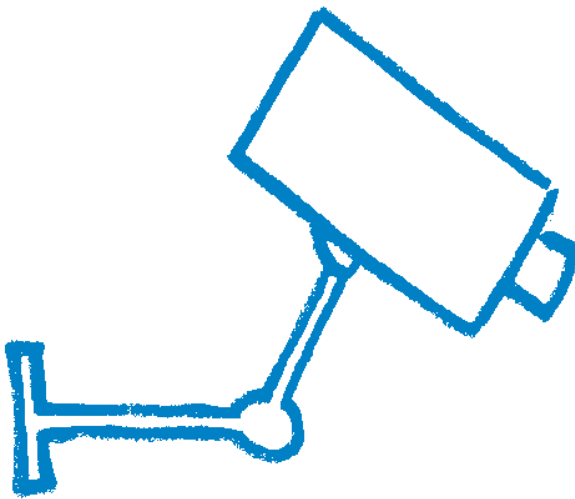


ESOMAR WORLD RESEARCH CODES & GUIDELINES

PASSIVE DATA COLLECTION, OBSERVATION AND RECORDING



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PASSIVE DATA COLLECTION, OBSERVATION AND RECORDING

1. INTRODUCTION

The *ESOMAR Guideline on Tape and Video Recording and Client Observation of Interviews and Group Discussions* was last updated in 1997. Since then there has been a great increase in other forms of passive data collection and advances in technology promise many more to come.

This document aims to bring the existing Guideline up to date and in line with the latest international developments for best practice, and to expand the coverage to include all forms of observation and passive data collection going beyond the original Guideline text which is mainly contained in sections 4.0 – 4.4 of this Guideline.

1.1. Active data collection

Rather than attempt to define the many aspects of passive data collection, an outline of the components of active data collection should set the scene for this Guideline. The typical active form of market research data collection involves the asking and answering of questions. An interviewer may be involved, either in person or on the phone, or there may be self completion of the questionnaire on paper or on-line.

Active data collection requires informed consent from the respondent who voluntarily answers the questions and can withdraw at anytime with all answers to be erased if requested. The purpose of the data collection must be explained and a guarantee given that the data will be used for research purposes only.

2. EXAMPLES OF PASSIVE DATA COLLECTION

Developments in video technology have created new opportunities for observation within the market research arena and this includes remote viewing from other locations, including across borders, as well as a resurgence of interest in ‘ethnographic’ research which involves observing and filming people in natural settings over an extended period of time.

There has also been an increasing use of CCTV (closed circuit television) in public places. This can incorporate a variety of different scenarios including observing behaviour in a shopping centre, which can be done openly (where no attempt is made to conceal the fact that participants are being observed and consumers can expect that their behaviour is both observed and recorded), or less openly (where

the observers are concealed and the observation is not disclosed).

For some time websites have been collecting browsing data and other passive measures based on techniques such as cookies and web bugs.

However, the latest online research techniques now include the observation of online groups and bloggers, often linked with growing marketing methods such as WOM (Word of Mouth) which rely upon observing how people interact with one another in both the face to face and virtual environments, also in areas such as mystery shopping and employee behaviour.

Behavioural data collected as an incidental bi-product of other activities are becoming available and raising concerns:

- Smart cards and scanners are increasingly used to collect a wide range of consumer or member behaviour;
- Mobile phones can track geographic location;
- Ticket booking systems can track destinations.

In the future, technologies that are currently being developed will include

brain scans, eye-tracking and RFID (radio frequency identification).

These developments bring a growing need to differentiate market research from other activities and for transparency with respondents about the information that is being collected, especially in view of data protection legislation. In many countries, some of these activities are controlled by data privacy legislation, but these activities can also raise ethical concerns as well as legislative issues.

3. KEY ETHICAL PRINCIPLES

It is not practical to give detailed guidance on every possible form of passive data collection. In this section some of the key ethical and legal principles that must be taken into account are spelled out. In subsequent sections consideration is given to some of the more common forms of passive data collection.

