Customer Recruitment: Ethical, Legal and Practical Issues

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Abstract. An often overlooked aspect of usability testing methodology is participant recruitment. Traditionally, test participants have either been independent users recruited by usability programs irrespective of their employer or they have been company representatives provided by product management or a sales team. However, there are drawbacks associated with these types of recruitment programs, which led our organizations at Oracle to create a standardized program of customer recruitment, instead. In this paper we describe the problems that we encountered when using the traditional methods of recruitment, how a new legal document and a customer recruiting process solved those problems, and what ethical considerations need to be made when recruiting customers.

Keywords: Participant recruitment, user research, customer recruitment, usability testing.

1 Customer Recruitment History

For over 20 years, Oracle has had an active user experience program, testing product designs with all types of users. Usability testing of Oracle products requires access to a broad range of users, who can work in departments such as HR, Finance, Sales, Procurement, IT, Development, Shipping & Receiving, and more. Last year alone, Oracle conducted over 320 usability activities. These activities engaged over 2000 participants, 75% of them employed by Oracle customers or partners. Participant recruitment is an essential component of the user experience program; however it has been fraught with difficulties. As noted by Sova and Nielsen [8], "The main obstacle to quick and frequent user testing is the difficulty of finding warm bodies."

1.1 Independent User Recruitment

Traditionally, we depended on the general public to test our products and prototypes. These individuals were recruited irrespective of who they were employed by. This "independent user" recruitment program required a special legal document (Individual Confidential Disclosure and Informed Consent Agreement) per participant, per activity and a large participant database for maintaining participant data and tracking participation. This program provided participants for usability research for many years.

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1.2 Drawbacks of Independent User Recruitment

However, there are downsides to recruiting from the general public. These include: cost, time, paperwork and security.

- Recruiting from the general public is costly, whether you have an in-house recruiter or utilize a third-party agency. To entice a member of the general public to participate, you often need to offer competitive incentives. Some user types, such as highly skilled specialized users, require higher incentives.
- It can be very time consuming and difficult to recruit participants from the general public.
  - Certain user types may be hard to find, and using services like Craigslist, Meetup, or LinkedIn to find participants can lead to a bias towards more experienced computer users.
  - There is a tendency to re-use participants. Recruiting participants to participate in multiple activities reduced the time and effort needed for recruitment, but led to a lack of variety and diversity.
- Tracking participation and incentives requires a database or some other system.
  - The use of paid participants leads to increased paperwork as payments made to individuals need to be tracked for company accounting purposes and IRS compliance. Employees that work for government agencies are not eligible to receive incentives and therefore cannot be recruited.
  - Additionally, undesirable test participants need to be flagged so they are not recruited more than once.
- Security is also a concern. Remote usability testing with participants recruited from the general public can be risky as it is not possible to know who else might be watching. It is also impossible to know if the test participant is recording the session in any way. As discussed by Bartek et al [2], "Session security is another concern, particularly if the material is confidential. It is not always obvious that the participant has other people in the room observing; also, the participant could take screen captures of the user interface without the facilitator's knowledge".
- Another concern when recruiting from the general public is the risk of recruiting professional usability testers (scammers). These people will falsify their job title, employer, and often identity in order to better match what the tester is looking for, to qualify for a study that would earn them money. As a result, the validity of their data is questionable as is their adherence to the non-disclosure aspects of the confidentiality agreement that they signed.

1.3 Company Representative Recruitment

Approximately six years ago, Oracle's user experience groups started supplementing individual user recruitment with specially chosen customer representatives. These individuals were representatives of their companies and were typically supplied by the Product Management (PM) team. Customer representatives usually participated in the usability activities as part of a larger activity, such as a Beta program. The use of company representatives was less expensive than individual user recruitment because company representatives do not expect to be paid for their time and participation.

1.4 Drawbacks of Company Representative Recruitment

However, other drawbacks experienced during individual user recruitment such as paperwork, security and difficulty in recruiting still exist.

