

Regulation Trends: Technology Regulation and Survey Research

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Promoting and Advocating Survey and Opinion Research

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Disclaimer

The information contained in this presentation is provided as guidance and is not intended as, nor is it a substitute for, legal advice. It is advisable to consult with private legal counsel regarding the interpretation and application of any laws to your business.

What is CMOR?

- National, non-profit association
- Established in 1992 as a *unifying voice* for the industry for respondent cooperation and government affairs issues
- Membership consists of **all segments** of the survey and opinion research profession

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Agenda

- Introduction: Technology, Research & Regulation
- Email
- Minors Online
- Social Networks & Web 2.0
- Online Behavioral Tracking
- Data Security
- The New Telephone Era (Cell, SMS, Robopoll)

Introduction: Technology, Research & Regulation



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Introduction

Identity Theft tops list of complaints filed with the Federal Trade Commission (FTC)

- » **37%** **Identity Theft**
- » **12%** **Internet Auctions**
- » **8%** **Foreign Money Offers**

Introduction

CMOR 2006 Research Profession Image Study

- **8 in 10** respondents were concerned about their privacy
- **Only 25-30%** of respondents felt researchers can be trusted to protect their “rights to privacy”
- About a **quarter** of respondents feel survey research is an invasion of privacy

Email



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Email

The 2003 Federal CAN-SPAM Act

- Regulates unsolicited *commercial* emails

Email Laws and Survey Research Emails

- **CAN-SPAM** - generally, **does not** apply to respondent recruiting or legitimate survey research contacts.
 - *may* be covered under **false or materially misleading header** provision
- **State email laws** can apply to **ANY** bulk emails

Email

Email Laws and Survey Research Emails

Guidelines to Consider When Sending Emails

As a best practice, researchers are encouraged to:

- 1) include **opt out** notices in **all email distributions**;
and
- 2) to maintain internal **do not email** lists

Minors Online



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Minors Online

Children's Online Privacy Protection Act (COPPA)

- Parental control over the information collected from their children online
- Who must comply w/COPPA?
 - Commercial websites directed to children (under 13) who collect PII
 - General audience websites who have actual knowledge that they collect PII from children

Minors Online

COPPA Principles

- NOTICE
- VERIFIABLE PARENTAL CONSENT
- PARENTAL ACCESS AND CONTROL
- EFFICIENT (AND ETHICAL) DATA COLLECTION
- ENFORCEMENT

Minors Online

COPPA

Age Verification

- On the web, no one knows you're a dog
- FTC *sliding scale*



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Minors Online

Child Protection Registries

- Secure database of protected **electronic contact points** accessible to minors:
- **Advertisements** for prohibited/harmful stuff
 - Prostitution, gambling, alcohol, tobacco...
- Utah and Michigan, but eyed by other states

Social Networking & Web 2.0



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Social Networking & Web 2.0

Research in Chat Rooms & Social Networking Sites

- Teens and tweens have different approach to their privacy than their parents
- Tons of PII offered online
- *Does that make it right for researchers to collect?*
- Avatars: Is the PII at all accurate?

Social Networking & Web 2.0

No specific laws/regulations yet, but...

- Facebook user backlash over “Beacon” ad-linking program
- Who **owns** the data?
 - Facebook profile deletion
- Who can **access** the data?
 - Insurer recently denied coverage based on Facebook & MySpace postings; employers using sites to check out candidates

Social Networking & Web 2.0

“Rome Memorandum” for regulators:

- Right to **pseudonymous use**
- Allow users to **opt out** of 2ndary uses
 - especially for marketing
- Obligation to **data breach** notification
- Who **controls** personal data
- **School curricula** to include privacy and information self-protection

Online Behavioral Tracking



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Online Behavioral Tracking

- Federal: FTC held Town Hall, released “*Self-Regulatory Guidelines*”
- States: CT and NY pursuing convoluted and restrictive legislation
 - Goals: Transparency and Choice
 - Definitions: Vague
- **CMOR seeking research exemption**

Data Security



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Data Security

Current laws and legislation

- Gramm Leach Bliley “Safeguards” Rule
- HIPAA “Security” Rule
- 42 states regulate data breach notification
 - Plus DC, Puerto Rico
 - Newest laws in VA, WV
- State laws requiring security/encryption
- Conflicting bills in Congress

Data Security

The Global Online Freedom Act (H.R. 275)

- Intent: H.R. 275 appears to be intended to ensure that the Internet and general data sharing do not become the means for *undermining* human rights and freedom of expression around the globe
- Concern: The Act may have the *opposite* effect by **stifling** research activities

The New Telephone Era



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The New Telephone Era

Cell Phone Restrictions (TCPA):

- ANY call made (without express prior consent) using an automatic telephone dialing system to a cellular telephone number ***IS PROHIBITED UNDER FEDERAL LAW***

***Automatic Telephone Dialing System: equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers ***

The New Telephone Era

SMS & Text Messaging Restrictions

- Applicability of CAN-SPAM? **Yes.**
- Applicability of the TCPA? **Debatable.**
 - 2005 case: Rodney L. Joffe v. Acacia Mortgage Corporation
 - 2007 case: Satterfield v. Simon & Schuster



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The New Telephone Era

Cell Phone & Texting Ethics

- **Compensation** for cell phone minutes or texting charges
- Respecting the “**mobile**” in mobile phones:
 - **Talking while driving**
 - **Time of day**
 - **Public spaces**



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The New Telephone Era

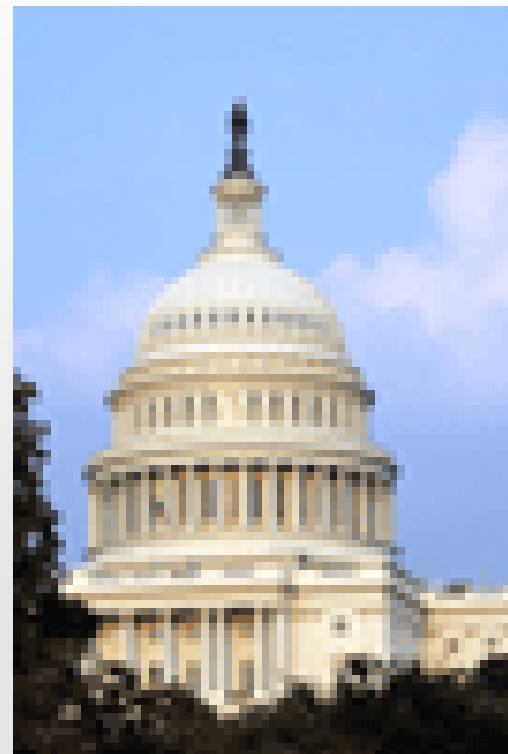
ROBOPOLLING: ADAD, IVR, and other devices

- State and Federal legislators seeking to **restrict use of, or outlaw** altogether, automatic polling systems
- “Robocall Privacy Act” (H.R. 5747, S. 2462)
 - CMOR successfully amended before introduction
- New law in Nebraska (L.B. 520)
 - CMOR working to amend

CMOR Contact Info

Questions?

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