

Marketing Monographs for Attorneys; Volume 2, Issue 1

SURVEY RESEARCH TO SUPPORT LITIGATION

Survey research is used to provide greater levels of understanding in a wide variety of disputes. Issues such as consumer confusion, misleading advertising claims, disparagement, copyright infringement and trademark disputes can be better assessed as a result of developing and executing survey research. The purpose of this monograph is to aid attorneys in understanding what research standards and guidelines might be relied upon in their use of survey research.

Attorneys will often refer to documents well established within the legal profession. Those documents include: *Manual for Complex Litigation, Fourth* or material found within subject matter guides such as *McCarthy on Trademarks*. While these documents provide discussion concerning a wide variety of issues, these are not the only documents that should be considered during the planning, execution or evaluation stages of survey research.

Professional survey research organizations adhere to a variety of ethical or technical codes and standards that have been developed by leading professional research industry associations. In particular, standards or guidelines have been issued by the Association of the American Public Opinion Research (AAPOR), the Advertising Research Foundation (ARF), the Market Research Association (MRA) and the Council of American Survey Research Organizations (CASRO). Two of these are the focus of this monograph because they address in depth issues that are not always completely covered in the usual and customary materials that attorneys are most likely to use in their work.

The code published by AAPOR includes a section that addresses the manner in which

survey results are to be represented in reports. This is an area of its code that is of particular relevance to attorneys who need to be certain that an expert report is consistent with best practices. The following is an excerpt from the AAOPOR code on this topic.

“Good professional practice imposes the obligation upon all public opinion researchers to include, in any report of research results, or to make available when that report is released, certain essential information about how the research was conducted. At a minimum, the following items should be disclosed.

1. Who sponsored the survey, and who conducted it.
2. The exact wording of questions asked, including the text of any preceding instruction or explanation to the interviewer or respondents that might reasonably be expected to affect the response.
3. A definition of the population under study, and a description of the sampling frame used to identify this population.
4. A description of the sample design, giving a clear indication of the method by which the respondents were selected by the researcher, or whether the respondents were entirely self-selected.
5. Sample sizes and, where appropriate, eligibility criteria, screening procedures, and response rates computed according to AAPOR Standard Definitions. At a minimum, a summary of disposition of sample cases should be provided so that response rates could be computed.
6. A discussion of the precision of the findings, including estimates of sampling error, and a description of any weighting or

estimating procedures used.

7. Which results are based on parts of the sample, rather than on the total sample, and the size of such parts.

8. Method, location, and dates of data collection.”

The code published by CASRO includes a section that is being given increased importance in survey research. It is the topic of Internet research which is becoming the basis for many survey research data collection projects. The following is an excerpt from the CASRO code on this topic:

“Internet Research and Email Solicitation

(1) Research Organizations are required to verify that individuals contacted for research by email have a reasonable expectation that they will receive email contact for research. Such agreement can be assumed when ALL of the following conditions exist:

a. A substantive pre-existing relationship exists between the individuals contacted and the Research Organization, the Client supplying email addresses, or the Internet Sample Providers supplying the email addresses (the latter being so identified in the email invitation);

b. Survey email invitees have a reasonable expectation, based on the pre-existing relationship where survey email invitees have specifically opted in for Internet research with the research company or Sample Provider, or in the case of Client-supplied lists that they may be contacted for research and invitees have not opted out of email communications;

c. Survey email invitations clearly communicate the name of the sample provider, the relationship of the individual to that provider, and clearly offer the choice to

be removed from future email contact.

d. The email sample list excludes all individuals who have previously requested removal from future email contact in an appropriate and timely manner.

e. Participants in the email sample were not recruited via unsolicited email invitations.

(2) Research Organizations are prohibited from using any subterfuge in obtaining email addresses of potential respondents, such as collecting email addresses from public domains, using technologies or techniques to collect email addresses without individuals’ awareness, and collecting email addresses under the guise of some other activity.

(3) Research Organizations are prohibited from using false or misleading return email addresses or any other false and misleading information when recruiting respondents. As stated later in this Code, Research Organizations must comply with all federal regulations that govern survey research activities. In addition, Research Organizations should use their best efforts to comply with other federal regulations that govern unsolicited email contacts, even though they do not apply to survey research.

(4) When receiving email lists from Clients or Sample Providers, Research Organizations are required to have the Client or Sample Provider verify that individuals listed have a reasonable expectation that they will receive email contact, as defined, in (1) above.

(5) The practice of “blind studies” (for sample sources where the sponsor of the study is not cited in the email solicitation) is permitted if disclosure is offered to the respondent during or after the interview. The respondent must also be offered the opportunity to “opt-out” for future research

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use of the sample source that was used for the email solicitation.

(6) Information about the CASRO Code of Standards and Ethics for Survey Research should be made available to respondents.”

The codes and standards of each of the professional organizations noted above address many other topics of relevance to attorneys who commission survey research. Topics such as sample selection, questionnaire design, data analysis are among the many areas covered. The codes and standards should be referred to each time a survey is commissioned. The links to these codes and standards appears below.

AAPOR:

<http://www.aapor.org/aaporcodeofethics?s=code>

ARF:

<http://www.thearf.org/assets/research-standards>

CASRO:

<http://www.casro.org/codeofstandards.cfm>

MRA:

http://www.mra-net.org/pdf/expanded_code.pdf