- It's hard to get past the "gatekeeper." Permission from the PM team has to be obtained every time we want to work with a customer. PMs can be very protective of their customers, and often want to send the UX activity invitation themselves; however they don't always know how to properly explain a UX activity (feedback session or usability test). Their explanations can mislead a customer and cause less interest in participation. Additionally, the PM team may recommend contacting specific customers only due to the customer mood or current situation and not due to their suitability for the study.
- It's difficult to find the right user. PMs only provide access to customer 'super users' who are using Oracle products regularly; specifically the products that the PM is managing. These users often know too much to provide new user feedback, and are not often suitable to represent potential customers because their expectations are based on their past experiences with the product.
- Security is also a concern. A signed Informed Consent and Confidential Disclosure Agreement (CDA) covers only one person and does not cover their office-mate, manager (potentially listening in to get a peek at a new product design) or IT staff who could, theoretically, capture or record the web conference being conducted on their company systems. Most customers have to participate in remote testing because they are not co-located with our engineering offices, but widespread across the globe.
- Tracking was difficult when we first started this program, because we were using multiple spreadsheets, which often contained duplicate information, or could be misplaced.
- Usability participants were often end-users (not the decision makers) and didn't feel comfortable signing an individual CDA or submitting this document to legal for review just to participate in one usability test.
- Customers often wanted to use existing legal documents instead of signing something new, specific to one activity. These existing documents did not often cover the use of feedback and were often specific to one product. Documents often referenced were: Development Collaboration CDA; Beta Trial License Agreement; NDAs for 2-way disclosure; and Software License & Services Agreement (SLSA).

2 Legal Documents

Unfortunately, most traditional legal documents between companies did not cover usability testing and the collection of feedback from customers. The Beta and Partner agreements that we used at Oracle sometimes covered usability activities and sometimes did not. Oracle's legal staff was concerned about whether we could use *any* product feedback provided to us under a Beta Agreement. Beta agreements are typically written in ways that limit the collection of feedback to current design of the

product in Beta. However, these agreements often don't cover the collection of feedback that is peripheral to the product, such as how it would be used and what other products would it be used with, which is information that would aid future product design.

Instead of depending upon the Beta agreement, the UX department started using a company-standard document for working with customers; the Individual CDA and Informed Consent. This document was used solely for the purpose of UX activities and included coverage for one individual and was not between the customer company and Oracle, but the individual only. This document proved to be difficult to use because the usability participant was often uncomfortable signing this document. Another document that was occasionally used was the Development Collaboration CDA which is a company level agreement, but also specific to one activity or product. They would have to arrange for someone with signing authority to sign the forms for each activity that a company representative participated in (e.g. Procurement Customer Advisory Board, High Tech Industry Strategy Council, and Usability Test). Unfortunately, it was often difficult to obtain to obtain a Development Collaboration CDA for each activity when working with customers. Customers didn't like having to sign multiple agreements and this again, prompted customers to try and leverage other agreements that did not provide adequate protection to Oracle.

3 Our Solution: UX Customer Participation Program

Over time, it became apparent that utilizing company representatives at Beta events or mediated by a product manager was not a feasible long term solution but neither was recruiting from the general public. We decided that we needed to focus on usability testing with customers but that we needed to find a way to build our own relationships with them. There were two key elements to making this plan successful: a new (better) legal document to cover all customer feedback activities and a method of tracking customer participation at the company level.

First, we consulted with Oracle's legal team to have them draft a new legal document, the Customer Participation Confidentiality Agreement (CPCA). This document was designed to address confidentiality and feedback as covered by previous agreements and also meet the following requirements:

- Cover multiple development-related activities (customer advisory boards, councils, design reviews, and user experience activities)
- Bind the customer company, covering ALL employees
- Place the burden and determination of what information to share on the customer company and cover permission to use feedback that participants provide to us, allowing us to use it to improve our products.
- Create a perpetual master agreement that would be agreed upon and signed once. After that, projects and disclosure period could be defined as needed using a project attachment (or addendum)

Next, we created a database to track customer participation and the existence of a CPCA. We call it the Customer Participation Database or CPD. This database tracks

participation in all development-related activities allowing us to look up a customer company and see what they are involved in from CABs to UX participation, the valid dates of the agreement, if they have completed the CPCA, and what activities are covered.

