

CAP Consultation on use of data for marketing: children and prize winners

Individual responses

1 – Keystone Law

This is a response to Question 2, stating that CAP proposes that the following amended version replaces the current rule 8.28.5:

“Promoters must either publish or make available on request such information to indicate that a valid award took place – ordinarily the surname and county of major prize winners and, if applicable, their winning entries. At or before the time of entry, promoters must inform entrants of their intention to publish or make available such information and give them the opportunity to object to the information being published or made available, or to reduce the amount of information published or made available. In such circumstances, the promoter must nevertheless still furnish the details of the prize winner and winning entry (as set out above) to the ASA), if challenged. The privacy of prize winners must not be prejudiced by the publication of personal information and in limited circumstances (for example, in relation to National Savings) promoters may need to comply with a legal requirement not to publish such information”.

We think that the proposed wording is overly prescriptive in relation to the following:

1. The time at which entrants to a prize promotion should be informed of the promoter’s publicity intentions
2. The time at which promoters can obtain consent to the publicity.

We see no compliance argument for saying that both actions must be carried out before entry, as long as the information is given and the consent is obtained prior to publication (or processing for the purposes of publication).

In relation to promotions which include a prize-claims process, a promoter is more likely to comply with the GDPR requirement to avoid capturing more personal data than needed, by avoiding capturing the full name of entrants at the time of entry and instead waiting to capture the names solely from winners at the time when they claim prizes.

Your currently proposed wording would not permit this.

2 – The Market Research Society (MRS)

1. The Market Research Society (MRS) is the world's oldest and largest research association for those with professional equity in market, social and opinion research and in business intelligence, market analysis, customer insight and consultancy. MRS has 5,000 members in over 50 countries and has a diverse membership of individual researchers within agencies, independent consultancies, client-side organisations, the public sector and the academic community. MRS also represents over 500 research service suppliers including large businesses and SMEs plus a range of research teams within large brands such as Tesco, BT, ITV, Telefonica and Unilever which are accredited as MRS Company Partners.
2. MRS promotes, develops, supports and regulates standards and innovation across market, opinion and social research and data analytics. MRS regulates research ethics and standards via its Code of Conduct. All individual members and Company Partners agree to regulatory compliance via the MRS Code of Conduct and its associated disciplinary and complaint mechanisms¹.
3. The UK is the second largest research market in the world, second to the US, and in terms of research spend per head of population is the largest sector with £61 per capita in 2015 (with the US at £39, Germany £24 and France £23²). The UK research supply industry is a £4bn market and has grown steadily over the previous five years by an average of 6% per year³.
4. MRS is pleased to reply to this consultation on the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). In our response we focus on the proposal to change CAP Code rule 8.28.5 on publication of prize winners names to read as follows:

“Promoters must either publish or make available on request such information to indicate that a valid award took place –ordinarily the surname and county of major prize winners and, if applicable, their winning entries. At or before the time of entry, promoters must inform entrants of their intention to publish or make available such information and give them the opportunity to object to the information being published or made available, or to reduce the amount of information published or made available. In such circumstances, the promoter must nevertheless still furnish the details of the prize winner and winning entry (as set out above) to the ASA, if challenged. The privacy of prize winners must not be prejudiced by the publication of personal information and in limited circumstances (for example, in relation to National Savings) promoters may need to comply with a legal requirement not to publish such information.”

5. Self-regulation of the research sector maintains a clear distinction between research and non-research activities such as direct marketing. Our accredited

¹ See MRS Disciplinary Regulations and MRS Company Partner Complaint Procedure at https://www.mrs.org.uk/standards/how_to_complain

² See the Research-Live Industry Report 2017: http://www.mrs.org.uk/pdf/MRS_RESEARCH%20LIVE%20REPORT%202017%20.pdf

³ See ONS Annual Business Survey: <https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/uknonfinancialbusinesseconomy/2015revisedresults>

members are required to follow the MRS Code of Conduct and associated guidance and regulations including our regulations on Free Prize Draws and Incentives (which reflect best practice from across sectors)⁴. If accredited members are involved in promotional prize draw activities then the provisions of the CAP Code will be applicable.

6. MRS supports the amendment of rule in the CAP Code to ensure compliance with transparency, fairness and lawfulness principle of the EU General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA). It is important that the privacy rights of prize winners' rights are respected whilst maintaining public confidence and credibility on the regulation of these activities.
7. MRS agrees that the legal basis for publication of the names of prize winners must be clearly identified. As the Information Commissioner's Office has noted there is no hierarchy of legal grounds and it is important to choose the ground that is best suited to the processing activity. Consent of the data subjects or contractual necessity are unlikely to be appropriate grounds in these circumstances and legitimate interests is a more appropriate processing ground.
8. It is important that prize promoters (who are likely to be the data controllers) are aware of their obligations in particular ensuring that their privacy policy and the prize promotion rules clearly set out the lawful bases that are being used for
 - i. processing the personal data of prizewinners; and
 - ii. providing details to the ASA on request.

If either of these processing grounds are based on the legitimate interest (of the data controller) then a legitimate interest assessment should be completed. CAP may wish to consider providing a template for this that smaller for profit and not for profit organisations can use for their activities in this sphere.

9. Additionally, prize promoters will need to be clear in the competition terms and conditions that full personal details may be provided to the ASA/CAP so that appropriate investigations and steps can be taken to verify prize winners and probity of the promotional activity.

⁴ Currently under review and being updated to reflect changes required by the GDPR 2016 and UK DPA 2018.