



The Voice and Values of Research

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Donald S. Clark, Secretary
Federal Trade Commission
Office of the Secretary, Room H-113 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers

Introduction

The Council of American Survey Research Organizations, Inc. (“CASRO”) wishes to submit the following comments to the Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers (the “Privacy Report”) published on December 1, 2010. As the foremost research trade association in the United States, CASRO has long championed the public’s right to privacy, notably through its Code of Standards and Ethics for Survey Research (the “CASRO Code”). CASRO believes that any comprehensive privacy standards adopted or supported by the FTC should permit members of certain professions to be bound by industry-specific, self-regulatory privacy regimes, such as the CASRO Code. The research industry, including opinion, social, and marketing research, must have the ability to access respondents in order to collect and analyze their opinions and behaviors. Consequently, it is critical for the research industry, even in the absence of governmental mandates, to maintain the public’s trust. CASRO lauds the FTC for its dogged efforts in the privacy arena and its thoughtful consideration of the balance between consumer privacy interests and the material benefits of data collection. Throughout the Privacy Report, the value of opinion, social, and marketing research is acknowledged. This is consistent with prior affirmations by the FTC that it has long understood the unique and essential role of the research industry in society.

CASRO is a not-for-profit association representing nearly three-hundred-fifty (350) research companies engaged in opinion, social, and marketing research regarding a wide variety of public and private issues. CASRO’s members are responsible for the overwhelming majority of the opinion, social, and marketing research studies conducted each year in the United States. (The U.S. ranks first in the world in terms of annual revenue and, alone, represents more than one-third of the global research community.) CASRO was formed for the purposes of establishing and maintaining professional values and ethical standards for research and for research businesses.

As with most professions and industries, the U.S. research industry now operates within a global community, in which it is critical to strive for harmonization of practices and standards and to understand and accommodate international laws and regulations. CASRO works closely with ESOMAR, the world association of research professionals, on establishing commonality in standards and guidelines and aligning our positions on emerging technologies and methodologies. As part of our joint interest in global harmonization, ESOMAR has reviewed and endorsed these comments submitted by CASRO.

CASRO also has ensured that our Code of Standards includes the U.S. Safe Harbor principles for data protection consistent with the EU Directive. Furthermore, CASRO has served as the U.S. delegate to the International Organization for Standardization (ISO) in the development of ISO 20252, the quality process standard for market, opinion, and social research; and ISO 26362, the access panel quality standard. These ISO business quality credentials compliment the CASRO Code as evidence of our industry's on-going commitment to self-regulation.

Market, opinion and social research is distinct from marketing, selling and advertising

Opinion, social, and marketing research is distinct and separate from marketing, sales, and advertising activities and should not be subject to regulations aimed at those activities. Research elicits opinions and gathers information on behaviors, attitudes, characteristics, and possessions; it does not solicit money or invite purchases. Research serves a critically-important function throughout our society to support decision making and to achieve that function, it must, and does, hold to the highest ethical standards of social science inquiry. It is utilized by universities, corporations, research institutes, litigants, politicians, and government agencies to develop behavioral and attitudinal data in support of technical, scientific, economic, health care, pharmaceutical, and other social, commercial, scientific and public policy issues. No other tool permits these constituencies to obtain comparable data or insights capable of serving as a barometer of public sentiment, behaviors, needs and aspirations. Without research, many issues affecting both public and private interests could not be addressed as intelligently or resolved as effectively.

Federal law has supported the distinction between opinion, social and marketing research and marketing, sales and advertising activities. The Federal Trade Commission itself has acknowledged the importance of research throughout the Privacy Report and has previously written that research is "informational," has "social utility," and is "not commercial speech." The FTC has recognized that distinction by excluding research from regulations that are intended to cover sales, marketing, and advertising activities, such as the TCPA, the TSR, the National Do-Not-Call Registry, and the CAN-SPAM Act.

Research industry self-regulation

Over many years CASRO has worked with other research associations in the United States and internationally to maintain a rigorous ministry of self-regulation for research professionals and research businesses to ensure that the rights of respondents are upheld and they shall not be harmed or adversely affected as a result of participating in a market research project. For CASRO, the cornerstone of our

system of self-regulation has been the mandatory and enforceable Code of Standards¹ (A copy of the CASRO Code is attached.) The principles that guide our professional activities, and that account for their ultimate value as sources of objective information based on scientific methods are governed by a canon of ethics that ensures the research industry's integrity. These fundamental principles are also reflected in market research self-regulatory codes around the world including the ICC/ESOMAR International Code which is applied in 46 countries, including 17 of the 27 member states of the European Union. Consistent with research professional practice and with every national and international code of research standards, the CASRO Code requires research organizations to protect the privacy rights of the individuals who participate in social, opinion, and marketing research. The CASRO Code mandates privacy protections that are specifically tailored to the privacy needs of research participants and are actually more rigorous than those required by current U.S. law. For example, the CASRO Code prescribes a "chain of trust" relationship that encompasses respondent confidentiality, transparency of purpose (information-gathering only), appropriate disclosure and consent, and respect for personal privacy as well as for the voluntary nature of the engagement.

