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Accessing and Using Data without Informed Consent: Guiding Principles from Conversation Analysis

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ABSTRACT

We critically reflect on ethical challenges of making, accessing, and using audio/video recordings for social research in which participants have not and/or cannot provide informed consent. We distinguish between two types of data: recordings for which informed consent for use for research purposes would have been feasible but was not obtained, for example, “classic” or “legacy” data collected during the early development of Conversation Analysis; and recordings for which informed consent for use for research purposes was, or will be, impossible to secure, for example, when participants’ contact details are unavailable or seeking consent could pose risks to researchers or other participants. We propose a set of guiding principles for the collection, access, and use of audio/video data for which participants’ consent for use for research purposes is absent.

Informed consent is a cornerstone of ethical research practice in most circumstances. It prioritizes individual autonomy by ensuring potential participants are aware of the nature, purpose, procedures, risks, and benefits of a study before voluntarily agreeing to participate. Historically, the emphasis on informed consent arose from highly unethical research practices up to and including profound harm of participants, such as horrific human experiments during World War II (Schmidt, 2023). The resulting Nuremberg Code of Ethics of Human Experimentation, and later the Declaration of Helsinki, emphasized voluntary participation and enshrined informed consent to protect individuals from harm. This guidance was widely adopted following other exploitation scandals in the United States and the United Kingdom (Hazelgrove, 2002). Informed consent involves adequately informing each potential participant about the research data and its use, communicating their right to refuse or withdraw, and the documenting a persons’ free and voluntary decision to participate in research.

Over time, informed consent processes have become increasingly structured, following stringent guidelines set by ethical review boards and committees, often requiring “clear affirmative action,” according to the United Kingdom’s General Data Protection Regulation (GDPR Art. 4(11), 2016)—that is, opting in rather than opting out of research. This usually translates into written consent as the “gold standard” (Declaration of Helsinki, 2013). The evolution of processes and regulation on consent has been driven by overarching ethical principles and debate in a primarily biomedical context of most of these.

In practice, this has generated considerable practical problems. One problem is the resulting long, complex documents that participants, particularly those most at risk of knowledge deficits, may struggle to understand (Berger et al., 2009; Grady, 2015; O’Sullivan et al., 2020; Tam et al., 2015). Furthermore, in social and behavioral research (including most conversation analytic work), the precise nature of data and how they will be analyzed cannot be fully specified in advance. This

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means it is impossible to abide by informed consent requirements to do so. This can diminish or even prevent such research (Lee et al., 2022; Murphy & Dingwall, 2007). This problem is further emphasized when funders and publishers require researchers to make data available for secondary analyses (Joyce et al., 2022; O'Sullivan et al., 2020; Taichman et al., 2017; see especially Stevenson et al., 2025/this issue).

The unpredictability of social research has not been addressed by attempts to improve informed consent (but see “Research Resources” in EMCA Wiki, n.d., for examples of informed consent forms for conversation analytic research; and Van Burgsteden et al., 2025/this issue, for discussions about consent forms with Dutch ethical oversight agencies). More progressive conceptualizations of “informed consent” recognize the problems of informed consent in social research, and entail ongoing and reflexive processes through which consent is continually renewed between participant and researcher (Klykken, 2022). Given the gaps between top-down guidance, the fact that it is not always possible to precisely specify what data will be collected and what analysis will be performed; and, finally, the reality of researcher/participant interactions about informed consent (see Fatigante & Orletti, 2014; Jepson et al., 2018; Maynard et al., 2010; Paoletti, 2014; Speer & Stokoe, 2014; Wade et al., 2009) is that researchers and reviewers face considerable burdens in navigating ethical decision making, including, whether/how informed consent is obtained.

