

ADUK RESOURCE

DATA SHARING CASE STUDIES

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Rageh wants to influence Sylvie. Influence is a process for gaining the support and commitment of others in achieving your goals. Rageh wants Sylvie to put extra effort into the marketing of DD. He knows that the best way to get her commitment is to build a high level of rapport with her. He does this with face-to-face communication. Although Rageh doesn't use the word 'power', that is what he is talking about. He understands that he does not have much positional power. Positional power comes from a person's authority or status. While the venue needs good quality dance product, there are other dance companies out there producing good work. Personal power comes from a person's ability to develop strong and mutually rewarding relationships. It depends on good interpersonal skills and positive personal characteristics. Rageh uses his personal power to develop a positive, productive relationship with Sylvie.

Case Study 1: Dance Direct and Broadwater Arts Centre

Dance Direct (DD) are performing at the Broadwater Arts Centre (BAC) in six months' time. Although Dance Direct have toured to Broadwater Arts Centre four times in the last six years, Rageh, the dance company's marketing manager, is taking nothing for granted. 'I've got a face-to-face meeting with Sylvie, their Marketing Officer, this week. It's a labour intensive way of doing things, but I've learnt that it is the only approach that gets real results. I want them to make us their priority. I can only do that if I sit down with Sylvie and make her feel that I am doing as much as I can, so that she will go the extra mile for us in terms of marketing effort. I need a positive relationship with Sylvie because we have little control over what happens.' Sylvie is an experienced marketer, but even she finds it difficult to juggle all the responsibilities that are expected of her. She likes Rageh: he knows his stuff; he is really interested in the programme at Broadwater; and if she gives him the postcodes of attenders after a Dance Direct show, he will do some mapping analysis that compares drive times for Broadwater with drive times for other venues on the Dance Direct tour. She wouldn't get this comparative data without him.

Sylvie and Rageh use the meeting to discuss the forthcoming show in the context of Broadwater and previous Dance Direct shows. They come up with a draft marketing plan which Sylvie will be implementing. Rageh also talks to Sylvie about a donor database he is developing. Sylvie offers to give him the names and addresses of previous bookers who have consented to having their data shared (70%). She also suggests that the venue could hand out cards for attenders to fill in when they see the forthcoming show.

Sylvie and Rageh are effective marketers who have a high level of mutual trust. The symbiotic nature of their relationship – they have a win-win collaborative approach – means that Sylvie (the venue) shares personal and statistical data with the company (Rageh) even though there is no mention of data sharing, either personal or statistical, in the contract the venue sends the company.

Sylvie would probably be happy giving Rageh statistical data anyway – because they have a good relationship with each other. However, because she knows that Rageh uses it to undertake analysis that she couldn't do without him, she is always prompt with the data, and works hard with the box office to make sure that postcodes are captured – even with door sales.

At Sylvie's box office, unlike the Auchterturra Playhouse box office of case study 4, they differentiate between the companies who visit the arts centre regularly, and any other third party. If a customer says they would be happy to receive marketing information from Broadwater Arts Centre, they then go on to ask 'Would you be happy for us to share your details with carefully selected arts organisations?' This gives a positive opt-in rate of approximately 0%, far higher than the 20% achieved by Inverkemp Playhouse.

Case Study 1: Dance Direct (DD) and Broadwater Arts Centre (BAC)

Harbottle and Lewis comment:

1. BAC, as the data controller will need to comply with the provisions set out in the Data Protection Act 1998 (DPA).
2. Pure statistical data (from which individuals cannot be identified) is not personal data and is not regulated by the DPA so BAC is not restricted from sharing pure statistical data with DD. However if individuals can be identified from the data disclosed (e.g. post code data) then this will constitute personal data and BAC would need to comply with the DPA in disclosing such personal data.
3. Sylvie offers to provide names and addresses of previous bookers who have consented to their personal data being shared with selected arts organisations. However, the question of whether BAC can share this data will depend upon what the data subjects were told about the purposes for which their data might be shared. The case study suggests that DD want the data for the purposes of a donor database. It may not have been obvious to data subjects that their data would be shared for fundraising purposes. The more information which BAC has provided to data subjects at the time of collection, the more likely it is that sharing data with DD for such purposes will be fair. BAC should ensure that it is clear to data subjects that such data is being shared for marketing purposes.
4. If BAC shares this personal data with DD, DD will become a new data controller in respect of such data and must comply with the requirements of the DPA (including informing the data subjects that it now holds their personal data and the purposes for which it intends to use such data).
5. Sylvie also suggests handing out data collection cards for the audience to fill in. If the intention is to pass this personal data to DD, BAC must ensure that the cards are clear as to who will receive the data and for what purpose the data will be used.

