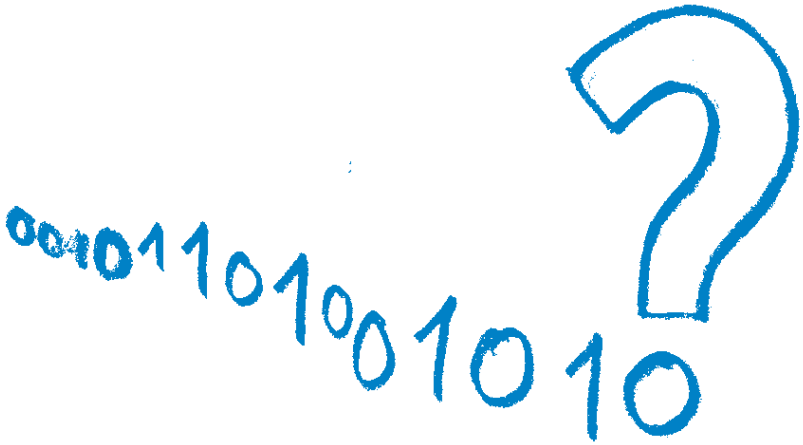


ESOMAR WORLD RESEARCH CODES & GUIDELINES

# GUIDE ON DISTINGUISHING MARKET RESEARCH FROM OTHER DATA COLLECTION ACTIVITIES



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# GUIDE ON DISTINGUISHING MARKET RESEARCH FROM OTHER DATA COLLECTION ACTIVITIES

## 1. SUMMARY

The ICC/ESOMAR International Code on Market and Social Research has always included a requirement for members to maintain the distinction between market research and commercial activities such as advertising, sales promotion, direct marketing and direct selling. The essence of the distinction being that researchers have no interest in the personal identity of the respondents they question – they do not pass information about identified people to their research clients.

This distinction has been essential over the years in avoiding unwanted restrictions on our access to representative samples. It has helped us to challenge the fraudulent activities of those pretending to do market research but whose real intention was to seek money or purchases or compile mailing lists.

Recent research developments in the area of customer satisfaction research or customer relationship management have thrown up some uncomfortable implications for researchers maintaining the distinction. It is increasingly common for these projects to have two purposes, the collection of representative sample survey data and provision to the client of details about individual

respondents to allow follow-up, or product offers.

When part of the intention in conducting a survey is to pass on identified data to the client to be used for marketing purposes, it must not be introduced to respondents as market research and it must follow the legal framework established for commercial activities such as direct marketing.

Failure to do so puts these projects in the same position as those who sell products or seek money under the guise of doing market research. The inevitable result will be the erosion of market research's distinction and the dilution of our defence against unwarranted restrictions on our access to representative samples of respondents.

## 2. DEFINING THE DISTINCTION

Easy access to samples of respondents is a fundamental requirement of valid research and a successful market research industry. On numerous occasions well intentioned legislators, attempting to safeguard personal privacy or protect personal data, have proposed laws which would seriously damage the research industry's access to samples.

An example to illustrate the potential threat to our industry was the German situation in 1979/1980. German data protection law requires the written consent of individuals from whom personally identifiable data is being collected and stored. Applying this requirement to market research would make telephone interviewing, in particular, very difficult. The German research industry reached an agreement with the Bavarian Data Protection Officer in March 1980 that market and social research had an effective system of self-regulation and should be exempted from this requirement. Since that time market and social researchers in Germany have not needed to obtain written consent from the respondent.

The same threat was in the first draft version of the ISDN European Directive that required the written consent of individuals before calling them by phone. This requirement was included because of confusion between market research and telemarketing. The final version has deleted the reference to market research as the European authorities took into account ESOMAR's explanation of the distinction between market research and telemarketing.

ESOMAR and the national research associations have been vigilant over the

years and have challenged potentially damaging proposals. They have successfully argued that market research has a special status, is different from the many commercial marketing activities which the legislators intended to address, and so should be excluded from the scope of the legislation.

The essential element of this distinction between market research and other activities such as advertising, sales promotion, direct marketing, direct selling, is that market research has no interest in the identity of respondents. They are selected as representatives and their data is used in statistical tabulations to provide insight. The data about individual identified respondents is confidential and not passed on to the commissioning organisation.

Other commercial activities might appear to be similar to market research – they contact people, ask questions and record the data. However, their major intention is to discover the personal identity of the people they contact and to use the data collected to target marketing or sales approaches.

This is not an illegal activity in any way. However, as the cost of communications falls and the ability to contact large numbers of people increases,

legislators have introduced limitations in order to prevent fraudulent activity and to reduce intrusions into personal privacy and nuisance.

As a result, in many countries the distinction between market research and direct marketing and sales activities is reflected in the legal framework concerning data protection and privacy. Market research benefits from a more liberal legal framework and is not subject to the same legal restrictions. For example,

- Researchers can approach respondents without needing to be invited;
- Researchers do not need to remove from samples those people on “Do Not Contact” lists for mail and phone;
- Researchers can contact respondents at weekends or in the evening;
- Research is not considered to be a commercial communication.

Direct marketing and other sales activities have a more restrictive legal framework and when ESOMAR Members are carrying out such activities, they must abide by the requirements of the **ICC Code on Direct Marketing** which provides appropriate guidance on such issues.