Research on language and social interaction

Social research that uses authentic, real-life recordings of “naturally occurring” social interaction presents challenges for gaining informed consent. These recordings are, by their very nature, inherently sensitive and include various identifiable features, from what a participant looks/sounds like to images of and references to confidential matters. As noted, studies using naturally occurring data and those that take an “unmotivated looking” (Psathas, 1990) approach may be unpredictable for what is included in the data and for what the focus of the research might be, and therefore difficult to define for the purposes of ethical review and for providing information to participants. For these reasons, ethical opinion may assert such methods are potentially not acceptable (see Lee et al., 2022, for a case study on their negotiation about ethnographic research with an ethical review panel; and Van Burgsteden et al., 2025/this issue, for an equivalent with conversation analysis [CA projects]). We now move on to distinguish between data for which consent for use for research purposes could have been sought, but was not, from data for which consent for use for research purposes¹ could not or cannot be sought.

Where consent could have been obtained

Some research on language and social interaction uses² data for which consent could have been but was not obtained at the time and cannot be obtained now. Early in the development of CA, it was commonplace to collect, use, publish, and share recordings when informed consent for these uses could have been obtained, but the parties were not asked; as Hoey and Raymond (2022) observed, they were collected under a very different ethical oversight culture. Such “classic” or “legacy” data—largely collected in the Western United States in the 1960s–1970s and mostly transcribed by Gail Jefferson (e.g., those known to the community as the “Newport Beach” and “Watergate” corpora)—are still used as research materials as well as in teaching.

Using classic data speaks to one of the core ideals of CA: that data used in research should be made available to scrutinize researchers’ claims about their findings (Huma & Joyce, 2022; Joyce et al., 2022; and see Albert et al., 2025/this issue), and because many interactional practices can be stable over long periods of time (Schegloff, 2006), their relevance endures. Nevertheless, use of classic data has been

¹In this article, when we refer to *informed consent*, we mean “informed consent for the use of data for research purposes.”

²We explore the ethics of sharing naturally occurring data in a separate article (see Joyce et al., 2022).

criticized. Apart from the ethical problems in recording phone conversations in the Newport Beach corpus, classic data may inhibit scientific development by discouraging, to the point of excluding, researchers and students who are unfamiliar with English-language data and with quite specific cultural references (e.g., the details, or even the existence, of the Watergate scandal of the early 1970s). All of this promotes an Anglocentric direction of the CA enterprise (for a detailed discussion, see Hoey & Raymond, 2022).

We now turn to another form of data for which informed consent for research could have been obtained but was not. Routine institutional recordings (e.g., emergency service calls, telephone help-lines, and so on) that have already been made are sometimes provided to CA researchers, usually in circumstances in which those institutions hope the research will improve services. Institutions may inform callers of the possibility of their calls being recorded and used in training and research (Tennent & Grattan, 2020), and/or provide consent on behalf of those recorded (e.g., Pooler, 2010),³ and researchers may also subsequently formally seek consent from participants (Booker et al., 2018). In contrast to classic data, however, the use of these routine recordings is typically subject to ethical oversight even if they feature people who had/have no autonomy of decision over the use of the data. Even when some level of consent has been sought, and/or participants have been informed that recordings may be made and used, the level of information participants receive on what will be done with their data is nowhere near the ideal-type of fully informed consent.

Could not and cannot be obtained

The other type of data we include as “without consent” are recordings from settings in which it is impractical or impossible to obtain consent (e.g., in public spaces with a reasonable expectation of being observed, and recordings collected for other purposes and made available to researchers). This can include clips from TV and radio, video clips made by members of the public and published online, surveillance videos, body/dash cameras, or urgent situations in which obtaining informed consent would be detrimental to the person(s) and/or the person(s) lack(ed) capacity to consent or died soon after (e.g., Sikveland et al., 2022). This is the case in some routine institutional recordings in which it is impossible to obtain informed consent (e.g., Kidwell & Kevoe-Feldman, 2018; Raymond, 2014).

