

# ESOMAR Guidelines on Maintaining the Distinctions between Market Research and Direct Marketing

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## Introduction

The ICC/ESOMAR International Code of Marketing and Social Research Practice regulates the professional activities which comprise the field of scientific marketing research. The Code itself describes at greater length what is covered by the term "marketing and social research, including opinion research" but this can be briefly summarised as: 'scientifically – conducted research where the identity of the individuals providing the information collected, and all personal data they give to the researchers, are kept fully confidential by the latter and cannot be disclosed, or used, for any non-research purpose. The Code emphasises that such research must always be clearly distinguished from other forms of marketing activities (many of which are regulated by their own separate codes of practice and, in certain cases, legislative controls).

In particular it is very important that marketing research should not in any way become confused with the range of activities carried out under the broad heading of 'direct marketing'. The latter include direct mail, telemarketing, marketing via the Internet, and the compilation and use of personal-information lists and databases for such purposes. Marketing research is not involved at any stage in collecting personal data for use in direct sales or promotional activities, directed at the individuals who participate in a research survey.

Marketing research and direct marketing are each well-established marketing tools which are widely used for governmental and social as well as commercial purposes. There are however several fundamental differences between them - both in their objectives and also in the ways in which they are conducted and used. It is vital that these differences are clearly defined and understood in order to avoid any confusion or misunderstandings on the part of the general public, the authorities and the clients for such services. This is also emphasised in the ICC International Code of Direct Marketing, which states that "No direct marketing should be represented to the consumer as being a form of marketing research".

One key set of legal requirements governing the carrying out of all such activities are of course those set out in the 1995 EU Directive on the Protection of Personal Data (and in equivalent national legislation). The ICC/ESOMAR International Code has in practice been closely in line with the Directive's requirements on transparency and confidentiality ever since the Code was first formulated over 50 years ago. Researchers working in accordance with the Code are obliged as a matter of professional ethics to safeguard the confidentiality of all personal data they collect through research. *This principle of the confidentiality of personal data is in fact the most crucial distinction between marketing research and most other forms of marketing activity.*

### **Why is it important to avoid possible confusion between the two types of activity?**

The very existence of marketing research and the value of its findings depend on the willing cooperation of the public and organisations which are the subjects of research. It is essential that this willingness to cooperate, and also to reply honestly and fully to the questions being asked, are not prejudiced by confusion or suspicion about the nature of marketing research projects or about the guarantees of confidentiality which are given to respondents. Respondents to research surveys must be completely confident that any information which they give in response to a marketing research survey will not be used for any purpose other than scientifically-conducted research and that their anonymity will be safeguarded. If, as the result of any confusion between the objectives and procedures of marketing research and those of other non-research activities, there were to be any substantial decline in the proportion of respondents who are prepared to cooperate in a confidential research survey, or who are willing to give full and frank responses to the questions asked, this would damage both the representativeness and the validity of the research.

The controls (whether self-regulatory or legislative) which are appropriate to the different types of activity are also different. Any blurring of the distinction between marketing research and direct marketing can lead to confusion and to the introduction of regulations which are inappropriate to a particular activity. This is to nobody's advantage. Any controls which might, for example, make it unnecessarily difficult to achieve representative samples or valid responses in scientific research would seriously reduce the value of such research to the commercial, governmental and social organisations (and indeed the general public) which make use of it.

### **What are the key differences between Marketing Research and Direct Marketing?**

The most important distinguishing characteristics of *marketing research* are that:

- (1) Its primary objective is to apply scientific research methods (eg in the use of sampling, data collection and analysis techniques) to the collection of information which will help in *describing and understanding* markets (whether commercial or other), and in planning strategies and in *predicting and monitoring* the outcome of actions based on these.
- (2) In most cases it achieves this by studying relatively small, and usually *representative*, samples of the relevant populations.
- (3) It is primarily, but not exclusively, concerned with analysing and reporting on *aggregated groupings* of those interviewed: it does not report information which can be linked to identifiable individuals.
- (4) Crucially, it *guarantees the confidentiality* of the information provided by respondents. Such can be disclosed only with the respondent's consent, and then only for research purposes and to research organisations involved in the project.
- (5) Equally important, the information collected in a marketing research project may be used *only for research purposes* - it must never be used to initiate or monitor other types of activity directed at the individual respondents. Marketing research is thus essentially concerned with a

*one-way* channel of communication, from respondents to the client via the confidential filter of the researcher. It does not under any circumstances provide a facility for any form of commercial or similar communication in the opposite direction, from client to individual respondent, nor does it seek to influence the respondent's views or behaviour as a result of the research.

