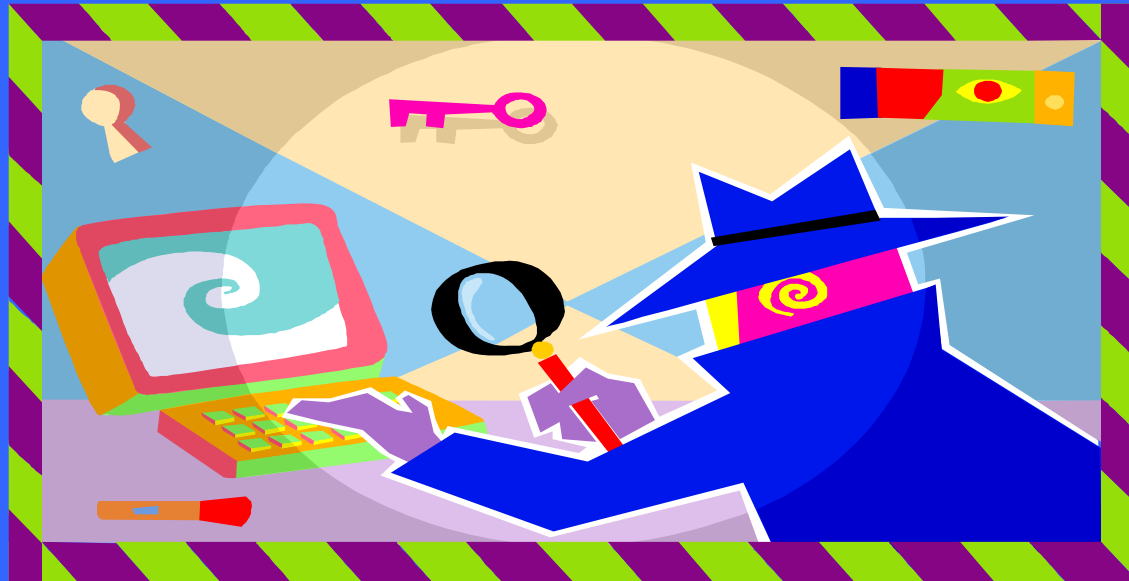


Insight Show 2011

MRS Academy

*Respecting the Rights of Consumers:
Market Research and Data Privacy*



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Topics

- **An evolving legal landscape**
- **Privacy and market research: an opportunity to build confidence with respondents**
- **Where to get help**
- **The future**

An evolving legal landscape



Data Privacy: A dynamic global landscape

Five linked factors:

- Legislation (espec. EU DP Directive)
- Increased use of the internet for transactions
- Increased use of personal data (CRM)
- ‘Confessional society’ (social networks)
- Rising tide of citizen/consumer concern and confusion about security/use of personal data



- *Global issues* -

Global Standards

Five principles of data privacy:

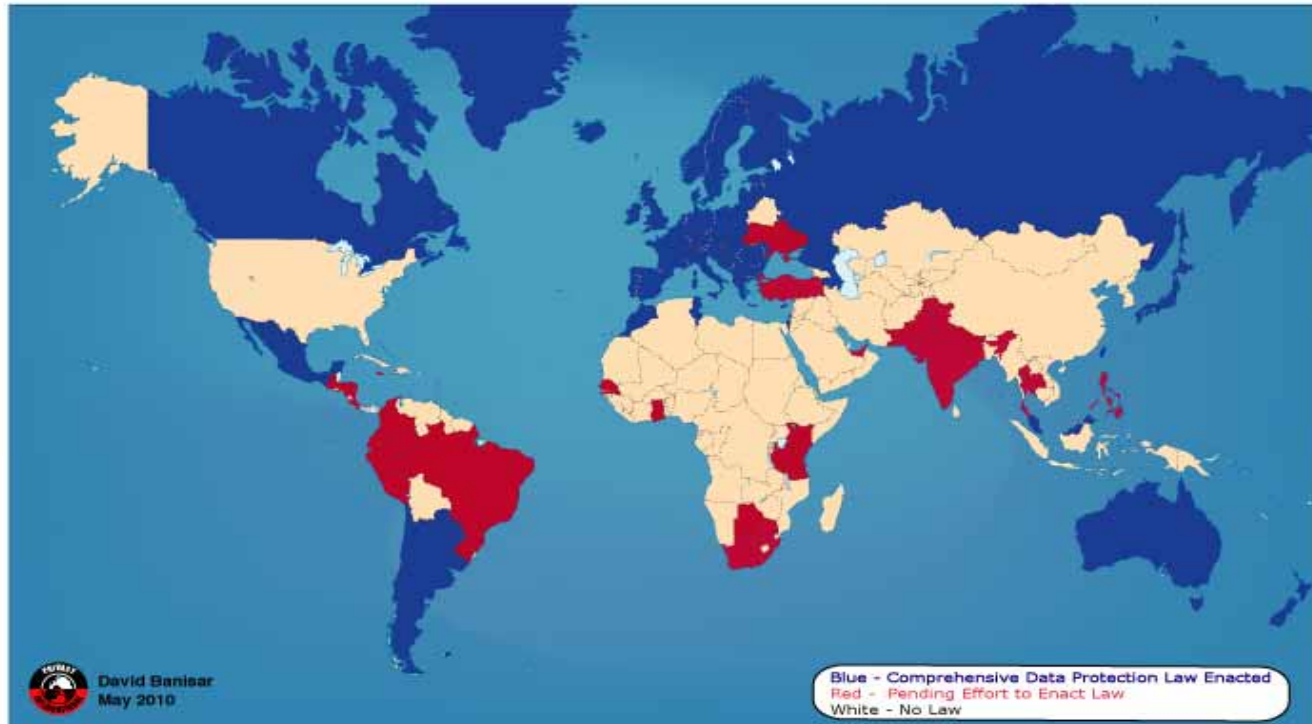
- ***Notice***: collection; use; disclosure
- ***Choice***: opt-in/opt-out
- ***Access***: subject access; inaccuracies
- ***Security***: reasonable steps
- ***Enforcement***: create effective controls



