

# Guideline on Surveys within and using Social Media (Social Media Guideline)

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This “Guideline on Surveys within and using Social Media” is issued by the associations for market and social research in Germany:

- ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e. V.
- Arbeitsgemeinschaft Sozialwissenschaftlicher Institute e. V. (ASI)
- BVM Berufsverband Deutscher Markt- und Sozialforscher e. V.
- Deutsche Gesellschaft für Online-Forschung – DGOF e. V.

Information on how to apply the ethical and professional rules of conduct laid down in the “Social Media Guideline” and in the various documents for the self-regulation of market and social research referenced in it can be obtained from the associations listed above.

## 1 Purpose of the guideline

The “Social Media Guideline” is part of the system for the self-regulation of market and social research in Germany. The rules of professional conduct must also be observed and applied in this context.

The “Social Media Guideline” establishes the specific way in which the ethical and professional rules of conduct – which are already formulated in the context of the self-regulation – are to be applied to surveys that are carried out within or using social media.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

## 2 Definition of social media

For the purposes of this guideline, social media are defined as platforms that assist their users to communicate with each other and to exchange information and media content interactively between individuals and groups via digital channels; in particular, this includes blogs, message boards, online communities and social networking services. Social media or areas thereof are classified as “open” or “closed”, depending on how they can be accessed (for details, see Section 4.1 and 4.2.).

## 3 Scientific nature of the procedure

Aside from choosing a method and technique that is appropriate to the subject matter and the research objectives, another key factor that determines the scientific nature of the procedure used when carrying out surveys within or using social media is that fundamental scientific and methodological quality criteria must be observed and adhered to, e. g. objectiveness, reliability and validity.

In assessing these quality criteria, it is particularly important to examine whether and, if so, how a social medium controls or modifies access to content, e.g. by implementing restrictions on data interfaces. The nature and extent of any restrictions on the accessibility of the content must be made transparent to customers or purchasers of the analyses and results.

## 4 Means of accessing social media

When the ethical and professional rules of conduct for market and social research in Germany are applied to surveys within and using social media, it is necessary to make a distinction regarding the method of accessing the social media, or the areas within social media, (open or closed). This is because, although there are no fundamental differences in the way the ethical and professional rules of conduct are to be applied, certain specific peculiarities need to be observed.

The fact that a social medium is open does not automatically mean that the operator’s Terms of Use permit free, unrestricted use of the content for research purposes in every case. Whether this is so must be examined on a case-by-case basis. Naturally, the same applies to closed social media.

### 4.1 Public social media:

In terms of data protection legislation, open social media can be viewed as a generally accessible source. There are no restrictions on the means of access or content. According to Article 6(1)(1)(f) EU-GDPR, personal content may be processed for the purposes of market, opinion and social research, “except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.” Insofar as special categories of personal data are processed, these may only be processed within the context of Article 9 EU-GDPR and § 27 of the new German Federal Data Protection Act (BDSG), i.e.,

among other things, if the data subject has made them public him or herself or has given his or her consent.

#### **4.2 Closed social media:**

In terms of data protection legislation, closed social media are not considered as a generally accessible source. In these cases, access is controlled and – often in connection with this – content is restricted. Personal content must therefore only be processed with the consent of the data subject, pursuant to Article 6(1)(1)(a) EU-GDPR in conjunction with Article 7 EU-GDPR, since it cannot be ruled out a priori that the data subject has an interest in data being excluded which requires protection. In addition, the operator’s Terms of Use must be observed. As a rule, the respective operator of the affected area of the social medium must give his or her consent to the data being used.

#### **4.3 Use of social media for research purposes:**

When social media are used to carry out market and social research, the research institution conducting the research usually controls the means of accessing the medium, and the contents must be strictly confined to research purposes. From the point of view of data protection legislation, social media that are operated for the purpose of market and social research (e.g. so-called “market research communities” or “research communities”) cannot be viewed as generally accessible sources either. Explicit consent to the processing of their personal data for research purposes must be obtained from participants prior to their first participation.

The research institution must offer participants an easily identifiable and easy-to-use means of leaving the social medium at any time and of prohibiting any further processing of their personal data. The obligations to provide information according to Art. 12 et seq EU-GDPR must be explicitly pointed out.

### **5 Separation from other activities**

The requirement of separating market and social research from other activities also applies, without limitation, to surveys within or using social media. Such surveys must be conducted in such a way as to be clearly and identifiably distinct from other activities in organisational and technical respects, particularly from any activities associated with direct marketing, advertising or sales promotion.

