

# NOTES ON HOW TO APPLY THE ICC/ESOMAR INTERNATIONAL CODE ON MARKET AND SOCIAL RESEARCH

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## NOTES ON HOW TO APPLY THE ICC/ESOMAR INTERNATIONAL CODE ON MARKET AND SOCIAL RESEARCH

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# NOTES ON HOW TO APPLY THE ICC/ESOMAR INTERNATIONAL CODE ON MARKET AND SOCIAL RESEARCH

## INTRODUCTION

These Notes are designed by ESOMAR to help users of the *ICC/ESOMAR International Code on Market and Social Research* to interpret and apply it in practice. Any further questions about the Code, for example on how to apply it in a specific situation, should be addressed to ESOMAR or the ICC, as appropriate.

The Notes will be reviewed periodically to take account of changing circumstances or important new issues. When necessary, further editions will be published by ESOMAR after consultation with the ICC and with other relevant bodies.

The ICC has also published other Codes of Practice which cover a variety of marketing issues not addressed in the ICC/ESOMAR International Code. In particular, the *Consolidated ICC Code of Advertising and Marketing Communication Practice* deals with the different requirements which apply to those separate fields of activity.

## SCOPE OF THE CODE

In addition to these Notes, ESOMAR has issued guidelines on specific aspects of market, social and opinion research including:

- Mutual Rights and Responsibilities of Researchers and Clients
- How to Commission Research
- Conducting Research Using the Internet
- Customer Satisfaction Studies
- Data Protection and Management
- Distinguishing Market Research from Other Data Collection Activities
- Interviewing Children and Young People
- Mystery Shopping Studies
- Passive Data Collection, Observation and Recording
- The ESOMAR/WAPOR Guide on Opinion Polls and Published Surveys

These are available on the ESOMAR website: [www.esomar.org](http://www.esomar.org)

## TERMINOLOGY

Throughout the Code the word 'shall' is used in order to maintain compatibility with other ICC Codes and ISO terminology. ESOMAR intends that 'shall' will have the same meaning as 'must' and that this is how it will be interpreted by ESOMAR's Professional Standards Committee and Disciplinary Procedures.

## DEFINITIONS

There is one area of potential overlap in the definitions which needs to be carefully considered by users of the Code. It is possible for an individual to be both a "client" and a "researcher" – when a researcher employed by an organization that is a user of research subcontracts part of the research project to a researcher outside of the organization. In this case, the researcher on the client side is still considered a researcher under the Code. It is then essential that the Code is not breached by inadvertently using data, or allowing data to be used, for a purpose

other than the research purpose for which it was collected.

It is essential that when respondents are being invited to take part in market research that the purpose is made absolutely clear to them at the outset and if the organisation collecting the data carries out activities other than market research, that there is no possibility of the respondent being confused about whether they are taking part in market research or an interview which has another purpose. More information on how to do this is provided in the notes on Article 1d below.

## SPECIFIC NOTES

### Article 1 – Basic principles

**(a)** "Market research shall be legal, honest, truthful and objective and carried out in accordance with appropriate scientific principles". This Article requires, among other things, that researchers must always conform to the requirements of international and national legislation. Whenever

national or international law or local professional rules impose obligations in any given country which are more strict than those already imposed by the ICC/ESOMAR Code, researchers must comply with these stricter obligations. Further information can be obtained from national associations listed on the ESOMAR website.

**(b)** This Article requires users of the Code not to act in a way which could bring discredit on the profession or lead to a loss of public confidence in it. There are obviously a number of possible actions which could lead to a failure to meet the requirements of this Article. One issue which arises from time to time is the systematic failure to pay interviewers, sub-contractors or respondents money which is legitimately owed to them. This Article makes that behaviour a clear breach of the Code.

**(c)** Maintaining the confidence of the general public and users of market research is one of the central objectives of this Code. This article requires that users of the Code behave in a responsible and

professional way when conducting their business and observe the principles of fair competition. The *Guideline on the Mutual Rights and Responsibilities of Researchers and Clients* provides helpful advice on ways in which this can be achieved in practice.

**(d)** The kinds of activity which must not be misrepresented as market research include:

- Enquiries which have the primary objective to obtain personally identifiable<sup>1</sup> 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 cam-

paign, 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.

Certain of these activities – in particular, the collection of information for databases for subsequent use in direct marketing and similar operations – are legitimate activities in their own right. Researchers (e.g. those working within a client company) may be involved with such activities either directly or indirectly. In such cases it is essential that a very clear distinction be made between such activities and market research. The definition of market research in the Code stipulates *“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.”* Any work that involves the collection and use of personally identifiable

data for non-research purposes (such as those listed above) or which combines both a market research purpose and a non-research purpose must not be represented as market research.