‘Madrid Resolution’ (November 2009)

Data Privacy round the world (May 2010)

Data Protection Laws Around the World



**Few meet EU Directive standards
EU (EEA) not a level playing field**

Source: www.privacyinternational.org

EEA not a level playing field.....



- Spain has a formidable reputation for upholding the law (a different funding model; DP Communication & Research awards)
- UK has a good balance between protecting citizen's rights and enabling commercial activities
- Germany has precise rules covering market research, and.....
 - New German DP law (2008/09): *'is comprehensive, very complicated in wording. In my opinion the most precise data protection act in Europe'* (Hans Glis, IT expert, Germany) *'Germany is drifting away from European harmonisation'* (Ulrich Wuermeling, attorney)
- Common thread in Spain & Germany (& elsewhere) is a focus on tightening/enforcing rules on direct marketing
- Belgium:
 - 'Researchers' Handbook' (Commission for the Protection of Privacy)
 - National Register access process/rules re. surveys
- Finland: Web guidelines for Scientific Research & Sensitive Data

Data privacy legislation: EU (UK)

- EU Directive on Data Protection (1996)
- Data Protection Act 1998 (October 2001)
- Privacy & Electronic Communications Regulations (December 2003)

**‘Top UK firms show little respect for customer privacy’
(PL&B Newsletter, April 2004)**

**65% of SMEs provide no DP training for staff
(BSI survey, June 2009)**

Consulting Association to be prosecuted by ICO (March 2009)

**‘UK should legislate on data breach notification, Lords say’
(September 2007)**

**HMRC loses CDs containing 25 m personal records
(November 2007)**

‘Wake-up call’: Nielsen BuzzMetrics censured in the USA for scraping data from a patient forum (October 2010)

Sony Playstation customer files ‘hacked’ (April 2011)

**ICO given powers to conduct compulsory audits
(November 2007)**

Apple holds locational data on customers (April 2011)

Data security breaches (12 months)

How?	e mail	Post	Lost, stolen computer	Disclosure	Web site	Lost paper records	Lost disk etc	Other	Total breaches
Local gov.		2	4	5	2	3	4	6	26
Central gov.		7	7		1	5	6	2	28
NHS, healthcare	1	2	27	5	1	14	18	7	75
Private sector	6	7	18	13	6	4	17	9	80
Charities	1	3	4			4	4	4	20
Other public		5	7	11	4	4	13	3	47
Other		1							1
Total	8	27	67	34	14	34	62	31	277



