



The LEGO Group's contribution to the Information Commissioner's Office call for evidence: Age Appropriate Design Code

First and foremost, the LEGO Group welcomes the inclusion of Article 123 of the UK Data Protection Act 2018, requiring the Commissioner to prepare a code of practice on standards of age-appropriate design of relevant information society services which are likely to be accessed by children.

In addition, we welcome the integration of the requirement that the design of services should meet a *child's development needs* into the legal definition. We believe that these *needs* should be considered from both the angle of the *protection of the interests, rights and freedoms of the child* as well as due consideration of methods that deliver *positive contributions to children's development* and learning, some which may require data to be processed.

Finally, we welcome the opportunity to contribute to this important discussion and look forward to supporting the delivery of a design-code that has children's best interests at its core. Before entering into the specific *proposals, questions and principles* as set out by the Consultation paper, we would like briefly to summarise the LEGO Group's approach to engaging with children.

The LEGO Group's approach to engaging with children

- At the LEGO Group, the interests, rights and freedoms of the millions of children we engage with every day are of paramount importance. Within this, safety remains a *non-negotiable* component of the design and execution of all our engagements with children. This is as true online as it is with our bricks in the physical world.
- Two of the six founding values of the company relate directly to the delivery of this commitment; *Caring*, the desire to make a positive difference in the lives of children and *Quality*, the challenge of continuous improvement to be the best experience for children and their development.
- We take these values very seriously and, as a company, consistently set high ambitions to maintain and enhance trust with children and parents, wherever and however we engage. Concretely, we apply high safety-by-design standards across all our digital offerings, putting into practice our belief in the importance of quality and safe learning experiences for children, especially during their formative years.
- To ensure this is done robustly, we have a long-standing, global partnership with UNICEF to integrate the Convention on the Rights of the Child and the Children's Rights and Business Principles across our business operations. We are also an active participant in the European Commission-convened Alliance to Better Protect Minors, which is committed to bringing partners together to make the online environment safer for minors.
- In direct relation to privacy, we are committed to applying high global standards for both children and adults. Up until May 2018 and the coming into force of the GDPR, the LEGO Group had embraced COPPA as a global standard for the collection of personal information online from a child under 13 years of age.
- Since May the new European data protection and privacy rules have served as a global standard for the processing of the personal data of a child.



A positive role for data in children's development:

- It is, though, also important to state that at the same time as prioritising safety it is also our company mission *to inspire and develop the builders of tomorrow*; enabling and empowering children, through playful experiences, to learn, develop and maximise their creative potential.
- And when we look to the future, we see digital as being of increasing importance in allowing us to achieve this.
- In the future it is likely that data could well become an *enabler of children's agency, education and development* and so we are keen to strike a balanced, forward-looking approach here. The principle of proportionality, where the appropriate protections for the data subject are to be decided according to a risk-based assessment that takes full account of children as vulnerable subjects, is fundamental.
- And so, we continue to champion the adoption of a framework that recognises and respects children's interests, rights and freedom, including the need for specific protections, while acknowledging that certain demonstrable developmental benefits generated by data processing, under certain conditions, should be accessible to children in the future.
- We believe the definition in the Data Protection Act of "age-appropriate design" as the '*means the design of services so that they are appropriate for use by, and meet the development needs of, children*' recognises that the *development needs* of children are not solely to be found in protection from risk, but also in the embracing technological opportunities from data where it has value for children' development.
- To be clear, this is not advocating a relegation of the importance of safety. It is absolutely correct that as young children today are exposed to the rapid technological developments taking place and the unprecedented levels of digital immersion that the potential for negative impact is well understood and resolutely addressed.
- Our position is an encouragement to policy makers to consider a balanced approach, that acknowledges that ostracising children from the future benefits of data may not meet their development needs.

An opportunity to incentivise good design practice

- Lastly, we also believe that the ICO's work and the development of the age-appropriate design code represent a significant opportunity to advocate good and best practice, as well as discouraging and penalising poor practice.
- We have for some time advocated that policy-makers and regulators explore a meaningful and fair way to support children and parents in their efforts to identify ISS that are in the best interest of children. This could include a process for regulators to highlight those who embrace best practice with smart, considered protections for children.