3.1 Legal Documents

The core of the customer recruitment program is the legal document. At Oracle, we call it the Customer Participation Confidentiality Agreement (CPCA). Legal documents used for customer recruitment should allow an organization to collect and *use* the feedback provided for product design and development. Many non-disclosure and Beta agreements do not cover this. The contents of such a document would need to be worked out with your legal teams and we do not aim to provide legal instructions as to the content of such a document for any organization. However, we can provide a short list of the elements of this document that we think are most important.

Key components of Oracle's Customer Participation Confidentiality Agreement are:

- Clear definitions of what is to be considered "company confidential information" and what is to be considered "participant confidential information"
- A clear definition of "feedback", as well as ownership of or a broad license to use that feedback in any way (eliminating limitations on how feedback may be incorporated into future products)
- An explanation as to how the information gathered from the participants may be used
- A statement that communicates that participant-confidential information should only be provided if and only if necessary in order to provide feedback – clearly noting that the primary intent is to collect feedback and not any participant-confidential information (this puts the responsibility on the participating company representatives to protect their information by simply not disclosing it)
- Sufficient flexibility so that the agreement can cover multiple activities, by a variety groups with the same general intent and goal, over a period of time
- Use of a "project attachment" (or addendum) to define new projects and a disclosure period whenever needed without having to draft a new CPCA and new legal terms

The CPCA is now a requirement for any Oracle development activity that involves collecting feedback from customers. So if a customer is a member of an existing customer advisory board or customer council at Oracle, their company should have already signed a CPCA. Once a signed CPCA is obtained from a customer company, any development organization within Oracle may leverage the same CPCA without having to obtain a new agreement, as long as the document was written to cover multiple activities. In the case that it was not written to cover multiple activities, only a new project attachment (addendum) would be required. This ability to use or modify an existing agreement drastically reduces the time required for recruitment for a specific activity. With an existing CPCA on file, an individual could theoretically participate in a user experience activity immediately.

3.2 Central Database or System

Equally important to Oracle's customer recruitment program is the Customer Participation Database (CPD). Originally, we kept track of the companies that signed the CPCA and participated in UX activities utilizing a spreadsheet (see Figure 1). However, it very soon became apparent that this was not feasible and required too much manual entry and too many separate, but related spreadsheets. It was determined that a single database was required. This database could track CPCA status, contact information and descriptive information for individuals at the company who had participated or were interested in participating in UX activities, a list of UX activities that each individual and company had participated in, and so on. The customer participation database would make it easy to identify user types who aren't necessarily interested in the product (such as end-users), but who may match the user profile that we are seeking.

Company	Name	Title	Location	Phone	Email	Product	Source	Notes
Company A	First & Last name	Senior Manager, Global Incentive Pay	Boston, MA	555-555-5555	email address	Enterprise, HCM Employee Self-Service	HCM Connect 2004	Expressed interest in participating in usability evaluations.
Company B	First & Last name	IT Solutions Specialist	Chicago, IL	555-555-5555	email address	Enterprise, HCM Employee Self-Service & Manager Self-Service	HCM Connect 2004	Area of interest: HCM
Company C	First & Last name	IT Solutions, HR	Santa Clara, CA	555-555-5555	email address	Enterprise, HCM (Employee Self-Service), & FNS	Bill Johnson (Oracle)	Upgrading from 7.5 to 8.8. Expressed interest in participating in usability evaluations.
Company D	First & Last name	Functional Analyst	Hyderabad India	555-555-5555	email address	FMS, HRMS, EPM, CRM, PeopleTools	UE Connect 2003	Expressed interest in participating in usability evaluations.

