



February 11, 2009

Gregory B. Craig, Esq.  
Office of the White House Counsel  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

Re: WhiteHouse.gov and User Privacy Questions

Dear Mr. Craig:

I write to follow up on my letter to you of January 27, 2009. I had asked you for a response by February 6, 2009, but to date have not received any.

As you will recall, my letter concerned the Administration's efforts to ensure that visitors to government websites are able to view official information, including videos, securely and without the fear of being tracked by either the government or third-party vendors. We hope you will agree that this is an important privacy protection that should be preserved even as the technologies used on government websites advance.

Specifically, we requested that you do four things:

1. We asked you to provide all information and analysis that forms the basis for the decision to waive the generally-applicable prohibition against the use of cookies on Federal websites for Whitehouse.gov. As you know, this represents a significant departure from the policy set by the Office of Management and Budget in 2000.

We would like this information for a number of reasons. For instance, we note that in your privacy policy you state: "This persistent cookie is used by some third party providers to help maintain the integrity of video statistics."<sup>1</sup> However, YouTube, the third party provider that is currently serving video on Whitehouse.gov, states that it makes a much broader use of such information:

We use both your personally identifiable information and certain non-personally-identifiable information (such as anonymous user usage data, cookies, IP addresses, browser type, clickstream data, etc.) to improve the quality and design of the YouTube Sites and to create new features, promotions, functionality, and services by storing, tracking, analyzing, and processing user preferences and trends, as well as user activity and communications.<sup>2</sup>

Plainly this allows YouTube to do much more than merely "maintain the integrity of video statistics," and includes specific reference to "tracking" users activities. Thus, it would assist

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<sup>1</sup> <http://www.whitehouse.gov/privacy/>

<sup>2</sup> <http://www.youtube.com/t/privacy>

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the public greatly to know the basis on which the waiver was granted and whether it contains limitations on what YouTube and other third parties can do with the data that they obtain about visitors to Whitehouse.gov that would explain the difference between the two privacy policies.

2. We asked that, in conjunction with the technical staff of WhiteHouse.gov and any third-party providers such as YouTube, you consider several specific suggestions about the handling of cookies on WhiteHouse.gov. For instance we believe that you should take into consideration the privacy interests of both those who do not view videos hosted at WhiteHouse.gov by YouTube, which you have started addressing in a number of ways, and those who do view the videos, who you have apparently not yet addressed. Further, since our letter was sent, we have been told informally that the "flash cookies" used by YouTube do not report any information back to the company. If true, this is welcome news. However, to increase public confidence, such representations, as well as other specific acts that you may be taking to reduce the risk of harms caused by cookies, would be better presented from the Administration in a more formal format. Accordingly, we ask that you provide us with feedback about our suggestions concerning cookies.

3. Finally, we would like a response to the concerns we raised about privacy issues beyond cookies that are raised by third-parties whose technologies are used on WhiteHouse.gov and on other governmental websites. Specifically, we asked this question: What is the White House willing to do to continue to protect the privacy of visitors to government websites, even as it utilizes technologies other than cookies that can do similar tracking?

As always, should you or your staff wish to discuss this matter in more detail, I can be reached at (415)436-9333 x 108 or at [Cindy@eff.org](mailto:Cindy@eff.org).

Sincerely,



ELECTRONIC FRONTIER FOUNDATION

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Legal Director

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