

RESEARCH & REGULATION

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THE INTERNET AND SURVEY RESEARCH

CASRO Internet Task Force A special task force has been put together to discuss and determine actions (education and/or guidelines) concerning new developments in internet research. These issues relate to both research process and practice, the CASRO Code, as well as potential government regulation. Cases in point:

Internet Panels

The task force will address the recruitment, disclosure, security, incentives, and practice and management of online panels.

SR "Primary Purpose" As SRers explore various marketing tools to recruit panelists, we must be mindful of "primary purpose" definition of CAN SPAM.

FTC Final Rule on CAN SPAM The final rule specifies that the regulation will cover

emails that have significant elements of sales, marketing, advertising, or solicitation in order to have a commercial "primary purpose." Legitimate SR emails are NOT covered, provided the message does not contain sales, marketing, or advertising content/links. CASRO was one of 13,500 "commenters" and was referenced or quoted frequently in the Final Rule. Importantly, the FTC adopted and codified the industry's fundamental premise that SR is NOT a commercial activity.

Maryland Anti-Spam Law Unconstitutional

A state judge has ruled that MD's anti-spam law is unconstitutional because it seeks to regulate interstate commerce. Unlike the fed CAN SPAM Act, the MD law, which applies to fraudulent emails, allows residents to sue for damages. Since the law could apply to residents who receive an email out of state, the state judge concluded that the law unconstitutionally attempts to regulate commerce that may never enter MD. Significance? In view of CAN SPAM's preemption of state laws (other than fraudulent email state laws), an argument exists that Congress has now expressly authorized state reg. of fraudulent spam. It remains to be seen if this issue is developed in the appellate court.



COMPLAINTS RE INTERNET RESEARCH

In addition to the guidelines for handling complaints or legal challenges in telephone SR, CASRO GPA is preparing similar guidelines for internet SR. Some states, individuals, even class actions have been initiated against SRers re "spamming." The guidelines will reference the specific

language of the law, the internet SR process and self-regulation, as well as CASRO and the Code. It is important to explain that while SR is NOT covered by the fed or state law, the SRer and the industry itself is responsive to and respectful of those individuals who do not want to participate

in internet research. Prior opt-in, ability to opt-out, as well as clear and unchallengeable Privacy Policies re ID, purpose, protections, and security must be assured. Please contact the CASRO GPA if you receive a "respondent" or legal complaint regarding your internet SR.

THE TELEPHONE AND SURVEY RESEARCH

Autodialer Compilation

The CASRO GPA has put together for CASRO members a compilation of state autodialer laws that could potentially be interpreted as affecting SR. We believe that in all but one of these states we can successfully argue that SR is NOT covered by the language or intent of the law. These ADAD (“autodial, announcing device”) laws affect calls using recorded message players. Almost half the states have regulated ADADs (or ADRMPs—autodial, recorded message players) over the past 12 or so years, and the SR industry has stated that these laws do NOT apply to SR because we don’t use recorded messages. SRers use autodialers to provide efficiency and quality control. ****PLEASE NOTE:** California ADAD law includes autodialers that have the capability of delivering a prerecorded message. So the prudent course for SRers, who autodial CA residents using equipment that has the capability of de-

livering a recorded message, would be to manually dial such numbers.

Cell Phone DNC List a Hoax

If you received an email saying that all cell numbers will be released to telemarketers if they are not on a cell # DNC list, ignore it—it’s a hoax.

The facts: major wireless companies are putting together an opt-in only customer cell # list for the internal use of directory assistance (411) operators.



“Model” to Verify Compliance of Client-Provided Sample

CASRO 3P now includes a model form for members to use to verify that client-provided sample a) does not violate client’s privacy statement or any agreement with customers; b) does not include customer tel. #s (CTNs) of those customers who have opted-out; c) includes only

those cell #s (if any) of those who have opted-in to auto-dialed calls. Further, the Model Agreement requires clients to provide immediate notification to the SR co. of any opt-out or CTN ported to a wireless #, as well as a client indemnification of the SR co. re the above.

FYI re EBR and Telemarketers

The FTC is considering “harmonizing” the FTC and FCC rules re telemarketing calls to DNC-listed consumers with whom the telemarketer has an EBR—“established business relationship.” The FCC rule says: No limit on prerecorded marketing messages, if caller has an EBR with recipient (even if DNC-listed). The FTC rule says: Because of call abandonment concerns, no more than 3% of marketing calls can be prerecorded, regardless of an EBR. While this issue affects telemarketers only, we will continue to monitor.

