

**From:** Daniel Maynard  
**Sent:** 06 February 2009 14:22  
**To:** Kate Leece; Matt Beake  
**Subject:** RE: Phorm and the ICO

Thanks for this Kate ☺

---

**From:** Kate Leece  
**Sent:** 06 February 2009 14:17  
**To:** Matt Beake; Daniel Maynard  
**Subject:** Phorm and the ICO

Hi Guys,

Just a bit of background on the ICO and Phorm debate

[http://www.ico.gov.uk/upload/documents/pressreleases/2008/new\\_phorm\\_statement\\_040408.pdf](http://www.ico.gov.uk/upload/documents/pressreleases/2008/new_phorm_statement_040408.pdf)

K  
Kate Leece  
Head of Legal & Business Affairs  
BBC Future Media & Technology,  
Broadcast Centre, BC5 D6,  
Media Village,  
201 Wood Lane,  
London W12 7TP

[S40(2)]

[ Not relevant ]

---

**From:** Kate Leece

**Sent:** 05 March 2009 06:59

**To:** David Deakin; Lucy McGrath; Andy Conroy; Ben Wilson-Press; Richard Cooper&Assistant

**Cc:** Alex Fulton; Kym Niblock; Claude London; James Isaac

**Subject:** [ Not relevant ]

Hi David,

14/05/2009

[Not relevant]

[Not relevant]

Seetha also said that she would like Richard Cooper to be comfortable about the use of the Audiences Services technology itself, especially in terms of being able to differentiate it from the more invasive 'Phorm' technology which we know raises public concerns, and hence I am copying Richard. Presumably it is Mark Hewis with whom he should discuss this at WW?

[Not relevant]

Richard/Ben, happy to discuss.

Thanks

Kate

[Not relevant]

[Not relevant]

From: Bill Thompson [S40(2)]  
Sent: 08 April 2009 09:07  
To: Tony Ageh  
Subject: Re: Internet usage monitoring trials  
Importance: High

I think it's something the BBC should opt out of but I don't think that you can make a public stand against it - I think it's reprehensible but it is not illegal. It might be appropriate for Watchdog or another editorial team to look at it - I've been on You & Yours and the Media Show talking about it - but a direct and public campaign seems to me to fall outside your remit as a public service provider. Perhaps get Erik to make a speech or two about the implications of this sort of technology and say that it doesn't fit with the BBC's view of the open and unimpeded network, but getting into this one as an anti-Phorm player may be a populist move but I fear it will end up with the Trust coming down on you.

However that doesn't mean you should let them use your traffic.

The first thing to say is that I personally do not like Phorm or its approach to online advertising. I'm with Tim Berners-Lee in arguing that ISPs should move bits around and only need to know enough about what those bits need to conform with the law and provide an efficient service. Deep packet inspection in order to target advertising is not part of the deal between ISPs and customers.

However the current legal position seems to be that it is permissible if sufficient privacy safeguards are in place, and Phorm has satisfied the Information Commissioner's Office about their practices and technology. I'm deeply suspicious, and Richard Clayton's report on Phorm did not make me any happier, but it is not clear cut enough.

<http://www.lightbluetouchpaper.org/2008/04/04/the-phorm-webwise-system/>

As a result the BBC is in a difficult position, since Phorm's technology does not therefore break any rules. One argument could be that there are clear concerns that the Open Internet Exchange slows down access to sites since there is a redirection taking place while URLs are inspected and pertinent adverts added. This would be a tricky one to use in order to remove the BBC from Phorm's service as Phorm themselves claim the delay is not significant and data so far is not conclusive. If they managed to demonstrate that it had no perceptible impact you'd be forced to join in.

However I think there's a much stronger argument to be made on the back of the BBC backstage terms and conditions. These say:

"You cannot charge people for being able to access BBC content through your proposition. That limits what you can do with a prototype using BBC content. So the short answer is no, you can't make money out of your prototype if it uses BBC content. However, generic advertising such as adwords on your site where you are hosting your idea or prototype is fine, so long as it is not specifically related to your prototype, service, or idea."

And I think that it is feasible to argue that Phorm's service is making commercial use of BBC content in ways that go beyond the normal terms of use for the website, to the extent that the targetting of adverts to people who regularly use BBC properties will be directly influenced by which BBC content they consume. Advertisers and the ISPs are therefore making money out of the BBC's content, albeit indirectly, and not just by putting adwords around a site that features or links to BBC material but by directly exploiting the behaviour of users in a way that is not acceptable for a publicly funded service.

This gives you a good, solid, public purposes reason to opt out. It will damage Phorm's ability to sell its service and its profitability but on grounds that I think are wholly defensible (but IANAL), and it puts you on the side of the angels but doesn't ally you with the massed hordes of campaigners.

One counter to this could of course be the way BBC material is indexed by Google and used to populate its search results, with advertising

displayed, or Google News and its use of BBC content. But as Eric

Schmidt points out here, Google sees such use as falling under fair use provisions, a position that has not yet been successfully challenged. Since Phorm is not displaying the BBC content and therefore makes no comment on it, this argument would not seem to hold

- OIX is entirely about commercial uses.

For the moment Google News does not feature any advertising: if Google were to put ads on the News pages then this would require some consideration as the principle I'm outlining here might mean the BBC having to remove BBC News from Google's index, which might not be considered desirable

While this does not address commercial BBC properties such as the sites managed by Worldwide - eg <http://www.bbcfocusmagazine.com/> - it would cover all bbc.co.uk material and reassure those using the BBC's publicly funded services.

So my view is that you can reasonably opt out but that making a fuss about Phorm - much as I'd like to see it happen - is unwise. Any argument about 'sensitive data' is going to be address by Phorm's tech team and end up in a slanging match, but they can't deny that they are making commercial use of the traffic data as it's their business model!

Hope this helps - am around all day (3402) I'm also happy for you to circulate this inside the BBC as widely as is useful -

b

[Not relevant]

**From:** Lucy McGrath  
**Sent:** 15 April 2009 22:03  
**To:** Kate Leece  
**Cc:** Rachael Ward  
**Subject:** RE: Phorm Blocking

Do let's discuss!