3.1. Personal data

Legal requirements for data protection deal exclusively with the gathering, processing and storage of personally identifiable data. This includes any information relating to an identified or identifiable natural person (i.e. a private individual as opposed to a corporate or

other comparable entity). An identifiable person is someone who can be identified directly from the data record if it includes such things as name, address, telephone number or email address. Personally identifiable data also includes data which makes indirect identification possible, in particular by reference to an identification number or the person's physical, physiological, mental, economic, cultural or social characteristics and location.

Where passive data is collected that contains no personal identification of data subjects, there is minimal risk of data protection breaches.

3.2. Informed consent

Before personally identifiable data can be processed, the data subject needs to give informed consent. The respondent must know about the nature of the data being collected, the reasons for processing it and what will be done with it. Data subjects should not be misled, lied to or tricked. Participation is voluntary and they can withdraw at any time. There may be instances in public places where informed consent from individuals is impossible to achieve. In those cases public notice should be given about the data collection – e.g. CCTV operation.

3.3. Proper use of the data

The use of personal data is restricted to those things that the data subject has agreed to. If it is collected for research purposes, it may not be used for other purposes.

3.4. Disclosure to third parties

Personally identifiable data can be passed on to a third party only with the permission of the data subject and to achieve the purpose for which the data was collected. Data collected for research purposes cannot be used for non research purposes. Data which has been anonymised, and so is no longer personal data can be passed on to third parties and processed for other purposes.

A data record on its own may not identify an individual, but in conjunction with other linked data records an individual may be 'identifiable'. This is a complex area with statisticians failing to agree on what are necessary minimum guidelines for data release. Researchers need to use conservative approaches to data release and transfer – bearing in mind our wish to retain special status for market research data.

3.5. Public place

Things that people are observed doing in a public place cannot be regarded as private or inaccessible to a researcher. However, the definition of a public place is subject to cultural variation and the researcher should take into account local circumstances and customs.

3.6. Publication or broadcast

When somebody publishes or broadcasts their views or opinions, this information is in the public domain. This is particularly important on the internet where people make use of open chat rooms or forums to make their views known (even if it is with an adjusted identity). There are many places on the internet which require users to join or register or apply for membership, before being permitted to participate. The term ‘walled gardens’ describes well these semi-public forums. If the internet chat room or forum is not a ‘walled garden’, i.e. anybody can be there and say what they like, then this is the equivalent of publication or broadcasting. The views expressed and the identity attached is in the public domain. Views expressed in internet areas that are “walled gardens” should be treated as private and the researcher should announce his presence and purpose and seek co-operation.

4. AUDIO AND VIDEO RECORDING OF INTERVIEWS AND GROUP DISCUSSIONS

Audio and video recording of interviews are now commonly used in research and widely accepted by respondents. Two issues arise under the ICC/ESOMAR International Code on Market and Social Research:

- (1) What form of permission should be obtained from respondents when such techniques are used?
- (2) How far, and under what safeguards, may audio or video recordings be played or supplied to people outside the research organisation carrying out the research?

Video-recording presents the most obvious problems. First, it is far more likely that a respondent may be identified from a video than from an audio recording. Second, it is also more likely that requests will be made by clients, advertising agencies etc. to see a video recording, and/or to have a copy of this, than in the case of an audio recording.

If a copy of a video recording passes out of the hands of the research organisation it becomes even more important, although more difficult, to

ensure its proper use and to protect respondents' anonymity. This problem is most acute in the case of business-to-business, medical and other research among special sub-groups of the population where there is much higher probability that some of the respondents may be identifiable by people who subsequently see the recording; but in principle it applies to *all* types of surveys.

Public interest in data protection and in avoiding unnecessary intrusions on privacy means that researchers must therefore ensure that audio and video recording is used with great care and with appropriate safeguards for the rights of respondents. This is provided for by Article 7 of the ICC/ESOMAR International Code. This Guideline sets out in more detail the ways in which this Article should be applied in practice with the following recommendations.

