There is much to be gained by using more of a listening stance when conducting communication research. We hear people in their own language talking about the things that they determine are important; we see the spread of ideas as it happens. There is much uncertainty ahead and there will be a loss of control. As in retail and communication so it will be in research; the consumer will become the driving force, learning to create the world that they want. As professional researchers we have the responsibility to protect clients from some of the excesses the internet can foster. Anyone can claim to go on to the web to do ‘listening’; there is still a vital need for us to help clients understand what it really means – to separate the noise from the messages. We have a genuine opportunity to bring the worlds of communication and research closer than ever before, to the benefit of both, as well as for the good of the consumer and the economy.

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Researchers, snoopers and spies – the legal and ethical challenges facing observational research

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At the methods forum last year, Agnes Nairn (2009) discussed ethics in research and stimulated a lot of discussion. In her paper she posed the questions: is it reasonable to use the data trail someone creates when using the internet without them being aware of it, and should researchers ‘lurk’ in chat rooms, forums and blogs of interest to them, without announcing their presence? It was therefore suggested that I should discuss the ethics of observational research at this year’s forum, given the opportunities to collect data passively and by observation that have been created by developments in technology and by the internet.

Observational research has a long history. In 1911 Charles Parlin, who was working for Curtis Publishing in Pennsylvania, publishers of the Saturday Evening Post, carried out the first recorded observational market research study (Ward 2009) when he demonstrated to the manufacturers of Campbell’s Soup that the paper would be a good advertising medium for its product. Campbell’s believed that the Saturday Evening Post was too downmarket for its premium canned soup. Parlin went round the dustbins in different parts of the town counting the soup cans and demonstrated that it was the lower classes who were buying Campbell’s Soup; the upper classes had servants to prepare their soup. As far as we know, no one complained about him going through their dustbins.

By the late 1930s, Mass-Observation was using anthropological and ethnographic techniques to study the British working class. One of the observers, Humphrey Spender, used the then very new 35mm Leica camera to take photographs to produce a visual record of the research subjects. These pictures were frequently taken covertly in a private place, like a church or pub bar,
or of vulnerable subjects like children.\(^1\) The photographs were published without the subjects’ permission. Spender received complaints from people who objected to being photographed. He said, years after the project had finished; ‘we were called spies, pryers, mass-eavesdroppers, nosey parkers, peeping-toms, snoopers, envelope-steamer, keyhole artists, sex maniacs, sissies and society playboys’.

Since these early days the rules about what researchers are permitted to do have been considerably tightened, in order to retain the confidence of the public and to conform to privacy and data protection legislation. The behaviour of the Mass-Observers is something that would not be acceptable even for the tabloid press nowadays,\(^2\) let alone professional market researchers. The most important step in protecting the privacy of the individual was the Universal Declaration on Human Rights in 1948.\(^3\)

Since that time there has been a continual tightening of privacy law and a number of specific guidelines about how to conduct research using people. In the UK, the best-known guideline is the ESRC Research Ethics Framework.\(^4\) This guideline makes it clear, among other requirements, that subjects have to be informed that they are being observed, the purpose has to be clearly explained, they have to give permission for any data collection, the confidentiality of personally identifiable information must be respected and they must be protected from harm. There are broadly similar legal requirements for the protection of personal data enshrined in the European Data Protection Directive, which has been copied by many countries around the world.\(^4\) These general rules and laws have been interpreted specifically for researchers by the MRS and ESOMAR. They have both produced guidance for the more traditional types of observational research using sound and video recording in qualitative, ethnographic and behavioural research. However, these guidelines do not deal with online research.

At present ESOMAR has a team working on revising the guideline on ‘Conducting Research Using the Internet’. This group has formulated some basic principles to help people working with the latest developments in online research, where the possibilities created by new technology are running ahead of formal regulation. The principles are as follows.