-----Original Message-----

**From:** Kate Leece  
**Sent:** 15 April 2009 19:01  
**To:** Lucy McGrath  
**Cc:** Rachael Ward  
**Subject:** Re: Phorm Blocking

An interesting question from WW. If this whips up concern about tracking user data, then may impact bbc.com's use of Audience Services technology, though I would hope users are getting this use sufficiently highlighted to them. Are you comfortable this is the case Lucy?

If Amazon are taking this stance re Phorm, then yes, in the interest of upholding privacy issues, I think we must consider too.

[Not Relevant]

Let me check Seetha's view as well, and discuss tomorrow?

Best regards,

Kate

-----Original Message-----

**From:** Lucy McGrath  
**To:** Kate Leece  
**CC:** Rachael Ward  
**Sent:** Wed Apr 15 17:52:22 2009  
**Subject:** FW: Phorm Blocking

Any thoughts????

---

**From:** Tabatha Rose  
**Sent:** 15 April 2009 17:49  
**To:** Lucy McGrath  
**Subject:** Phorm Blocking

Hey Lucy;

[Not relevant]

I saw this article and was wondering (out of sheer nosiness) if you guys were going to do something similar. I've had a few questions from suppliers already and I'm hoping we don't get too much drama from the public.

<http://news.bbc.co.uk/1/hi/technology/7999635.stm>

[Not relevant]

Tabatha

Tabatha Rose

Commercial Platforms Manager BBC.com

BBC Worldwide 201 Wood Lane, London, W12 7TQ (S40 (29))

<mailto:[S4002]> - t: (S4002) Confidential - commercially  
sensitive information Please consider the environment before printing this email.  
<<http://www.bbc.com/>>

**From:** Kate Leece  
**Sent:** 15 April 2009 14:26  
**To:** FM&T-Legal & Business Affairs  
**Subject:** FW: Phorm - Commission launches case against UK over privacy and personal data protection

Just fyi all...

K

---

**From:** Khalid Hadadi  
**Sent:** 14 April 2009 14:43  
**To:** Mark Burgess; Kate Leece; Anthony Rose and Assistant; Nicholas Eldred & PA; Andrew Baxter; Martyn Freeman-WW  
**Cc:** Matteo Maggiore And Joelle  
**Subject:** Phorm - Commission launches case against UK over privacy and personal data protection

Dear All

Please find details of an infringement proceedings relating to data protection and privacy opened against the UK regarding Phorm.

Best wishes

Khalid

***The Commission has opened an infringement proceeding against the United Kingdom after a series of complaints by UK internet users, and extensive communication of the Commission with UK authorities, about the use of a behavioural advertising technology known as 'Phorm' by internet service providers. The proceeding addresses several problems with the UK's implementation of EU ePrivacy and personal data protection rules, under which EU countries must ensure, among other things, the confidentiality of communications by prohibiting interception and surveillance without the user's consent. These problems emerged during the Commission's inquiry into the UK authorities' action in response to complaints from internet users concerning Phorm.***

*"Technologies like internet behavioural advertising can be useful for businesses and consumers but they must be used in a way that complies with EU rules. These rules are there to protect the privacy of citizens and must be rigorously enforced by all Member States," said EU Telecoms Commissioner Viviane Reding. "We have been following the Phorm case for some time and have concluded that there are problems in the way the UK has implemented parts of EU rules on the confidentiality of communications. I call on the UK authorities to change their national laws and ensure that national authorities are duly empowered and have proper sanctions at their disposal to enforce EU legislation on the confidentiality of communications. This*



*should allow the UK to respond more vigorously to new challenges to ePrivacy and personal data protection such as those that have arisen in the Phorm case. It should also help reassure UK consumers about their privacy and data protection while surfing the internet.”*

Since April 2008, the Commission has received several questions from UK citizens and UK Members of the European Parliament concerned about the use of a behavioural advertising technology known as ‘Phorm’ by Internet Service Providers in the UK. Phorm technology works by constantly analysing customers' web surfing to determine users' interests and then deliver targeted advertising to users when they visit certain websites. In April 2008, the UK fixed operator, BT, admitted that it had tested Phorm in 2006 and 2007 without informing customers involved in the trial. BT carried out a new, invitation-based, trial of the technology in October-December 2008. BT's trials resulted in a number of complaints to the UK data protection authority – the Information Commissioner's Office (ICO) and to the UK police.

The Commission has written several letters to the UK authorities since July 2008, asking how they have implemented relevant EU laws in the context of the Phorm case. Following an analysis of the answers received the Commission has concerns that there are structural problems in the way the UK has implemented EU rules ensuring the confidentiality of communications.

Under UK law, which is enforced by the UK police, it is an offence to unlawfully intercept communications. However, the scope of this offence is limited to ‘intentional’ interception only. Moreover, according to this law, interception is also considered to be lawful when the interceptor has ‘reasonable grounds for believing’ that consent to interception has been given. The Commission is also concerned that the UK does not have an independent national supervisory authority dealing with such interceptions.

The UK has two months to reply to this first stage of an infringement proceeding, the letter of formal notice sent today. If the Commission receives no reply, or if the observations presented by the UK are not satisfactory, the Commission may decide to issue a reasoned opinion (the second stage in an infringement proceeding). If the UK still fails to fulfil its obligations under EU law after that, the Commission will refer the case to the European Court of Justice.

## **Background**

The EU Directive on privacy and electronic communications requires EU Member States to ensure confidentiality of the communications and related traffic data by prohibiting unlawful interception and surveillance unless the users concerned have consented (Article 5(1) of Directive 2002/58/EC). The EU Data Protection Directive specifies that user consent must be ‘freely given specific and informed’ (Article 2(h) of Directive 95/46/EC). Moreover, Article 24 of the Data Protection Directive requires Member States to establish appropriate sanctions in case of infringements and Article 28 says that independent authorities must be charged with supervising implementation. These provisions of the Data Protection Directive also apply in the area of confidentiality of communications.

A detailed overview of telecoms infringement proceedings is available at:

[http://ec.europa.eu/information\\_society/policy/ecomm/implementation\\_enforcement/infringement/](http://ec.europa.eu/information_society/policy/ecomm/implementation_enforcement/infringement/)

[NOT RELEVANT TO REQUEST]

**From:** Richard Cooper [mailto:richard.cooper@bbc.co.uk]  
**Sent:** 17 April 2009 09:02  
**To:** [§40(2)]  
**Subject:** Phorm

Hi [§40(2)]

[§40(2)]

My knowledge of how Phorm works is currently based on the information readily available on the web, in particular, the Phorm FAQ for the official line:

<http://www.webwise.com/how-it-works/faq.html>

And this unofficial document that goes into considerably more detail:

<http://www.cl.cam.ac.uk/~rnc1/080404phorm.pdf>

As Phorm moves in and out of the news (triggered again recently by Amazon's comments), I am starting to get more detailed ad-hoc questions, so it's time to check my sources.

