

ESOMAR WORLD RESEARCH CODES & GUIDELINES

ESOMAR GUIDELINE ON THE MUTUAL RIGHTS AND RESPONSIBILITIES OF RESEARCHERS AND CLIENTS

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RESEARCH

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ESOMAR GUIDELINE ON THE MUTUAL RIGHTS AND RESPONSIBILITIES OF RESEARCHERS AND CLIENTS

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ESOMAR GUIDELINE ON THE MUTUAL RIGHTS AND RESPONSIBILITIES OF RESEARCHERS AND CLIENTS

INTRODUCTION

The ICC/ESOMAR International Code on Market and Social Research sets out the ethical and professional rules which market researchers must follow. The Code is designed to enhance the public's confidence in market research by emphasising the rights and safeguards to which they are entitled under this Code, with particular emphasis on the market researcher's responsibilities when collecting personal information from respondents.

In 2007, the ICC and ESOMAR made a major revision of the ICC/ESOMAR International Code and removed those articles referring to the mutual rights and responsibilities between the researcher and the client. These are now included in this new Guideline which is intended to specify the working principles in the researcher/client relationship.

In order to ensure there is clear agreement between the client and the research provider and that both parties adhere to the requirements of the Code, it is strongly recommended that the points discussed in this Guideline are covered in the research proposal and a separate written contract or standard terms of business. This Guideline is not, however, intended to regulate the

details of the business relationships between the researcher and the client. In most cases the contract will not be between the researcher and client as individuals but between their respective organisations.

The Guideline should be read in conjunction with the [ICC/ESOMAR International Code on Market and Social Research](#), the [Notes on How to Apply the ICC/ESOMAR International Code](#) and other guideline documents issued by ESOMAR including the [Guideline on How to Commission Research](#). The Guideline is also consistent with the ISO 20252 international quality standard which covers the same topics.

SCOPE (ICC/ESOMAR INTERNATIONAL CODE ARTICLES 1 AND 12)

Researchers must carry out the work assigned in accordance with the terms and provisions of their proposal. They must warrant that all services provided will be performed in accordance with the general principles of the profession as described in the ICC/ESOMAR International Code, with professional responsibility and conforming to the principles of fair competition, as generally accepted in business. The Code should

be applied against the background of any stricter standards or rules that may be required in any specific market.

Researchers must specify in the research proposal that they follow the requirements of the Code and it is recommended that they make a copy of the Code available for the client. This applies to both single and continuous agreements, although the latter might involve additional multiple agreements.

Researchers have overall responsibility for ensuring that research is carried out in accordance with the ICC/ESOMAR Code, and for ensuring that clients and other parties to the research agree to comply with its requirements.

1. OWNERSHIP (ICC/ESOMAR INTERNATIONAL CODE ARTICLE 5)

Because of the problems and complications of intellectual property rights, ownership and copyright issues must be covered in the contract as a matter of good professional practice to avoid disputes arising during the course of a research project. If a client commissions a business tool that is original and copyright protected, he is normally entitled to use the work and reproduce

and distribute it to that end under licence. It should be noted that ownership and copyright (the author's right to reproduce their work, to communicate it and to make it available as defined in the Berne Convention) can only be transferred in writing. In drafting the contract, the researcher is therefore also advised to take into account that:

a. Market research proposals and cost quotations are the property of the organisation or individual who developed them unless otherwise agreed in writing. The extent of protection in practice may to some extent depend upon the interpretation of the law in different countries. Serious cases of unauthorised distribution or copying could be regarded as unethical but disciplinary or legal action would be difficult to enforce, without being underpinned by comprehensive evidence that stands up to legal examination. The author is therefore advised to lay claim to their copyright in written form so that they can if required produce the necessary evidence of this. All transfers of ownership and copyright must be in writing.

b. The contract must include conditions under which the client can disclose market research proposals and cost quotations to a third party other than consultants working for the client on the project, to prevent these being used

to influence research proposals or cost quotations from other researchers.