Opinion research, in conforming to the requirements of the ICC/ESOMAR International Code, has identical characteristics to those of marketing research generally other than the fact that its objectives may often be different. It can therefore be regarded as a branch of marketing research as far as the requirements of the International Code and of this Guideline are concerned.

The characteristics of *direct marketing* are very different from - in many ways the complete opposite of - those of marketing research:

(1) The primary objective of direct marketing is to *conduct promotional and selling* activities directed at specific individuals and organisations. Direct marketing organisations may *also* carry out a considerable amount of 'marketing analysis' - providing aggregated and cross-analysed information of various kinds - but this is normally a secondary rather than the primary objective of collecting the data and does not affect the other characteristics of direct marketing referred to here.

(2) It normally involves the collection and use of personal data from very large numbers of the general population or from as many as possible of a specific group (eg customers): the emphasis is *on maximising the total number of the target audience* covered rather than on the representativeness of the final data.

(3) The data collected are purposely stored and made use of on *an individually-identified, disaggregated* basis since they would not otherwise be fully exploitable in direct marketing.

(4) Since the personal data collected are permanently linked to the individuals who have supplied those data there can normally be *no guarantee of anonymity*. In many cases the personal data will be made available to a variety of users, most often for *non-research purposes* such as promotion and direct selling.

(5) Unlike marketing research, direct marketing is thus normally a *two-way process* whereby the individual originally providing personal data to the enquirer is then, as a direct result, subject in return to individual promotional and/or sales approaches based on the use of those data. (There is of course also a certain amount of direct marketing activity which does *not* use an existing bank of personal data in order to pre-select prospective customers but is based on 'cold calling'). Direct marketing is thus by definition a form of 'commercial communication'.

This Guideline indicates what researchers must do in order to maintain the distinctions outlined above. It is not in any way intended to play down the importance of direct marketing's role in business, government and elsewhere. Researchers themselves often belong to an organisation which makes use of - or even as a group, offers - direct marketing facilities in other, *non-research contexts*. Researchers are also increasingly involved with the problems of general

database management. *The aim of the Guideline is to ensure that the roles and methods of working of the two activities - marketing research and direct marketing - are as clearly as possible separated from one another so as to avoid confusion between them.*

**(Note:** this Guideline is concerned primarily with relations between researchers and individual members of the general public - ie situations to which the Data Protection definition of "personal data" will apply. While many of the same considerations may apply to research among "legal entities" such as business organisations there are in such cases certain legal and other differences which are not covered in the present document).

### **Procedures to be followed**

These requirements are based on the Rules set out in the ICC/ESOMAR International Code. They take full account of the legal requirements arising from the 1995 EU Directive on the Protection of Personal Data: researchers must always conform to the provisions of national and international legislation of all kinds.

The main issues which arise fall under five headings:

1. Professional issues
2. Data collection
3. Data storage and use
4. Database management
5. Organisational issues.

## 1. Professional Issues

Whenever researchers are acting in their capacity as researchers they must not be involved in carrying out direct marketing or other non-research activities. Such activities are by definition incompatible with Rule 4 of the International Code which safeguards the confidentiality of respondents' personal data which have been collected for marketing research purposes and prevents these from being used for any non-research purpose. This Rule does not prevent researchers, when they are acting in a *different* capacity (e.g. as a general information manager), from being involved with the operation of marketing databases. However, in such a case they must clearly differentiate such an activity from their work as a marketing researcher and avoid any confusion arising between the two types of activity. The researcher remains responsible for ensuring that the requirements of this Guideline with regard to the maintenance of the confidentiality and anonymity of the personal data collected via marketing research are strictly adhered to.

## 2. Data Collection

2.1 The principle of '*transparency*' is the key consideration in all dealings with the public. Researchers must make it clear to respondents that all personal data collected during a research project will be treated *confidentially* and purely for the purposes of scientific marketing research, and that this will not lead at any time to any attempt to sell something to the respondent as a result of their having taken part in the research.

