

Research

News

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BIG DATA

THE RISE OF THE MACHINE?

8

BIG DATA: THE RISE OF THE MACHINE?

Our selected panel of experts explain.

14

BIG DATA: WHAT RESEARCHERS NEED TO KNOW

By Con Menictas

16

TRANSLATING BIG DATA

By Luke O'Brien

20

FOCUS ON VALUE ADDING

By Chris Crook



BIG DATA EDITION - THE RISE OF THE MACHINE?

Overseas transfer of personal information

The issue of overseas transfer of participants' personal identifiable information was raised at the recent AMSRS conference. This article clarifies researchers' responsibilities if this happens.



The AMSRS Code of Professional Standards does not prohibit the transfer of personal identified information out of Australia. It does however, impose responsibilities on researchers who do so:

Rule 41: *Particular care must be taken to maintain the protection of participants' personal information under the APPs when personal information is disclosed to an overseas recipient.*

The Rule refers members directly to the Australian Privacy Principles (APPs).

APP 8 covers cross-border disclosure of personal information and states that if personal information is sent to an

overseas recipient, the entity sending the information must take reasonable steps to ensure that the recipient is subject to privacy laws that are at least equivalent to Australian law.

A change made to the APPs last year means that the Australian entity sending the information overseas may now be responsible for any breach of the APPs by the overseas recipient. So, it is important that researchers know where their participants' personal information is held and, if it is held overseas, are aware of the privacy law in that country.

If a researcher is working for a client based overseas and sending them

personal identified information as part of the research project (eg data files or video recordings), they must make the client aware of their responsibilities when handling the information. Good practice would be to state these responsibilities in the contract for the project.

If a researcher uses an external sub-contractor for a research project and that sub-contractor is handling participants' personal information, the researcher must check where the information is being held – locally or overseas. Sub-contractors may include, among others, cloud-based providers of survey software, data analysis services, panel providers or telecommunications suppliers (who transfer information through a third party outside Australia).

If the information is being held overseas, the researcher must check which country is involved and review the sub-contractor's privacy policy to determine whether they are operating under equivalent privacy laws to those in Australia. If the country does not have equivalent privacy laws, a researcher must have a specific agreement or contract with the sub-contractor to handle the information in a manner consistent with the APPs.

APP 8 also states that if any personal identifiable information collected during a project is sent overseas, a researcher must obtain informed consent from participants to do this. Not to do so contravenes the AMSRS Code (Rule 41), since this Rule references APP8.

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