### 3. KEY POINTS IN THE NEW ICC/ESOMAR CODE

The revised **ICC/ESOMAR Code**, issued in 2008, contains several requirements which are relevant to the issue of maintaining the distinction. For the first time the Code includes a clear definition of market research and encapsulates within the definition the main distinction of research from other marketing activities:

***Market research**, which includes social and opinion research, is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making. The identity of respondents will not be revealed to the user of the information without explicit consent and no sales approach will be made to them as a direct result of their having provided information.*

**Article 1 (d)** restates the requirement for members to maintain this distinction as follows:

*Market research shall be clearly distinguished and separated from non-research activities including any commercial activity directed at individual respondents*

*(e.g. advertising, sales promotion, direct marketing, direct selling etc.).*

**Article 7 (c)** clarifies the only acceptable circumstances in which personally identifiable data can be passed on to the research client as follows:

*Researchers shall ensure that respondents' personal identity is withheld from the client. The researcher may communicate the respondent's identifiable personal information to the client, unless national provisions require stricter regulations, under the following conditions:*

- i) the respondent has explicitly expressed this wish and/or*
- ii) the respondent has given their explicit consent and*
- iii) on the understanding that no commercial activity (as defined in Article 1d) will be directed at them as a direct result of their having provided information.*

**Article 3 (a)** requires that respondents should not be misled in any way when their co-operation in research is being sought.

*Respondents' co-operation in a market research project is entirely voluntary at all stages. They shall not be misled when being asked for their co-operation.*

Finally, Article 1 (b) requires members to avoid any actions which might bring the industry into disrepute as follows:

*Researchers shall not act in any way that could bring discredit on the market research profession or lead to a loss of public confidence in it.*

#### **4. IMPLICATIONS FOR THE ACTIVITIES OF RESEARCH COMPANIES AND RESEARCHERS**

Previous versions of the ICC/ESOMAR Code have required research companies, that wish to carry out commercial marketing activities which are outside the definition of market research, to create a separate organisation and identity for this work in order to avoid potential confusion in the minds of clients and respondents.

The updated ICC/ESOMAR Code requires only that research companies are transparent in their dealings with respondents and do not misrepresent as market research any project which is outside the new definition of market research in the Code. It also requires them to carry out non-research projects within the legal framework

in place for activities such as direct marketing and database construction.

The following activities should not be represented to respondents as market research:

- Enquiries which have the primary objective to obtain personally identifiable information about private individuals whether for legal, political, private, supervisory (e.g. job performance) or other purposes;
- The acquisition of information for use for credit-rating of the respondent, one-to-one targeting, debt collection or fund-raising from the respondent;
- The compilation, updating or enhancement of lists, registers or databases for non-research purposes (e.g. direct marketing);
- Projects where identifiable responses are used for a purpose other than market research, e.g. for an advertising campaign, sales or promotional approaches to individual respondents, staff incentive schemes; job performance evaluation;
- Projects which have a joint purpose (e.g. combine market research with

follow-up promotional activities with respondents, etc.);

- Industrial, commercial or any other form of espionage.

Customer satisfaction studies frequently require personal data to be passed over to the client. The following types of customer satisfaction studies should not be represented to respondents as market research:

- Projects where the client asks the researcher to pass over examples of cases which the client would like to follow up directly fall under the heading of “customer relationship” (i.e. “direct”) marketing, since it may form part of an overall service to the customer and would serve a purpose other than market research.
- Cases where in using a client’s customer list further information is passed on such as a person’s *new* address is likely to count as a form of marketing database enrichment.
- Any project which *combines* the collection of personal data both for market research purposes and for direct marketing purposes (e.g. follow-up promotional activities with those individuals, etc.).



## 5. FUTURE RISK ASSESSMENT

If the market research industry continues to maintain the distinction between market research and other commercial activities, the risk of legislative restrictions being placed on our activities will be minimised.

Maintaining the distinction will contribute to the following three purposes set out in the rationale for the **ICC/ESOMAR Code**:

- To enhance overall confidence of the public at large in market research;
- To safeguard freedom for market researchers to seek, receive and impart information (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights);
- To minimise the need for governmental and / or inter-governmental legislation or regulation.

Failure to maintain the distinction will increase the future risk of legislation aimed deliberately at curtailing the activities of market researchers. It will also increase the likelihood that legislation introduced to control other commercial activities will include market research

in its remit on the grounds that it is no different to direct marketing, list building etc. It is essential for the long term future of our industry that all researchers continue actively to maintain the important distinction of market research.

## 6. ADDITIONAL ADVICE

ESOMAR guidelines on **Customer Satisfaction Research** and **Mystery Shopping** provide additional advice on appropriate procedures for these areas of research. Members who are unsure about the application of the Code in specific circumstances will find the **ESOMAR Notes on how to apply the ICC/ESOMAR International Code of Market and Social Research** helpful and can seek advice by contacting the Professional Standards Committee, [professional.standards@esomar.org](mailto:professional.standards@esomar.org) or ESOMAR, Eurocenter 2, 11<sup>th</sup> floor, Barbara Strozziilaan 384, 1083 HN Amsterdam, The Netherlands.



“Market research, which includes social and opinion research, is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making.

The identity of respondents will not be revealed to the user of the information without explicit consent and no sales approach will be made to them as a direct result of their having provided information.”

Definition of market research contained in the ICC/ESOMAR International Code

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ESOMAR is the world organisation for enabling better research into markets, consumers and societies.

With 5000 members in over 100 countries, ESOMAR's aim is to promote the value of market and opinion research in illuminating real issues and bringing about effective decision-making.

To facilitate this ongoing dialogue, ESOMAR creates and manages a comprehensive programme of industry-specific and thematic events, publications and communications, as well as actively advocating self-regulation and the worldwide code of practice.



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