The ICC International Code of Direct Marketing calls for similar transparency, and requires that

direct marketing activities should not imply to the consumer that they are a form of marketing research (the Code specifies that direct marketing data collected by questionnaires or similar methods should make clear at the time of the collection that the information provided may be used for sales or sales promotion purposes).

2.2 Marketing research and direct marketing activities (eg database building) *must not be combined in the same data collection exercise*. If *any* personal data are collected and used in an identifiable manner for non-research purposes the project cannot be described as marketing research or carried out as such. (The particular issues which arise in this connection in certain forms of customer satisfaction research are addressed in a separate ESOMAR Guideline on Customer Satisfaction Research).

### 3. Data Storage and Use

In order to conform to the requirements of confidential survey research set out in the International Code:

3.1 Since data protection legislation applies only to "personal data" researchers should wherever possible plan to "de-personalise" such data as soon as possible after collection and the completion of any necessary quality control checks on the data. Where for technical or other reasons this is not practicable then any data must be securely stored in a way which prevents it from being linked without due authorisation to the other information those respondents have provided to the researcher.

3.2 As long as it remains possible to link particular individuals to their responses there must be adequate security arrangements in force to ensure that any data is not accessible, accidentally or otherwise, by unauthorised individuals either inside or outside the researcher's organisation. Authorisation for such access must be given only on a "need-to-know" basis and exclusively for research purposes. Such security precautions are necessary for *all* types of personal data, especial care being essential with the security of any data which might be regarded as particularly sensitive for any reason.

3.3 As set out in more detail in the "Notes on the ICC/ESOMAR International Code", Rule 4, in cases where it is necessary for technical reasons for any identifying data to be retained (eg in the case of *panel* or *longitudinal* studies), the data must be securely stored in a way which prevents any unauthorised access for any purpose other than one needed to meet the objectives of the specific research. In such a case the respondents concerned must have been informed, in advance, of the way in which their data are to be handled and have agreed to their retention in this way. They must also be told that they can at any time ask to know what personally-identified data about them are currently being held and that they can if they wish then ask for these to be amended or destroyed.

3.4 In any case, *only fully anonymised data may be disclosed* to anyone outside the research organisation(s) responsible for the project unless the individuals providing personal data have been fully informed and agreed in advance to its release for a specific research purpose. *Under no circumstances may personal data collected in a marketing research project be used for any non-research purpose*.

3.5 If a sub-contractor is to be used for any element of the project (eg data collection or analysis) it is essential that the sub-contractor concerned is bound by the same security and confidentiality requirements as the main researcher. This must be clearly specified in any contract with the sub-contractor in order to establish an unbreakable 'chain of confidentiality' in the way in which personal data are handled.

## 4. Database Management

Researchers increasingly deal with databases of different types and for different purposes. It is essential that the distinction between research and direct marketing is strictly maintained at all times in the way such databases are handled:

4.1 *Research databases.* Those which do not incorporate any personal data (as defined in the Directive and other legislation) should pose no problems. However, other types of research database are frequently maintained by researchers - mainly for panel and longitudinal research where it is inherent in the research that new data collected need to be related to other data previously collected from the same respondent. Another type of research database is of the kind where a file of respondents with known characteristics (eg ownership or use of specific products or services) is maintained to provide potential sampling frames for later research studies.

The basic requirements which apply to such databases are:

4.1.1 In no case may non-anonymised data held in such databases be used for any non-research purpose.

4.1.2 Any personal data to be incorporated into such a database may be collected and entered into this only if the respondent is told of this intention at the time of collecting the data and why and for what purposes the data will be used, and that under no circumstances will it be released or used for any non-research purpose.

4.1.3 The respondent has the right at any time to request the deletion of any or all of their personal data from the database.

4.1.4 A suitable security system must be in place to prevent any unauthorised access to the personal data on the database.

4.1.5 The database must be correctly registered with the national Data Protection Authority.

4.2 *Marketing databases.* Databases are developed and maintained for marketing (as distinct from research) purposes by a variety of organisations such as mailing-list suppliers, manufacturers and service-providers, charities, governmental organisations, etc. Researchers are likely to become involved with such databases in two main ways. The principles to be applied in these situations are:

4.2.1 First, in the case of a database used as a *frame from which to draw a sample* of individuals among whom a survey is to be carried out. Provided that the owner of the database has registered it with the Data Protection authority in a way which permits its use for such a purpose, and has properly maintained it, there should be no problem in using it for research. (The researcher should however confirm before carrying out the research that the database has been so registered and maintained).