Important Principles for the age-appropriate design code

- We support the adoption of a *separate and specific* approach to the processing of children's data. One that is built for children. One that recognises the need for specific protections to safeguard children's interests, rights and freedom as vulnerable persons, while also acknowledging that the value generated by data processing should be accessible by children in the future, under the right conditions and, where appropriate, with parental oversight.
- We would recommend placing the following principles at the heart of this Code.
 - **Child-centred:** The Code should place children's best interests at its core.



- **Co-created:** The Code should also be built in collaboration with children. At the LEGO Group we often state that children are our role models and highlight the importance of co-creation and direct engagement.
- **Proportionality:** This is the sensitivity and flexibility to acknowledge the context of the processing, taking into account risk, the nature of the data subject (age and/or capacity), safeguards and, we would posit, *the value* derived from the processing to children's wellbeing, in informing the response;
- **By-design:** Be grounded in the principles of safety-by-design and privacy-by-design. We fully recognise the importance of the protection of children built, by default, into experiences from the design stage and we also acknowledge the importance of empowering and educating children around choice and agency;
- **Value:** Acknowledge that data collected and processed under the right conditions can, in some cases, contribute to children's development needs, particularly in skills development, education and learning;
- **Advocating behaviours:** A Code such as this represents an opportunity to encourage ISS that are likely to be accessed by children to *promote positive behaviour* among their users.
- **Playful, creative and innovative:** The Code should be built upon a strong understanding of how children learn, develop and grow. From an early age, children experience the world through play. They are more inclined to engage with topics like privacy through gamified activities, delivered in a creative and innovative manner. This is not just about simplifying text but also promoting novel approaches to communicating messages of importance.

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children's personal data by providers of ISS (online services),

- We are unable at this stage to comment either way regarding the age brackets outlined in the paper. [3-5,6-9,10-12-13-15-16-17) We do however recognise the evolving capacities of the child.
- We believe it would be of value to raise four principle challenges in adopting numerous age brackets in the application of this code.
- Firstly, having an age-banding approach across several variables creates an unavoidable level of complexity for all parties involved. This essentially means that the ICO may in fact be creating five design codes across all the areas mentioned in the *minimum standards* as provided by Government, one for each age bracket.
- Secondly, the more granular the age-banding, the more difficult it is to dismiss the fact that age is not always an accurate indicator of capacity. Variations in capacity are likely to be the result of several factors and it may well be the case that assumption of capacity by age distorts the reality that similar age groups may have significant differences in capabilities.
- Thirdly, the Code is designed to be used by ISS which are *likely to be accessed by children*, not necessarily those ISS *offered directly to the child*. This creates the complication that when you age-band the Code, you are stipulating, for example, that an ISS that is likely to be accessed by 9-year olds but is designed for 10-12 may have to adopt different standards than those for its target audience, even if the primary users are 10-12. This also creates complications, in part because of the data minimisation principle. For example, if an ISS must identify the age of children on their service then they will have to age-gate, something that, if done rigorously, could be considered quite intrusive.
- Fourthly, a granular approach with a spectrum of data processing 'intensity' and safeguards may also lead us to conclude that children at the younger age categories should have essentially a 'data free' experience. We would just highlight that while we fully acknowledge that safeguards should be high for younger categories, you will under the age of 13, have a presumption of parental consent and thus parental intervention and, ideally, parental accompaniment on children's digital experiences.
- We do acknowledge that children are often left alone at a young age and that ISS must be built in anticipation of this, but there should also be a presumption that the experience is likely to have more significant parental



involvement than a plus-13 platform. As such, any prescriptions for design based on banding should reflect these higher levels of parental involvement, particularly when it comes to the possibility to turn on processing of data.

- There are also *clear benefits* of a more granular approach to age banding. Primarily it allows processing of children's data, design standards and safeguards to deliver a gradual evolution of children's relationship with data and ISS. This would reduce the likelihood of a 'cliff edge' scenario where children go from a highly protective environment into a data 'regime' that is designed for an adult audience.
- Lastly, it is worth sharing a practical example of the application of the age brackets suggested for the LEGO Group. LEGO® Life, our social app, is designed for an audience ranging primarily from 8-12. This transitions two of the recommended bandings, so we assume it would be required to conform to the principles set out at the lower of the two bands. This would be important to qualify for ISS straddling more than one band with a single service.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

- As we have stated we have, since 2015, had a global partnership with UNICEF to support the integration of the Convention on the Rights of the Child and the Children's Rights and Business Principles into our operations and digital engagements with children.

