Chapter XIII
Legal and Ethical Concerns of Collecting Data Online

Amanda Sturgill
Baylor University, USA

Pattama Jongsuwanwattana
Yonok University, Thailand

ABSTRACT

International data collection offers the possibility of greater external validity for studies. However, using the Internet to collect information internationally brings concerns related to data privacy for respondents. Nations vary on their privacy protections for citizens’ Internet use. Beliefs about data privacy, official policies notwithstanding, can also affect respondents and response rates. This article explores these issues and lists issues that should concern the international survey researcher.

INTRODUCTION

Although proposals to conduct survey research via the mail or telephone may generate questions about the content or phrasing of the questions, these methods of data collection are not routinely questioned on the basis of their delivery mechanisms. In fact, these methods of collecting data are commonly used and are, themselves, the subject of research (Dillman, 2001). However, they are not technologically guaranteed to protect respondents’ privacy. Even though mail interception and wiretapping are illegal in the United States, this does not guarantee that they do not occur. In other nations, reading mail or e-mail and wiretapping may be legal. It seems difficult for any researcher using Internet data collection to guarantee security of respondent data.

In recent years, using the Internet as a mechanism for data collection has appealed because it may lower turnaround time for responses, and may also either lower cost or defer cost (for computers, network service, etc.) to either the researcher’s organization or the respondent. As the use of the Internet has made multinational data collection much less expensive, it is, therefore, more likely to occur. Including a variety of national and cultural perspectives considered in research may lead to greater external validity of the findings. However, issues involving privacy...
and access concerns in other nations need to be addressed. Regardless of the de jure legality, researchers must also be concerned about the de facto security of computer networks in different nations. The beliefs of Internet users about their security also matter, as these beliefs can affect response quality and rate.

**GENERAL ISSUES IN DATA PRIVACY**

Using the Internet to deliver surveys is desirable for the researcher for a number of reasons. Copying and distribution costs drop a great deal and turnaround time is faster without postal system delays. It is possible to target an individual through electronic mail, while a paper survey might be opened or answered by another member of the household. Data can be extracted electronically, without need for hand coding and entry. But Internet data collection, especially across national boundaries, has repercussions both for the users and for the data that is collected.

It is not difficult to imagine cases where privacy of personal data is important for the respondents from whom data is collected. Studies of socially undesirable behaviors or studies requesting sensitive medical information already compel researchers to provide evidence that they will protect the security of the respondent’s data. Collecting that data electronically and/or across borders carries risks that the data can be accessed legally by authorities or illegally by hackers.

In the United States, it appears that electronic communication may be afforded protection under the federal wiretapping statutes (Levary, Thompson, Kot, & Brothers, 2005), which state that taking electronic information either in transit or while in storage is punishable by both a fine and jail time. Although wiretapping statutes (U.S. Code Title 47, Chapter 9) were initially written to cover “aural transfer” of information (subsequently defined as transactions containing the human voice), the finding in Steve Jackson Games, Inc. v. United States Secret Service in 1993 (Electronic Frontier Foundation, n.d.) appears to have extended the interpretation of that law to include electronic data transmission. Like most laws relating to computer network communication, this is a case-law finding and not an actual amendment to the U.S. Code. Such precedent can, however, be used to bring suit for interception of electronic mail or Web-based survey responses.

In order to preserve the abilities of law enforcement to investigate crimes carried out using the postal service or electronic communication, both mail theft and wiretapping laws have exceptions that may be important in guaranteeing confidentiality to survey participants. A first exception states that, after following procedures specified under the U.S. Code, law enforcement officers and/or government agents might legally intercept communication if they had just cause to suspect it was being used in the course of an illegal activity. Procedures, including when judicial approval or warrants are required, were loosened with the USA Patriot Act of 2001, and even when afforded, protections are not foolproof (Detroit Free Press, 2005). Mistakes have occurred where legal communications were intercepted and not only read, but entered into the public record. This is evidenced in case-law findings in lawsuits against law enforcement agencies that have improperly intercepted communications (Adams, 2001).

In the U.S., a second exception allows the provider of an electronic service to retain the right to intercept and read communications. This definition includes one’s employer who provides the telephone extension, computer, or other connection to an electronic network. An Internet service provider, such as MSN or America Online, is also given that right. Because it is difficult for an individual American to connect to the Internet without using some type of Internet service provider, this exception may mean that most Americans can have their e-mail legally intercepted.
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