Case Study 2: Ballyglass Hall and Silver Moon Dance Company

This simple statistical analysis has generated considerable good will.

Milo is organising the mailing on behalf of Ballyglass Hall and won't have access to customers' personal data. This means that the box office manager can include anyone who has said yes to being mailed by the venue without contravening the Data Protection Acts.

This agreement requires the mailing house to keep the personal data secure, to use it only for the purpose of this mailing and to keep it for no longer than necessary to complete the mailing.

The campaign planning meeting between Milo the marketing and outreach officer from Silver Moon and Shelley the temporary marketing manager at Ballyglass Hall had gone well. Both were full of ideas about how to build on the reasonable audience developed over the last three visits by the company. New in post, Shelley particularly appreciated the audience profiles Milo had compiled for some of the venues on the last tour. Eight weeks later the outlook was not as bright. 'I hadn't realized how different it would be in a presenting venue,' Shelley explains. 'In my last job, productions ran for three to four weeks so we had three shows and a handful of one night stands to sell each season. Now I've got fifty and I think I've been taking the wrong approach. I wish there had been time to do a handover with my predecessor before she went on maternity leave.' Milo is worried. There was an initial flurry of bookings after the season brochure went out but sales have been slow since then.

When he calls Shelley, he realises just how overstretched she is. They agree that Shelley should concentrate on getting local press coverage for the workshops that precede the performance. Milo will organise the direct mail. He liaises with the box office manager who extracts the names and addresses of everyone who bought tickets for contemporary dance in the past two years and, separately, all those who have bought for the slightly more adventurous end of the theatre programme. He ensures that she includes only those who have given their consent to be contacted by either Ballyglass Hall or Silver Moon or both. At roughly 1,500 customers, Milo can't possibly stuff the envelopes at his end and it's too short notice to mobilise Ballyglass Hall's volunteers. Shelley

Both Shelley and Milo understand that, regardless of what is in the written contract, they will only achieve their audience development goals if they work together – and that requires a positive working relationship.

Shelley hasn't done the things she agreed at the planning meeting. It would be tempting to cover up but because she is honest about the challenges she faces, Milo can help her find a solution. Note that he doesn't pressurise her to do more for the company. This would be unrealistic and risks disrupting the positive relationship between the two organisations. By offering to help out, he has increased the likelihood that Shelley will get some press coverage. Milo has successfully negotiated a solution that benefits both sides.

The relationship between company and venue has been consolidated over time so they clearly trust each other to act in the best interests of the partnership.

Case study 2: Ballyglass Hall (BH) and Silver Moon Dance Company (SM)

Harbottle and Lewis comment:

1. BH and SM want to market to data subjects whose details have been collected by BH and are held in the BH box office database. Consequently BH (as the data controller of such personal data) will need to comply with the provisions set out in the Data Protection Act 1998 (DPA) governing the fair and lawful processing of personal data.

2. Fair and lawful collection of personal data will include informing data subjects (at the time of collection of the data) of:

- a. the identity of the data controller;
- b. the purpose for which personal data will be processed;
- c. any other information which is necessary for the processing to be fair (e.g. if data are to be shared with a third party, this information should be provided together with details of the purposes for which the third party might process the data).

3. As BH wishes to use the personal data for direct marketing purposes, BH should inform data subjects (at the time of data collection) that BH intend to use their personal data for the purposes of marketing a) BH; and b) third parties (e.g. visiting companies such as Silver Moon). In the case of direct marketing mailings, best practice is to provide an opportunity for the data subject to opt out of receiving direct marketing mail. (Direct marketing by other media is subject to stricter requirements under the Data (Privacy in Electronic Communications Regulations) and often requires consent).

4. If any data subject informs BH they no longer wish to receive any direct marketing material, BH must promptly insert a suppression flag in its database so as to ensure that such data subject does not receive further direct marketing from BH.