Although I recognise that the tone of Mr Clayton is not exactly supportive of Phorm, is his document an accurate representation of how it works, or can we have a separate session where you can put it right?

Cheers

Richard

---

**Richard Cooper**

Controller, Digital Distribution & Operations

**BBC Future Media & Technology**

BC5 B6, Broadcast Centre

[340(2)]

<http://www.bbc.co.uk>

This e-mail (and any attachments) is confidential and may contain personal views which are not the views of the BBC unless specifically stated.

If you have received it in error, please delete it from your system.

Do not use, copy or disclose the information in any way nor act in reliance on it and notify the sender immediately.

Please note that the BBC monitors e-mails sent or received.

Further communication will signify your consent to this.

\*\*\*\*\*  
\*\*\*

**From:** Dirk-Willem van Gulik  
**Sent:** 17 April 2009 10:55  
**To:** Richard Cooper  
**Cc:** Kate Leece  
**Subject:** Re: Phorm - Commission launches case against UK over privacy and personal data protection

Richard Cooper wrote:

> [\\_http://www.cl.cam.ac.uk/~rnc1/080518-phorm.pdf\\_](http://www.cl.cam.ac.uk/~rnc1/080518-phorm.pdf)

I spoked to some old friends at the EU ~~(S402)~~ who tend to dive into this; and got a very similar story.

> a purist internet approach it's a man-in-the-middle attack that  
> redirects a request to [bbc.co.uk](http://bbc.co.uk) to a server in their network that

redirects \_and\_ records/analyses/stores the request/reply.

Also note that the # of redirects is limited - Phorn eating 3 to 5 of the 7-10 of these allowed is probably not good - as we may well need a fair handful to ensure privacy in for example identiy, some of the game sites and for our AJAX.

> masquerades as [bbc.co.uk](http://bbc.co.uk) so that it can set a 'webwise' cookie on our  
> domain (and of course does exactly the same for all other domains, so  
> the user will have a 'webwise' cookie for every domain that they have

Which we could detect by using javascript and/or SSL.

> There is an opt-out mechanism suggested that sites could used  
> (robots.txt), but as described in this document it is not clear that  
> this is useable without at the same time blocking your site from  
> search engines.

Correct. Not an option.

However I guess we could 1) inform Phorn or the ISPs that we wish to be blacklisted, 2) regularly check that with JS/https to keep them honest and 3) if needed inform our users/the world of this.

The reason for 'demanding' this may be around our increased identity/spaces/etc use - which starts to expose a lot of data to Phorn  
- in fact - much more that we actually internally allow to be collected or aggregated. I.e. if Phorn was a normal external supplier which we wanted to use then our own policy/dpa-compliance interpretation would probably be at odds with most of this.

> An alternative mechanism could be to include some javascript in the  
> standard template for every page for a site that looks for the  
> presence of the webwise cookie on its domain, and if found to rewrite  
> it to the generic opt-out value that would then mean that Phorm would  
> stop processing subsequent requests to that domain.

Or altering the user. Or having once in a while a https request come in  
- and examine that on the server. It may be that once identity and other https things start to become more common - that we simply can look at the logs to get an idea of the scale of this.

> From a commercial perspective I can understand why there's value  
> created in having this information, and therefore why ISPs want to do this.  
> From a technical perspective it's evil!

Agreed - and as things will fail, and the BBC has a tendency to seek the edges of what is technically/creatively possible - incurs an indirect cost to us in terms of transparency/control/flexibility/ability - as whatever we now 'do' with the user is at the mercy of the 'middleman'.

If this is a worry - with a very small bit of work we could do some detection to get an idea of the scale and/or inform the user (e.g. have the 'Privacy and Cookies link' at the bottom of the home page change to something more visible - e.g. a small warning signal - followed by an extra block on that page. Or in general - modify the privacy and cookies page to explicitly tell the user that parties en route may be observing and that in their case - Phorn is known to do so.

Dw.

**From:** Dirk-Willem van Gulik  
**Sent:** 17 April 2009 11:02  
**To:** Kate Leece  
**Cc:** Richard Cooper  
**Subject:** Re: Phorm - Commission launches case against UK over privacy and personal data protection

Kate Leece wrote:

> Many thanks Richard, very helpful. I don't like the masquerading as  
> bbc.co.uk part at all, but I will consult with Lucy in IPC on this tomorrow.

I'd be also vigilant w.r.t to the 'man in the middle' who actively looks and interacts with 'our' traffic/conversation with the user and indirectly passes information learned from this eavesdropping to its third party advertizers.

Or in other words while ISPs 'en-route' can (theoretically) also listen in on the traffic - they tend to then not share this - but only use this within the end to end site/user relation/futherting. Whereas Phorn goes a step further - and actively leaks this to third parties.

So we have to 'trust' Phorn as if it was part of the BBC system - i.e. you'd want to apply the various infosec/dpa policy forms/process to it.

> We will have to keep an eye on the press and public reaction. It does  
> not sound like there is a clear and easy way to opt out but if we did  
> want to make a stance and opt out, how much work would be the  
> Javascript alternative be?

If the information is correct - quite easy.

Dw

**From:** Kate Leece  
**Sent:** 17 April 2009 12:58  
**To:** Lucy McGrath  
**Cc:** Lorraine Stiller-INTERNET  
**Subject:** FW: Phorm - Commission launches case against UK over privacy and personal data protection

Hi Lucy,

As briefly discussed, just to let you know that Ian and Andy Conroy are discussing the question of whether the BBC should in fact opt out of Phorm without further delay. There are a number of ramifications of course, including bbc.com's current use of Audience Sciences on our shared infrastructure.

Richard's emails below confirm we can do this ourselves or go direct to Phorm, but the issue is wider than just the technical fix of course.

Ian is intending to speak to Seetha and Matt Beake in Press & Comms - I'm in a mtg now but will update when I hear more.

