



EUROPEAN COMMISSION  
Information Society and Media Directorate-General  
Electronic Communications Policy  
Implementation of Regulatory Framework (I)

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Mr Steve Jackson  
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Dear Mr Jackson,

I refer to your e-mail of 16 June 2008 to Commissioner Viviane Reding concerning the deployment by Internet Service Providers (ISPs) of the 'Phorm' technology and the position of the United Kingdom (UK) authorities regarding complaints raised in this respect. Mrs Reding has asked me to respond on her behalf.

First, I should stress that privacy and the protection of personal data are fundamental rights enshrined in Articles 7 and 8 of the EU Charter of Fundamental Rights and also protected by the European Convention on Human Rights and the related instruments of the Council of Europe, to which all EU Member States are signatories. Specific EU law provisions concerning privacy and data protection in the electronic communications sector are laid down in Directive 2002/58/EC on privacy and electronic communications (ePrivacy Directive), which specify and complement for this sector the general personal data protection principles defined in Directive 95/46/EC (Data Protection Directive).

In particular, Member States are to ensure the confidentiality of communications and related traffic data through national legislation. They are required to prohibit interception or surveillance of communications and the related traffic data by persons other than the users without their consent. Traffic data may only be processed for certain defined purposes (e.g. billing) and for a limited period. The subscriber must be informed about such processing. Additional processing requires anonymisation or prior consent of the subscriber or user.

As regards the enforcement of these provisions, the ePrivacy and Data Protection Directives require Member States, through their national law, to ensure the availability of adequate judicial remedies as well as to establish liability of data controllers for the damage caused and to provide for sanctions in case of infringements. The supervisory authorities designated by the Member States must be endowed with investigatory powers,

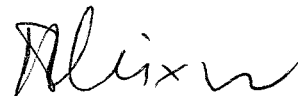
effective powers of intervention and the power to engage in legal proceedings. They must also hear claims lodged by any person regarding processing of personal data.

The responsibility for the enforcement of national legislation transposing EU Directives lies with the competent national authorities. The Commission is following the statements by the UK authorities, such as the Information Commissioner's Office, regarding Phorm and expects them to investigate any complaints raised with regard to the deployment of Phorm technology by ISPs.

The Commission is currently in contact with the UK authorities to clarify, in particular, the actions of the competent national authorities with regard to the users' complaints about trials of the Phorm technology by BT in 2006 and 2007, as well as the position of the UK authorities regarding the planned future deployment of the Phorm technology, in particular the way in which it is planned to obtain the users' consent. The Commission will continue to follow this case and take appropriate action, should the need arise, to ensure that the relevant EU law is effectively implemented by the UK authorities on this matter.

I trust that the above information provides you with an adequate overview of the Commission services' views on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alix' or 'Alix Michou', written in a cursive style.

Paraskevi Michou  
Head of Unit