The integrity of the research process requires that researchers collect a limited amount of personal, demographic data from respondents in order to analyze and reliably report the opinions and behaviors of the population they study. Research professional practices and industry standards require that any personal data be securely protected and retained only as long as is necessary for the purpose of the research and quality control. Further, the CASRO Code prohibits using any personal data collected in the research process for the purpose of direct marketing, advertising or selling. Under the research industry's stewardship, the public continues to be willing participants in research, confidentially providing their personal information and opinions. CASRO believes that our track record of transparency and vigilant self-regulation has fostered public trust and confidence in our profession, making collection of personal information by researchers "commonly accepted." Indeed, in a recent survey 73% of respondents thought it was "always acceptable" for a company to use a consumer's information for research and product development, while only 27% of respondents thought the same of using a consumer's information for targeted marketing and promotions.² Moreover, those opinions have remained almost static over a three-year period.³

FTC Recognition of Self-Regulatory Privacy Programs

CASRO agrees with the FTC that a comprehensive, federal privacy regime is appropriate and believes that any such regime must recognize mandatory and enforceable self-regulatory programs, such as those that exist in the research industry. These self-regulatory programs protect individual privacy

¹ CASRO regularly considers revisions to the CASRO Code as new privacy and ethical issues arise. For example, in this era of rapid technological advances, research companies are increasingly utilizing new online technologies to provide more efficient and accurate research services for clients. In response, CASRO has already revised the CASRO Code to incorporate rules on the use of tracking applications for online research. These rules are based on the same fundamental principles of confidentiality, transparency, restricted use and consent. Currently, a CASRO taskforce is considering whether revisions to the CASRO Code are required to address privacy protections that may be needed when our members conduct social media research.

² Ponemon Institute, Privacy Trust Research Series, January 2011 *citing* FY 2010 survey.

³ *Id.*, *citing* FY 2008-2010.

more effectively and efficiently than expansive regulations that are designed to prohibit practices not “commonly accepted” by consumers, such as behaviorally-targeted marketing and advertising. Indeed, generic and comprehensive privacy regulations that cut broadly across all industries can have unintended and negative consequences on professions and industries that have 1) an established and effective privacy protection system; 2) professional or industry processes and practices that inherently protect personal privacy; and/or 3) mandatory and enforceable standards that ensure transparency, confidentiality, and public trust. By virtue of its professional pursuit and business paradigm, the opinion, social and marketing research industry embraces each and all of the above conditions.

CASRO believes that without differentiation, consumers will bundle all corporate and industry privacy practices under the common denominator of marketing and advertising and call for across-the-board restrictions on access to and use of personal information, in order to prevent unsolicited marketing and advertising efforts. As noted above, consumers currently do understand the difference between research and marketing, but regulation that treats research and marketing as the same may hinder consumers’ ability to discern which companies and industries have more protective practices. The research industry’s differentiation from marketing and advertising results in a level of public trust that improves our access to and relationship with respondents, leading to higher quality and reliability in the research we conduct. For example, consumers may be perfectly happy to allow online behavioral tracking by the research industry, especially with notice and consent. Consumers may be very uncomfortable, however, with receiving advertisements based on their online activity, even with notice and consent. Consumers understand that research is different in that it is non-commercial, does not attempt to promote a message or influence opinions, and that its ultimate purpose is to improve society.

Any conflation of research and marketing (as a result of a single privacy regime that treats the two as interchangeable) could have a materially negative impact on research participation rates. As a result, the quality and accuracy of research could be adversely affected. Thus, a standard that failed to accommodate self-regulatory programs could degrade consumer confidence not only in the research profession, but in other professions that depend on the collection of personal information.

Anonymization

Differentiation is also important to prevent unintended consequences that could undermine the integrity of the opinion, social and marketing research industry. While there are a number of potential industry-specific unintended consequences presented by the FTC’s proposed framework, CASRO would like to focus on two areas where a common, overbroad standard could significantly hinder research: 1) anonymization and 2) the broad extension of the rules to encompass device-specific information.

A common standard for anonymization may not take into account the nuances and complexities of the personal data protections that are integral to research and enforced by the CASRO Code and other national and international codes of standards. As personal information moves between research companies, service providers, and clients, that information will be aggregated and de-identified, but it is rare for the information to be anonymized in the strictest sense. Throughout the research process, however, the CASRO Code continually requires that personal information remain protected; that it is used

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only for research purposes; and that it is safely disposed of or erased when that purpose is completed. It is important to note that “no action can be taken toward an individual respondent simply because of his or her participation in the survey.” The point of research is not to collect identifiable responses for direct action, but rather to speak to small samples of a defined population in order to ascertain the views or behaviors of the whole population from which the sample was drawn. The risk of harm or adverse consequences for respondents where research is conducted in accordance with professional practices and under the oversight and enforcement of industry codes is infinitesimal.

Identification and tracking technologies

Device identification and IP address information are widely used in research for the sole purposes of survey administration, survey fraud prevention, and research quality control. The approach that the research industry is taking is very similar to that taken for fraud prevention by the online banking and online commerce industries. A standard that required an opt-in before using identification and tracking technologies for these legitimate research administration, survey fraud prevention, and research quality control would seriously impair survey response rates and survey integrity and reliability. A pre-survey opt-in requirement could communicate to potential fraudulent respondents our fraud-prevention intention. It’s also the case that a pre-survey opt-in could result in decreased response rates and degraded survey validity and reliability.

Summary

Consequently, CASRO believes that any comprehensive privacy standards adopted by the FTC should recognize that the research sector is bound by industry-specific, self-regulatory privacy regimes, such as the CASRO Code, that provide even greater levels of protection. This concept is consistent in many ways with the “Choice Programs” described in the legislation proposed by Congressman Rush. As with “Choice Programs,” any industry-specific code would be administered, verified, and enforced by trade groups, such as CASRO. The adequacy of any industry-specific program would be determined by the FTC. Such industry-specific privacy codes and programs would allow for differentiation and nuance, while still providing adequate protection of consumer privacy.

Lastly, the FTC noted several times in the Privacy Report that survey research would contribute to a better understanding of consumer opinions and expectations regarding privacy. CASRO would welcome the opportunity to assist the FTC in obtaining such research.

Respectfully submitted,

President
CASRO