K

-----Original Message-----

**From:** Kate Leece  
**Sent:** 17 April 2009 12:45  
**To:** Ian Hunter- [S40(2)] Andy Conroy  
**Cc:** Matt Beake  
**Subject:** FW: Phorm - Commission launches case against UK over privacy and personal data protection

As discussed, Richard's views on how to opt out if we decide to do so...

Important issue is to consider the impact and comms around why we continue to use Audience Services on bbc.com

K

-----Original Message-----

**From:** Richard Cooper  
**Sent:** 17 April 2009 10:03  
**To:** Kate Leece; Dirk-Willem van Gulik  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

>> how much work would be the Javascript alternative be?

If my understanding is correct, then it would be technically simple but politically rather more complex...

I've contacted [S40(2)] who's currently working for Phorm. Let me know if there are any specific questions that you have, or whether you'd like to be involved in some sort of session with them.

Cheers  
Richard

-----Original Message-----

**From:** Kate Leece  
**Sent:** 17 April 2009 08:32  
**To:** Richard Cooper; Dirk-Willem van Gulik  
**Subject:** Re: Phorm - Commission launches case against UK over privacy and personal data protection

Many thanks Richard, very helpful. I don't like the masquerading as bbc.co.uk part at all, but I will consult with Lucy in IPC on this tomorrow.

We will have to keep an eye on the press and public reaction. It does not sound like there is a clear and easy way to opt out but if we did want to make a stance and opt out, how much work would be the Javascript alternative be?

Thanks

Kate

-----Original Message-----

From: richard cooper

To: Kate Leece

To: Dirk-Willem van Gulik

Sent: Apr 16, 2009 7:48 PM

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

I have unofficial info

<http://www.cl.cam.ac.uk/~rnc1/080518-phorm.pdf>

From here

<http://www.lightbluetouchpaper.org/2008/04/04/the-phorm-webwise-system/>

This is in line with other information that I've seen on the web. From a purist internet approach it's a man-in-the-middle attack that redirects a request to [bbc.co.uk](http://bbc.co.uk) to a server in their network that masquerades as [bbc.co.uk](http://bbc.co.uk) so that it can set a 'webwise' cookie on our domain (and of course does exactly the same for all other domains, so the user will have a 'webwise' cookie for every domain that they have visited).

There is an opt-out mechanism suggested that sites could use (robots.txt), but as described in this document it is not clear that this is useable without at the same time blocking your site from search engines.

An alternative mechanism could be to include some javascript in the standard template for every page for a site that looks for the presence of the webwise cookie on its domain, and if found to rewrite it to the generic opt-out value that would then mean that Phorm would stop processing subsequent requests to that domain.

From a commercial perspective I can understand why there's value created in having this information, and therefore why ISPs want to do this. From a technical perspective it's evil!

Cheers  
Richard

---

From: Kate Leece

Sent: 16 April 2009 12:56

To: Richard Cooper&Assistant

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Thanks Richard -are you able to get someone to look into this?

I think we need to be fully across this...

K

---

From: Richard Cooper

Sent: 16 April 2009 11:06

To: Kate Leece; Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath

Cc: Matteo Maggione And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar-

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection



We'll need to get more information on phorm - at the moment it's not clear to me how a web site actually opts out as phorm is effectively a 'man-in-the-middle' attack that intercepts requests to [bbc.co.uk](http://bbc.co.uk) and sends them somewhere else briefly!

---

From: Kate Leece  
Sent: 16 April 2009 10:07  
To: Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath  
Cc: Matteo Maggiore And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar  
Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Many thanks Khalid, very interesting.

James/Lucy,

A couple of thoughts on this:

\* Given the news from the EU, and the decision by Amazon yesterday that it will not allow Phorm to scan its web pages to produce targeted ads, we should consider whether the BBC should also be contacting Phorm to opt out of the system for the BBC website until such time as this is resolved.

\* Are we still comfortable that [bbc.com](http://bbc.com)'s use of behavioural targeted advertising (by Audience Sciences (which went live 1 April 2009) meets the Directive's requirement that user consent must be 'freely given specific and informed' (Article 2(h) of Directive 95/46/EC <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:NOT>> )?

[Not relevant]

Copying Seetha and Richard C for their information also.

Thanks

Kate

---

From: Khalid Hadadi  
Sent: 14 April 2009 14:43  
To: Mark Burgess; Kate Leece; Anthony Rose and Assistant; Nicholas Eldred & PA; Andrew Baxter; Martyn Freeman-WW  
Cc: Matteo Maggiore And Joelle  
Subject: Phorm - Commission launches case against UK over privacy and personal data protection

Dear All

Please find details of an infringement proceedings relating to data protection and privacy opened against the UK regarding Phorm.

Best wishes

Khalid

The Commission has opened an infringement proceeding against the United

-----Original Message Truncated-----

[NOT RELEVANT]

-----Original Message-----

From: Ian Hunter

Sent: 17 April 2009 16:08

To: Kate Leece

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Yes - the Matts in PR are getting their heads round it. I have alerted Seetha to the possible need to come out with a statement. Andy C is getting a precise line from Worldwide on how their service is structurally different from the approach taken by Phorm. I suggest we let the Matts pull together something early next week which we can deploy as appropriate. Yrs, Ian

-----Original Message-----

From: Kate Leece

Sent: 17 April 2009 15:43

To: Ian Hunter

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Hi Ian,

Any update on this?

Thanks

Kate

-----Original Message-----

From: Kate Leece

Sent: 17 April 2009 12:45

To: Ian Hunter [S402] Andy Conroy

Cc: Matt Beake

Subject: FW: Phorm - Commission launches case against UK over privacy and personal data protection

As discussed, Richard's views on how to opt out if we decide to do so...

Important issue is to consider the impact and comms around why we continue to use Audience Services on bbc.com

K

-----Original Message-----

From: Richard Cooper

Sent: 17 April 2009 10:03

To: Kate Leece; Dirk-Willem van Gulik

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

>> how much work would be the Javascript alternative be?

If my understanding is correct, then it would be technically simple but politically rather more complex...

I've contacted [S402] who's currently working for Phorm. Let me know if there are any specific questions that you have, or whether you'd like to be involved in some sort of session with them.