Provided the researcher or the research institution is acting solely as a passive observer, this fundamental principle of ethical and professional behaviour does not lead to any specific requirements towards participants, either for **surveys in open or in closed social media, or in open or closed areas** of social media.

When active (i. e. participatory) observational methods are used, it is necessary to ensure that the posts to the social medium made by the researcher him-/herself or the research institution itself are recognisable as such and that they do not serve to advertise or promote concrete individual products or services, or their manufacturers or providers. This requirement is to be interpreted and applied in the broadest sense, and also holds for public institutions and their activities and services.

### **6 Copyright, rights of use, exploitation and trademark rights**

One of the distinctive features of surveys within or using social media is that in many cases verbatim responses, images and sound recordings that are cited within the report, to illustrate the research results, allow the person who is quoted or recorded to be identified by searching the Internet. One of the duties of the research institution is to determine in advance – in addition to the requirements of data protection legislation – the questions of copyright and laws on the rights of use and exploitation of intellectual property and possibly trademark law in connection with conducting a study and to obtain the necessary consent when using citations (if permissible, see Section 7 Requirement of anonymisation) as well as of video, image or sound recordings.

### **7 Requirement of anonymisation**

The requirement of anonymisation in market and social research also applies, without restriction, to surveys conducted within or using social media. Beyond the requirement of anonymisation, even anonymised verbatim citations of study participants as well as anonymised images, video or sound recordings in the report are never permissible if they expose the person cited, the persons depicted or third parties to the risk of legal or other consequences, or if they violate their personal and other rights (e. g. copyrights, trademark rights, see also Section 6).

### **8 Consent**

The permissibility of processing personal data when conducting studies within or using social media is based – as always in market and social research – on a permissive rule, in particular according to Article 6(1)(1)(f) EU-GDPR (i.e. the legitimate interest, “except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”) or suitable consent given by the data subject in accordance with Article 6(1)(1)(a) EU-GDPR in conjunction with Article 7 EU-GDPR.

In the case of longitudinal studies, it may be necessary to obtain such consent again at regular intervals. These intervals must be individually defined and documented by the research institution carrying out the study.

**8.1** In open social media, the personal data of participants may on principle be processed and used for the purpose of market and social research without obtaining the appropriate explicit consent, based on the permissive rules mentioned above. Beyond this, it is also permissible for the researcher to actively guide or generate comments, communication and reactions of participants through his or her own posts, provided this is done in a visible way.

**However, studies based on active (i. e. participatory) covert observation procedures in open social media and using open social media are not permissible.**

Similarly, it is not permissible to link personal data obtained from open social media with personal data obtained from other sources, unless effective consent has been obtained.

**8.2** In closed social media, participants must be able to trust that they are in a protected area that serves a defined purpose which is known to them.

Therefore, the following rules apply here:

- Personal data may not be processed for the purposes of market and social research – or for other scientific purposes – without appropriate consent.
- In addition to the consent of the participants, the appropriate approval of the operator of the social media must also be obtained before processing the personal data of the participants.
- Both must be documented by the research institution conducting the study.
- **Investigations based on covert observation procedures in and using closed social media are not permissible.**
- Personal data from closed social media may only be linked with personal data from other sources if the effective consent of the data subject has been obtained and if doing so cannot lead to the identification of the data subject.

**8.3** In social media that are created for research purposes, participants must be able to rely on being in a protected area that is operated by a research institution and serves exclusively market and social research purposes.

Explicit consent to the processing of their personal data for research purposes must be obtained from participants prior to their first participation. Respondents do not indicate in a legally secure way that they agree to their personal data being processed solely for market and social research purposes, simply by joining the social medium.

**Under the above-mentioned conditions, studies based on active and/or covert observation procedures in social media are permissible for research purposes.**

## **9 Recruiting survey participants or panel members**

In principle, it is permissible to recruit survey participants or panels members in social media, provided the persons contacted are given all the necessary information about the type of survey or the panel, the conditions for participation, the identity of the institution conducting the research and, where required, the necessary data protection information according to Art 12 et seq EU-GDPR. When recruiting surveys participants or panel members in social media, it is necessary to check whether or not the approval of the corresponding operator of the area of the social medium concerned is required.

## **10 Final provisions and disclaimer**

The “Social Media Guideline” forms part of the Code of Conduct that govern market and social research in Germany, resulting as these do from the law and the methodological standards, but also from common practice. It always applies when studies for market and social research are carried out within or using social media in Germany or from Germany.

The principles and practices described in the “Social Media Guideline” represent, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. However, the issuers of this guideline cannot guarantee indemnity. If the issues are weighed up at a later time or by other authorities, it cannot be ruled out that different standards may result regarding the permissibility of the practices described.

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