Consent may not be obtained because participants are unknown to the researcher (e.g., videos recorded in public and published online by members of the public). It may also be impossible, impractical, or potentially risky for a researcher to seek consent (Rüdiger & Dayter, 2017; Stommel & Rijk, 2021). Ethical guidelines suggest such observational research, without informed consent, may be considered acceptable in public settings, for example, “where those observed would expect to be observed by strangers” (Oates et al., 2021, p. 23). However, the nature of “public” and erosion of “private” online complicates the straightforward “online data is fair game” approach. The ubiquity of recordings, participants’ expectations of privacy (Thompson et al., 2021), and the accountability of nonparticipation could mean it is the legal and institutional “box-ticking” of privacy procedures, rather than the reality of privacy, that informs researcher and ethical review panel decision making.

Arguments in favor of using data when consent is absent

Thus far we have examined the principle and practice of informed consent, the kinds of data for which informed consent is absent, and when and why they are collected and used. If informed consent is taken as vital to the conduct of ethical research, then none of these data should be used. We now examine arguments that have been made *for* conducting research on data for which consent is absent. These center around both the actual and potential societal benefits of research. We also engage in more

³See, for example, the role of the Caldicott Guardian (in Scotland), who oversees arrangements for the use and sharing of identifiable patient information (Caldicott, 1999).

practical arguments around historical precedence, custom, and practice, and the impossibility of withdrawing all these data.

The cumulative program of CA work is grounded in studying classic recordings and has had a huge impact on society. These classic data formed the foundations upon which research studies (those with and without fully informed consent) and their applications have been applied to challenging such things as racism within policing practice (Jones & Raymond, 2012), preventing suicide (DiDomencio, 2015), healthcare (Parry & Barnes, 2024), and dementia care (O'Brien et al., 2018). A further ethical argument is that the risk of harm to the people involved in the classical data is minimal. Moving from ethics to practicalities, there is no reasonable prospect of preventing the reuse of classic data. Widespread publishing and dissemination would make it impossible to retrospectively retract the data and excise them from current and future analyses. There is also historical precedent. Many research fields rely on historical data from a time when formal consent procedures were not standard practice, yet these data are preserved and studied because they continue to provide valuable insights (e.g., Bolden et al., 2023; Holt, 2017).

It is also the case that analysis of data for which it is not possible to obtain informed consent can offer rich, beneficial insights that might be inaccessible through research practices that require informed consent. Studies of this kind, which make use of recordings, provide “moment-by-moment workings of another world—one that even the most skilled field researchers might otherwise have great difficulty accessing” (Jones & Raymond, 2012, p. 120). Assessing the ethics of using such data balances the accessibility of recordings from the public sphere, the sensitivity of the information recorded, and the vulnerability of the participants (The National Committee for Research Ethics in the Social Sciences and the Humanities [NESH], 2019).

Overall, ethical decision making regarding research on data when consent is (or will be) absent is challenging because it directly compromises an individual's autonomy to decide whether or not to participate, and whether their participation should be recorded and the recording retained. Situations in which such data are involved are exceptional and need considerable deliberation and clearly presented arguments to allow ethical review boards to make judgments. In general, research undertaken without consent must meet three conditions: (a) value and benefit from doing the research, (b) lack of alternative research design to achieve the same result (e.g., deception or lack of consent is essential), and (c) no or minimal risk of harm to participants.

Overarching ethical frameworks: Deontology, four principles vs. utilitarianism

Two fundamental ethical positions guide decision making: utilitarian ethics (a “consequentialist” approach), in which the outcome can justify the means to achieve it; and deontological ethics (a “procedural” approach), in which specific duties/obligations are understood to be so important that the outcomes are regarded as not justifying overriding these duties or obligations (Mandal et al., 2016). Utilitarian ethics emphasize actions that create the greatest positive impact on society. In social research, a utilitarian stance would take it that autonomy (operationalized as informed consent) could be overridden when there is a strong argument that the (predicted) research outcomes will offer considerable social value. A deontological stance—which dictates that certain acts are morally wrong whatever the outcome and that certain duties (here, the autonomy of potential participants) must always be upheld (Playford et al., 2015)—would rule that the autonomy of (potential) participants makes unethical any research on data for which informed consent is absent (for more discussion of deontology in CA's ethics, see De Stefani & Mondada, 2025/this issue).