5. If BH chooses to delegate the mailing job to an external mailing house. The mailing house will be a Data Processor, under the DPA. BH (as data controller) will remain responsible for the Data and must ensure it is properly processed in accordance with the DPA. Before supplying the mailing list to the mailing house, BH must ensure that the mailing house has entered into a written agreement with BH in accordance with the requirements of the DPA (including obligations on the mailing house to use the data only upon BH's instructions and to adopt appropriate technical and organisation measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data).

Case Study 3: Dance Direct and Tidmouth Civic Theatre

Data Protection is a confusing issue for touring companies as policies vary widely from venue to venue. Another venue on Dance Direct's tour takes the view that anyone who consents to being contacted by the venue is also implicitly agreeing to be contacted by the producer or company. They are therefore happy to share the personal data of those ticket buyers (although only two companies have ever asked for it). This is fine as long as staff clearly identify the venue and company or producer when they collect the data. This venue also asks customers if they are happy for their details to be passed on to 'other arts organisations in the area'. The different policies occur because the Data Protection Acts are open to interpretation – about what is 'fair', for example.

Rageh's plans to compare the drive times of audiences at key venues on Dance Direct's forthcoming tour have hit a snag. The local authority that runs Civic Theatre in Tidmouth says that they are unable to give him any personal data about ticket buyers. Mike, the venue manager, is apologetic, 'The Council has a blanket ban on sharing data with anyone because of data protection. They insisted managers like me went on a training day with their front-line staff where they said disciplinary action would be taken against anyone breaching policy.'

Rageh is understandably frustrated as Mike and his team have only anecdotal evidence about the size of their catchment. Tidmouth is in a rural area so he thinks that they might be attracting audiences from a very wide area. Rageh also wants to prove that dance has a bigger catchment than the programme as a whole. He needs Mike on his side. He e-mails a couple of maps of the audience at a venue on the last tour and suggests that this kind of comparison would be a useful tool in Mike's constant battle to get the arts valued by his colleague in the council.

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Rageh understands that it is vital to retain a positive working relationship with Mike. That means that in this instance he chooses to modify his goals in order to maintain the relationship. Rageh also uses his influencing skills to build a greater level of synergy between his own goals and those of Mike. As a result, Rageh is more likely to achieve his original goals the next time Dance Direct visits Tidmouth.

Local authorities and other government bodies come under close scrutiny so it's understandable that they develop hard line policies like this. Mike has little positional power in this situation. Any solution will have to be negotiated at a higher level using personal power.

Rageh needs Mike to invest some time and effort to find a solution. He motivates him by finding a way in which Mike will benefit from that investment. Just as in case study 1, these maps are his bargaining chips.

Case study 3 continued: Dance Direct and Tidmouth Civic Theatre

Rageh has thought through how he can support Mike in negotiating some flexibility at a higher level in the Council.

Rageh has done his homework too. Responsible venues will only share personal data with companies that show they understand data protection issues. After all, if the company processes a customer's data inappropriately, the data could be traced back to the venue as the point of collection. Rageh often refers to the Information Commissioner's Office website at www.ico.gov.uk where there is plenty of clear advice in plain English.

Rageh asks Mike to find out who's responsible for data protection policies at the Council and explain the problem. He suggests setting up a conference call between the three of them. The council officer has done her homework, 'Not even local authorities can get access to Census data at postcode level because a postcode only covers on average 15 households so people can be identified pretty much as individuals from that information. That applies here too.'

'But that's because the Census contains personal and sensitive information that could be linked to those 15 households,' Rageh responds. 'All we want is the postcode itself with no other data attached to it. What if Mike was to just give us the postcodes in an Excel spreadsheet? We would analyse the information, map it and then delete the spreadsheet. We would then be able to tell Mike what percentage of households in the Tidmouth District Council area are buying tickets. Surely that's something that the Council would want to know.'

This is a good compromise but not ideal for Rageh. With just the postcodes, he won't be able to check the quality of the data or get rid of duplicates. He explains the issue to Mike and suggests that his box office manager visits another venue with the same computerised ticketing system to compare data collection and cleaning procedures. He suggests a couple of venues who seem on the ball and hopes that any necessary improvements will be made by the time booking opens for Dance Direct's visit.

The problem is about how the eight principles of data protection are interpreted. This is a particularly extreme view but Rageh won't win by arguing about it. He needs to listen carefully, understand how the officer is interpreting the DPAs and negotiate a solution that fits with that interpretation but also gets him what he wants.