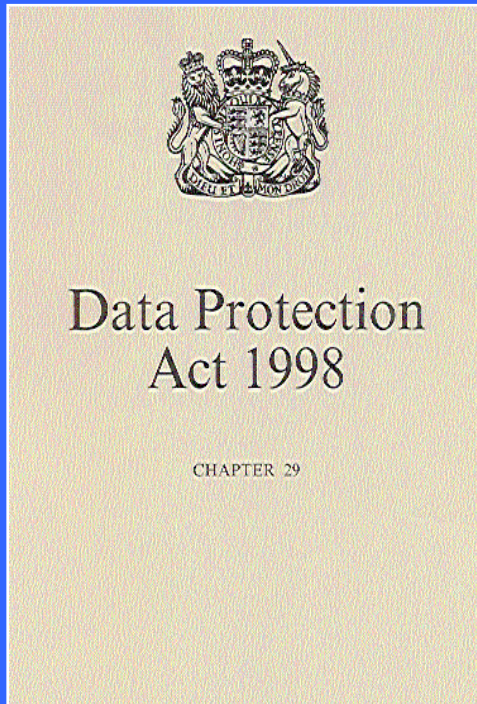
Guardian 29-10-08

18% of SMEs claimed DP had lower priority in current economic climate (BSI, June 2009)

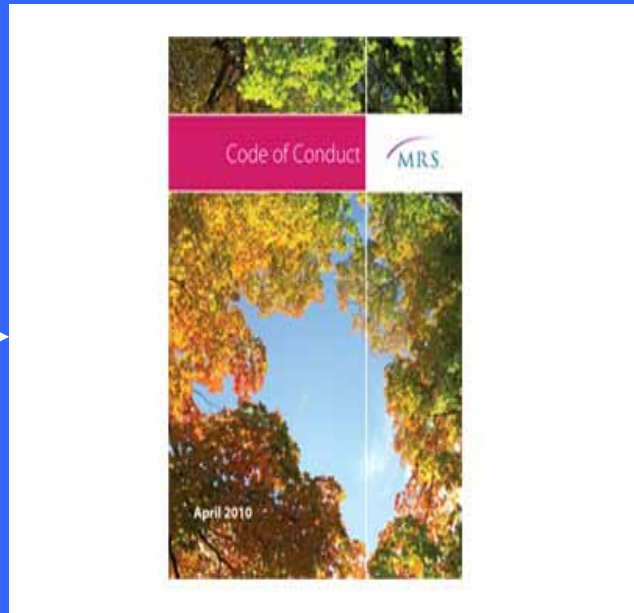
**Privacy and market research:
an opportunity to build confidence
with respondents**



UK Data Protection Act 1998 & research



**MRS guideline
(mandatory)
Data Protection
Act 1998
and Market
Research:
Guidance for
Members**



**Key issues incorporated
within the MRS Code from
December 2005 version**

MRS Codeline queries 2009-10

Topic	%**
Data protection	20
Respondent confidentiality	11
Interviewing children	11
Incentives	10*
Other legislation	8
Research for non research purposes	7
Research design	4
Non research	4
'Sugging'	3
Other queries	24

* New guidance from ICO in 2009

**Base = 515

UK 1998 Act*: Key Principles

Personal data:

- must be processed *fairly & lawfully* **(B16)**
- can only be used for the *specified & lawful purposes* for which it was *collected* **(B9)**
- shall be *adequate, relevant & not excessive*
- shall be *accurate & where necessary kept up to date*
- must *not be kept* beyond fulfilling the purpose for which it was collected
- shall be processed in accordance with the *rights of data subjects* **(B9)**
- must be kept *secure* **(B62-64)**
- shall not be *transferred outside the EEA* unless adequate protections are in place

* UK Act does not cover Jersey, Guernsey & Isle of Man

Challenges from the UK regulator.....

1989: UK Data Protection

Registrar challenges the market research industry to explain why it should not be classified as direct marketing...

2000: Data Protection Registrar defines all customer satisfaction research as being subject to the provisions covering direct marketing within the 1998 Act...

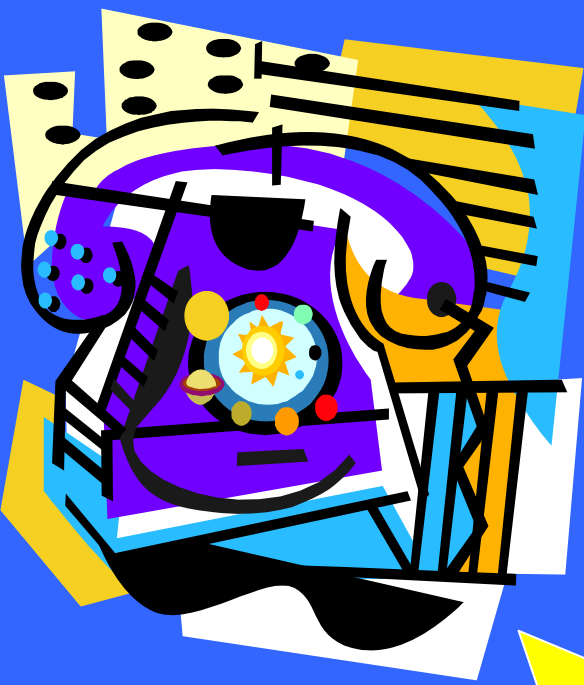
2003: Ofcom defines silent calling/pinging as misuse of the telecommunications Networks (enhanced 2011)...