CASRO 3P Checklist

As government focus on privacy increases, CASRO Privacy Protection Program model contracts and policies become more important self-regulatory tools. to ensure your company has established and uses these tools:

...Privacy Policies are under government scrutiny.

Privacy Policy for General Websites

Privacy Policy for Global SR

Privacy Policy for Internet SR

...Fed and State govts are protecting personally identifiable information (PII); regulating marketing uses of PII; ensuring compliance re opt-in/opt-out and 3rd party providers.

Model Client Agreement re Disclosure of Respondent ID

Model Agreement to Verify Compliance re Client-provided Sample

Model Opt-in/Opt-out Language

Model Standard Contract with Clients

Model Contracts & Riders re HIPAA; GLB; and/or FCC Telecom Rule

See CASRO 3P at

www.casro.org for more details

PRIVACY POLICIES

The accuracy of and adherence to privacy policies has become a focal point for the FTC and the states: the FTC is actively enforcing against privacy policy violations, and some states have introduced bills requiring posted privacy policies and/or prohibiting misleading privacy policies. FTC cases: FTC v. Petco Animal Supplies, Inc. and FTC v. Gateway Learning Corp.

On July 1, 2004 California’s Online Privacy Protection Act of 2003 went into effect. This law requires that every website that collects personal information post a privacy policy on its website and comply with that privacy policy. This law affects all websites accessed by CA residents, thereby affecting virtually every website in existence. Significance? The emphasis

is two-fold: not only should businesses establish privacy policies, but they should ensure that such policies are clear and accountable. CASRO Actions: GPA is compiling a list of pending and existing privacy policy laws. The CASRO 3P model privacy policies provide an excellent foundation for general websites; global SR; and internet SR. (see CASRO 3P on website.)

PERSONALLY-IDENTIFIABLE INFORMATION (PII)

The protection of personally-identifiable information (PII) is a key regulatory focus in off-shore outsourcing, privacy, and privacy disclosure bills. The GPA is reviewing the various definitions of PII in the US and globally and determining if there are consistent criteria

to describe PII. It is critical that the regulatory definition of PII align with the CASRO Code of Standards and with SR practice. The objective of this review is continued self-regulation that allows CASRO to support PII-targeted bills. **A CA Law (the “Shine the Light”**

Law) requires opportunity to opt-out before disclosing PII to a 3rd party direct marketer. This makes it legally (not just ethically) essential to enter into a Respondent Identifiable Information Disclosure Agreement prior to disclosing PII to clients for SR (see CASRO 3P).

THE STATE ROAD

State Legislative Tracking

The Feb. report refers to carryover bills, pre-filed bills, and newly introduced state bills that the CASRO GPA is monitoring or preparing to address. Key issues are protection of PII; call center disclosure; off-shore outsourcing restrictions; relevance of spyware prohibitions to SR, as well as usual suspects: DNC, unsolicited marketing; internet bills. Key states: CA, NY, FL, PA, and MO.

Florida Victory CASRO GPA leader Jim Robinson explained to bill sponsors the ramifications for SR of a FL

call center disclosure bill (SB272) that specifically included SR and, because of ambiguous language, would have required SRers to identify clients (not just the SR co). Following this lobbying effort, Sen. Campbell decided to withdraw the bill.

Parental Permission The Children's Online Privacy Protection Act (COPPA) requires verifiable parental permission for email contact and online communication with children 13 and under. In addition, CASRO has recommended that regardless of law, it is prudent to obtain parental

permission even for teens, since (1) states/courts may aggressively address complaints; (2) the age of emancipation varies; (3) it demonstrates sensitivity to parental controls and children's rights to privacy. We're reviewing state law that may pertain as well.

CASRO GPA Compilations

Compilation of State Auto-dialer Laws (see Article, pg 1 and website)

Compilation of Political Polling/Research Laws (see website)

Compilation of Privacy Policy Legislation and Laws (in progress)

CASRO Lobbying

Victory:

Florida "Call Center

Disclosure" Bill

requiring

identification of

clients in surveys

is withdrawn

NEWS BRIEFS

EC Approves Contractual Clauses re Data Transfers

The European Commission has developed contractual language that will provide a legal basis for cross-border transfers of personal information outside Europe. CASRO GPA is reviewing clauses to determine their suitability to SR.

Secret Video Surveillance of Shoppers Newest tech services are tracking consumers' shopping and purchases via hidden camera and marketing such data. Privacy and ethical issues abound. Does this (should this) potentially overlap with legitimate mystery shopping research? While law permits video surveillance for security purposes, what will be the government's (and the public's) position on this marketing trend?