Rageh always finds out what box office computer systems are used by the venues Dance Direct visits, just as he finds out the extent of their press list. 'When I first started touring I spent a couple of hours with one of the box office managers getting to know how they work and what their issues are. It was a real eye-opener.'

Case study 3: Dance Direct (DD) and Tidmouth Civic Theatre (TCT)

Harbottle and Lewis comment:

1. The case study refers to sharing of census data. However, it would appear that this is a red herring and that what DD is actually requesting is information which TCT has collected from ticket buyers. If that is the case, it is clear that TCT is collecting the data and consequently TCT will be the data controller of the personal data (unless otherwise stated at the point of data collection).

2. To try to break the stalemate, Rageh suggests that TCT shares only the postcodes of the audience members. As long as individuals cannot be identified from the postcode data then this will not constitute personal data and the sharing of the data and use by DD will not be governed by the DPA.

The DPAs don't rule on who owns the data. They see everything from the general public's point of view so the 'owner' is whoever the ticket buyer might reasonably assume they are doing business with. That could include the venue, company and promoter, if there is one. Ownership is not the issue here. Ticket buyers must give their specific informed consent to be contacted by the company or the venue or both.

Calling James a liar is probably not the most effective negotiating strategy. Gillian's confrontational stance may have ruled out any further discussion. As she is the company's general manager, it has also endangered New Trick's entire relationship with the venue.

Case study 4: New Tricks Theatre Company and Auchterturra Playhouse

Gillian is outraged. For the past five years, New Tricks Theatre Company has premiered its shows at Auchterturra Playhouse. New Tricks worked hard to develop a decent audience and now the theatre won't give her their names and addresses. OK, the company is going to stage a site specific production next season rather than returning to the Playhouse so she can see how they might feel threatened by competition. However, it was New Tricks they came to see so it's her audience not theirs.

James, the Playhouse Marketing Manager, doesn't really want to talk about it. 'My hands are tied,' he says. 'I've already e-mailed Gillian the names and addresses of 123 New Tricks ticket buyers who said they wanted mailings from third parties. The DPA just doesn't allow me to give her anyone else's details. I've explained this but she said she didn't believe me. It's unfortunate that we have an audience that is particularly loyal to the Playhouse so although 90% say they are happy to be mailed by us, 80% say they don't want information from anyone else. As long as people have given us permission to share their data with our visiting companies, I'm very happy to do so. But if they don't give permission, there's nothing I can do. I'm sick of the whole thing.' In fact, only two out of the ten Scottish companies that visit the Playhouse regularly have ever asked for the names and addresses of their ticket buyers.

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James is right. He is not allowed to pass on personal data to anyone unless they have given explicit, informed consent. All it takes is a letter from a ticket buyer to the Data Commissioner and the Playhouse could be investigated, taken to court and heavily fined.

The question the box office asks is 'Can we pass your details onto another organisation'. This does not differentiate between the companies who visit the Playhouse regularly and any other third party. Gillian needs to persuade the Playhouse to ask New Trick's ticket buyers a different question. Recording responses to different kinds of data protection questions can be complicated but many venues have got round this by adding a category or classification – in this case New Tricks – in the same way that they would record if the customer wants the cinema brochure or were interested in dance.

Case study 4: New Tricks Theatre Company and Auchterturra Playhouse

It is easy to understand Gillian's frustration but the Data Protection Acts are only concerned with preventing unfairness to the people whose data is being used.

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New Tricks has collected a mailing list of around 3,000 in the five years they have been touring Scotland. Gillian doesn't think this is enough to enable them to market their new show effectively and they don't have the budget to get an audience from scratch. 'Besides,' she says, 'we haven't really used our mailing list recently because it costs too much to mail so I'm sure a lot of them will have moved. All this hoo-ha over data protection is so unfair. It's our audience and we want our data.'

If Gillian had been thinking in the long term about New Trick's relationship with the Playhouse, she would have spotted a win-win situation here. The site specific work will inevitably attract new audiences so she could have used this as a bargaining chip with the Playhouse. By inviting them to become a partner in the project by acting as the box office for the project, they would have had access to the resulting data about these new ticket buyers and, in return, she could have asked them to mail all their drama attenders, not just those that had previously bought for New Tricks.

The venue usually has more power in any relationship with visiting companies (unless, of course, a company has a very high profile or venues are competing).