2009: New guidance on incentives...

*Therefore, a continuing
challenge for
market research...*



*Differentiation
from
direct marketing...*



DP key points & MR: General issues

- DPA covers personal information about identifiable, *living*, individuals (data subjects)
- Covers **all** MR methodologies
- Anonymised data is exempt – *remove identifiers as soon as possible*
- Personal data in the public domain is (generally) exempt - except when mixed with other data
- Sample screening not *normally* required (exception where specific ‘*do not contact for MR purposes*’ marker)
- Care when covering ‘**sensitive**’ data
- Respondents in ‘B2B’ surveys: a *grey* area

1998 Act Definitions: “Informed Consent”

Two components:

- **Transparency:** ensuring individuals have a very *clear & unambiguous understanding* of the *purpose(s)* for collecting their personal data & how it will be *used*
- **Consent:** at the time that the data is collected, individuals *must give their consent* to their data being collected, and also at that time, have the *opportunity to opt out of any subsequent uses* of the data

Clearly spelt out to respondents at the beginning of the interview that the information collected will **only** be used for **confidential survey research purposes**

--Applies in all interview situations--

Informed Consent: Implications

- Permission to re-interview **must** be gained at the initial interview – *apart from for back checks/very exceptional circumstances (B11/12)*
- Right to withdraw from interview at any point **must** be respected (B18)
- Permission at recruitment **must** be gained for recording/observing (B15/36-41/47)
- If they ask, respondents **must** be told – at an appropriate point in the interview – the source of their details and/or the name of the data controller (B7)
- Prior permission (opt-in) **must** be gained before data is transferred to another agency, or the client if conducted in the name of the agency (B13)
- **Must** have detailed web-site privacy notice (new ICO rule on cookies)

- *no surprises; common sense; respondent perspective* -

1998 Act: Research exemptions

- Sample screening & TPS, MPS
- Subject access (?)
- Sensitive data (explicit consent)
- Anonymised data
- Subsequent 2003 Electronic Communications regulations (**most**)

Disclosure of personal data in research ('Categories 1-6')*

- 1. Disclosure to project team only (all bound by MRS Code)
- 2. Disclosure to data controller of deceased/ 'goneaways'
- 3. Disclosure to set 'do not interview' markers
- 4. Disclosure to resolve **complaints** - separate from survey findings
(B10)
- 5. Disclosure to client of personalised data for research purposes only
(B9/13/35)
- 6. Data disclosed to client for use in attributable form for purposes in addition to/other than confidential survey research **(B9/13/35/48)**

'You can change the rules, but not after the game has been played'

Howard Beales, FTC Bureau of Consumer Protection)

'13% (FTSE 100 companies) were sharing data with third parties without obtaining consumers' explicit consent' (PL & B Newsletter, April 2004)

*(*Source: MRS Regulations for Using Research Techniques for Non-Research Purposes, updated Nov. 2009)*

Disclosure to client ('Category 5')

(B.9/13/35)

- For market research purpose only
- Respondent's expectation ('common sense' test) – more than just mentioning the client
- Respondent has the opportunity to 'opt-out'

'Owning a list of potential respondents does not give the client an automatic right to know how each person answered the survey'

Attributable data collection projects ('Category 6')

(B.9/13/35/48)

- Client receives *some or all* of the data at an individual level
- Data used for purposes *in addition to or instead of* those defined in MRS Code as confidential research

Key Criteria:

- Maintain *distinction* between MR & other uses
- Public *must not* be confused

New rule on incentives

- ***Incentive:*** Any benefit offered to respondents to encourage participation in a research project.
- **B26** Client goods or services, or vouchers to purchase client goods or services, must not be used as incentives in a research project.

New rule on incentives

- Product testing – as before
- Non-client incentives – as before
- Client incentives = promotional exercise
 - **Legal requirement** not just MRS
 - Follow other MRS Regulations: *Using Research Techniques for Non-Research Purposes*
 - + New MRS Incentive guideline

Data security: A defining issue.....