- Treat participants with respect; aim to create a relationship based on trust, respect and reciprocity which will lead to a good experience for people who participate in online research.
- Tell people what you are doing and obtain informed consent from research subjects; avoid practices which might cause concern if explained clearly to participants or legislators.
- Activities which use market research methodologies but which are not

\(^5\) EU Data Protection Directive 95/46/EC.
intended solely for research purposes must be clearly differentiated from non-research activities.

- Remember online research is global; the industry will be required to conform to the rules in the most restrictive nations, not the most permissive.

The kinds of issues that have been created by recent developments in online research, which any guidance to researchers has to cover, are as follows.

- Observation at a distance; a clear explanation about how to obtain informed consent to allow observation of interviews and focus groups over the web, now that clients can log in and observe interviews online from anywhere in the world.
- Social media; a requirement that researchers entering ‘walled gardens’ cannot ‘lurk unannounced’ and must declare their presence and purpose.
- Research communities; community members must be told the purpose of the community and how the information they provide will be used. They must not be used as a method of creating publicity to generate sales or change behaviour.
- Cookies; respondents must be informed if cookies are being used, their purpose and about their persistence. They must have the opportunity to refuse to take part in the research and to not accept the cookie, or to delete it.
- Web analytics which involve tracking of individual’s surfing behaviour require explicit consent from the subject before being used.
- Behavioural targeting is a technique which uses the observation of web surfing behaviour to select advertising which may be appropriate for the user of a specific computer. The individual is not identified at any stage but they may not be aware that their behaviour is being observed. For example, someone who is visiting sites for airlines and hotels in Greece may be considering a holiday in the Mediterranean area. There are services which automatically target suitable advertising, in this case Mediterranean holidays, to pages which the tracked machine is visiting. The same technology can be used to serve invitations to take part in a survey, thus greatly improving sampling efficiency and increasing the probability that the potential respondent will find the survey interesting. However, it is important that this technology is not used thoughtlessly or abused if public trust in the industry is to be maintained. Its use must be effectively regulated by the industry itself and will require clear explanation and consent.
- Digital fingerprinting uses information which is extracted from a machine and its browser to create a ‘key’ which provides a unique identifier. This can be used to detect fraud by individuals who try to conceal their identity, for example by deleting cookies or changing their IP address. It can be used by market researchers to identify ‘professional’ respondents who are making multiple responses to surveys. Its use should be disclosed and the opportunity to refuse to participate provided.

Other developments which will become relevant to researchers in the future are as follows.
• Deep packet inspection; Phorm is the best-known brand name for this technique. It involves reading the data being transmitted to and from a specific machine by the ISP in order to establish more about the behaviour and interests of the user than can be obtained by tracking their surfing using cookies. BT created an outcry when it emerged that it had been testing the system on a large scale without informing its customers. There will need to be quite a lot of work done on defining the limits of this technology and explaining its role before it would be wise for researchers to use it.

• Radio frequency identification (RFID) will be used increasingly to identify products in order to save scanning time at the supermarket checkout and for many other applications where electronic identification is required (e.g. biometric passports, ID tags for pets, payment cards). RFID tags make it possible to surreptitiously track people by analysing the mix of RFID tags they are carrying as they pass through concealed scanners. As with behavioural tracking on the internet, the permissions for the use of this technology will need to be closely regulated by the industry itself, if not regulated by law.

• Cloud computing involves spreading the computing work across a network of computers which may be located anywhere in the world. It greatly improves the efficiency of the use of the machines, but it means that data are being transferred globally without any control over where specific elements in a data set are sited at a given time. This creates technical legal problems to do with explaining where personal data are being held and also potentially data security issues. Fortunately, this development is not only a problem for the market research industry, but the solution might be if the rules governing its use are different between countries and regions.

In this short paper I have attempted to explain the development of the use of observation by the research industry and the way that the industry has regulated itself in the past in order to maintain public confidence in the behaviour of researchers. The same basic approach to self-regulation must be applied by researchers using new online research techniques. The most important principle to remember is that, in all research, we must create a relationship with research participants based on trust, respect and reciprocity, so that taking part will always be a good experience for the people who agree to participate.

References

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