Gillian hasn't thought through why she wants the personal data of all ticket buyers for New Tricks. If she can't manage her existing mailing list, then how is she going to use this new data effectively? All she wants to do is a single mailing for the site specific show. Besides, she appears to be in breach of the DPAs herself. She has a legal responsibility to make sure the data New Tricks holds is up-to-date and not to keep it for longer than necessary.

Case study 4: New Tricks Theatre Company (NT) and Auchterturra Playhouse (AP)

Harbottle and Lewis comment:

1. As a data controller, AP will need to comply with the provisions set out in the DPA.
2. Gillian considers the information collected by AP to be 'her data'. The question of who can access the data and who has rights to use it for marketing purposes comes back to who collected the data and on what terms. It's clear from this scenario that AP collected the data and clearly asked data subjects to indicate whether or not they would be happy to have their data shared with third parties for marketing purposes.
3. James is correct in that he cannot provide personal data to NT for marketing purposes where the data subjects have opted out of their data being shared with third parties for marketing purposes. If AP were to provide the data to NT this would not be fair and lawful processing under the DPA and would constitute a breach of the DPA.
4. Gillian believes that much of the personal data held by NT will be out of date and inaccurate. The DPA requires that a) all personal data shall be accurate and kept up to date; and b) personal data shall not be kept for longer than is necessary for the purposes for which it is kept.

Case study 5: Manifesto and Tripod Theatre

Delila did not think particularly carefully about why she wanted personal data. It turns out that she wanted to find out about the age and ethnicity of her audience. This is not data that will be captured at the point of sale. Case study 1 demonstrates how mutual professional respect contributes to the trust that needs to be in place for data sharing to take place. Delila does not have enough of an understanding of a venue box office to maintain credibility with Brett.

Delila, Manifesto's new General Manager, feels upset. She has just seen the contract returned by Tripod Theatre – she sent it just over three weeks ago – and the Venue Manager, Brett, has struck out the clause about sharing personal data. 'I was only trying to do the right thing. We need names and addresses so that we can find out where our audiences are coming from.' Her local audience development agency had recommended that she use the following clause:

'The venue (INSERT NAME) agrees that the Promoter (INSERT NAME) will have full and uninhibited access to all and any customer sales data relating to all and any contracted performances with the Promoter (INSERT NAME).'

When Brett received the contract, he had been surprised at the inclusion of the clause about data sharing. Delila had not mentioned this when they had negotiated the deal the month before. Before he deleted the clauses from Manifesto's contract, he double-checked with his trade association's legal advice service. The lawyer had confirmed his view that it is inappropriate and illegal for a company to demand 'full and uninhibited access to all and any customer sales data'. Inappropriate because it places an unlimited demand on the venue's resources, and illegal because it does not take into account the requirements of the Data Protection Acts, namely that a customer must give their specific informed consent to be contacted by the company, or the venue, or both.

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Delila omitted to discuss data sharing with Brett herself and relied on the contract alone. Our research shows that the sharing of data is most likely when there is a high level of trust and rapport between the venue and the company, regardless of whether data sharing is referred to in the contract or not. Thus not only was Delila using an inappropriate clause, but she failed to start talking about data when she was making the deal with Brett.

When Delila received the contract with the data sharing clause deleted, her first course of action was to discuss the matter with Brett, to find out why he had done it. Her desire to understand where he was coming from, combined with her openness, was enough to turn a potential disaster into a positive outcome. Delila used her inter-personal skills to rebuild rapport with Brett.

Case study 5: Manifesto and Tripod Theatre

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Delila decided to telephone Brett to discuss the matter further. Brett explained the implications of the Data Protection Acts and the pressures of venue management. 'I felt sorry for Delila – she was clearly shocked that what she had done was not 'best practice'.' Delila told Brett that she needed to know about the ethnicity and age of the audience for her Arts Council England report. Brett said that the best solution was for Manifesto to provide a questionnaire to be handed out at each performance. 'Manifesto is one of the most important companies in our season, artistically,' said Brett, 'Delila is new, so I was happy to sort something out.'

It makes sense for a company to think carefully about why it wants personal data, and to think about it from the venue's point of view. If the company puts effort into the quality of its relationship with the venue, then even difficult situations can be resolved fruitfully.

In Brett's eyes, Manifesto is an important company and he wants to keep them. The status that he places on Manifesto, (their positional power as described in Case Study 1) gave Brett the impetus to find a way to give Delila what she wanted. If Brett had not valued Manifesto, it is possible that the outcome would not have been so positive for Delila.