SPAM and Privacy—Key Concerns of FTC Bureau

The FTC's Bureau of Consumer Protection will be focusing on SPAM and Privacy as two of the four top areas of concern (health claims and weight loss are the others). Under the "Privacy" banner the Bureau will be focusing on protection of consumer information and spyware.

More on Spyware The intrusiveness of spyware and the government's concerns about protecting the public will probably not differentiate among industries, as has been the case with telemarketing and research, for example. This is a "red flag" for SR to aggressively self-regulate not only to be ahead of gov't reg, but also to be able (via industry guidelines) to demonstrate support for inevitable gov't reg.

And on Intercept Technology SR guidelines are needed here as well. In-

dustry rules could address specific disclosure of what the technology will intercept, how it will be used and securely protected, verifiable (double) opt-in, how to opt-out; and confirmation of SR purposes and protections.

Govt Research Spending

Federal statistical budgets total about \$3 billion for 2005. The US Census Bureau has the highest budget at nearly \$755 million, with the Bureau of Labor Statistics coming in second with a \$455 million budget.

HIPAA Security Guidelines

are underway to help orgs comply with data security requirements of HIPAA re personal information in electronic form. More to follow.

Junk Fax Protection Act Passes Senate

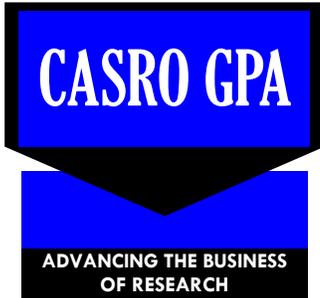
with no impact on SR (see R&R, 9/04, pg. 2)

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**CASRO RESOURCES . . . WWW.CASRO.ORG**

The Council of American Survey Research Organizations (CASRO) is the national trade association of survey research businesses representing about 260 companies in the US, Canada, and Mexico. Our resources, noted on our website, include information for our members, the industry, the public, and the media.

CASRO's GPA Resources:

- ◆ **CASRO Code of Standards and Ethics for Survey Research**
- ◆ **CASRO Privacy Protection Program (CASRO 3P)** (latest: Model Client Sample Verification Agreement)
- ◆ **Legal Status of Telephone Research vs. Telemarketing**
- ◆ **CASRO Compliance Tip Sheet**
- ◆ **Legal Updates/Memos** (latest Update: 12/04; latest Memos: KY; CA "Shine the Light," HHS)
- ◆ **CASRO Compilations/Tracking** (latest: Feb. State Leg. Tracking; Autodialer Laws; Political Polling/Research Laws; Privacy Policy Leg. & Laws; Review of State Parental Permission Laws (in progress))
- ◆ **Federal Filings (contact CASRO office): Amicus Brief re DNC; FTC Comments re CAN SPAM definitions; FTC Comments re 30-day Safe Harbor on Ported #s**
- ◆ **"CASRO Primer: Politics is Local"** (latest: Congressional Grid)
- ◆ **Media Facts** (re CASRO, US & Global Research, Privacy, Commercial)

REGS AND LEGAL ISSUES AFFECTING PHARMA SURVEY RESEARCH

Increasing government scrutiny of pharmaceutical research in the US combined with apparent differences between the US and EU industry guidelines re pharma SR require further investigation by CASRO's GPA and Legal Team. Two cases in point:

Disposition and Amount of Physician Incentives

A recent HHS Advisory Opinion addressed whether physician incentives for pharma research violate a federal "anti-kickback" law.

On June 1, 2004 the Dept of Health and Human Services (HHS) issued an Advisory Opinion, discussing payments to physicians by a pharma research co. HHS declined

to take action against the co. for the payments in this particular case. The Agency did, however, indicate that anything more than purely nominal payments to physicians could result in action against the payor. (see CASRO Legal Memo 1/05 on website)

EU & US Pharma Research

CASRO GPA has received several inquiries from members who have been asked to comply with EphMRA (European Pharmaceutical Marketing Research Association) research guidelines. EphMRA guidelines and US pharmaceutical research practices present some troubling differences. The EphMRA guidelines

are more focused on clinical pharmaceutical research than is US pharma survey research.

The EphMRA guidelines require researchers to follow the FDA's guidelines for "good clinical practice," which in turn requires clinical researchers to report any "adverse effects" that respondents may reveal or discuss in a survey.

Since most US pharma SR does not involve clinicians as interviewers, the EphMRA guidelines place a burden of responsibility and clinical knowledge on interviewers that is not applicable. Generally, US pharma SR interviewers do not qualify as "clinicians," who are able to recognize and report "adverse effects."