Cheers  
Richard

-----Original Message-----

From: Kate Leece

Sent: 17 April 2009 08:32

To: Richard Cooper; Dirk-Willem van Gulik

Subject: Re: Phorm - Commission launches case against UK over privacy and personal data protection

Many thanks Richard, very helpful. I don't like the masquerading as bbc.co.uk part at all, but I will consult with Lucy in IPC on this tomorrow.

We will have to keep an eye on the press and public reaction. It does not sound like there is a clear and easy way to opt out but if we did want to make a stance and opt out, how much work would be the Javascript alternative be?

Thanks

Kate

-----Original Message-----

From: richard cooper

To: Kate Leece

To: Dirk-Willem van Gulik

Sent: Apr 16, 2009 7:48 PM

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

I have unofficial info

<http://www.cl.cam.ac.uk/~rnc1/080518-phorm.pdf>

From here

<http://www.lightbluetouchpaper.org/2008/04/04/the-phorm-webwise-system/>

This is in line with other information that I've seen on the web. From a purist internet approach it's a man-in-the-middle attack that redirects a request to bbc.co.uk to a server in their network that masquerades as bbc.co.uk so that it can set a 'webwise' cookie on our domain (and of course does exactly the same for all

other domains, so the user will have a 'webwise' cookie for every domain that they have visited).

There is an opt-out mechanism suggested that sites could use (robots.txt), but as described in this document it is not clear that this is useable without at the same time blocking your site from search engines.

An alternative mechanism could be to include some javascript in the standard template for every page for a site that looks for the presence of the webwise cookie on its domain, and if found to rewrite it to the generic opt-out value that would then mean that Phorm would stop processing subsequent requests to that domain.

From a commercial perspective I can understand why there's value created in having this information, and therefore why ISPs want to do this. From a technical perspective it's evil!

Cheers  
Richard

---

From: Kate Leece  
Sent: 16 April 2009 12:56  
To: Richard Cooper&Assistant  
Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Thanks Richard -are you able to get someone to look into this?

I think we need to be fully across this...

K

---

From: Richard Cooper  
Sent: 16 April 2009 11:06  
To: Kate Leece; Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath  
Cc: Matteo Maggiore And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar  
Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

We'll need to get more information on phorm - at the moment it's not clear to me how a web site actually opts out as phorm is effectively a 'man-in-the-middle' attack that intercepts requests to bbc.co.uk and sends them somewhere else briefly!

[Not Relevant]

**From:** Kate Leece  
**Sent:** 19 April 2009 12:56  
**To:** Seetha Kumar; Matteo Maggiore; Richard Cooper; Ian Hunter  
**Cc:** James Leaton Gray & Assistant; Lucy McGrath; Andy Conroy; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant  
**Subject:** Re: Phorm - Commission launches case against UK over privacy and personal data protection

**Follow Up Flag:** Follow up  
**Flag Status:** Green

Richard has investigated the ways to opt out, either instruct Phorm or add some Javascript to our standard page template ourselves, not technically difficult, if we decide to do so.

A key concern is impact on bbc.com's use of Audience Sciences for behavioural targeted advertising, as whilst technology different, public may see as the same. Also, as the EU Directive says user consent must be 'freely given, specific and informed' we need to decide if this really is the case. James/Lucy, can you confirm IPC's position on this?

Ian and Andy Conroy were discussing Friday pm, does Andy have WW's latest position?

[Not Relevant]

Best regards,

Kate

[Not Relevant]

**From:** Kate Leece  
**Sent:** 19 April 2009 13:26  
**To:** Anthony Rose; Ian Hunter- ~~S40(2)~~ : Andy Conroy; Matt Phillips; Matt Beake  
**Cc:** Richard Cooper&Assistant; Seetha Kumar- ~~S40(2)~~ James Leaton Gray & Assistant; Lucy McGrath  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

**Follow Up Flag:** Follow up  
**Flag Status:** Green

Thanks Anthony, that's helpful.

I think the key issue here is, as you say, the perceived privacy issue that Phorm has created through the nature of their tracking, exacerbated now by an EU action which suggests that the UK is not adequately protecting its users' privacy.

We need to make a decision as to whether the BBC should ask Phorm to specifically exclude bbc.co.uk traffic in its user profiling, which could help to reinforce our position that we care deeply about our users privacy.

However, I agree that we must carefully frame our public statements on Phorm, i) because of the current use of behavioural targeted advertising on bbc.com and ii) because behavioural targeted advertising is being seen as a key way of boosting advertising revenue so critical to many online businesses at this time.

I'm copying Matt P and Matt B who I know were looking into this further on Friday,

K

**From:** Anthony Rose  
**Sent:** 19 April 2009 12:52  
**To:** Matteo Maggiore; Richard Cooper; Kate Leece; Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath  
**Cc:** Matteo Maggiore And Joelle; Mark Burgess; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar-  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

There's a lot of misinformation on Phorm, so here's a quick overview of the technical issues plus my personal prognosis of Phorm's future:

1. My view on Phorm is that it's a flawed business model. Basically, if Phorm share ad revenue with ISPs then they'll necessarily pay less to web sites who run those ads than Google can pay, and hence web sites will choose to run Google ads over Phorm ads. For that reason alone I don't see Phorm surviving long term - which, if you agree, would limit the amount of time and energy that we need to devote to Phorm (though of course it will have successors with variants on their business model but similar privacy issues).
2. Phorm has gotten itself into a privacy pickle. They've actually gone to some effort to ensure the data they keep is anonymised, but given the negative PR I can't see this ending any other way than the ISPs capitulating and admitting this was a poorly thought through idea. In other words, I believe that Phorm will fold anyway based on the privacy scaremongering - another reason why we don't need to be spending too much of our time on this.
3. Now, in terms of Phorm and the BBC web site experience:
  - a) We don't serve ads on bbc.co.uk, so there's nothing for Phorm to 'inject' into our users' web site experience.
  - b) Outside the UK, BBC WW serve ads. Where Phorm operates in those territories, that would seem to be an issue to be resolved by BBC WW in each territory as applicable.
4. Separate to Phorm running ads on a web site, an issue exists where Phorm tracks web traffic passing through its systems to assist in building up a profile for a given user, allowing them to serve more targeted ads on *other* sites. This may include their tracking bbc.co.uk traffic, such that if you visit a number of football pages they may classify you as a sport lover, allowing them to serve targeted sports ads on other sites.