4.1. Respondents' agreement to the use of recording

Respondents must be told at the beginning of the interview or group discussion that tape or video recording techniques are to be used unless this knowledge might bias the respondent's subsequent behaviour. The only other exception where advance notification is not essential is for recordings made

exclusively for supervisory, control or analysis purposes and where it will be seen or heard only by the interviewer, moderator, supervisor or researcher working on the survey. In both these situations, respondents must be told about the recording at the end of the interview and be given the opportunity to see or hear the relevant section of the record and, if they so wish, to have this destroyed or to have their image pixelated so that they cannot be identified.

Some countries have legal restrictions on the use of recording devices which would require advance notice in all cases. This is particularly the case for recording telephone conversations, but may also apply to any recording device.

Closed circuit television or video streaming should not be carried out without permission in advance from respondents.

4.2. Client rights to copies of the original data

It is generally accepted research practice that the client is entitled to be supplied, at cost, with duplicate copies of the original survey information obtained from respondents, provided that this has been anonymised. Where this information is held in the form of

audio or video recordings, rather than on questionnaires, there is usually no problem if it is supplied to the client in the form of anonymised transcripts or anonymous audio recordings (although in both cases care may be needed to remove identifying comments or other clues from the material). In the case of video recordings the danger of respondent identification is much greater; and in this and other cases where the anonymity rule might be at risk the following recommendations must be followed.

4.3. Safeguards on the release of recordings

Recordings must not be allowed out of the hands of the researcher or research organisation carrying out the study **unless explicit permission has previously been obtained from all the respondents included in the recording.**

Where such permission is to be obtained the researcher must ensure that respondents are given as much relevant information as possible about the future use of the recording, in particular:

- to whom the recording is to be given
- to whom it is likely to be shown
- for what research purposes it is likely to be used.

In particularly sensitive cases, the possibility (where technically feasible) of blurring or obscuring the identifying characteristics of respondents should be considered when a video recording is to be released outside the research organisation. In certain cases it may be sufficient to release the soundtrack only.

When a recording is released in conformity with these recommendations it should be labelled with the appropriate restrictions on the purposes for which it may be used. The researcher must also ensure, under Article 12 of the ICC/ESOMAR International Code, that the recipient of the recording is aware of the requirements of the Code and the need to abide by these (the restrictions on the use of recordings should be made known at the **start** of the project). The recipient should be told that permission must be obtained from the researcher (and where appropriate the respondents) before the recording is used for any other purpose not previously agreed; and that **under no circumstances may the recording be used for non-research purposes such as promotion or direct sales activities.**

If any part of a recording is to be **played (but not handed over)** by the researcher to anyone other than

authorised research personnel within his own organisation, the researcher must ensure that the requirements of Article 7 of the ICC/ESOMAR International Code are fully met. No reference may be made to the identity of any of the respondents involved without their prior permission.

4.4. Client observation of interviews

Similar considerations arise where an interview or group discussion is to be observed by a client or his representatives (including advertising agency staff, etc.), whether for quality control purposes or to gain a better understanding of the findings of the research. This is especially the case where the fact of being observed is not easily apparent to respondents, for example where the observation is in a separate viewing room via closed circuit television. The following recommendations deal with **client observation of interviews.**

In certain cases clients and their representatives may be allowed under the ICC/ESOMAR International Code to observe an interview or group discussion at the time it is carried out (with or without the simultaneous use of recording equipment). Wherever this happens the researcher must ensure that all such observers are fully aware of the requirements of the ICC/ESOMAR

International Code and agree to abide by these.

The researcher must also try to ensure that such observers do not include people who are likely to know, or have any direct dealings with, any of the individual respondents being interviewed (for example client sales staff in the case of a survey among business managers or doctors). Observers should be told that if they find they know any of the participants, they must stop observing and notify the researcher.

Respondents must be told that the interview or discussion is being observed by other persons.

The identity of the client need not be revealed unless asked for by the respondents.