c. The provisions of 1a above also apply to the research design, the questionnaire and all research records prepared by the researcher.

d. The research results relating to a specific client, obtained by a research service provider as a result of carrying out a particular research project, must not be used in research projects for other clients without authorisation and normally copyright will be transferred to the client, except in the case of syndicated projects as indicated under 1e below. The client however, has no right to know or have personal information about respondents unless the respondents have given explicit permission for this to the researcher, and then only for research purposes.

e. Normally, in the case of syndicated and/or multi client projects or services where the same data are available to more than one client and where it is clearly understood that the resulting reports are available for general purchase or subscription, the client cannot disclose the contents of a report to any third party other than his own consultants and advisors for use in connection with his business, without prior written permission of the researcher.

f. The contract must also include confidentiality clauses on the market research briefs, specifications and other information provided by the client. These must be treated in the strictest confidence and cannot be disclosed by the researcher to any third party unless otherwise agreed in writing. If necessary the researcher may disclose relevant sections of the client's research brief to an actual or potential subcontractor for the research project purposes but would then be responsible for ensuring that the subcontractor fully complies with the requirements of the ICC/ESOMAR International Code.

2. SUBCONTRACTING (ICC/ESOMAR INTERNATIONAL CODE ARTICLE 10)

Researchers shall inform clients, prior to work commencing, when any part of the work for them is to be subcontracted outside the researcher's own organisation. On request, clients shall be told the identity of any such subcontractor.¹

In this document, subcontracting includes outsourcing and off-shoring and any requirements for subcontracting apply equally to these activities.

The researcher must ensure that whenever the use of any subcontractor may result in the disclosure of personal data to the subcontractor, the latter must fully comply with all relevant data protection requirements and must undersign their agreement to apply the ICC/ESOMAR International Code.

Though it is usually known in advance which subcontractors will be used, occasions may arise during the course of a project where subcontractors need to be brought in or changed at very short notice. In such cases, rather than cause delays to the project in order to inform the client prior to work starting, it will usually be acceptable to let the client know as soon as possible after the decision has been made.

3. CHECKING OF DATA COLLECTION AND DATA PREPARATION (ICC/ESOMAR INTERNATIONAL CODE ARTICLES 4 AND 7)

Article 4c of the ICC/ ESOMAR International Code states that researchers shall on request allow the client to arrange for checks on the quality of data collection and data preparation.

This quality control must be defined in the contract between the market research agency and the client. It must comply with the relevant national laws and self-regulatory documents on market research and with the provisions of the ICC/ESOMAR International Code concerning data privacy protection, in particular Article 7. For this reason the Code Notes relating to Article 4c require that, since back-checking is an important element in professional quality control of fieldwork, all face-to-face interviews must include a statement that there is a possibility that a subsequent recall may be made for quality control purposes, unless the interview is conducted in a central location or recording is used.

If the checking is subcontracted by the client, the subcontractor must undertake in writing to comply with the appropriate laws and provisions including the ICC/ESOMAR Code. In particular, the anonymity of the original respondents must be safeguarded and their names and addresses used exclusively for the purposes of back-checks and not disclosed to the client.

The related costs must be covered by the client.

4. KEEPING OF RECORDS (ICC/ESOMAR INTERNATIONAL CODE ARTICLES 4 AND 7)

The researcher must conform to current professional practice relating to the keeping of research records for an appropriate time after the end of the project.

The proposed period of time for which research records must be kept by the researcher will vary with the nature of the data (e.g. whether they are personal or not), the nature of the project (e.g. ad hoc, panel, repetitive) and the possible requirements agreed between the researcher and the client for follow up research or further analysis. In default of any agreement to the contrary, in the case of ad hoc surveys the normal period for which the primary field records (the original completed questionnaires and similar basic records) should be retained is one year after completion of the fieldwork and three years for panels unless legal requirements for data retention require a shorter period.