Looking at information on the Phorm web site, they have gone to some lengths to make sure the data is anonymised, not linked to an IP address, etc. So in terms of pure user tracking, they appear to be keeping far *less* data on users

than ad serving companies have been keeping for many years now. However, it's the *nature* of their tracking - i.e. placing their monitoring equipment at ISPs, able to monitor your every web transaction - that's so insidious, and which is leading to the (in my view, terminal) privacy invasion *perception* problem that they have.

5. It seems to me that if Phorm is analysing the content of every web page browsed by a given user, then the primary action would be for users, or consumer groups acting on their behalf, to engage directly with ISPs, rather than for individual web sites to opt out. Even if most major web sites opted out of Phorm tracking, that would not materially affect their business - i.e. you don't need to track very much user activity to construct enough of a profile to improve your ad targeting on those sites which do display Phorm-targeted ads.

6. Yes, the BBC could ask Phorm to specifically exclude bbc.co.uk traffic in its user profiling (if it indeed does include our site, and if indeed they can exclude individual sites). There is definitely a consumer win to be had here.

7. However, it's important to note that the reason some ISPs are intending to use Phorm is to boost their revenue - revenue that they claim needs to be augmented to offset the increasing costs incurred for serving video for sites such as BBC iPlayer. I would therefore suggest that we carefully frame our public statements on Phorm, or at least engage with ISPs before making public statements about Phorm or asking Phorm to exclude bbc.co.uk traffic from its user profiling, so as to avoid giving ISPs a potential "BBC is increasing our serving costs, while simultaneously depriving us of potential revenue" messaging opportunity.

[Not Relevant]

**From:** Andy Conroy  
**Sent:** 20 April 2009 09:10  
**To:** Alex Fulton  
**Cc:** Kym Niblock  
**Subject:** Phorm v Behavioural Targetting

**Alex**

The PS is considering firming up its view of Phorm. This might mean announcing like Amazon our active dislike.

Inevitably this will lead to questions about BT.

Could you talk to Matt Phillips in FM&T Comms - I think he is expecting you - about what impact any PS announcements might have on how WW explains its position etc..

**Regards**

**Andy**

**Andy Conroy**  
**BBC Public Service/Worldwide New Media Partnership Manager for FM&T**

BBC Future Media & Technology  
BC4 D5, Broadcast Centre,  
Media Village,  
201 Wood Lane,  
London,  
W12 7TQ

[S402]

[www.bbc.co.uk](http://www.bbc.co.uk)



**From:** Kate Leece  
**Sent:** 20 April 2009 18:04  
**To:** Lucy McGrath  
**Cc:** Lorraine Stiller-INTERNET  
**Subject:** FW: Phorm

Hi Lucy,

You should be aware....

K

-----Original Message-----

From: Matt Beake  
Sent: 20 April 2009 16:42  
To: Kate Leece  
Subject: FW: Phorm

Hi Kate - fyi re: BBC WW asked about involvement in Phorm. Our line as below.

Thanks, Matt

-----Original Message-----

From: Matt Phillips  
Sent: 20 April 2009 16:40  
To: Alex Fulton; Matt Beake  
Subject: RE: Phorm

Thanks Alex

Pls speak to Matt who has been speaking to Kate Leece. I guess our line should be that we don't carry advertising on any BBC sites so it's not a live issue for us - more complex for WW of course... Just keen to clarify that distinction between the UK PSB sites and the international angle...

M

-----  
Matt Phillips  
BBC Future Media & Technology  
(S40(2))

-----Original Message-----

From: Alex Fulton  
Sent: 20 April 2009 16:32  
To: Matt Phillips  
Subject: FW: Phorm

Hi Matt,

I have been contacted by NMA today on a Q about BBCWW's stance on Phorm.

Andy Conroy mentioned you were looking at establishing the BBC's line on it - it would be great to catch up with you on it.

I'm drafting a line here, which I'll run past you also.

Thanks v much, Alex

-----Original Message-----

From: suzanne bearne [S40(2)]  
Sent: Monday, April 20, 2009 11:51 AM  
To: Alex Fulton  
Subject: Phorm

Alex

I hope you enjoyed the sunshine at the weekend.

Can you let me know what bbcw's stance is on phorm? Will the company follow in amazon's footsteps and look to block the technology?

Kind regards  
Susie

Susie Bearne  
Reporter  
New Media Age  
50 Poland Street, London, W1F 7AX  
[S40(2)]

---

**From:** Matt Beake  
**Sent:** 21 April 2009 10:39  
**To:** Kate Leece  
**Subject:** RE: Phorm/BBCWW

No further info other than the below. Could be a bit of a fishing expedition. I think the main thing, which I can emphasise to Alex, is that we make sure that there is no confusion that this statement comes from BBC WW, and not the BBC.

---

**From:** Kate Leece  
**Sent:** 21 April 2009 09:58  
**To:** Matt Beake  
**Subject:** RE: Phorm/BBCWW

Thanks Matt – do WW have any further info on the approach NMA are taking to the story? ON this basis it sounds like we are not expecting the BBC/BBCWW to feature at all, but are we sure that is the case?

Thanks

K

**From:** Matt Beake  
**Sent:** 21 April 2009 09:51  
**To:** Kate Leece  
**Subject:** FW: Phorm/BBCWW  
**Importance:** High

Hi kate - here is WW's proposed response. Please let me know if you'd like to discuss. Thanks, Matt

---

**From:** Alex Fulton  
**Sent:** 21 April 2009 09:18  
**To:** Matt Beake  
**Cc:** Matt Phillips  
**Subject:** FW: Phorm/BBCWW

Hi Matt,

Here's the line I'll send over to NMA today – in response to their Q regarding our stance on Phorm, following Amazon's move.

David Moody is fine with this line.

*We don't usually comment on our stance in relation to other companies decisions.*

*As you know, BBC Worldwide takes data protection and e-privacy extremely seriously and always considers carefully advice from relevant bodies in this area.*

Also – did you see that Wikipedia has blocked Phorm as well (on Zdnet).

Friday 17 April 2009, 5:01 PM

## **Wikimedia Foundation turns down Phorm**

Posted by David Meyer

14/05/2009

The Wikimedia Foundation has become the latest web giant to opt out of Phorm's user-tracking targeted-advertising system.