UN Convention on the Rights of the Child:

- Of principle importance in this case are:
 - Article 1 (definition of the child) Everyone under the age of 18 has all the rights in the Convention.
 - Article 3 (best interests of the child) The best interests of the child must be a top priority in all decisions and actions that affect children.
 - A right that will sit at the centre of this Code and should dictate safeguards as well as a recognition of value derived from data.
 - Article 5 (parental guidance and a child's evolving capacities).
 - Article 12 (respect for the views of the child).
 - This we believe is particularly important in the design process of the Code.
 - Article 13 (freedom of expression).
 - Article 15 (freedom of association).
 - Article 16 (right to privacy).
 - Article 29 (goals of education) Education must develop every child's personality, talents and abilities to the full.
 - Again, this we believe can be embraced to acknowledge that data could play a positive role in children's development if processed under the right conditions.

Children's Rights and Business Principles:

- Of importance in this case are:
 - Principle 4. Ensure the protection and safety of children in all business activities and facilities.
 - Principle 5. Ensure that products and services are safe and seek to support children's rights through them.



- Principle 6. Use marketing and advertising that respect and support children's rights.
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Aspects of design

We will take the List items submitted by the UK Government and address all questions within each item:

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.

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

Q5C. about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

Data Minimisation Standards,

Considerations

- The principle of data minimisation is enshrined in Article 5 and 25 of the GDPR requiring that personal data shall be:
 - *adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');*
 - *Taking into account ... the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing...*
- The wording does not directly reference children but does reference consideration of the risks for the *natural persons*, which infers the recognition of children as vulnerable persons. It is not clear though how the principle of data minimisation differs in the context of the child. It is hard to extend this to require *more adequacy, more relevance and greater limits than what is necessary*. The bottom line being that the definition of adequate, relevant and necessary should be strictly adhered to.
- Our approach to data minimisation has been one of low data collection and use. For example, our social app, LEGO Life, has a series of default safeguards that go to significant lengths to protect children, both in terms of data collection and processing as well as a broader harm-mitigation approach.
- LEGO Life was referenced in the UK Government's Internet Safety Strategy Green Paper as part of Chapter 6. *How can technology improve online safety for all users?* There it stated that:

In 2017, the LEGO Group launched their social themed app, LEGO® Life. The app is designed for younger children, particularly those from ages 8 -12, and it aims to inspire children to build and share their creations in a high-safety, high-trust environment. LEGO® Life applies the principle of safety-by-design, as well as introducing children to some of the more positive features found in other social platforms, demonstrating how social media sites can enrich their lives through sharing with family and friends.

The app is now available in 18 countries around the world and has over 3.2 million downloads. In addition to this, in 2018 the LEGO Group will launch a Parental App, Hub and Dashboard, taking a further step in securing the peace of mind of parents as well as providing them with more opportunities to share in the creative experience with their children.



- LEGO Life does indeed adopt a safety-by-design and privacy-by-design approach, currently minimising the collection and use of children’s data and supporting children’s privacy by:
 - Requiring that children choose a playful, three-part username selected from a series of terms unrelated to the individual (something we found children really enjoyed) and then asked to create a Minifigure avatar that represents them and acts as their profile picture, instead of personal images. We also do not allow children to post and show pictures of their faces (or others faces) in their images and creations.
 - Ensuring that all content published by users is pre-moderated before it goes live. This is done through a combination of automated filtering and manual intervention. We have highly trained moderators positioned around the world to enable a 24-hour moderation approach, so the children do not have to wait long to see their posts go live.
 - Encouraging children to interact with UGC created by other LEGO Life children through a unique set of expressive LEGO Emoticons and Stickers. This allows for instant engagement without elevating the risk of bullying through negative or harmful comments. These have also proven to be very popular.
- In reference to the challenges that data minimisation poses, there remains the principle challenge that the necessary detection of the age of a child in order for an ISS to understand which age-band it needs to abide by could well be data heavy. Indeed, the ability to do this rigorously and with demonstrable accuracy would potentially require the processing of significant additional data. This presents a challenge to the principle of data minimisation, particularly in the context of children.

