Summary of the Article 29 Working Party Opinion on the Use of Mobile Apps

Key Issues

- Recommendations apply to any market research agency operating in the EU market and processing data of EU citizens using mobile apps as part of research projects
- Failure to comply with the Article 29 Working Party recommendations could lead to enforcement procedures

Why is the Article 29 Working Party focusing on Mobile Apps?

The Article 29 Working Party (Art29WP) consists of all 27 EU Member States' Data Protection Authorities and has significant regulatory clout.

The development of mobile apps provides many opportunities for market research and other industries. The Art29WP recently released an Opinion in order to clarify the legal framework on mobile apps, and the privacy responsibilities of app developers.

Thy noted that an average smartphone user will download 37 apps and that more than 1,600 new apps are added to app stores on a daily basis.

This rapid proliferation and use of mobile apps poses privacy threats for those using them, which in turn has The Art29WP are concerned that app users are at a high risk of failing to provide privacy and data protection.

The development of apps can be done with very limited programming skills, and the nature of the internet means that even obscure apps can reach millions. Many app developers are unaware of their data protection responsibilities, and give little thought as to how their apps may cause privacy risks. Even experienced app developers often integrate third-party services with little regard to the end-users' data protection.

The key privacy issues for app developers in market research to consider are the need for transparency including the purpose for which personal data is being collected to gain meaningful consent from respondents, to not collect more data than is actually needed (data minimisation), and adequate security measures.

Rules applicable for App Developers

- Before downloading an app, the user's specific, free and informed consent must be obtained before the app can begin to collect data.

- Market research companies should ensure that the types of data collected must be made clear to the user (i.e. location), and that consent is gained for each.
- Consent is only valid for legitimate and proportionate purposes.
- Only data that is absolutely necessary to perform the function of the app should be collected and with reasonable retention periods.
- Market research companies should also allow users to withdraw their consent, uninstall the app and delete data where applicable.
- There needs to be a single point of contact for users of the app.
- There must be an understandable and easily accessible privacy policy.
- Regarding apps aimed at children, app developers are told to adhere to the age limit defining children or minors that is set in national legislation and to choose the most restrictive data processing approach available.

Rules applicable to Third Parties using apps' data

Many market research processes in apps work through third parties. The Art29WP Opinion also sets out specific rules for third parties in mobile apps, which should be noted and adhered to, or risk the attention of the authorities.

- Apps must provide comprehensive information if the data will be used for third-party purposes, such analytics and should not circumvent any mechanism designed to avoid tracking.
- Market researchers should also comply with the consent requirement outlined in Article 5(3) of the ePrivacy Directive, to provide the user with information on the purposes of data processing.
- Finally, third parties should apply appropriate security measures. This includes secure transmission and encrypted storage of unique devices and app-user identifiers as well as other personal data.

What does this mean for Market Research?

For market research, clarification on consent, tracking and analytics should be of considerable interest. It is hoped that the Opinion will help small-scale app developers be more aware of privacy and data protection concerns.

The Opinion helps to make clear what is and what is not acceptable in data privacy when building and administrating mobile apps. Following the rules will help ensure our industry maintains consumer and regulatory confidence in our operation of new technologies.

In addition to the Opinion, mobile app developers in market research should take note of ESOMAR's Guideline on Mobile Market Research.