People as Subjects and as Objects: Contrasting Market and Academic Research

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Academic researchers treat humans as research subjects and market researchers treat humans as objects. This paper sketches some of my concerns about the different norms and practices of these groups and is meant to help build a basis for discussion in the session on "Human Subjects Research in Cyberspace" at Computers, Freedom, and Privacy 2000.

1. Principles underlying ethical research on human subjects

In academic institutions, anyone conducting research that uses identifiable humans as subjects is bound by reasonably well understood standards meant to protect the people who will be subjects. The research design must be reviewed by an independent board, that includes community representatives, to insure that it conforms to appropriate ethical standards. Consider some of these standards:

a. Risk and Benefit

All ethical research must carry an expectation that it will yield some benefit. No ethical research needlessly harms participants--any harms or risks of harm must be outweighed by expected benefits. Risks might include risk of physical harm, as in a clinical drug trial, but also psychological harms and the potential for loss of privacy.

b. Informed Consent

All research subjects be adequately informed as to the nature of the study and its incumbent risks and benefits, and they must genuinely consent to participate. Ethical research assumes the autonomy of the research subjects and gives decision-making power to them concerning their participation or non-participation in the research. Truly informed research subjects have been presented explanations of the research in terms they understand and had opportunity to ask questions of the researchers to deepen or confirm their understandings. Truly consenting research subjects have affirmatively signified their consent, typically by signing a consent form in the presence of one of the researchers. In ethical research, subjects must always "opt-in"; the "opt-out" model is never ethically

acceptable. Moreover, in ethical research, subjects know that they can withdraw consent and cease to participate at any time, with no expectation that they will be punished for withdrawing consent.

c. Privacy and Confidentiality

One special class of harms--particularly relevant to Computers, Freedom, and Privacy--is the class involving invasions of privacy and breaches of confidentiality. Disclosing personally identifiable information about research subjects if unethical, and researchers are expected to go to great lengths to preserve the anonymity of their subjects and protect the confidence in which information was conveyed to them. Invasion of privacy is itself a harm, but it may carry with it a variety of other harms, including punishment or exploitation by others, loss of self-esteem, and stigmatization.

Conducting research in cyberspace poses special challenges for the protection of human subjects, including difficulties in gauging and documenting consent and threats to confidentiality due to the insecurity of the medium.

2. The "Tripleclack" case

Consider, just by way of example, a line of market research in cyberspace. I have a real case in mind, but its details are not all public. (The company has denied some of the allegations.) So, minimally to safeguard the reputation of the company, I will refer to it with a pseudonym. Call the company, "Tripleclack."

Suppose that this company, Tripleclack, placed cookies on the computers of users who visited particular Web pages. Tripleclack informed any users who thought to inquire that their practices kept the cookie information entirely anonymous. Tripleclack claimed that it tracked only the users' "clickstream" without ever having any idea who the user might be. In fact, to the contrary, on any site where the users registered--to access a news site, say, or to gain access to "personalized" features of a shopping site--Tripleclack collected all the personal information entered and linked it to the supposedly anonymous cookies.

As a consequence, Tripleclack might have in its database a user's name, credit card numbers, and home address, a comprehensive list of the user's search terms, and records of purchases made and sites visited online. This information may be tied together with information about offline habits, income, debt, and more gathered from more traditional sources, since the user's name, address, and so on have been captured. Note that all this happens invisibly to the user, with neither information nor consent. In fact, all the while, Tripleclack is claiming that it is scrupulously ethical, since it never links online patterns of behavior to identificable users.

3. Analysis as human subjects research

How does such a case fare when evaluated according to the standards for ethical research involving human subjects?

Of course, Tripleclack never faced review by any independent parties to permit them to commence such invasive practices. The very idea of such oversight is entirely at odds with the norms and practices of market research. Journalists might sometimes practice deception or invade privacy, but journalists have editors and publishers to whom they are accountable.

The Tripleclack case involves a large number of harms in an unknown, but obviously high, number of instances. The harms include deception (Tripleclack lied to users about its practices), invasion of privacy, disclosure (assuming that Tripleclack sells the data it gathers), likely stigmatiza-

tion (assuming that some Web browsing practices of some users might be thought deviant), potential exploitation (assuming that the data might allow targeting of members of vulnerable subgroups), failure to inform, and failure to obtain consent.

If the standards of ethical academic research were applied to market research, the conduct of Tripleclack would clearly be regarded as unethical, immoral, and wrong. Tripleclack treats users as "objects" rather than as autonomous "subjects" or "agents." The usual framework of standards for research involving human subjects might make a good starting place for considering how to evaluate other sorts of research on people, including market research, journalism, and undercover police investigations.

4. Sources of further information

AAAS/NIH-OPRR Workshop on Ethical and Legal Aspects of Human Subjects Research on the Internet, <http://www.aaas.org/spp/dspp/sfrl/projects/intres/main.htm> includes the report written by Mark S. Frankel and Sanyin Siang (report is in pdf format).

Ethical Issues in Social Science Research, edited by Tom L. Beauchamp, Ruth R. Faden, R. Jay Wallace, Jr., and Leroy Walters. (Out of print.) Nineteen articles covering issues such as types of harm, whether consent is always necessary, when deception might be permissible, privacy and confidentiality, government regulation, and techniques for resolving privacy problems.

"Framing the Debate: Ethical Research in the Information Age," by L. Schrum, *Qualitative Inquiry,* 1995 1(3):311-326.

"Considering the Electronic Participant: Some Polemical Observations on the Ethics of On-Line Research," by D. Waskul and M. Douglass, *The Information Society,* 1996 12:129-139.

"Take Action! DoubleClick had double-crossed the Net" <http://www.cdt.org/action/doubleclick.shtml> is a CDT action page. Along with some background, it will help you opt out of DoubleClick.

"The Web Bug FAQ" <http://www.tiac.net/users/smiths/privacy/wbfaq.htm> by Richard M. Smith explains how users can unwittingly be tracked through the use of small graphic devices on Web pages

"DoubleClick's Double Cross" <http://weblog.mercurycenter.com/ejournal/2000/01/26> is Dan Gillmor's MercuryNews column on the case.

Secrets : On the Ethics of Concealment and Revelation by Sissela Bok discusses the notion of secrecy in different contexts, including gossip, trade secrecy, whistleblowing, social science research, journalism, and undercover police work.

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