If the research data are being collected by an organisation whose primary activity is market research, the identity of the organisation collecting the data will normally be the name of the research agency and the purpose will be market (or survey, or opinion) research. To ensure the public is not confused when data is being collected by an organisation which is involved in both research and non-research activities, for example a manufacturing company or advertising agency:

- the company’s privacy policy and promotional literature must differentiate the different services that are being offered and separate market research from other activities;
- it must be easy for respondents and others to contact the researchers carrying out market research and those

<sup>1</sup> In these notes the terms “personally identifiable data” or “personally identifiable information” have been used for reasons of clarity. They have the same meaning as the terms “personal data” or “personal information” used in European Union legislation.

making enquiries must not be confused by having apparently to get in touch with a non-research organisation or deal with non-research staff to raise queries or complaints about market research activities;

- the introduction and any questionnaire used clearly define the purpose of the interview and the respondent must not be left with the impression that the exercise has a research purpose if it does not.

These requirements do not prevent researchers from being involved in non-research activities providing the purpose of collecting personally identifiable data is not misrepresented. Nor do they in any way restrict the right of the organisation to promote the fact that it carries out both market research and other activities providing they are clearly differentiated and that they are conducted separately and in accordance with the relevant laws and local professional rules of conduct. More guidance in this area is given in the *Guide on Distinguishing Market Research from Other Data Collection Activities*.

### **Article 3 – Professional responsibility**

**(a)** Respondents must be informed, where it is not already obvious, that their co-operation in the project is entirely voluntary. A respondent is entitled to withdraw from an interview or research project at any stage and to refuse to co-operate in it further. Any or all of the personally identifiable information collected from the respondent must be destroyed within a reasonable time if the respondent so requests. However, a particular issue arises in the case of continuous research, for example for measuring product purchase or media consumption. Data records can go back over a number of years and it would destabilise the trend data to remove historic records. Under these circumstances, the respondent must be able to have any personal identifiers and any way of associating the data with their name or contact details individually with the data, removed or deleted.

Researchers and those working on their behalf (e.g. interviewers) must not make statements or promises that they know

or believe to be incorrect, in order to secure the co-operation of respondents or others – for example about the likely length of the interview or about the possibilities of being re-interviewed on a later occasion. In addition, any assurances given to respondents must be fully honoured.

Where it is possible that the researcher might wish to re-contact the respondent for a further interview at a later date (for example in the case of a longitudinal research project) permission for this must be obtained from the respondent not later than the end of the first interview, except in the rare cases where there is some valid methodological reason to the contrary. One way to ensure that respondents are not misled, if the need for a recall interview arises unexpectedly, is for researchers to ask for this permission as a standard part of any survey interview. It is also good practice to warn about the possibility of a back-check call for quality control purposes. This may be required by law in some countries.

In certain kinds of research it may be necessary for methodological reasons to mislead the respondent about the exact nature of the project at the outset. Under these circumstances it is important that the respondent is made aware of the true purpose of the research before the interview is ended and given the opportunity to withdraw from the research and have their responses deleted. An example would be when an advertising test may be presented as an opportunity to watch a TV programme, the real objective being to measure recall of advertising shown during the programme.

**(b)** One particular circumstance where respondents could be adversely affected by taking part in research relates to sampling from lists provided by third parties. Where names or contact details are taken from a list provided by a third party, it is permissible to update the list with a marker identifying individuals who have specifically asked to be removed from the list, or who have moved away or died. A marker indicating who was contacted and whether they were interviewed can

also be placed on the list if the list is only used for research purposes. However, there are some circumstances, like researching activity which may be sensitive (for example criminal or political activity) where the researcher must carefully consider whether recording even this limited amount of information is professionally responsible in relation to the requirements of Article 3b.

#### Article 4 – Transparency

**(a)** When asking respondents for their co-operation in a market research project they must be told:

- i. the identity of the organisation or individual who is collecting the data;
- ii. the types of person or organisation that will receive the results in the case of market research data, or the person or organisation that will receive their data if it is passed on in a personally identifiable form;
- iii. the specific purposes for which the results will be used.

If the personally identifiable data is being collected and analysed by an organisation whose primary activity is research this would be the name of the research agency and the purpose would be market (or survey, or opinion) research. However, if the personally identifiable is being collected and passed on to another organisation without being anonymised (e.g. the researcher is only carrying out fieldwork), it is important that the name of the final holder of the personalised survey data (the “data controller” in European data protection terminology) is given and, if requested, their contact details.