4.5. Web video streaming of interviews and group discussions

In circumstances where observers will be watching a video stream in remote locations, the researcher still has a responsibility to ensure that respondents' rights are protected as if the observers were at the research location.

Video streaming does not work in the same way as most Internet content.

While most internet content like web pages and e-mail can pass through IP networks (such as the Internet) as plain text, video must be encoded first. Encoding is a process where a mathematical algorithm compresses and discards video data. This process removes blank audio and freezes images where there is no movement; this makes video streams smaller and more efficient by just concentrating data on the movement of objects or people within the video. Once the video is encoded (whether it's live or on demand), the video is transmitted over the internet in small chunks, which are played by the client media player then discarded, they aren't saved anywhere on the client side.

If the video transmission system used does deliver a copy of the recording to the receiving computer, the researcher must take steps to ensure that any copy of the video stream saved in the cache of the observer's computer is either deleted or is not used in a way which breaches this Guideline.

ESOMAR recommends that steps are taken to ensure that video streams and digital video files are "fingerprinted" via steganography (art and science of writing hidden messages in such a way that no one apart from the sender

and intended recipient even realizes there is a hidden message) or other means such as a digital watermark, so that the origin of videos can be traced back unequivocally in the event of them becoming public without the respondents' permission.

4.6. Audio recording and listening in to telephone interviews

In many countries there are legal restrictions on listening in to, or recording phone calls. Some allow exceptions when the purpose of the listening in is part of a quality control strategy. ESOMAR cannot provide country by country guidance. However, the use in the introduction to the interview of a phrase such as "this interview may be recorded for staff training purposes" is recommended.

Where a client wishes to listen in to a telephone interview, or listen to audio recordings of interviews, the guidance in the previous section on client observing applies.

5. OBSERVATION OF HUMAN BEHAVIOUR

When researchers set out to observe human behaviour not by interview but just by watching, two general courses are open to them. They can be openly

involved in the activity they are observing – participant observers, or they can remain aloof from the activity – acting almost like voyeurs or covert observers. The ethical issues vary depending on the approach taken.

5.1. Participant Observation

Participant observation is a well established social science technique and has been used in investigations of human interactions. The Ethical Standards of the American Psychological Association¹ provides excellent guidance particularly on the very critical component of “informed consent”, guidance which ESOMAR endorses.

Here are some of the features of informed consent as described in the Standards:

- Prior to conducting research, researchers enter into a documented agreement with participants that clarifies the nature of the research and the responsibilities of each party.
- When obtaining this informed consent, researchers use language that is reasonably understandable to the participants.
- Informed consent is obtained before recording the subjects in any way.
- Researchers explain significant factors that may be expected to influence the person’s willingness to participate (such as risks, discomfort, adverse effects, or limitations on confidentiality) and other aspects about which the person may inquire.
- Researchers tell participants that they can withdraw from the research at any time as well as explain the foreseeable consequences of declining to participate or withdrawing.
- For persons who are legally incapable of giving informed consent, researchers nevertheless provide an appropriate explanation, obtain the person’s consent, and obtain appropriate permission from a legally authorised person, if such substitute consent is permitted by law.
- Researchers inform participants of their anticipated sharing or further use of personally identifiable research data and of the possibility of unanticipated future uses.
- Researchers provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they attempt to correct any misconceptions that participants may have.

10 ¹ Ethical Principles of Psychologists and Code of Conduct. *American Psychological Association, Washington, DC. American Psychologist*. Vol 57(12), Dec 2002, 1060-1073.

The APA Standard also advises on reporting:

“In reports or presentations of their research, researchers do not disclose confidential or personally identifiable information concerning their subjects unless the person has given written permission (or unless there is some other ethical or legal authorisation to do so). “Ordinarily,” the Standards add, “in such scientific and professional presentations, psychologists disguise confidential information concerning such persons or organizations so that they are not individually identifiable to others and so that discussions do not cause harm to subjects who might identify themselves.”

5.1.1. Participation in Internet activity

If people express their views in public internet areas, where they would expect anybody who was interested could see and read and transmit their ideas, then this is in the public domain.

