



The British Toy and Hobby Association's contribution to the Information Commissioners Office call for response to the Age Appropriate Design Consultation Document

The British Toy and Hobby Association (BTHA) welcomes the opportunity to contribute to this important consultation and looks forward to supporting ongoing work and discussions. We are most grateful for the meeting we had in the consultation period and the assurances that came from that meeting on scope and clarity of definitions.

We have included some of the concerns we raised in the meeting, and for which you gave assurances, simply as a reminder that these would be a concern for the industry, but we rest assured that you are working on many of these concerns as part of conversations you have had throughout the consultation process.

We would be happy to continue the dialogue to follow up on any queries that arise from this document, particularly on connected toys and would be happy to answer queries, share information and help shape the toy recommendations in any way we can be helpful. The BTHA has had a connected toy guide for members since October 2017 and we have a connected toy expert that works as part of our technical team for members at the BTHA. We would be happy to put our resources and experience at your disposal during the finalisation of the code.

Due to the short consultation period of only six weeks, and due to the fact it is running in parallel with two related consultations we have struggled to properly assess the full impact of all aspects of the proposed requirements on our sector. We would ask that the final code be reviewed in line with recommendations from the Online Harms consultation and most importantly the DCMS Internet of Things labelling consultation going on at the same time as this paper and also defining connected IoT devices. It would be important to have conformity of these definitions. We would welcome further input into the final wording of the code if that were desirable.

Overall, the BTHA, and our members, applaud the ICO's leadership in seeking to clarify the rules for collecting and processing the data of child users. We, and our members, share the goal of promoting practices that will help enable children to engage with online content in a safe environment, with the full engagement of their parents, while encouraging innovation in the online space.

We agree that the best interests of the child should be a primary consideration when designing and developing online services for children. Members support the UN Convention on the Rights of the Child, and in particular appreciate its focus on the role of parents and caregivers in protecting and promoting the best interests of the child. We believe it is essential that parents feel empowered to take decisions about how their children's data is used to help children get the most out of online play.

We are concerned however that some of the specific standards in the proposed code may have the unintended consequence of creating disincentives to invest in safe, quality online experiences for children which we cover in detail in our response.

Unfortunately, despite the laudable goals of the proposed code, we do have concerns about its broad scope, which on its face applies to users of nearly all digital experiences. The draft code applies if the online product or service is “likely to be accessed by children in the UK” (page 5), which we understand from our meeting you plan to define, and we agree that definition and tightening of the scope is necessary.

We encourage a more rigid definition as currently “even if the service is aimed at adults, you must be able to point to specific documented evidence to demonstrate that children are not likely to access the service in practice,” or that “any element of it” is likely to appeal to children means such measures are meaningless if evidence later emerges that even a small proportion of users are children, as compliance will thus be required (page 13-14). This standard could potentially sweep in a much broader swathe of online products and services even than the GDPR, which requires parental consent “in relation to the offer of information society services directly to a child.” Thus, the code goes far beyond the notion of requiring verifiable parental consent for experiences that are somehow targeted at or attractive to children by sweeping in any online experience from which children are not specifically blocked.

In addition, employing a “likely to be accessed” standard would result in the Code having broader extraterritorial reach than the GDPR and could create incentives to geo-block UK users to avoid the application of the age verification and other requirements of the Code.

We welcome the tightening of the scope and clarification in definitions in order to eliminate the inconsistencies that currently make this impossible for companies to implement. The content is prescriptive in many areas whilst still leaving ambiguity in others. In our response questions we have suggested one approach or another would be best; companies either need far more clarity and definitions than are in the draft, or they need the 16 standards by which a decision would be taken to challenge a company but the means by which individual companies undertake those requirements are left to them, as long as the process is evidenced.

Finally, we would ask that due care and consideration is given to the timing of the code’s release and that the maximum statutory transition period of one year is applied (we give more details to the reasons this is needed in our response). We would hope that discussions will be ongoing with Europe in order to remain aligned with the GDPR to avoid addition burden for U.K. industry at a time when U.K. industry is under unprecedented pressure.

About the BTHA

The BTHA has a strong history of working with regulators to find ways to act responsibly in regards to business activities with children and their families. We regularly work with the Council of Advertising Practices and the Advertising Standards Authority on relevant self-regulation for toy and child advertising. We work with BEIS and the Office for Product Safety and Standards as well as working with, and giving free training to, Trading Standards on toy safety. We prioritise our work on best practice for the sector by producing training and guidance for members who belong to the BTHA as they are the reputable toy companies that wish to act responsibly and lead on good practice. The work of the BTHA has been recognised by regulators in the past; we were awarded a BEIS commendation for toy safety work in 2018 and have been shortlisted again in 2019. We welcome the opportunity to work with the ICO in the same capacity.

Founded in 1944, the British Toy & Hobby Association (BTHA) is the official organisation representing toy manufacturers. The BTHA has 138 members ranging from international toy giants to small family-run businesses that together account for more than 85% of the branded, legal toys sold in the UK. Membership of the BTHA shows the member's commitment to adhere to the BTHA Code of Practice under the umbrella of the Lion Mark promoting the highest standards of safety and quality in the manufacture and marketing of toys, games and playthings.

Aside from officially representing the interests of Britain's toy manufacturers, the BTHA also has wider priorities, including promoting the benefits of play through the Make Time 2 Play campaign, raising money via the industry's charity the Toy Trust to help disadvantaged children, and organising the annual Toy Fair, which showcases the British toy industry.

The UK toy industry

The UK toy industry is the largest market in Europe and the fourth largest in the world behind the United States, China and Japan. It was worth £3.3 billion in sales in 2018 with 370 million toys sold in the UK. British consumers buy more toys than any other market in Europe with an average spend of £339 per child per year. Online sales account for 37% of toys sold in the UK up 6% last year.

The UK toy industry is a vibrant, innovative industry with 26,000 new toy lines launched in 2018, accounting for 31% of British sales worth £1 billion at retail. The UK toy industry made a direct contribution to the UK GDP of £1.4 billion with a total GDP impact of £2.7 billion last year.

80% of toy companies are SMEs and it is therefore essential that they continue to be able to market their toys in a responsible way in order to ensure that innovation, consumer choice and UK business success is not stifled. The BTHA would be happy to continue to engage in further discussions on this issue if needed. Please contact [REDACTED] or call [REDACTED]