Case study 5: Manifesto (M) and Tripod Theatre (TT)

Harbottle and Lewis comment:

1. As a data controller, TT will need to comply with the provisions set out in the DPA.
2. It is inappropriate for M to demand full and uninhibited access to audience data since TT can only provide such information as it can fairly and lawfully disclose under the DPA. The information which can be disclosed would depend upon TT's data collection notice and whether it is clear that data can be shared to visiting production companies and for what purposes. If such purposes extend to marketing TT would need to provide a sufficiently clear opt out (for mail marketing) and opt in (if marketing by electronic communication (such as e-mail or text) is envisaged).
3. Delia wants to obtain information relating to the ethnicity of her audience. Personal data relating to ethnicity constitutes sensitive personal data as defined by the DPA. As sensitive personal data, such data would be subject to additional restrictions and requirements in order for TT's processing (such as sharing with M) to be fair and lawful.
4. Processing of sensitive personal data in such circumstances is unlikely to be lawful without TT obtaining the explicit consent of the data subject to the sharing of their ethnicity data.
5. If TT had collected data as to ethnicity and age, TT would have been able to provide purely aggregated or statistical data to M without falling foul of the DPA as such data would not constitute personal data under the DPA.
6. Brett volunteers to permit M to provide a questionnaire to be circulated at performances. If M intends to capture personal data on such questionnaires (e.g. information from which people can be recognised as opposed to anonymous data as to ethnicity and age then M should take advice as to the wording of the data collection notice to be included on the questionnaires to ensure that it complies with the DPA.

Case study 6: Speckled Hen and Aberwyvern Theatre

Nerys declines to share personal data with companies not because of issues around ownership, but because she believes that the best way to develop audiences for Aberwyvern is for them to manage all aspects of customer relationship management themselves. In turn, she views Speckled Hen as a customer (albeit an internal one), and aims to give them an excellent experience across the organisation from the moment they first make contact. With this in mind, she made sure Aberwyvern's education officer was at the meeting so that the educational aspects of Speckled Hen's work could be explored fully.

Aberwyvern Theatre re-opened two years ago with a new artistic team as a producing house that also presents carefully selected touring work. There are three other theatres within a twenty-mile radius. 'We are protective of our audiences,' explains Nerys, the Marketing Manager, 'because we put a lot of effort into building relationships with them.' Aberwyvern has recently received a 25% funding uplift in recognition of its artistic excellence and local popularity.

Jane is the marketing manager of Speckled Hen, a children's theatre company. They will be performing at Aberwyvern in nine months, and Nerys has asked her in for a marketing meeting. Jane wants Nerys to agree to provide the personal data of customers so that she can keep her options open for next year – two of the other three theatres have been very supportive over the years.

'I couldn't bring myself to ask for personal data,' said Jane afterwards. 'They are so driven – but they do know what they are doing. They have put a lot of thought into choosing us as a company, and they want us to commit to performing there for the next three years. Their education officer was at the meeting, and he was fab.' Nerys was clear about her position. 'We don't share personal data because we want to control the message that the audience gets. However, we do provide visiting companies with detailed statistical information. This helps us strengthen our relationship with the company, and it means we can establish informed sales targets for next time round.' In fact, Speckled Hen were allowed to put postcards out in the foyer areas to obtain the personal data of interested attenders.

The Data Protection Acts have no bearing on the sharing of statistical data. Nerys knows that statistical data offers a rich seam of data that can inform subsequent marketing planning.

Nerys provides all visiting companies with the following information:

- Sales summary and breakdown
- Postcode summary and breakdown
- Buyer types
- Source codes
- Direct mail response levels
- Cross over with other productions
- Group sales

Aberwyvern has established itself as a desirable venue for touring companies: the venue has artistic kudos and high attendance levels. This makes the venue high status and makes it easier for the venue to decline requests for personal data from companies. The benefits to the company of the overall experience plus the detailed statistical analysis mean that this is still a win-win outcome.

Case study 6: Speckled Hen (SH) and Aberwyvern Theatre (AT)

Harbottle and Lewis comment:

1. AT, as the data controller, will need to comply with the provisions set out in the DPA which include the Eight Data Protection Principles governing the processing of personal data.