Examples of possible introductions to interviews, depending on how the data will be used:

#### EXAMPLE ONE: INTRODUCTION TO A MARKET RESEARCH SURVEY WHERE ANY DATA RELEASED TO A CLIENT WILL BE IN A FORM WHERE INDIVIDUAL RESPONDENTS CANNOT BE IDENTIFIED

Hello, I am from XYZ market research and we are carrying out a survey on .....This is genuine market research not a sales call. The interview will take about ....minutes and any answers you give me will not be identifiable as coming from you. We do not sell anything or collect any money.

#### OR

Hello, I am from XYZ market research and we are carrying out a survey on ..... The interview will take about ....minutes and the answers you give me will be made anonymous.

The example above contains the following important information; the identity of the organisation which will receive their personally identifiable data (the data controller in EU legislative terminology), the length of the interview and the fact that the interview is for a market research purpose. The first wording is particularly suited to a telephone interview where the interviewer is not able to show any independent identification.

The example below uses a different introduction because the organisation responsible for holding and analysing personally identifiable research data (the data controller) is not the same as the organisation doing the interviewing. The respondent needs to have both pieces of information. Both examples assume that the interviewer will also identify themselves and provide the respondent with information about how to contact the data collection company if the respondent needs to.

**EXAMPLE TWO: INTRODUCTION TO A MARKET RESEARCH SURVEY WHERE THE DATA WILL BE HELD BY ANOTHER ORGANISATION, FOR EXAMPLE A CONSULTANCY, AD AGENCY OR THE CLIENT COMPANY, BUT EVEN IF IDENTIFIABLE DATA IS RELEASED, THIS WILL BE ON THE UNDERSTANDING THAT NO COMMERCIAL ACTIVITY WILL BE DIRECTED AT THE RESPONDENT AS A DIRECT RESULT OF THEIR HAVING PROVIDED INFORMATION.**

Hello, I am from XYZ market research and we are carrying out a survey on .....for ABC Inc. who will be given your answers. The interview will take about ....minutes and any answers you give me will only be used by ABC Inc. for market research. They will not try to sell you anything or collect any money as a result of you taking part in this survey.

When explaining the general purposes for which the results will be used, it is very important that market research is not confused with customer relationship management and similar activities where the personally identifiable data will be used for commercial activity directed to individual respondents. If this is one of the purposes of the interview it should be made clear at the outset when permission is being requested and not presented as market research. More guidance in this area is given in the *Guide on Distinguishing Market Research from Other Data Collection Activities*.

**(b)** It is important that the respondent is able to check the identity and bona fides of the organisation or individual who is collecting their personally identifiable data and the identity of the organisation or individual who will end up holding their personally identifiable data, if different. When interviewing face-to-face, a “thank you” leaflet or business card is an effective way of providing this information. Providing a freephone number to call is a common way of meeting this requirement when

interviewing by telephone. In the case of online research a telephone number or postal address should be provided in addition to an email address.

If a respondent asks how their name came to be selected for interview they must be told. They must also be assured that any personally identifiable data they provide will be used for research purposes only and will not result in a sales approach being made to the individual respondent.

**(c)** Back-checking is an important element in professional quality control of fieldwork. All face-to-face interviews must include a statement that there is a possibility that a subsequent recall may be made for quality control purposes, unless the interview is conducted in a central location or recording is used.

Where an independent check on the quality of fieldwork is to be carried out by a different research agency the latter must conform in all respects with the relevant national laws and self-regulatory documents on market research and with

the provisions of the ICC/ESOMAR Code concerning data privacy protection, in particular Article 7. An agreement in writing to this effect must be obtained from that agency. If the third party agency has been instructed by the client, and not by the researcher, the researcher must ensure that the client enters into such an agreement with the third party agency. In particular, the anonymity of the original respondents must be fully safeguarded and their names and addresses used exclusively for the purposes of back-checks and not disclosed to the client.

The client may wish to personally check the quality of the fieldwork or data preparation. In such cases the client, or his mutually acceptable representative, may observe a limited number of interviews for the purpose of quality control. When this occurs the researcher must first obtain the agreement of the respondents concerned (see note to Article 3a). In addition, any such observer must previously have agreed to comply with the provisions of the ICC/ESOMAR Code, especially Article 7, in writing. The researcher must also try

to ensure that such observers do not include people who are likely to know, or have 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. Further advice on how to meet the requirements of this article are given in the *Guideline on Passive Data Collection, Observation and Recording*.