The researcher must take suitable precautions to guard against any accidental loss or release of the information during the agreed storage period.

On request, the researcher must supply the client with duplicate copies of such records provided that:

- such duplicates do not breach anonymity and confidentiality requirements;
- the request is made within the agreed limit for keeping the records;
- the client pays the researcher's costs to provide these duplicates.

5. PUBLISHING FINDINGS (ICC/ESOMAR INTERNATIONAL CODE ARTICLE 11)

It is impossible for the researcher to fully control the ways in which research findings are interpreted or applied once these are in the public domain. However, both the client and the researcher have a responsibility to ensure that published results are not misleading. The researcher must endeavour to prevent any misinterpretation or misuse of research findings, and (as far as is practicable) correct any misinterpretation or misuse once they become aware that it has happened.

Where any of the findings of a research project are published by the client, the researcher should make sure (e.g. in their contract for a research project) that they are consulted in advance by the client about the form and content of

publication of the findings. Researchers shall always be prepared to make available the technical information necessary to assess the validity of any published findings and if following publication it becomes clear that serious misinterpretation of the research and its findings has occurred, leading to misleading discussion of the implication of the research, the researcher must endeavour to correct such misinterpretation by any available and appropriate means.

If the client does not consult and agree in advance the form and content of publication with the researcher, the latter is entitled to refuse permission for their name to be associated with the dissemination of conclusions and to publish the appropriate technical details of the report.

More detailed guidance on the publication and reporting of polls and surveys is given in the [ESOMAR/WAPOR Guide to Opinion Polls and Published Surveys](#).

6. RECORDING, LISTENING AND OBSERVATION (ICC/ESOMAR INTERNATIONAL CODE ARTICLES 6 AND 4A)

On request the client, or their mutually acceptable representative, may observe an interview or group discussion at

the time it is carried out. In this case, respondents must be told that the interview or discussion is being observed by other persons and the researcher must ensure that all such observers are fully aware of the requirements of ICC/ESOMAR International Code and agree to abide by these. This might not be required in some markets for listening in for quality checks in telephone research. The ESOMAR Guideline on Passive Data Collection, Observation and Recording provides more detailed guidance on this issue.

7. TECHNICAL INFORMATION PROVIDED TO THE CLIENT (ICC/ESOMAR INTERNATIONAL CODE ARTICLES 4D AND E)

Researchers shall ensure that market research projects are designed, carried out, reported and documented accurately, transparently and objectively. They shall also provide their clients with appropriate technical details of any research project carried out for the client.

The report on a market research project should normally cover the following points or provide a reference to a readily available separate document containing the information for instance to ensure

that if necessary, the study can be replicated in the future.

Background

- for whom the study was conducted;
- the purpose of the study;
- whether any subcontractors performed any substantial part of the work;

Sample

- a description of the intended and actual universe covered;
- the achieved sample size against the projected sample size and reasons, if relevant, for not obtaining the projected sample;
- the sampling method, including the procedure for selecting respondents and any weighting methods used, if applicable;
- the response rate (in the case of probability samples) and the definition and method of calculating it;

Data collection

- the data collection method and the dates of fieldwork;
- a description of the interviewing staff, briefing and interviewer quality control methods used;
- the method of recruiting respondents; and the type of incentives, if applicable;
- in the case of desk research, a clear statement of the sources of the information and their likely reliability;

Presentation of results

- the relevant factual findings obtained;
- bases of percentages and any analysis subgroups (both weighted and unweighted);
- general indications of the probable statistical margins of error to be attached to the main findings, and of the levels of statistical significance of differences between key figures if possible;
- the questionnaire and other relevant documents and materials used (or, in the case of a shared project, that portion relating to the matter reported on).

8. SUBSTANTIAL ALTERATIONS

Researchers must take all reasonable care to meet agreed deadlines but they cannot be responsible for any delay caused by circumstances beyond their control. The probable lengths of any significant delay must be notified as soon as possible to the client.