2. Pure statistical data (from which individuals cannot be identified) is not personal data and is not regulated by the DPA so AT is not restricted from sharing statistical data with SH (provided individuals cannot be identified from the data disclosed (e.g. audience gender statistics)).

3. SH hoped to also receive personal data from AT. Nerys elects not to share personal data for various reasons. It's worth nothing that AT could not lawfully comply with SH's request unless AT was able to share such data with SH fairly and lawfully under the DPA (including having notified data subjects at the time of collection of their personal data that their data would be shared with third parties and the purposes for which data might be used by such third parties).

4. SH will become a data controller in respect of any personal data captured by the data collection postcards. The data collection postcards should contain a clear data collection notice:

- a. clearly identifying SH as the party collecting the data;
- b. the purpose for which personal data will be processed;
- c. any other information which is necessary for the processing to be fair.

The clauses are:

The Promoter will ensure that its Box Office adopts 'good practice' under the Data Protection Act 1988 and Telecommunications (Data Protection and Privacy) Regulations 1999 and seeks consent from its customers to send information about future developments from the venue and from the Orchestra. The Promoter will make available to the Orchestra customers' address and booking data (including number and price of tickets purchased) where the customer has given their informed consent to receive such information about the Orchestra's future events and developments, after prior consultation. Where customers' informed consent has not been received, the Promoter agrees to write to the customer at the Orchestra's request to seek their informed consent to receive from the Orchestra such information about the Orchestra's future events and developments, after prior consultation with the Promoter. The cost of fulfillment postage for this is to be re-charged to the Orchestra.

Case Study 7: English National Orchestra and the Theatre Royal

Zoe, marketing director at the Theatre Royal is clear that they will not share data with any other organisation under any circumstances. 'We've spent time and effort putting our customer relationship management strategies in place and so we want to keep in touch with audiences rather than anyone else getting in the way. Besides, most of the companies haven't got a clue about data protection and we don't trust them not to do something that will get us into trouble. We heard of one company that gave their mailing list to their sponsor and everyone on it got a letter about insurance. We always reassure our ticket buyers that we won't share their data with anyone else and I'm convinced that's why we get 90% to join our mailing list.'

English National Orchestra are touring a well-known oratorio with a high-profile soloist to just four venues in the UK before a series of international dates. The Theatre Royal are keen to be one of those venues.

Anita, the orchestra's head of public affairs, always includes clauses about data sharing in their contract. 'We see everyone as a potential attendee of our London concerts,' she comments. 'And we always cross-match the data from London dates with data from our touring venues so that we have a better understanding of frequency and loyalty.' 'If it was anyone else,' says Zoe, 'we would simply delete the clauses before we signed the contract. We want the data so we're going to have to change our box office procedures considerably to make sure we don't fall foul of data protection.'

Our research shows that companies are most likely to get access to the personal and statistical data they ask for when there is a high level of trust and rapport between venue and company staff. Including clauses on data sharing in the contract appears to have little impact unless, as in this example, the company or promoter has considerable positional power.

Our research has identified companies with no understanding of their obligations under the Data Protection Acts. But we've also talked to companies with an excellent understanding who have set up policies and procedures that reflect best practice.

Our research shows that venues who share data also get equally high consent rates. The key factor is not whether the question is asked but how it is worded.

The orchestra is the partner with positional power in this relationship. The venue wants the data so will make an exception to its rule.

Case study 7: English National Orchestra (ENO) and Theatre Royal (TR)

Harbottle and Lewis comment:

1. As a data controller, TR will need to comply with the provisions set out in the DPA.
2. Both TR and ENO have rightly identified that in order for TR to share data with ENO, TR must obtain consent from the data subject(s).
3. TR must ensure that the consent which it obtains from the data subject(s) is in the correct form required for the DPA and expressly covers both TR and sharing with the ENO. The exact wording required will vary depending on what each of TR and ENO intends to do with the data, and what type of data they collect.
4. The ENO clauses seek to require TR to adopt good practice and obtain consent from data subjects to the sharing of their data with ENO in a fair and lawful manner.
5. ENO could also seek warranties from TR that TR has collected any data it shares with ENO in a fair and lawful manner and also that any disclosure to ENO and use by ENO for the stated purposes will not put ENO in breach of the DPA.
6. TR might want to see warranties from ENO that ENO shall only use the data for the purposes envisaged by the scope of consent obtained and that ENO won't share the data or use the data for any other purposes.