

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018

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Information Commissioner's Office

Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:
childrenandtheGDPR@ICO.org.uk

Print off this document and post to:
Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report [Digital Childhood – addressing childhood development milestones in the Digital Environment](#) as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its [literature review of Children’s online activities risks and safety](#).

The proposed age ranges are as follows:

- 3-5
- 6-9
- 10-12
- 13-15
- 16-17

Q1. In terms of setting design standards for the processing of children’s personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

- Not at all appropriate
- Not really appropriate
- Quite appropriate**
- Very appropriate

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),

Although I acknowledge the intention of the age brackets as defined so far I would recommend to change the age brackets based on my previous work in regard of children’s online safety as follows:

- under 6 years*
- 6 to under 9 years*
- 9 to under 12 years*
- 12 years and older*

At the German Centre for Child Protection on the Internet we have developed the Model of Intelligent Risk Management. There we defined age brackets as described above based on the following reasoning. The ultimate objective of Intelligent Risk Management is to counter the risks and dangers that can affect children and adolescents through the use of the Internet, with a joint approach based on shared responsibility and competencies. This approach must take into account both the differing levels of potential threats as well as the differing usages children make of the Internet. The social background and educational level here can influence the differing conditions and existing knowledge of children and adolescents in the various stages of childhood and youth.

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.

For the Model of Intelligent Risk Management four age groups were distinguished, with a different strategic protective goal for each. Current studies show a steady increase in Internet use by children in the age group of under 6 year olds, who have little or no reading skills. This – the youngest – age group in particular has barely been considered until now in child protection measures, as Internet use was in any case rare and only undertaken by a few children, usually to a limited extent. The second group is made up of children aged 6 to under 9 years, who already have experience using the Internet and elementary competencies dealing with digital media, but are still largely socialised in a family environment. The third age group is made up of children from the age of 9 to under 12 years. In this stage of childhood the individual's scope of action expands. Their parents, siblings and other family members are joined by other people with whom they have relationships and trust, all influencing their media socialisation. The fourth age group consists of children aged 12 and over, whose behaviour when using the media is largely shaped by an increasing independence when making use of what the Internet has to offer, as well as a growing ability to manage risks on their own.

The strategic protective goals defined for each age group by the Intelligent Risk Management model reflect this development throughout the stages of childhood and adolescence. The younger the child, the more any means of protection should exclude or avoid risks. As children grow older, child protection can gradually be limited to reducing (serious) risks, and focus on the child's own ability to cope with risks. Therefore, given a child's general development of skills for dealing with media and their potential risks, the protective goals for the four age groups do not have fixed boundaries but are, rather, fluidly interrelated. The three buttresses of child protection – the design and content of the service, technologies, and media literacy – give rise to differing protective concepts for each of the four age groups, with each buttress bearing a different burden.

Risk exclusion is the strategic goal of protection for the youngest age group. For children aged under 6 we must endeavour to exclude risks, because this is where the maximum amount of safety must be achieved. Children in this age group already act independently when using the media, and their abilities should be improved by giving them elementary media literacy, but they are not yet able to contribute reliably to achieving the goal of their protection. Therefore in this age group the reliability of the media literacy element can only be guaranteed by parents playing an active part and being digital literate themselves in providing support for their child's online activity.

Risk avoidance is the strategic goal for children aged 6 and over. As they develop reading skills children begin to make increasingly independent use of the Internet. They outgrow special child content and safe surfing areas, while communicative and interactive services become increasingly important. However the potential risks from this cannot be either completely prevented or avoided, neither by the provider nor by technical means. Elementary media literacy must therefore be developed further so that children can protect themselves against risks. As they grow, children expand their social environment, build contacts outside the family and develop spaces for independent activity. This is also apparent in their behaviour when using digital media. Alongside safe and attractive services, there are editorial and technical tools which can be used to shape one's own online experience. Consequently, from the age of about 9 there should be a general transition from risk avoidance to risk reduction. This involves a process of gradually shifting from protection provided by third parties to the child's own abilities. Thus, from the age of about 12 the strategic goal is risk reduction. In adolescence, media literacy in the sense of an ability to manage one's own risk becomes a key element in child protection; serious risks can be reduced by appropriate configuration of services or technological protective measures as accompanying buttresses. The question of whether and to what extent harm and injury might result from the potential risks is regarded as secondary in the development of the model for the time being. On the other hand, the distinction between high-risk incidents that might cause harm or injury and the scale of the risk in the sense of the probability that harm or injury actually occurs after such an incident is of great relevance in the application and implementation of the model. In real terms: not every risk actually results in harm or injury to the child concerned.

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)

The UNCRC establishes that children are themselves "rights holders". In other words children have certain inalienable rights which are not contingent upon any other factors. States must provide a framework for the protection and implementation of the rights guaranteed by the Convention and this creates obligations towards children which other parties must respect (see General Comment No. 16, Art. 8, 2013). The overarching or guiding principle of the UNCRC is stated in Article 3:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Digital Media usage intersects with children's rights at several different points e.g. the right to freedom of expression (Art. 13), the right to freedom of association and to freedom of peaceful assembly (Art. 15), the right to education (Art. 28) the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (Art. 31), the right to protection from commercial exploitation (Art. 32), the right to protection from all forms of sexual exploitation and sexual abuse (Art. 34) and not least the right to non-discrimination (Art.2).