Both utilitarian and deontological ethics address how we treat people, and emphasize autonomy, although in different ways and for different reasons. The application of ethics in practice rarely involves directly applying a single moral position to resolve a problem (Beauchamp, 2007). Instead, it entails balancing these positions, which may require justifying the overriding of certain moral standards because of other considerations. Utilitarianism offers a single organizing principle (greatest good for greatest number), but does not necessarily have the sensitivity of deontology's

principlism to resolve complex cases (e.g., Gordon et al., 2011). Taken together, Beauchamp and Childress (2001) proposed six conditions for reflective judgment for use when such balancing is needed: (a) Good reasons can be offered for prioritizing the overriding norm over the infringed norm; (b) there is a realistic prospect of achieving the desired moral objective; (c) no morally preferable alternative is available; (d) there is as little infringement as possible compatible with achieving the desired goal; and (e) all negative effects of the infringement have been minimized; and (6) all affected parties have been treated impartially. The principles we propose take into account these conditions.

Proposed principles for data with(out) informed consent

Research on language and social interaction has used and continues to use data with absent consent, with the aim of social benefit. No single ethical position can address the challenge of using such data. It is therefore important to recognize and reflect on the ethical implications on a case-by-case basis, treating ethics as a balancing of competing principles and not a rigid administrative checklist that may leave researchers unprepared for unique situations (Geller et al., 2010). In this last section, we propose a series of principles to guide deliberations and decisions by researchers and those who provide ethical oversight regarding collecting, using, and sharing data without informed consent.

Principle 1: Monitor and minimize harm

Consideration should be given to the potential harm of using data featuring people who have not given their consent. Researchers have a duty to safeguard participants in their research, “even where such participants may, themselves, be cavalier about the risks they are taking.” (Murphy & Dingwall, 2001, p. 347). Because harm is context-specific and often difficult to define and predict, it is the researchers’ responsibility to continuously reflect on how their work may affect them and/or their participants. Creating a distress protocol may support deliberations on whether and how to proceed if a participant faces potential harm, and/or having a “guardian” to monitor research and provide informed consent on the participant’s behalf (Aguinaldo, 2022; Caldicott, 1999).

Principle 2: Ensure confidentiality

Individuals who have not given their informed consent should have their identities protected as far as is possible. Standard anonymization practices in language and social interaction research—such as voice modulation; video blurring; and removal of names, locations, and dates—are available, although they may not guarantee confidentiality (Van den Hoonaard & Van Den Hoonaard, 2016). Most reflections on anonymization of data encourage discussion with participants (e.g., Kaiser, 2009; Paoletti, 2014; Saunders et al., 2015a, 2015b). With absent consent data, direct consultation with participants is likely impossible. Instead, researchers may consider participants’ reasonable expectation of privacy, seek to minimize identifiability, consider potential harm to individuals or communities if they are identified, and weigh all of this against potential benefits of the research.

Principle 3: Evaluate the potential benefit and cost of using the data

Research should maximize benefit while minimizing harm. It may be that no alternative research design could achieve the same result and therefore the lack of consent is essential to benefit the greater good; in such cases, balancing foreseeable risks, costs, and harms against that potential benefit is essential (see Jones & Raymond, 2012).

Principle 4: Transparent reporting and justification of use

Ethical research involving data without informed consent requires clear justification of why the benefit outweighs compromising autonomy. Transparency and accountability are essential for maintaining trust in research (NESH, 2019), and studies that make clear their potential benefit(s) are likely more acceptable to (potential) participants (Golder et al., 2017). However, ethical deliberations are rarely or minimally requested by journals or reported by authors (Stommel & Rijk, 2021), despite being presumably included in applications to ethical review boards. We reiterate Stommel and Rijk's (2021) proposal that more explicit attention to and reporting of ethical considerations can helpfully address the discrepancy between ethics *in theory* and ethics *in practice*.

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