‘Walled gardens’ need more careful handling. The researcher joining a restricted group intent on research, should announce his presence and objectives and seek the permission either of the area moderator, if there is one, or the members of the group.

Internet areas which are set up specifically for respondents to visit in order to participate in research – i.e. created for the researcher for the purpose of research, should be subject to all the requirements of informed consent and confidentiality, required of other direct research approaches.

5.2. Undisclosed observation

There is wide cultural variability in levels of covert or undisclosed observation that are tolerable within different countries. For instance in the UK speed cameras are ubiquitous, while in the USA there was huge public outcry against installing them as they were seen as violating privacy. Attitudes towards privacy differ between cultures. Observation in public places, whether disclosed or undisclosed, is legitimate. Where possible and always when required by legislation, researchers using undisclosed observation techniques in public places (such as shops, restaurants etc.) should provide notification to the public.

5.2.1. Public places

If videoing people in public places, the researcher should display clear warning signs. If observation is taking place in an environment, research ethics may be addressed by placing a notification at the entrance to the store or restaurant

stating that observations for research purposes are taking place. People who elect not to participate have the right not to enter. In circumstances where it is not reasonable to expect an individual not to enter, in a hospital for example, people should be given the right to have their data anonymised by obscuring identifiable features, or deleted if this is feasible without affecting the results of the research.

Contact information should be displayed with some prominence in a sufficiently large and readable typeface. A typical statement may read as follows:

EXAMPLE NOTICE:

Observations and videotaping for market research purposes are taking place inside the store today.

Company name; contact details.

A similar notification might be used at the entrance to a service provider:

EXAMPLE NOTICE:

During the month of February, we will be conducting random observation of interactions between customers and sales staff for the purpose of improving our services to the public.

Company name; contact details.

5.2.2. Private places

Observation in private places is not allowed without the explicit consent of the subjects.

5.3. Mystery shopping

Mystery shopping is a variant of passive data collection in that the data subject does not know that data is being collected. ESOMAR has a separate *Guideline on Mystery shopping* giving detailed advice.

6. INCIDENTAL DATA

In this digital age much opportunity exists for personal data records to be created which are incidental outputs from some everyday transaction or activity. A mobile phone will create records not just of who you call and who calls you, but also approximately where you have been – which mobile cell areas you have been connected to. All of this data is legitimately collected for specific purposes – billing you accurately or knowing how to connect calls to you.

Such personal data can be processed for those purposes and analysed for management purposes though it will usually have very limited sets of data variables and will not allow much by way of general research insights.

It should not be analysed for different purposes. For example analysing frequently called numbers in order to offer personal discounts, or analysing flight destinations of frequent flyers to make special offers to them for flights to those locations.

The real marketing value of this behavioural data can be extracted when it is combined with other data about customer habits, attitudes or characteristics; in other words, when two independent personal data files are combined. This is frequently referred to as database enhancement.

6.1. Database enhancement

A simple example of database enhancement is adding geodemographic coding to a survey data file. The following guidance on procedure can be applied to any example of bringing together two personal data files for the purpose of creating a more useful research database. Database enhancement is carried out by reputable research agencies in many countries. The process, if carried out correctly, involves no breach of confidentiality either in the coding process or in the analysis and use of the final anonymised data set.

Existing survey data is examined by a coding expert and each respondent is allocated to (in this example) one of 38 predefined codes. It is no different to

having detailed employment information in a survey and using a specialist coder to code a respondents industry into a 900 category industrial classification.

The one thing that is different to standard data coding is that it does need a third party technical expert (the owner of the Geodemographic system) to review the data and apply the code.

This eventuality is covered in the ESOMAR *Notes on How to apply the ICC/ESOMAR International Code on Market and Social Research*:

Article 12 – Responsibility

In order to meet the requirements of the Code and of good business practice, it is important for there to be contracts or written agreements between the researcher and the client and any other parties (e.g. self-employed interviewers or subcontractors) setting out their respective responsibilities.