After Amazon did the same earlier this week, Wikimedia took the plunge on Thursday, "after some internal discussion on whether opting out of the Phorm user-profiling system in the UK would legitimize it".

The move means that users of Wikipedia and other Wikimedia properties cannot have their surfing tracked across those sites by Phorm/Webwise.

Unlike Amazon, which gave no explicit reason for its decision, Wikimedia outlined its motivation to the Phorm/Webwise folks: "...we consider the scanning and profiling of our visitors' behavior by a third party to be an infringement on their privacy".

**From:** Alex Fulton

**Sent:** Monday, April 20, 2009 6:16 PM

**To:** David Moody -WW; Claude London; Rebecca Conroy; Kym Niblock

**Cc:** Esther Brown

**Subject:** Phorm/BBCWW

Hi all,

We have been asked by New Media Age to comment on BBCWW's stance on Phorm, following Amazon's decision to block the technology. I'm suggesting responding as below:

*We don't usually comment on our stance in relation to other companies decisions.*

*As you know, BBC Worldwide takes data protection and e-privacy extremely seriously and always considers carefully advice from relevant bodies in this area.*

Please let me know tomorrow morning if you have any comment on this.

Many thanks, Alex

**Alex Fulton**

Communications Manager - Digital Media

BBC Worldwide

Media Centre, Media Village, 201 Wood Lane, London, W12 7TQ

[S406]

From: Matt Beake  
To: Kate Leece  
Sent: Mon Apr 20 16:42:07 2009  
Subject: FW: Phorm

Hi Kate - fyi re: BBC WW asked about involvement in Phorm. Our line as below.

Thanks, Matt

-----Original Message-----  
From: Matt Phillips  
Sent: 20 April 2009 16:40  
To: Alex Fulton; Matt Beake  
Subject: RE: Phorm

Thanks Alex

Pls speak to Matt who has been speaking to Kate Leece. I guess our line should be that we don't carry advertising on any BBC sites so it's not a live issue for us - more complex for WW of course... Just keen to clarify that distinction between the UK PSB sites and the international angle...  
M

-----  
Matt Phillips  
BBC Future Media & Technology  
[S40(2)]

-----Original Message-----  
From: Alex Fulton  
Sent: 20 April 2009 16:32  
To: Matt Phillips  
Subject: FW: Phorm

Hi Matt,

I have been contacted by NMA today on a Q about BBCWW's stance on Phorm.

Andy Conroy mentioned you were looking at establishing the BBC's line on it - it would be great to catch up with you on it.

I'm drafting a line here, which I'll run past you also.

Thanks v much, Alex

-----Original Message-----  
From: susanne bearne [S40(2)]  
Sent: Monday, April 20, 2009 11:51 AM  
To: Alex Fulton  
Subject: Phorm

Alex

I hope you enjoyed the sunshine at the weekend.

Can you let me know what bbcw's stance is on phorm? Will the company follow in amazon's footsteps and look to block the technology?

Kind regards  
Susie

Susie Bearne

[Not relevant]

-----Original Message-----

From: Andy Conroy  
Sent: 21 April 2009 08:45  
To: Kate Leece; 'ian.hunter@bbc.co.uk'  
Cc: 'seetha.kumar@bbc.co.uk'; Richard Cooper  
Subject: RE: Phorm

Hi

I asked this WW to do this work last Friday.

Alex Fulton their comms person is pulling this together with Matt P.

I am due to speak to her tomorrow, Wednesday.

Regards

Andy

Andy Conroy  
BBC Public Service/Worldwide New Media Partnership Manager for FM&T

[S40(2)]

-----Original Message-----

From: Kate Leece  
Sent: 21 April 2009 08:44  
To: 'ian.hunter@bbc.co.uk'; Andy Conroy  
Cc: 'seetha.kumar@bbc.co.uk'; Richard Cooper  
Subject: Fw: Phorm

Ian/Andy,

Fyi - I think it is really important that we know what approach WW are taking in their response to NMA's enquiry about Phorm.

Hence I have asked Matt beake to find out more asap

K

-----Original Message-----

From: Kate Leece  
To: Matt Beake  
Sent: Tue Apr 21 08:33:30 2009  
Subject: Re: Phorm

Hi Matt, do we know how WW are replying and what approach NMA are taking? We need to consider how the BBC WW position on advertising bearing sites might be seen by members of the public who see us as one brand.....

K

-----Original Message-----

Reporter  
New Media Age  
50 Poland Street, London, W1F 7AX  
(020 7400 1234)

**From:** Khalid Hadadi  
**Sent:** 22 April 2009 17:21  
**To:** Lucy McGrath; Matteo Maggiore  
**Cc:** Kate Leece; Nancy Dickie  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

Dear Lucy

There were number of complaints from privacy advocates that the UK government have not implemented the EU Directive properly in the UK.

The Commission having investigated the complaints and considered UK implementation of the Data Protection Directive (2002) believes that the UK has a case to answer and has thus opened an infringement proceedings.

I hope this is clear?

Happy to discuss further tomorrow on the phone.

Best wishes

Khalid  
(S40(2))

---

**From:** Lucy McGrath  
**Sent:** 22 April 2009 18:07  
**To:** Matteo Maggiore; Khalid Hadadi  
**Cc:** Kate Leece; Nancy Dickie  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

Hi Matteo and Khalid

Do we have a copy of the complaint? It's hard to know whether the Commission is challenging the original trial or the new Phorm model where there is active consent?

Many thanks

Lucy

---

**From:** Matteo Maggiore  
**Sent:** 17 April 2009 11:49  
**To:** Richard Cooper; Kate Leece; Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath  
**Cc:** Matteo Maggiore And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

This is going to become quite contentious in the Brussels debate. Reasonably, while the debate is ongoing and the grey areas stay that way, we should err on the side of "gold-plating" our compliance and make sure decision makers are aware that that is our approach.

---

**From:** Richard Cooper  
**Sent:** 16 April 2009 11:06  
**To:** Kate Leece; Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath  
**Cc:** Matteo Maggiore And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar  
**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

We'll need to get more information on phorm – at the moment it's not clear to me how a web site actually opts out as phorm is effectively a 'man-in-the-middle' attack that intercepts requests to bbc.co.uk and sends them



somewhere else briefly!