Fig. 1. Typical Information gathered in a spreadsheet

The Customer Participation Database makes it easy to search for and obtain contact information for users who aren't necessarily interested in the product from a technical perspective, but instead use a product or similar product every day as a part of their job. Obtaining contact data makes it easier to track down participants who match a user profile but who do not have a professional relationship with any other Oracle organizations. A key part of this process is to collect and store as much information about the company and its employees as possible (see Figures 2, 3, and 4).

Overview

Name : Angela's Company

HQ Address : 1234 Street
Detroit Michigan 48048
United States

HQ Phone : 555-555-5555

Website : http://www.angelascompany.com

Oracle Contact :

Participation/Projects :

CPP Member: Yes

Notes :

Customer/Partner : Customer

Type : Public Sector

Industry : High Tech

CPCA/PPCA Status : Signed CPCA

Gift Policy : Oracle logo gifts under $10 in value are permitted

Number of Employees : 1,000-4,999

Oracle ASM : John Stevens

Fig. 2. Company information gathered and displayed in CPD

Projects Covered	Customer/Partner Signee	Master Effective	Oracle VP	Expiration Date	Recording Option
CABs, Councils, Focus Groups, Guide Groups, Requirement, Validation & Design Reviews, Customer Feedback Sessions and UX activities.	Angela Miller, President & CEO	25-AUG-12	Bob Fubble	25-AUG-15	Yes

Fig. 3. CPCA details displayed in CPD

	Name	Title	Email	Time Zone	Phone	Associated Projects	Contact Type	Oracle Contact	Newsletter	Notes	Interested in UX Activity
	Kristina Wheeler	Procurement Analyst	kwheeler@angelascompany.com	Eastern	(w) 555-555-5551 (c) 555-555-5552	UX: Procurement CIF Test (Nov 2012)	Procurement	John Davis	Yes	Also willing to test HR and Finance apps.	Yes

Fig. 4. Contact information gathered and displayed in CPD

4 Tips and Hints

The creation of a customer recruitment program is a company-specific process so there are lots of ways that it can be implemented. This section covers some of the elements that we think are most important to consider and develop plans for. However, this is not an instructional manual or even a checklist. You should only set up a customer recruitment program after discussions with your company's Legal and Product Management teams.

4.1 Practical

There are a number of practical issues that relate to the customer participation program. These are tips that we found useful for helping to find participants and keep track of their participation.

Create, Update and Maintain a Database: We continually work to keep information current and track all participation. We do our best to ensure that the information entered is as complete as possible (see examples above) and not just the information related to one activity, but all activities that fall under the CPCA. The CPD makes it easy to identify potential participants. However, this process only works if the information exists in the database.

Implement Quality Control for your Database: Once the database is established, it can be maintained by many organizations. This allows for the quick accumulation of data and the ability to share information. However, we find that some mechanism of quality control should be maintained, either through limiting the allocation of "administrator accounts" and by allowing a central administrator to review any changes before they are made permanent. It is practical to be consistent. We established processes and UI controls (i.e. using drop-down fields or radio buttons) allowing data to be entered consistently to allow for easy searching.

Start Recruiting Early: Customer recruiting starts long before UX activities are planned. Getting the CPCA signed can be time consuming as it may be difficult to find someone with the appropriate signing authority for the company and to answer all of their questions about the document. With this in mind, we actively attempt to have the CPCA signed by as many customer companies as possible prior to their being involved in a UX activity.

Publicize: We promote our customer participation program at conferences (user group events and Oracle conferences), attend customer advisory boards, and customer council meetings. We write a newsletter with on-going, current information about UX activities at Oracle. We invite customers to learn about UX and the ways that we are

trying to work with customers. We are also partnering with Product Management and Marketing to help them understand how promoting UX to their customers can benefit their organizations.