Recommendation:

- To ensure that the principle of data minimisation is respected, and that ISS processing of personal data is *adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed*, we would recommend the strong encouragement of data protection impact assessment (DPIA) at the point of design for ISS. In Annex 2 of the Article 29 Working Parties Guidelines on Data Protection Impact Assessments it recommends that a DPIA address criteria relating to *necessity and proportionality*, including what is *adequate, relevant and limited to what is necessary data*.

The presentation and language of terms and conditions and privacy notices

Considerations:

- The ability to effectively communicate with and impart meaning and understanding to children – including very young audiences – on the subject of privacy and safety is an essential part of responsible digital engagement with children.
- This could include the shortening of standard legal texts or the sentences within them, but should also explore more innovative approaches, grounded in an understanding of how children learn and process information. This can involve colours, images, anthropomorphic characters, animations, videos, games and stories etc.
- There is also an opportunity here for the ICO to begin to explore the possibility of testing certain communication techniques with children. Ideally a chosen method employed by a business should be underpinned by some evidence of efficacy. It is very unlikely that every organisation would have the capacity to do so, so some ‘ICO verified truths/principles’ could be valuable for everyone.
- Recital 58 of the GDPR states that “*Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.*”



- Data protection law is a complicated subject and delivering it in a way that can be *easily* understood is a challenge, particularly when you consider the younger end of the age spectrum, where risk and consequence are less understood.
- It should also be again acknowledged that ISS offered directly to a child under the age of 13 will also require communication of data processing activities to parents primarily to enable VPC to work effectively.
- However, we recognise the position of the A29WP that *'children do not lose their rights as data subjects to transparency simply because consent has been given/ authorised by the holder of parental responsibility'* and believe efforts should still be made by the ISS to protect the interests and rights of a child through transparent behaviour.
- It does appear though that to get close to a point of *easy understanding*, particularly for younger children, the method and manner of communication will have to move some way from what we understand today to be Terms and Conditions and Privacy Policies and the legal purpose that they serve.

Recommendation:

- Our recommendation is that, despite the challenges, the ICO should encourage an ambitious approach, grounded in innovation, testing and a deeper understanding of how children effectively learn and absorb information.
- The ICO could undertake an examination of methods, tested and built with children, from which recommendations can be made on possible approaches that can be employed by ISS. The A29WP in their Guidelines on Transparency suggested the possible employment of *'user panels, readability testing, formal and informal interactions and dialogue with industry groups, consumer advocacy groups and regulatory bodies, where appropriate, amongst other things'* but of utmost importance is the inclusion of children.
- We also encourage the ICO to reaffirm the recognition from the A29WP that *'with very young or pre-literate children, transparency measures may also be addressed to holders of parental responsibility given that such children will, in most cases, be unlikely to understand even the most basic written or non-written messages concerning transparency'*.
- We believe there should be the freedom for each ISS to deliver a personalised approach according to the culture, spirit and style of the ISS. Strict limitations on approaches employed would not be desirable at this stage and could potentially remove aspirations for ISS looking to excel and differentiate themselves in this space.
- The assessment of whether something is *easily understood* should take full account of the efforts and resources employed by ISS in attempting to reach this ambitious bar.

Automated and semi-automated profiling

Considerations:

- We remain very aware of sensitivities related to the discussion of profiling of children, as well as the associated risks and protections.
- The definition of profiling in the GDPR Article 4(4) states that *'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;*



- Given the breadth of this definition we believe that an ISS' ability to conduct profiling in the context of children should again be grounded in a contextual, risk-based assessment, with a clear acknowledgement of the presence of specific protections for children as set out in the GDPR.
- The Article 29 Working Party adopted Guidance in October 2017 stating that '*Article 22 does not prevent controllers from making solely automated decisions about children, if the decision will not have a legal or similarly significant effect on the child*'.
- They were also very clear that, from Recital 38, children do merit specific protection and that '*Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child*'.
- We would highlight again the active involvement of parents in the processing of the data of a child under 13 in the UK, due to the requirement for verified parental consent, where the legal basis for processing data is consent. We believe that this should be recognised as a *specific protection* and have some impact on the balancing act weighing up the interests, rights and freedoms of children in the context of profiling.
- We do recognise that profiling in the context of children would in certain circumstances deliver a demonstrably positive impact on children's well-being and development.
- To be clear, a risk-based approach would not permit all types of profiling. As we say above some forms of automated profiling at scale should be safeguarded against and a risk-based approach would achieve this, not because it is profiling per se, but because of the risk associated with it.

