

**The Market Research Society submission in response to the Department for Business Innovation & Skills consultation: *Implementing the Revised EU Electronic Communications Framework***

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## **1. About The Market Research Society**

With members in more than 70 countries, The Market Research Society (MRS) is the world's largest association serving all those with professional equity in provision or use of market, social and opinion research, and in business intelligence, market analysis, customer insight and consultancy.

Visit the MRS website for more information: [www.mrs.org.uk](http://www.mrs.org.uk)

## **2. Introduction**

MRS welcomes the opportunity offered by the Department for Business Innovation & Skills (BIS) to respond to the *Implementing the Revised EU Electronic Communications Framework*.

MRS noted the consultation questions and has chosen to address only those questions which are relevant to MRS activities.

MRS confirms that the contents of this paper are not confidential and can be attributed to MRS.

## **3. MRS Response to the Consultation**

### **Scope of the consultation**

MRS was surprised at being excluded from the list of organisations identified as likely to have an interest in the electronic communications framework consultation. However, the exclusion is possibly understandable if the use of "cookies" for online research is not widely appreciated within BIS.

MRS should be added to the list of interested organisations for this consultation plus for any other future developments in this area, particularly regarding the use of cookies and any other passive processing techniques.

### **Questionnaire Responses**

MRS notes the 14 consultation questions but wishes to address only one of these, question 12 on cookies, which is the most relevant to our stakeholders.

**Q12 We welcome views on our proposed approach to implement the amendments to the Directive in relation to cookies by way of copying out the Directive text.**

**In order to contextualise MRS's response to the question about cookies, we will first clarify what market, social and opinion research is, how important research is to the UK economy, and then go on to address how cookies are used in online research.**

### **What is market research?**

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.

Since the 1950s, market, social and opinion research has been robustly self-regulated by the MRS Code of Conduct which is supported by strong compliance and disciplinary frameworks.

The fundamental principles of research and the MRS Code of Conduct are that:

- ❖ Research does not seek to change or influence opinions or behaviour.
- ❖ Research must be conducted with the voluntary participation of respondents, based on the principle of informed consent.
- ❖ Respondents must not be harmed or disadvantaged as a result of participating in a research project.
- ❖ Personal data collected for research purposes must not be used for other purposes.

These principles mirror the legislative requirements of the Data Protection Act 1998. Unlike direct marketing, advertising or other commercial communications, research does not contain commercial messages nor does it seek to promote the aims or ideals of those who conduct or commission it.

### **Research and the UK economy**

Market research plays a vital role in helping businesses and other constituencies better understand consumers, customers and citizens in developing goods and services, and is essential for economic efficiency, innovation and progress. Social and opinion research is widely used by public bodies to understand citizens' preferences and measure key performance indicators, and government studies used for improving educational, healthcare and police services.

The UK is the world's second largest market for market research, behind the US. The latest MRS annual survey of the UK market research industry showed that total market research industry revenue reached

an estimated total of £2.076bn. Online research is a growing area of research and 26% of all UK research is now undertaken on online. The UK is the tenth highest country for its online research spend (as a total of percentage of total spend)<sup>1</sup> and is the sixth largest in Europe. However, for online research to continue to be successful and for online research results to be robust and have validity, it is essential that cookies can continue to be used without any additional burdens being placed upon respondents.

### **How cookies are used in research**

Cookies are an essential part of online research and are primarily used for operational and quality control purposes or very specific research purposes for which respondents have opted in. For example:

- To ensure that market research data is of the highest quality cookies are used to ensure that respondents only participate once in any given research project.
- To avoid duplication and for bookmarking cookies are used to deliver sequential communications and to not inundate respondents with excessive, cumulative or irrelevant communications.
- To ensure adequate security cookies are used to protect against unauthorised intrusion into protected pages and/or sites.
- To protect against fraud cookies are used to detect fraudulent third party insertion that are not designed to be part of a research study.
- To measure exposure to online content and advertising, media efficiency and media effectiveness by identifying members of “opt-in” research panels who have seen content or advertising to allow online research studies to be directed to them.

### **Administration of cookies in research**

MRS is greatly encouraged by the BIS paper which outlines plans to reduce the regulatory burden in the UK wherever possible. MRS supports the approach to ensure that the transposition of Directives is done in a proportionate way and does not lead to ‘gold plating’.

However, MRS has particular concerns about the e-Privacy Directive and specifically article 5(3) which threatens to require user consent for cookie use. As we have discussed with civil servants in BIS over the last few months, MRS is concerned about the revised e-Privacy Directive and the suggested introduction of an automatic requirement for user ‘consent’ for cookies.

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<sup>1</sup> Based on figures from the *Global Market Research Report 2010: ESOMAR Industry Report*.

This Article (5.3), if interpreted in a strict way, could place EU businesses at a significant competitive disadvantage. An overly strict interpretation of the revised e-Privacy Directive could severely disrupt a burgeoning and economically successful UK online research sector as well as disrupt the consumer's overall online experience.

MRS is, therefore, supportive of BIS's statement that cookies are not "dangerous" and the general approach that BIS has with regard to cookies. Cookies are essential for online research, and without them the online research sector would be severely restricted. This would also undermine activities such as government consultation and research exercises which favour the online research approach, for its efficiency, but also for its costs effectiveness.

MRS believes that the current approach of the research sector, whereby cookie usages is detailed in the Terms and Conditions (e.g. for research panels) an/or privacy policies of the relevant websites, offering respondents the opportunity to opt out of the cookies, should be allowed to continue once the revised EU framework is implemented into the UK.

MRS as the Code-holder and regulator for market, social and opinion research in the UK has as yet never received any complaints from UK citizens about cookies use by researchers. It would be disproportionate and inappropriate for a researcher to have to inform a respondent every time a cookie is used in a research study. Having to gain consent on every occasion a cookie is used in a research study could result in:

- Increasing the length of introductory research preambles, increasing the drop-out rate and decreasing the effectiveness and robustness of UK online research.
- Increasing the programming time to ensure that cookie preferences can be correctly administered resulting in increasing costs to implement online research, currently a very cost effective research approach favoured by many British businesses and the UK government.
- Decreasing the respondent online research experience due to the escalating cookie permissions which would need to be obtained.
- Severely impacting on response rates which will undermine the robustness and representativeness of UK research, a burgeoning and successful part of the UK economy.

In this context, we support the government's commitment to avoid specifying lists of approved cookies at the expense of others yet to be developed but rather to look to self-regulation. MRS believes that self-regulation works because it ensures that business can quickly adapt to changing circumstances, technologies and commercial practices.

MRS supports the view held by BIS that the e-Privacy Directive does not require websites to obtain prior consent for cookies to be placed on users' terminals, and note that this view is also held by Alexander Alvaro, Member of European Parliament, and rapporteur for the e-Privacy Directive. Alvaro makes the point that “had the Parliament intended the placing of all cookies on a user's terminal to require “prior” and/or “explicit” consent, it would have adopted such language, consistent with the other occurrences of such terms elsewhere in the text and it would not have adopted the language of Recital 66 as it currently appears in the Directive.” We believe that this is consistent with the approach set out by BIS.

#### **4. Further contact**

For further information or clarification on this submission please contact Debrah Harding at The Market Research Society via email at [Debrah.harding@mrs.org.uk](mailto:Debrah.harding@mrs.org.uk) or by telephoning +44 (0) 20 7490 4911.