

Ask Government Affairs

By Howard Fienberg

This is the first in an interment series of Legislative Update columns dedicated to members' frequently asked questions.

Q: I received an e-mail warning me that I must register my cellular phone number on the national Do Not Call Registry by the end of June, when all cellular phone numbers will be released for use by telemarketers. Is this true?

A: This long-running (recycled and re-forwarded) e-mail message is false – an urban legend. According to the Federal Trade Commission, “Contrary to the e-mail, cell phone numbers are NOT being released to telemarketers, and you

will NOT soon be getting telemarketing calls on your cell phone. ... While the telecommunications industry has been discussing the possibility of creating a wireless 411 directory, according to the FCC, even if a wireless 411 directory is established, most telemarketing calls to cell phones would still be illegal, regardless of whether the number is listed on the federal government’s National Do Not Call Registry.”

While a directory of wireless numbers sounds like a potential boon to survey and opinion research, such efforts have gone nowhere. It would also be a very limited directory, because numbers would be added only by consumer opt-

in and accessible only as part of 411 consumer assistance lines manned by telephone operators – for personal, not business, use. Finally, several states, and Congress, have either passed or considered laws limiting or preventing the deployment of such directories.

Q: My client wants to acquire the personal data from our most recent study so they can build a database for other research activities. I'm inclined to say no to such sharing, but is it OK since it is for research purposes?

A: Ethically (and generally legally), you cannot share personally identifiable information (the definition of which can vary widely) with anyone outside of your organization unless you have told your respondents that you will do so. First, you must adhere to your stated privacy policy, which may restrict what you can do with collected data and who and under what circumstances you might disclose it to third parties. Then, you need to revisit exactly what respondents were told during the recruitment and research process and what documents and waivers they may (or may not) have signed. Finally, you should determine the business value of the data. It is in your organization’s best business interest not to share such personal data because it could constitute a trade secret – and you should carefully consider designating it as such in your policies and contracts.

Q: I want to survey young people for a study, but don't want respondents that are so young as to require parental consent to participate in the survey. At what age is parental consent required?

A: MRA’s recommended best practices for research with minors (anyone under the age of majority of the state in

Where can I find a resource that provides trouble-free translations and coding in all languages?



which the respondent resides) is to ensure parental consent in advance of any research. Written consent is the best (especially from a legal standpoint).

You can find each state's laws on their age of majority (which vary widely) in the MRA Compliance Guide.

We generally suggest using the principles underlying the Children's Online Privacy Protection Act (COPPA) as a guide – although COPPA only legally applies to children under the age of 13 online – and trying to apply them as best you can in your own work with minors, online or offline, in person or over the phone.

There are no state or federal laws of which we are aware of that specifically require parental consent for survey participation, but you should consult COPPA and other laws depending on your situation. For instance, if funding for the study comes from the U.S. Department of Education, you may have to abide by the Protection of Pupil Rights Amendment (PPRA), which requires that materials from any study of elementary or secondary students be provided to their parents, and that certain "sensitive" topics in any study require parental consent before students can participate.

Also, keep in mind that what topics are considered "sensitive" by parents will vary, so it is generally in your best interest to obtain parental consent if the topic has any hint of sensitivity.

Q: Do I have to tell a respondent that our telephone interview is being recorded or monitored?

A: Legally, it will depend on where your call center and respondent are located. Federal law requires that only one party consents to such recording, but numerous states require two-party or all-party consent. You can likely assume that your interviewees consent to such recording (and cover yourself well by having them sign forms acknowledging such consent), which makes you compliant with any one-party consent requirements. You will, however, need to get your respondent's

consent if you and/or they are residents of a two-party consent state.

Of course, if your call center is located in Iowa (which only requires one-party consent) and you're calling a respondent in Massachusetts (a two-party consent state), the more restrictive law applies (two-party consent).

MRA recommends using the following model

clause at the opening of any telephone interview where recording or monitoring may occur: "This call may be monitored or recorded for quality assurance purposes. Your continued participation in this telephone survey serves

as express consent to be monitored or recorded."

Resources: More information on these and other topics can be found in the Compliance Guide, a free tool for MRA members: www.cmor.org/dref/.

Disclaimer: The information provided in this article is for guidance and informational purposes only. It is not intended to be a substitute for legal advice. MRA advises all parties to consult with private legal counsel regarding the interpretation and application of any laws to your business.



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