Where elements of a research project are subcontracted it is essential that the researcher ensures in the contract with the subcontractor that they and, in particular any interviewers, understand and fully conform to the requirements of the Code.

The process for ensuring the confidentiality of the personal survey data is to remove all personal data including the respondent's name from the address

data before passing it to the specialist coding organisation.

Once the specialist coding is completed and returned to the research agency, the codes are added to the rest of the database and from there on handled as anonymised data for analysis. No information about a specific individual is released outside the research company.

If a respondent receives some form of marketing approach as a result of analysis of the survey data, they will receive it because they are part of some much larger target group defined by survey analysis. It will not be based on their individual data as supplied in the survey. This is the same for any survey carried out to support marketing. A respondent who is representing a group of people with certain characteristics may receive marketing messages designed for that group of people.

It is essential for the research agency to explain the relevant data protection issues to the third party coder and they must sign a declaration that they will comply with the requirements of the ICC/ESOMAR Code and data protection legislation.

6.2. Loyalty cards

Companies frequently want to bring together loyalty card sign up information of customer surveys with detailed

till roll data recorded against the loyalty card. For legitimate research analysis, the process described for database enhancement should be followed.

7. RETAIL TRACKING

RFID technology is currently being developed to help retailers and producers with the logistics of getting products to the right place at the right time by tracking their whereabouts. There are no examples at the moment of the data being used for customer tracking or linking product whereabouts to identified individuals. This technology will be monitored by ESOMAR and revisions to this Guideline issued if needed.

8. PHYSICAL MONITORING

Neuromasurement, the physical monitoring of respondents using sensors and devices such as EEG (Electro Encephylogram) or fMRI (Functional Magnetic Resonance Imaging) is a growing area of consumer research. The key issue here is informed consent. For both fMRI and EEG, the onus is on the research agency or neuromarketing company to explain fully the role and use of the technology, both at recruitment and prior to implementation. The

model which should be used parallels that of qualitative research, and in particular the role and use of viewing facilities, where filming and videoing has to be explained, client attendees behind a mirror need to be explained, as well as the role, use and purpose of the project.

In neuro-experiments, the researcher/neuroscientist must fully explain to the subject, in layman's terms, the procedures being used. With fMRI, this is much more invasive, in so much that the respondent is in a laboratory environment, "being strapped to a gurney", whilst the head is immobilised before being placed inside a very claustrophobic environment, prior to exposure to any stimulus. In short, the experience is highly invasive, and unless explained properly in terms of the experiential procedure, could cause some degree of anxiety.

The use of EEG is different; it is significantly easier to understand as the equipment used is portable, lightweight and non-invasive; whilst the environment is more user friendly. The process as with fMRI is to explain simply the methodology, how the brain works and the fact that EEG measures changes in electrical activity within the brain, which happens with every thought, movement and action as a

response to the environment we live in and things that we see, hear, taste, touch and smell.

Eye-tracking equipment is increasingly used with the EEG, where the consumers not only wear the "scull cap" for EEG measurement, but they are also fitted with a pair of glasses, which monitor frontal and retinal eye movement. Again, the process of explanation is vital, but at the same time, must be kept simple.

Researchers collecting psycho physiological data (psi-phi) (fMRI, EEG, electrocardiogram, skin conductance/resistance et al.) must have a clear retention policy for the data. This sort of data has significance beyond behavioral data as it can be used for medical purposes. With EEG and fMRI the data may reveal hidden diseases or conditions. It should be made clear to the subjects that the MR Investigations have no diagnostic role and that the researchers are not medically qualified to interpret the clinical implications of the data. The period for which data will be retained should be explained to the subject in case it needs to be reviewed by medical personnel.

9. FURTHER INFORMATION

Queries about implementing the Guide-
line should be sent to the ESOMAR
Professional Standards Committee,
professional.standards@esomar.org

Helpful links

The Ethical Standards of the American
Psychological Association
www.apa.org/ethics

Project team

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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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