According to Article 13 children must be able to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Although for practical purposes there was no internet available to children when the Convention was written there can be no doubt that nowadays the Internet is the medium of choice when it comes to children exercising their right to access information. The same applies to the right of freedom of association and to freedom of peaceful assembly (Art. 15).

While Article 28 prompts state parties to make primary, secondary and higher education accessible to all it also requires relevant parties to facilitate access to scientific and technical knowledge and modern teaching methods. A child's right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts as laid down in Article 31 are today intimately intertwined with the internet. Although commercial exploitation of children was different in 1989 when the UN-CRC was phrased the provisions of this article have become ever more important with the extensive collection of children's data by digital media applications nowadays. Moreover protection from any form of sexual exploitation by means of illegal use of digital media for that purpose is explicitly relevant for children's safety.

The Article 2 right to non-discrimination is significant in relation to challenges associated with equal access to all children.

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,

- the ability to understand and activate a child’s right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

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.

As described before the Intelligent Risk Management Model developed at the German Centre for Child Protection on the Internet has defined “Design and Content of Services” addressed to or used by children as one of three different buttresses to ensure child protection online (s. figure attached). The model defines also different requirements for the design and content of services for the four different age groups. In detail this can be described for the different areas as follows:

- *default privacy settings are especially important for younger children, while up from 12 years children must have learned to change them on their own according to their individual needs based on their digital literacy and maturity*
- *data minimisation standards should apply to all age groups in the same way, although older children might feel the necessity to disclose more private data in order to manage their social contacts adequately this does not mean that ISS provides should be allowed to exploit these data for commercial purposes*
- *the presentation and language of terms and conditions and privacy notices needs to be adapted to children’s skills in reading and understanding complex instructions and explanations*
- *uses of geolocation technology should not be permitted for children under 6 years, it should be limited to certain applications for children aged 6 to under twelve*
- *automated and semi-automated profiling should not be permitted for children under 9 years, it should be limited to certain applications for children aged up from 9 to under 12, it could be permitted for children up from 12 years given that adequate safety mechanisms for the protection of their data are in place*
- *transparency of paid-for activity such as product placement and marketing should be provided for all age groups accompanied by age-appropriate explanations*
- *the sharing and resale of data should not be permitted for data of children under 12 years, it should be limited to certain applications for data of children aged 12 and above*
- *the strategies used to encourage extended user engagement should not be permitted for children under 12 years, they should be transparent and comprehensibly explained when used for certain applications for children aged 12 and above*
- *user reporting and resolution processes and systems should be available in an easy to use and comprehensible manner for all age groups accompanied by age-appropriate explanations. Reporting procedures should be designed to enable tracing the status of a complaint and its status of resolution and potential redress.*
- *the ability to understand and activate a child’s right to erasure, rectification and restriction should be offered to children of all age groups addressing also the holders of parental responsibility especially in the case of younger children up to 12 years*
- *the ability to access advice from independent, specialist advocates on all data rights should be offered to children of all age groups being provided to children themselves and addressing also the holder of parental responsibility, and*

- any other aspect of design that the commissioner considers relevant – nothing to add!

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.

The main challenge of setting design standards is the development of children’s competences and maturity. There will be a lot of fluidity between the different age groups regardless where the brackets are set. From my point of view for the youngest age group processing of children’s data needs to be strictly limited to what is necessary for provision and usage of the service. Then with increasing age the limitations can be less restrictive. Still commercialisation of children’s data should not be allowed for children aged under 12. With children above that age any commercial use needs to be explained in age-appropriate language accompanied by alternative options to use the service with reduced or no provision of personal data.

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

A positive approach could be based on the principle of safety by design, starting the development of services addressed to or potentially used by children with an assessment of risks to the child potentially occurring when using the service. Once such risks are detected the service could either be designed to prevent children’s usage, i. e. by age-verification, or the service could be designed in a way that protects children from the potential risk, i. e. by default safe settings for children of a certain age group.

New Internet services and innovative devices for which there is still no concept of protection in particular give rise to the challenge of assessing the probability of related risks to the various age groups and testing the existing protection strategies and measures for suitability and applicability.

When it comes to the development of new technologies a technology assessment process can help to understand the implications and potential consequences occurring from the technology for certain age groups. For example with such an assessment it would have been possible to predict the early uptake of mobile devices with intuitive touch screens by very young children. Thus there would have been an option to develop and implement child friendly and protective settings on these devices in advance.

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.

See answers to Q4

Q5D. examples of ISS design you consider to be good practice.

www.meine-startseite.de for children aged up to 9 years

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

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

Long-standing experience in technologies for child safety online; research, evaluation and assessment of functionalities, effectiveness and usability of so called parental control tools, i. e. filter software; experience in technology assessment processes on digital media and technologies; experiences in the development of joint approaches combining media literacy education, age-appropriate design and technology.

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

None

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify: German Digital Opportunities Foundation	<input checked="" 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 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.**