**(d)** This covers the requirement for transparency about details of the execution of a research project between researcher and client; a more comprehensive list of requirements is given in the *Guideline on the Mutual Rights and Responsibilities of Researchers and Clients*.

#### **Article 5 – Ownership**

Market research proposals and cost quotations are protected by copyright and remain the property of the organisation or individual who developed them unless otherwise agreed in writing.

The extent of protection in practice may to some extent depend upon the interpretation of the law in different countries. Serious cases of unauthorised distribution or copying could be regarded as unethical but disciplinary or legal action is difficult to enforce, without being underpinned by comprehensive evidence that stands up to legal examination. The author is therefore advised to lay claim to their copyright in written form so that they can if required produce the necessary evidence of this. All transfers of ownership and copyright must be in writing.

It is good business practice to agree the ownership of proposals and quotations in the terms of business. This is covered in more detail in the *Guideline on the Mutual Rights and Responsibilities of Researchers and Clients*.

#### **Article 6 – Recording and observation techniques**

Observation and recording of behaviour is a major activity for market researchers. The general principles are clearly outlined in this article; the respondent must be

told at the beginning of the interview that recording techniques are to be used unless this knowledge might bias the respondent's subsequent behaviour. In the latter situation, the respondent 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 require advance notice in all cases. This is particularly relevant for recording telephone conversations, but may also apply to any recording device. Live closed circuit television or video streaming should not be carried out without permission in advance from respondents. Respondents may also need to be informed of other rights relating to Articles 4 and 7, as some recordings may include personally identifiable data. Certain techniques, for example recording qualitative research and videoing behaviour in a shop or public place, involve particular issues. There are also ethical issues involved in observing conversations in internet chat rooms.

The use of these techniques and others is covered in more detail in the separate *Guideline on Passive Data Collection, Observation and Recording*. Specific issues arise with Mystery Shopping and these are covered in the *Guideline on Mystery Shopping*.

#### **Article 7 – Data protection and privacy**

Market research conducted according to the principles of transparency, confidentiality and secure handling of personally identifiable data has achieved recognition as a form of “statistical or scientific research” since personalised information cannot be disclosed for non-research purposes such as direct marketing. Such recognition must not be jeopardised by any failure to conform to the requirements of this article.

Many countries have legislation which protects personal data and/or privacy. This Article of the Code explains the most important requirements for a professional. However, it is important for researchers to be aware of the law and



national professional rules when working internationally, since there are specific requirements at a local level in some countries which go beyond what is required by the Code\*. The *ESOMAR Guideline on Data Management and Protection* provides more detailed guidance relating to data protection and data management for market research than can be covered in these notes.

**(a)** Providing access to a privacy policy for respondents who are being interviewed online is relatively straightforward. The *ESOMAR Guideline on Conducting Market and Opinion Research Using the Internet* explains how to do this and gives an example. For other modes of interviewing providing access is more challenging. All agencies must have a privacy statement easily accessible for respondents on their websites, there must also be a hard copy available which can be mailed or faxed on request. Someone must be responsible for privacy and for keeping the privacy policy up to date, ensuring that all staff, including temporary staff, are aware of its requirements and for handling queries relating to it. Interviewers working face to face must

be told how respondents who wish to see the privacy statement can ask for a copy; putting the details on a “Thank you leaflet” is a good way to do this and also ensures that respondents are made aware of the way their personally identifiable information will be protected. Telephone interviewers will need a short version which can be read out to respondents who ask, as well as details of how respondents can access a copy of the full policy document. Always include a contact point for complaints and queries.

**(c)** If a researcher working in the client organisation receives research data from a project at an identifiable individual respondent level then there must be a written agreement between agency and client to ensure that the data are used only for research and that both parties agree to observing the rules laid down in the ICC/ESOMAR International Code on Market and Social Research, as well as in national codes and guidelines. An example would be receiving recordings or edited video clips of group discussions or interviews.

In this case, researchers in the client organisation must ensure that data sets or other materials (photographs, recordings, paper documents, etc.) collected for market research that contain personally identifiable information are kept securely and are only used for the original market research purposes for which they were collected. Access to such data should be restricted and allowed only on a need to know basis. The researcher in the client side should ensure that all staff handling such sensitive data have signed to confirm they will follow ICC/ESOMAR Code and are aware of their obligation not to disclose personal data.