4.2.2 Second, in the case where research findings are to be used (at least in part) *to enrich the database* (i.e. by adding information to it). The overriding principle here is again that personal data collected during a research project must *never* be used directly, in a non-anonymised form, as input to such a database. Any data which are collected during a marketing research survey *must therefore be anonymised before they can be used as input to a marketing database*.

The most common way of doing this is by modelling the data so that the inputs to the database are not in the form of personal data but anonymous and partly-aggregated data. This must be done in a way which ensures that the owner or subsequent users of the database have no way of linking the data collected in the research to the identities of the data subjects concerned. The researcher must be able to assure respondents that their anonymity is not in any way compromised by such an operation and they will not as a result of participating in the survey be subjected to any individual direct selling or other promotional approaches.

4.2.3 An entry on such a database designed simply to record that a particular individual was interviewed or contacted on a given survey, or that they do not wish to be contacted for further research, is however permitted if the purpose of the entry is solely to ensure that that individual will not be unnecessarily approached for research at some later date.

4.2.4 Where identifiable data are collected by, or provided to researchers in a client organisation the client is responsible for ensuring that this data remains exclusively in the market research domain. If client databases are used for marketing research the client must ensure that these are adequately registered with the data protection authority and that any updates to these databases are used for marketing research purposes only.

4.2.5 For technical and other reasons a growing amount of database processing is being handled by sub-contractors who may be either specialist providers of such services or another department of the organisation to which the researcher belongs. It is particularly important in such cases that, as already specified in 3.5, the researcher ensures that the sub-contractor or department concerned fully conforms to all requirements of the Code. The criterion must be that the confidentiality of personal data is at all times safeguarded as securely as if the researcher was directly carrying out this part of the data processing himself.

4.2.6. If personal data are to be used as direct, *identifiable* input to a marketing database where they could be used for non-market research purposes *these must not be collected as any part of a marketing research project* but must be collected as a direct marketing project. The individuals approached for such a direct marketing project must not in any way be misled into thinking that they are taking part in a confidential marketing research survey.

## 5. Organisational Issues

With the growing concentration and globalisation of business it is increasingly likely that researchers find themselves working in an organisation where other parts of the same organisation are involved in conducting *non*-research activities, including direct marketing. This has long been the case where the researcher belongs to the research department of a client organisation (in such a case the researcher has the same responsibilities under the International Code as if he or she were completely independent of the client).

The requirements which should be followed in such cases are:

5.1 Marketing research activities must always be carried out in a form, and in a way, which minimises any risks of respondent or public confusion between marketing research and other types of marketing activity such as direct marketing.

5.2 There must be no danger that respondents or the public generally could be confused or misled, when being approached for non-research purposes, that they are being asked to take part in a confidential marketing research project. Such non-research activities must therefore not be carried out under a name or in a way which might lead to a misunderstanding that they are being conducted by a marketing research organisation.

5.3 For example, marketing research should wherever feasible be carried out by a legally-distinct entity from those other parts of the overall organisation which carry out *non*-research activities. In *all* cases where possible misunderstandings might be created, in order to avoid the danger of confusing the general public about the differing nature of the activities involved the marketing research activities should use a clearly-different name from that used for the organisation's other, non-research, activities. Further ways to achieve the objective of avoiding confusion would be for the marketing research agency to also use a different postal address, telephone number and other 'contact points' in its dealings with the public. Under the International Code it must be made easy for respondents and others to contact the research agency carrying out the research, but again they must not be confused by having apparently to get in touch with a non-research organisation in order to raise any queries or complaints.

5.4 It is also preferable - again to minimise the danger of confusing the public, but also in many cases for technical reasons - that different staff are used for the different activities.

5.5 These requirements do not in any way restrict the right of the *overall* group/organisation, in its dealings with clients etc, to promote for *business* purposes the fact that it offers/ carries out both research and non-research activities as parts of its total operations. The organisation must however in such cases make it clear that these activities are conducted separately and in accordance with the relevant professional rules of conduct - i.e. that the research activities are carried out in full accord with the requirements of respondent confidentiality and anonymity and will not be used for non-research purposes. This proviso also applies more generally to any of the organisation's promotional or publicity activities which may be seen by the general public.

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