4.2 Ethics

There are many articles about the ethics of user recruitment and participation in usability tests [6, 7] and there are a number of professional "codes of conduct" published by professional organizations such as the American Psychological Association [1] and the User Experience Professionals Association [9]. However, there are a few elements of customer recruitment which are unique and therefore may not covered in those documents.

Customers are NOT the General Public: The ethical guidelines and advice related to recruitment from the general public may not always apply to customers. Individuals at a company that has a CPCA on file may be asked by a manager or colleague to participate. Therefore, their participation in the UX activity is known by the company and is officially a part of their employment. As a result, articles related to usability testing with internal participants (employees) [3] will likely have more relevance than those articles & guidelines that assume participation by the general public [4].

Confidentiality of Nonparticipation: Customer representatives that are nominated for a user experience activity by their colleagues, manager, or upper management may feel unable to decline to participation. Participants should be informed that their participation is confidential and if they wish to decline participation, their management will not be informed of their decision.

Confidentiality of Participation: While it is common practice to explain to participants that they are not being tested but in fact are the evaluators themselves [5] participants may have concerns that their usability test data might reflect badly upon themselves. Participants should be clearly informed that the data collected is confidential and would NOT be shared with their manager or colleagues.

Scope of Data: A final consideration is the nature of the data collected. Because individuals are participating as representatives of their company and the participation is "blessed" by their employers, they may feel more comfortable providing data about their company practices. While legally, the burden of determining what they are allowed to communicate during the user experience activity is on the employee and their company, the UX practitioner should be considerate of the questions that they ask and how they handle the data collected.

Confidentiality: Anonymity of participants should be maintained so that only those who have a reason to view participant data or identifying information should be able to do so. This prevents PMs and Marketing teams from viewing confidential data that might impact their relationship with the customer company. "The usability engineer is responsible to adequately protect the privacy of their participants. Failing to protect their privacy, even from management within the testing organization is a breach of the contractual agreement entered into with the study's participants." [3].

Relationship Management: A final consideration is the relationship between your company and your customers may be affected by any confusion or concerns over ethics. Any *perception* of ethical misconduct or even simple misunderstandings could damage the relationship between the customer and your company. A company may expect to be provided information about their employee's participation that you feel that you cannot provide, as it violates your ethical guidelines. It is imperative that a clear description of what companies can expect and NOT expect should be provided.

Signing Authority: It is important to ensure that the appropriate individuals review and sign the CPCA. The individual who signs the CPCA must have the authority to bind their company and its employees. It is not your responsibility to understand the customer company's policies to determine who has the appropriate authority to sign the document, but ethically, you should make a good faith effort to ensure that you have the appropriate signature level. It is imperative that all communications (see Figure 5) with individuals at the company stress this requirement.

> *In preparation for your participation in the upcoming* ***Revenue Management & Billing CAB Meetings****, I have attached our Customer Participation Confidentiality Agreement (CPCA) for review. The next step is to have the CPCA signed and return it to us before the meeting/event. This document is required to cover participation in Oracle Activities when we are collecting feedback on Oracle products/services and to serve as an NDA when Oracle Confidential Information may be shared. Please have your organization's appropriate signatory review the CPCA and let me know if you have any questions. By signing the CPCA, the signee must represent that they have signatory authority to bind your organization to the terms of the agreement. Please return signed document to…*

Fig. 5. Letter accompanying Standard CPCA

5 Conclusion

At this point, we are having great success with our customer participation program. As a result, last year we conducted over 320 UX activities, recruiting 75% of the participant base from customer companies. Our customer participation program has lowered our cost significantly, and protects Oracle's legal interests more effectively. In this paper, we've attempted to show how setting up a customer recruitment program can address some of the problems inherent in traditional methods of obtaining participants and the benefits of utilizing customers. We've also reviewed the elements that we think are essential (a good legal document and a database) to a customer recruitment program. Hopefully, you are now motivated to start your own customer recruitment program or to at least supplement your existing individual participant recruitment program.

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