If during a market research interview a respondent expresses the wish for their personally identifiable information to be passed to the client because, for example, they have experienced a problem with a product or service and want it put right Article 7c allows for this as long as:

**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

Point i) allows for the possibility that rather than the respondent spontaneously asking for their identifiable personal details to be passed to the client, the researcher can ask them if they would be willing for their identifiable personal details to be passed to the client. In this latter case, the researcher should either obtain the respondent’s permission at the beginning of the interview or tell the respondent that they will be asking permission to identify them to the client at the end of the interview.

Explicit consent in this context means that the respondent has agreed that some, or all, of their answers and their contact details if relevant can be provided to the client on the understanding that the information will be used to deal with the issue raised and not to initiate a sales approach. In many countries, it is sufficient to record

\* Readers’ attention is called to the fact that the German-language version of the International Code is prefaced by a Declaration prepared by the German national market research associations. This sets out certain additional requirements which must be followed in order to conform with German legislation when carrying out research in that country. Copies of this Declaration can be obtained via the ESOMAR website.

that explicit permission has been given on the questionnaire – further information can be obtained from associations listed on the ESOMAR website.

**(d)** The *ESOMAR Guideline on Data Management and Protection* provides more specific guidance on the application of 7e and 7f.

### **Article 8 – Children and young people**

At present there is no common international definition of “child” or “young person”. Even within a single country the definition may vary with the activity under consideration. Since it would be very difficult to agree any general definition based on factors such as the child’s cognitive powers, researchers should take a straightforward practical approach to the issue. If not otherwise specified locally, researchers must assume that a “child” is defined as being aged “under 14 years” and a “young person” as being aged “14-17 years.” This issue is covered in detail in the *ESOMAR Guideline on Interviewing Children and Young People*.

### **Article 10 – Subcontracting**

There should be a statement about an organisation’s policy in relation to subcontracting work in the standard terms and conditions of the research organisation. This is essential if subcontracting all or part of the work is standard practice for the research organisation. It is good practice for subcontracting in relation to a specific project to be explicitly agreed between the research organisation and the client. The *Guideline on the Mutual Rights and Responsibilities of Researchers and Clients* contains more information on the application of this article in practice.

### **Article 11 – Publishing findings**

**(b)** The publication of research findings may sometimes prove to be misleading because certain of the technical aspects or limitations of the research have not been fully appreciated and/or because the public presentation, explanation and discussion of the findings (e.g. in the media) has not clearly spelt out all the relevant considerations. This can happen accidentally, or as a result of the pressures on media time and space, rather than for any

more undesirable reason. Researchers can reduce the danger of such problems arising by making sure (e.g. in their agreement for a research project) that they are consulted in advance by the client about the form in which any research findings will be published.

**(c)** In order to enable others to check the validity of conclusions drawn from the research the relevant technical details and results of published research must be available for anyone who wishes to check them. The easiest way of doing this is to publish them on the research company’s website.

**(d)** It is clearly impossible for a researcher fully to control the ways in which research findings are interpreted or applied once these are in the public domain. However, both the client and the researcher have a responsibility to ensure that published results are not misleading. The researcher must endeavour to prevent any misinterpretation or misuse of research findings, and (as far as is practicable) to correct any such misinterpretation or misuse once they become aware that this has happened.

Should the client not consult and agree in advance the form of publication with the researcher, the latter is entitled to:

**(i)** refuse permission for their name to be used in connection with the dissemination of conclusions and

**(ii)** publish the appropriate technical details of the project.

The requirements of this article are covered in more detail in the *ESOMAR/WAPOR Guide on Opinion Polls and Published Surveys*.

### **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. Further guidance is given in the *Guideline on the Mutual Rights and Responsibilities of Researchers and Clients*.

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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.

#### **Article 14 – Implementation**

The addresses to which queries about the Code, or reports of possible Code infringements, should be sent are those on the inside front cover of the Code itself. Any such communications should be marked “For the attention of”:

- The Professional Standards Committee, [professional.standards@esomar.org](mailto:professional.standards@esomar.org) or ESOMAR, Eurocenter 2, 11th floor, Barbara Strozziilaan 384, 1083 HN Amsterdam The Netherlands
- The International Secretariat, ICC, 38 Cours Albert 1er, 75008 Paris, France

The enforcement of this Code is covered under the ESOMAR Disciplinary Procedures. Acceptance of the Disciplinary Procedures is a condition of membership of ESOMAR. A copy is published on the ESOMAR website.

Most countries have a national market research association or associations who enforce professional and ethical standards among their members. A list of associations which abide by the ICC/ESOMAR Code can be found on the ESOMAR website.

“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 essential organisation for encouraging, advancing and elevating market research worldwide.