Recommendation:

- We do not believe there should be a broad prohibition of profiling on ISS likely to be accessed by children. Instead we believe that ability of the ISS to conduct profiling in the context of children should again be grounded in a contextual, risk-based assessment, with a clear acknowledgement of the presence of specific protections – such as mandatory DPIA and Parental Consent for under 13 - for children as set out in the GDPR.
- There could be some recognition of the difference between “bad profiling” and “good profiling” wherein if you can protect a child by doing profiling (e.g. automated processing) it should be permissible for an ISS. We use automated processing, for example, to filter pictures that have violent characters or obscene images and it would be very difficult to protect children online if we were not allowed to do so.

Transparency of paid-for activity such as product placement and marketing,

Considerations:

- There is significant existing legislative and self-regulatory governance of transparency requirements for commercial practices from business-to-consumer, including marketing and product placement that extend to ISS.
- The EU UCPD that governs B2C unfair commercial practices, enshrined in UK law by The Consumer Protection from Unfair Trading Regulations 2008, defines misleading omissions in Article 7 as practices that '*in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise*'.
- The AVMSD, that is in the process of completing its revision, governs the application of the marketing, sponsorship and product placement in linear and non-linear audio-visual content. It is anticipated that the revised version will apply to video-sharing platforms.



- Marketing, sponsorship and product placement has a strong self-regulatory framework, governed in the UK by the Advertising Standards Authority & Committee of Advertising Practice. UK applicable CAP Code of Non-broadcast Advertising and Direct & Promotional Marketing contains comprehensive rules on Recognition of Marketing Communication the scope of which extends to cover a significant quantity of online services
- CAP has recently published additional Guidance to companies on the Recognition of advertising: online marketing to children under 12. Where it states that *'Marketing communications that do not adequately make clear their commercial intent, either through the context in which they appear or through disclosures, are likely to breach the Code'* and that *'While much marketing is obvious by its nature and/or format, some formats need further, "enhanced" disclosure to help younger children understand their commercial intent'*. It goes on to set out the requirements for enhanced disclosure.

Recommendation:

- There is clearly a significant existing body of rules relating to the need to make clear the commercial intent and nature of commercial activities. There is also significant guidance on *how* to do so.
- The challenges appear reflect the question of whether to extend such requirements to children above the ages set out in legislation and self-regulatory codes; and which regulatory body should ultimately take that decision. It has been to-date in the remit of ASA to make such decisions relating to marketing practices in the UK.
- While the legality and appropriateness of data processing activities involved in the delivery and experiencing of marketing practices fall under the ICO's remit, it is not clear that the guidance on the identification, content and method of marketing do.

The strategies used to encourage extended user engagement

- We were keen to just add one concise reflection in this section which focuses less on strategies used to encourage extended user engagement and more on strategies to counter extended user engagement.
- LEGO Life was designed as an augmentation and social tool that was layered over the physical play experience. The tool creates a space to share and digitally interact with builds that have been created through physical play activities. In other words, the app does not function optimally unless children have spent time off the app, playing, building and creating. While we recognise that a model that connects the functionality of the ISS to children's time spent being elsewhere is perhaps not appropriate for all, it is interesting again to consider innovative ways to limit extended user engagement by-design.

END _____



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

Name: [REDACTED]

Email: [REDACTED]

Brief summary of what you think you could offer:

The LEGO Group and the LEGO Foundation have over 80 years' experience supporting the growth, development and well-being of children all within a safe environment. We are a globally recognised and trusted brand primarily engaging with children under-13. We have a well-established safe, social app for younger children in LEGO Life. This features a lot of the safety and privacy by design components referenced above. We are also constantly exploring how best to communicate important messages to children, both related to privacy but also about what behaviours we would love to see them embrace.

I would see our ability to support the ICO's efforts as focusing on the following areas:

- Support the development of effective child-tested communication methodologies grounded in children's learning patterns.
- Supporting the development of a mechanism for the incentivisation of good practice in this space.
- Development of a concept of "developmental value" of data processing and use, including in the context of profiling.



Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify:	<input checked="" type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

**Thank you for responding to this call for evidence.
We value your input.**