If there is any alteration to the specification agreed with the client during the course of the project, this must be notified to the client.

Both parties must approve any major change in the project that could have a significant impact on the cost, timing

and/or quality of the project.

If the research proposal was based on figures provided by the client which are found to be inaccurate, and if this leads to any substantial gap, delay or additional cost, then the researcher may adjust their timing and costs accordingly and shall notify the client of this at the earliest possible time.

If the provider is unable to meet the deadline for the research proposal or cost quotation, the client shall be informed of this at the earliest possible time.

9. RESPONSIBILITY FOR PRODUCTS AND STIMULI (ICC/ESOMAR INTERNATIONAL CODE ARTICLE 3B)

Researchers shall take all reasonable precautions to ensure that respondents are in no way harmed or adversely affected as a direct result of their participation in a market research project.

It is important that the contract between the client and the researcher specifies that when the client entrusts products to the researcher's care, the client commits to providing products compliant with relevant laws and to provide all necessary information on these products,

including the directions for use, a list of ingredients or contents if this is required by law and the transport and storage conditions.

It must be clear that the client is fully responsible for all damage or injury caused by materials or products they have provided for research purposes unless the researcher failed to take normal care of the materials or products when in their possession. Moreover, the client must take the necessary measures to provide the researcher with any constraints relating to security required for the products.

The researcher must be indemnified by the client against all the transport, storage, and usage risks that could occur, and against complaints from respondents or from the researchers' employees. The researcher must ensure that suitable information is given to respondents for the safe use and handling of the materials or products.

10. CONFIDENTIALITY

The researcher must not disclose the identity of the client or any confidential information about the latter's business, to any third party without the client's consent unless there is a legal obligation to do so. This does not affect the right of

respondents to know the identity of the client, if personally identifiable data is released to, or received from, the client.

All information supplied to the researcher by the client in order to conduct a research project must be treated in the strictest confidence. It must only be used in this context and must not be made available to third parties without the client's authorisation. Confidential information must be stored securely. This includes the product and the methodology employed and must extend to researchers, even when they change employment. This requirement also applies to subcontractors. These requirements should be enforced by written contracts.

It is often assumed that ownership of an ad-hoc project rests with the client who paid for it, whereas ownership of a multi-client project remains the property of the research agency. However, the situation is seldom clear in practice.

For this reason, and in order to avoid dispute, the ownership of the methodology, and/or the results and any report should be made clear in the contract between the researcher and the client. It is also wise to claim copyright on any published material.

11. TRANSPARENCY (ICC/ESOMAR INTERNATIONAL CODE ARTICLE 9)

Researchers shall inform clients if the work to be carried out for them is to be combined or syndicated in the same project with work for other clients, without disclosing the identity of such clients without their permission.

The client does not have the right, without prior agreement between the parties involved, to exclusive use of the researcher's services or those of his organisation, whether in whole or in part. In carrying out work for different clients, however, the researcher must endeavour to avoid possible conflicts of interest between the services provided to those clients.

12. ADDITIONAL ADVICE

Members who are unsure about the application of the Guideline in specific circumstances can seek advice by contacting the Professional Standards Committee, professionalstandards@esomar.org or ESOMAR, Eurocenter 2, 11th floor, Barbara Strozzilaan 384, 1083 HN Amsterdam, The Netherlands.

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“Market research, which includes social and opinion research, is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making.

The identity of respondents will not be revealed to the user of the information without explicit consent and no sales approach will be made to them as a direct result of their having provided information.”

Definition of market research contained in the ICC/ESOMAR International Code

ESOMAR is the world organisation for enabling better research into markets, consumers and societies.

With more than 4600 members in over 100 countries, ESOMAR's aim is to promote the value of market and opinion research in illuminating real issues and bringing about effective decision-making.

To facilitate this ongoing dialogue, ESOMAR creates and manages a comprehensive programme of industry-specific and thematic events, publications and communications, as well as actively advocating self-regulation and the worldwide code of practice.