

ASA, BSA, ESA and RGS-IBG statement on Anthropology, Sociology, Human Geography and the implementation of new data protection legislation in UK academic institutions

On May 25th 2018, the EU General Data Protection Regulation (GDPR) will come into force (<https://www.privacy-regulation.eu/en/index.htm>). This new regulation is more prescriptive than the current Data Protection Act, first implemented in 1998. The GDPR states that: ‘*Valid consent for taking data needs to be clear and affirmative (it cannot be silent or ‘inferred’ by inactivity)*’. The ASA, BSA and RGS-IBG are deeply concerned by indications that at some UK universities this may be interpreted in a highly restrictive way. In particular, that methodologies such as participant observation might come under threat and interpreted as a mode of research which can no longer be ethically approved.

The ASA, BSA, ESA and RGS-IBG welcome recent joint position statements by the British Academy and the ESRC¹ on this new legislation. We strongly urge that the implementation of the GDPR in universities build on the recommendations in those joint statements. This includes recognition that the GDPR states a number of provisions to prevent undue restrictions for the humanities and the social sciences, such as a requirement by Member States to detail derogations (exemptions) from the GDPR “ ‘as necessary to reconcile the right to protection of personal data with the freedom of expression and information’ not just as regards ‘journalistic purposes’ (together with literary and artistic expression) but also for the purpose of ‘academic ... expression’ (Article 85 (2))”².

Significantly, “the reference to academic expression is principally designed [to] ensure that humanities and social science scholarship is shielded within this special expression clause on an equal basis to that of journalism. This reflects the similarly publicly-focused nature of these expressive activities, their critical social value and similar difficulties which may be faced with complying the GDPR’s default provisions. It is therefore critical that this clause is fully executed in the UK”³.

Three key points emerge that anthropologists, sociologists and human geographers might wish to bear in mind when discussing the implications of the GDPR for ethics review and data protection in their research:

First, when universities implement the GDPR *it is crucial they make full use of the derogations designed for enabling academic research*. The reference in the GDPR to academic expression is principally designed to ensure that humanities and social science scholarship is shielded within the special expression clause on an equal basis to that of journalism. This clause, as laid out in (Article 85 (2)) reflects the similarly publicly-focused nature of these expressive activities, their critical social value and similar difficulties which may be faced with complying with the GDPR’s default provisions. Further, we distinguish between the collection of personal data and the more creative generation of interactions and observational data.

¹ (https://www.britac.ac.uk/sites/default/files/2017.06%20-%20BritAc%20%20ESRC%20GDPR%20Submission%20summary_3.pdf and <https://www.britac.ac.uk/sites/default/files/2017-05-10%20DCMS%20GDPR%20Derogations%20submission.pdf>)

² https://www.britac.ac.uk/sites/default/files/2017.06%20-%20BritAc%20%20ESRC%20GDPR%20Submission%20summary_3.pdf

³ https://www.britac.ac.uk/sites/default/files/2017.06%20-%20BritAc%20%20ESRC%20GDPR%20Submission%20summary_3.pdf

Secondly are procedures for the archiving of data. Anthropological, sociological and geographical research is often based on a fiduciary relationship with the researcher. Data resulting from such research are to be regulated through the research clause set out in Article 89 of the GDPR. Although this contains prohibitions regarding the processing of personal data, the article contains many clauses that enable the processing of data for research purposes.⁴ Social science research should benefit from further shielding as envisaged in Article 23 of the GDPR, which emphasises its “important objectives of general public interest”.⁵ The Joint Submission emphasises that the clauses of the article should be fully utilised by the UK for the processing of special personal data and that this should also be extended to the cognate area of criminal data as set out in Article 10.⁶

Thirdly, the template for the regulation of all research under current data protection legislation has been a biomedical model. This is described by the British Academy and the ESRC in their joint statement as not suited to much work in the humanities and social science, including participant observation, covert research (which may be justified in exceptional circumstances) and many forms of ethnographic fieldwork. They note that “these points were recognised during the drafting of GDPR resulting in ‘academic’ expression being protected for the first time alongside and on an equal basis to other forms of special expression, namely journalism, art and literature, in Article 85.”⁷

The ASA, the BSA, the ESA and the RGS-IBG will be reviewing their ethical guidelines in consultation with their memberships with a view to clarifying how “clear and affirmative” can be interpreted for the disciplines of anthropology, sociology and human geography. All four organisations welcome this opportunity to ensure university regulation for data protection and ethics review is robust, and appropriately matched to the breadth and depth of methodological practices in the social sciences.

The ASA, BSA, ESA and RGS-IBG wish to acknowledge the work of Professor Rose Barbour and Professor Margaret Sleeboom-Faulkner in contributing to this statement.

⁴ Article 89 EU GDPR, ‘Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes’ (<https://www.privacy-regulation.eu/en/9.htm>)

⁵ Article 23 (1.e; 1.i).

⁶ Article 10, EU GDPR, ‘Processing of personal data relating to criminal convictions and offences’

⁷ <https://www.britac.ac.uk/sites/default/files/2017-05-10%20DCMS%20GDPR%20Derogations%20submission.pdf>