Where data provided by the client is used in a survey (eg for sampling), all parties must ensure security of data meets clients requirements & those within 1998 Act:

- Assurances re safeguards
- Written contract with client (and data processors) re data
- Use MRS data security checklist
- Return or destroy data as required by client

Where to get help: simply a click away.....

Where can I get advice?



www.mrs.org.uk

www.esomar.org

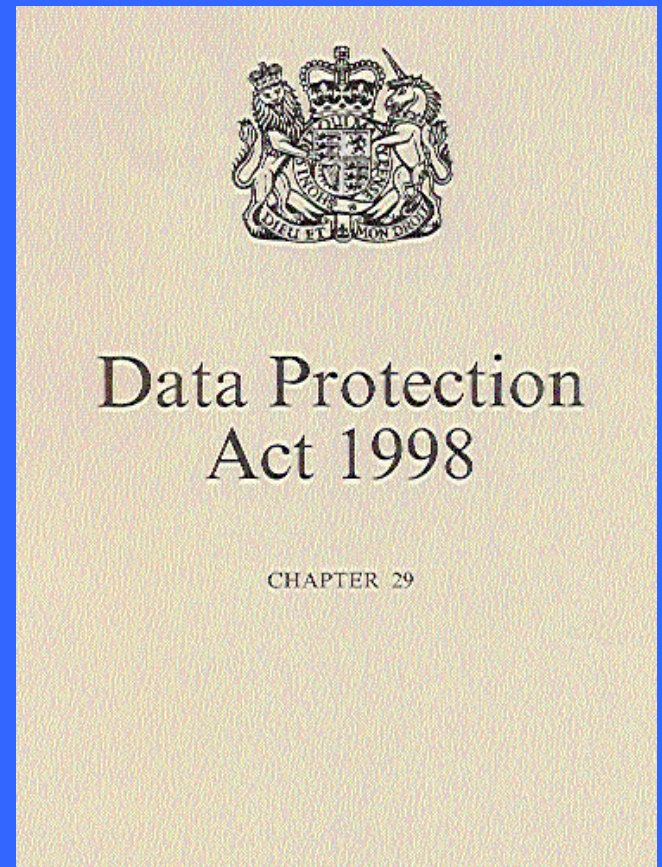
www.informationcommissioner.gov.uk

www.bsi-global.com

www.privacylaws.com

Why a dose of legislation can be good for you.....

- The DP Act 1998 balances consumer protection with commercial considerations
- Confidential survey research remains a special case
- A legal underpinning to the principles within the industry Code – especially protecting the rights of respondents
- Encourages higher standards



DP is a very 'hot' topic.....

- Changes to the EU Directive (expected late 2011), MR issues (EFAMRO):
 - Definition of personal data
 - Distributed/cloud computing & invisible processing
 - Definition of data controller
 - Privacy by design
- Tougher rules likely for Web 2.0 (social networks data): MRS & ESOMAR considering
- Part 8 UK 'Coroners and Justice Bill' – amendments to 1998 DP Act
 - Assessment Notices: Inspections (audits) without consent of data controller (likely to be selective in private sector)
- Legal requirement to notify significant breaches (+ independent report)
- Tougher sanctions where breaches avoidable/intentional (big fines & prison!)
- Introduction of Privacy Impact Assessments (ICO guidelines)
- Tougher regime for 'Silent Calls' (Ofcom, Feb 2011)
- Code on 'Data sharing'; new rules on cookies (ICO, May 2011)
- Under the spotlight: geodemographics/assumptions/probabilities & predictions
- Safer Internet Programme to educate children (Jan. 2009) – encouraging self-regulatory initiatives (EU)
- Freedom of Information law (UK) could be extended to cover suppliers to public sector
- Increasing spread of DP laws around the world

The list just gets longer and longer.....

Final thoughts.....

‘Behavioural targeting on the internet will become increasingly pervasive and consumers understandably feel uncomfortable.....consumer rights must adapt to technology, not be crushed by it.....If we fail to see an adequate response to consumer concerns on the issue of data collection and profiling, as a regulator, we will not shy away from our duties nor wait for a cataclysm to wake us up.’

(Meglena Kuneva, European Consumer Commissioner)

‘Data protection is still a relatively new regulatory area and easily forgotten in hectic day-to-day business’

(Dr. Claus Ulmer, Deutsche Telecom Group)

‘Don‘t consider privacy as an obstacle to business but as a human right and a chance and tool to create confidence with citizens and clients!’

(Michael Seigert, DP lawyer, Germany)

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