

Information Commissioner's Office Call for evidence: Age Appropriate Design Code

IAB UK submission

(A copy of the call for evidence questions is available at <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/call-for-evidence-age-appropriate-design-code/>)

Q2. Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

In the context of advertising regulation, the Committee of Advertising Practice (CAP) undertook some work exploring children's recognition and understanding of online advertising, resulting in publication of its guidance *Recognition of advertising: online marketing to children under 12* in April 2017. As part of this work, CAP reviewed the evidence on children's critical understanding capabilities at different ages. This indicated that children had three distinct stages of cognitive development: 0-7; 8-11; 12-15. The guidance was subsequently developed to address issues arising with the first two age groups, i.e. those under 12. The ICO's proposed age brackets do not align with those identified by CAP, and it is unclear from the call for evidence on what basis they have been selected. It would be useful if age categories used for similar purposes could be aligned, as far as possible.

Aspects of design

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

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- automated and semi-automated profiling
- transparency of paid-for activity such as product placement and marketing
- the sharing and resale of data

The ICO should consult with relevant industries, including the advertising industry, to ensure that any definitions it develops accurately reflect how data is used in practice, e.g. for 'profiling', and make a clear distinction between terms whose meanings can differ depending on the context and the ultimate purpose of the data use.

Any definitions of marketing should take into account existing definitions used in legislation and in the UK advertising industry self-regulatory Code of Advertising Practice (CAP Code) for non-broadcast advertising. The ICO's Code should complement but not duplicate what is already within the remit of the CAP Code and the advertising regulator, the Advertising Standards Authority (ASA).

Q5. Please provide any views or evidence you have on the following:
Q5D. examples of ISS design you consider to be good practice.

In addition to legislative requirements and the mandatory self-regulatory system of CAP and the ASA, the digital advertising industry has established self-regulatory frameworks in other specific areas in order to set out accepted standards and good practice for responsible advertising. One such framework covers the use of personal data for online behavioural advertising.

IAB UK acknowledges that the collection and use of consumer data could potentially raise issues relating to consumer privacy. In 2011, building on an US initiative and the development of good practice in the UK, EU advertising and media trade bodies published good practice for all EU and EEA markets to enhance transparency and user control for online behavioural advertising (OBA): the EDAA AdChoices Programme. This framework applies to advertising targeted at any user, including those aged under 18, and requires participating businesses to agree not to create 'interest segments' to specifically target children (12 and under).

The initiative is based upon seven key principles, one of which is:

iv. Sensitive segmentation: This principle recognises the need for additional protection for younger children, and requires participating businesses to agree not to create 'interest segments' to specifically target children (12 and under) and on the collection and use of sensitive personal data for behavioural advertising.

A copy of the EU industry Framework and the full set of principles can be found at: <http://edaa.eu/european-principles/>. At the heart of this work is a symbol or icon (see right – often known as the 'AdChoices' icon) that appears in or around the advertisements on sites, as well as on site pages themselves.

When a user clicks on the icon he or she will be able to find out more about the information collected and used for this purpose. In 2017, over 170bn icons were delivered by approved providers across Europe, giving consumers significant opportunities to manage or control their online advertising preferences.¹

The icon also links to ways for internet users to manage their interests, such as via privacy dashboards or ad preference managers. It also links to a pan-European website – www.youronlinechoices.eu – with helpful advice, tips to help protect privacy and a control page where you can turn off behavioural advertising. There are on average 1.9 million unique visitors to www.youronlinechoices.eu every month.²

¹ https://www.edaa.eu/ext/edaa_2017.html

² *ibid.*

The UK version of the website is at www.youronlinechoices.eu/uk. Further information on the initiative is available at <https://www.iabuk.com/policy/iab-factsheet-may-2014-online-behavioural-advertising>.

The EU industry initiative is administered by the European Interactive Digital Advertising Alliance (EDAA) www.edaa.eu. The ASA administers OBA consumer complaints in the UK and in 2013 new rules on OBA were introduced to the CAP Code to ensure businesses provide:

notice to be provided to web users **in or around the advertisement**;
choice via an **opt out mechanism** to prevent data from being collected and used for behavioural ad purposes.³

These rules are **complementary** to the EDAA's OBA Framework: those businesses complying with the Framework will be complying with the CAP Code.

It should be noted that a number of the aspects covered by the Framework (such as notice, choice, and sensitive segmentation) are now covered by the GDPR and we expect that the Framework will evolve in light of that.

Another example of existing industry good practice is the UKCISS Child Safety Online guide for providers of social media and interactive services. The guide is not specific to advertising, but includes advertising in its scope, including in relation to data use. Section 5 of the guide addresses Privacy and there is specific guidance in Section 3 in relation to children under 13. This could be a useful starting point for the ICO's Code.

CAP's guidance on recognition of advertising and children under 12, referred to in our response to question 2, sets out how advertisers can help to ensure that online advertising is 'obviously identifiable' to children, particularly where the nature of an ad means that it is likely to need enhanced disclosure to make sure that children can recognise it as an ad. This guidance does not cover ISS design, but rather what is expected of marketers (who have primary responsibility for compliance under the CAP Code) when it comes to transparency and younger children, and should be taken into account by the ICO in developing any aspects of its Code that may cover advertising and transparency.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of

³ In response to changes introduced by the GDPR, the Committee of Advertising Practice (CAP) is consulting on changes to the rules related to the collection and use of data for marketing.
<https://www.asa.org.uk/news/gdpr-consultation-on-the-collection-and-use-of-data-for-marketing.html>

children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

The IAB is happy to work with the ICO on an areas of the code that may relate to digital advertising, including providing information and helping to develop solutions.

Contact [REDACTED] on

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