---

**From:** Kate Leece

**Sent:** 16 April 2009 10:07

**To:** Khalid Hadadi; James Leaton Gray & Assistant; Lucy McGrath

**Cc:** Matteo Maggiore And Joelle; Mark Burgess; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant; Seetha Kumar: (S40C)

**Subject:** RE: Phorm - Commission launches case against UK over privacy and personal data protection

Many thanks Khalid, very interesting.

James/Lucy,

A couple of thoughts on this:

- Given the news from the EU, and the decision by Amazon yesterday that it will not allow Phorm to scan its web pages to produce targeted ads, we should consider whether the BBC should also be contacting Phorm to opt out of the system for the BBC website until such time as this is resolved.
- Are we still comfortable that bbc.com's use of behavioural targeted advertising (by Audience Sciences (which went live 1 April 2009) meets the Directive's requirement that user consent must be 'freely given specific and informed' (Article 2(h) of Directive 95/46/EC)?

[Not Relevant]

Copying Seetha and Richard C for their information also.

Thanks

Kate

---

**From:** Khalid Hadadi

**Sent:** 14 April 2009 14:43

**To:** Mark Burgess; Kate Leece; Anthony Rose and Assistant; Nicholas Eldred & PA; Andrew Baxter; Martyn Freeman-WW

**Cc:** Matteo Maggiore And Joelle

**Subject:** Phorm - Commission launches case against UK over privacy and personal data protection

Dear All

Please find details of an infringement proceedings relating to data protection and privacy opened against the UK regarding Phorm.

Best wishes

Khalid

[Not Relevant]

-----Original Message-----  
From: Kate Leece  
Sent: 22 April 2009 23:38

To: Ian Hunter (S402) Andy Conroy  
Cc: Seetha Kumar-Private; Anthony Rose and Assistant; Richard Cooper&Assistant; Lucy McGrath; Matt Phillips; Matt Beake  
Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Hi Ian/Andy,

Is there a summary of the pros and cons of the BBC opting out of Phorm being prepared, and the comms plan around how we would manage it if we did, and indeed has Andy been able to get a precise description from Worldwide on how their service is structurally different from the approach taken by Phorm so as to be able to defend its continuance if need be?

I am concerned that we explore the full picture, asap, and are prepared for further questions/challenges.

Many thanks

Kate

-----Original Message-----

From: Kate Leece

Sent: 19 April 2009 12:56

To: Seetha Kumar (S402) Matteo Maggiore; Richard Cooper; Ian Hunter (S402)

Cc: James Leaton Gray & Assistant; Lucy McGrath; Andy Conroy; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant

Subject: Re: Phorm - Commission launches case against UK over privacy and personal data protection

Richard has investigated the ways to opt out, either instruct Phorm or add some Javascript to our our standard page template ourselves, not technically difficult, if we decide to do so.

A key concern is impact on bbc.com's use of Audience Sciences for behavioural targeted advertising, as whilst technology different, public may see as the same. Also, as the EU Directive says user consent must be 'freely given, specific and informed' we need to decide if this really is the case. James/Lucy, can you confirm IPC's position on this?

Ian and Andy Conroy were discussing Friday pm, does Andy have WW's latest position?

[Not Relevant]

Best regards,

Kate

-----Original Message-----

From: Seetha Kumar (S402)

To: Matteo Maggiore; Richard Cooper; Kate Leece; Ian Hunter (S402)

Cc: James Leaton Gray & Assistant; Lucy McGrath; Andy Conroy; Richard Cooper; Anthony Rose and Assistant; Nicholas Eldred & PA; Richard Cooper&Assistant

Sent: Sat Apr 18 17:13:35 2009

Subject: Re: Phorm - Commission launches case against UK over privacy and personal data protection

When will we get more information on phorm - i.e. how we actually opt out? What's our time line?

[Not Relevant]

Seetha

**From:** Richard Cooper  
**Sent:** 22 April 2008 17:51  
**To:** Kate Leece  
**Subject:** RE: Phorm and the Information Commissioner

**This message has been archived. [View the original item](#)**

Thanks. My primary concern is that as far as I can understand they intercept our pages to add a cookie which they then use to track the users page consumption - I don't know what domain that cookie will be on.

Cheers  
Richard

---

**From:** Kate Leece  
**Sent:** 22 April 2008 14:02  
**To:** Richard Cooper&Assistant  
**Subject:** Phorm and the Information Commissioner

Hi Richard,  
You mentioned the issues surrounding the way in which Phorm were operating, and therefore I am forwarding the Information Commissioner's statement of 18/4.  
[http://www.ico.gov.uk/Home/about\\_us/news\\_and\\_views/current\\_topics/phorm\\_webwise\\_and\\_](http://www.ico.gov.uk/Home/about_us/news_and_views/current_topics/phorm_webwise_and_)  
To cut to the conclusion  
In the view of the Commissioner Phorm can operate Webwise and OIX in a way which is in compliance with the DPA and PECR but must be sensitive to the concerns of users. The Commissioner will keep the Phorm products under review as they are rolled out and his view will be strongly influenced by the experience of those users who choose to participate in any trials and the way in which they are able to make that decision. The Commissioner will also continue to be interested in the dialogue between technical experts and Phorm about the way in which the system operates.

So definitely one to keep under review and if you have concerns about the accuracy of the technical representations Phorm have made to the ICO, let me know.

Best regards,

Kate

Kate Leece

Head of Legal & Business Affairs  
BBC Future Media & Technology,  
Broadcast Centre, BC5.D6,  
Media Village,  
201 Wood Lane,  
London W12 7TP

[SLOG2]

-----Original Message-----

From: Matteo Maggiore

Sent: 22 April 2009 17:11

To: Khalid Hadadi

Subject: Fw: Phorm - Commission launches case against UK over privacy and personal data protection

Did you respond to her previous email?

I would like to meet someone in the Com on this - do you know who deals?

M

-----Original Message-----

From: Lucy McGrath

To: Matteo Maggiore; Khalid Hadadi

CC: Kate Leece; Nancy Dickie

Sent: Wed Apr 22 17:06:45 2009

Subject: RE: Phorm - Commission launches case against UK over privacy and personal data protection

Hi Matteo and Khalid

Do we have a copy of the complaint? It's hard to know whether the Commission is challenging the original trial or the new Phorm model where there is active consent?

Many thanks

Lucy

[Not Relevant]