

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),

- It is clear that young people need special attention when it comes to their privacy online.
- However, we believe that the age brackets presented are too narrowly scoped and we suggest that brackets should be broad enough to allow design differences that are not artificial.
- In particular, it does not seem appropriate to make a distinction between 13-15 and 16-17. In practice, it would be difficult to find

concrete differences with design principles implemented for the 13-15 and the 16-17 age brackets. Robust design principles for teenagers should be sufficient to address the special needs of a single 13-17 category.

- Facebook requires people to be at least 13 years old to create an account. It violates our terms of services to provide a false age when registering and we take extra measures to protect the safety and privacy of our young users. These measures apply equally to all users under 18 years, for example:
 - We've designed many of our features to remind them of who they're sharing with and to limit interactions with strangers.
 - When it comes to teenagers we also protect sensitive information such contact info, school or birthday appearing to a public audience.
 - We take steps to remind teenagers that they should only accept friend requests from people they know.
 - Because it's important for young people in particular to think before they share their location, location sharing is off for them by default.
 - When either an adult or teen turns on location sharing, we include a consistent indicator as a reminder that they're sharing their location.
 - New teen users are automatically defaulted to share with 'friends' only, they must actively select to share more widely.
 - As announced by the Royal Foundation Commission on Cyber Bullying, also adapted our platform to provide direct access to support when they face bullying online. Facebook has worked with the NSPCC to create new functions that signpost young people to Childline at the point that they report bullying or harassment to us. Unlike other platforms we rolled this out so that young people who report this to us are signposted.

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.

- Adolescence marks the beginning of development of more complex thinking processes including abstract thinking, the ability to reason from known principles, the ability to consider many points of view according to varying criteria, and the ability to think about the process of thinking. As presented by Piaget, children aged 13 and over enter the formal operations phase and are generally able to use hypothetical reasoning. This type of reasoning allows them to understand hypothetical consequences of their actions online, especially when the effect of those actions may not be immediately present.

- We know that teenagers are some of the most safety and privacy savvy users of the internet:
 - Surveys show that teenagers are very knowledgeable about how to control the information they share online. For example this [Pew Research Center study](#) said:
 - 74% of teenagers deleted people from their network or friends list.
 - 60% of teenagers say they have their Facebook profile set to private and another 25% have a partially private profile.
 - Most teenagers report high levels of confidence in their ability to manage their Facebook settings.
 - An [EU Kids Online](#) survey said young people are developing digital literacy at increasingly younger ages and “the more children use the internet, the more digital skills they gain, and the higher they climb the ‘ladder of online opportunities’ to gain the benefits”.
- A [survey](#) of Canadian children and adults found that most knew how to change their privacy settings on Facebook (87.3% of children and 93.2% of adults), and the majority had actually done so (66.5% of children and 82.9% of adults).
- However, it is also worth noting that age is an imperfect measure of maturity. Parents are in the best position to evaluate if their children are ready for something. Therefore, any rules and guidance issued by the ICO should be flexible enough to empower parents to make decisions with their children about what is appropriate.
- We would also caution against implementing design requirements that introduce friction to young people accessing digital services, learning and becoming empowered. There is a risk that strict or ineffective design principles could push young people away from good actors and toward less mindful parts of the internet. Similarly, there is a risk that in adopting strict design principles for young people we “dumb down” controls for young people who are often highly capable in using digital services.

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 UN Convention on the Rights of the Child (UNCRC) recognises the importance for all children to be able to form his or her own views and the right to freely express those views (Article 12).
- The UNCRC also insists on the right of the child to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kind through any media (Article 13).
- The Convention specifically recognizes the importance of mass media and the need to ensure that the child can have access to information from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health (Article 17).
- Most importantly, Article 5 of the Convention insists on the necessity to respect the responsibilities, rights and duties of parents, extended family members or legal guardians to provide the appropriate direction and guidance in the exercise by the child of the rights recognized in the UNCRC.
- It is therefore essential that the Code drafted by the ICO fully accounts for the roles of parents who are primarily responsible for empowering and supporting their children.
- The digital environment offers children broad opportunities and an open window to the world. The ICO Code should empower children to make use of their Convention rights and not create additional barriers.

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.

- More than 2 billion people around the world are actively using Facebook every month, with varying languages, cultural perspectives, literacy levels and are aged between 13 and 110. Facebook is a service that hinges on the key principles of accessibility and control.
- As it has grown, Facebook's design has evolved and developed considerably, with a significant amount of research and iteration to ensure the greatest possible level of accessibility to the many diverse people who use Facebook, while also allowing for the consistency required by a single global service.
- We believe that every service needs to be designed for accessibility, and Facebook has pioneered in areas like the use of AI and machine learning applied to images on Facebook to allow the visually impaired to access the service.
- Teenagers are an important focus of our work to increase the accessibility of the service. Teenagers have some similar and some different needs to other groups, including allowing for visual clarity, the use of icons, clear spacing and simple language. There are entire teams of content strategists at Facebook who work solely on designing with words, to ensure that Facebook is as accessible as possible to as many people as possible of all ages. This extends from important documents like our data policy, which uses simple language, illustrations and nested text, all the way to consistency and clarity in design for every button, description or piece of language on the site.
- Sometimes, legal and regulatory constraints can make this challenging to achieve, as some important documents must include legal terms and phrases with specific meanings within them, making it a challenge to bridge the linguistic traditions of legal writing with our core goals of accessibility.
- Similarly, controls are designed to be as accessible as possible, with both upfront, in context and on demand controls for different aspects of the service. We seek to place these controls in the position best expected by users of our service. For example:
 - This includes unique dynamic contextual design elements, such as people receiving a warning about their audience selector when they are about to share a post with a setting that they don't usually use. Design elements reduce the burden on people while using context to help people be in control.
 - These contextual controls are supplemented with strong dashboards that gather key controls in a single place, allowing

people to ensure that Facebook works in the way that they prefer.

- While accessibility and control are key principles to implement through design for everyone who uses Facebook, there are also many specific steps to protect teenagers and their data online. At Facebook we keep young people safe online through our policies, tools, help and support, partnerships and feedback, including:
 - Educational messages and resources from Facebook related to privacy, security and safety such as our [Safety Center](#), [Youth Portal](#), [Parent Portal](#), [Bullying Prevention Hub](#) and teen specific resources developed with experts such as Think Before you Share
 - Partnerships such as our [major anti-bullying commitment](#). In October 2017, Facebook - in partnership with The Diana Award and Childnet International - offered every secondary school in the UK a trained digital safety ambassador. As many as 26,200 secondary school students and 2,000 teaching staff from 2,400 schools across the UK could be trained as Anti-bullying Ambassadors or Digital Leaders over the next two years. Facebook has spent over a decade developing innovative safety tools, products and programmes to keep young people safe online. This major new commitment ensures that this pioneering work is being felt both inside and outside the classroom.
 - Stricter default privacy settings for teenagers and additional behind-the-scenes protection.
 - In addition to these privacy safeguards, Facebook has developed robust [Community Standards](#) and rely on our community to report content that may violate those standards.
 - Reporting links are available for every piece of content on Facebook, and our teams have worked hard to make the reporting process as speedy and user friendly as possible.
 - On Facebook, for certain graphic content that has been reported to us but does not violate our Community Standards, we are also in a position to add an interstitial warning for adults, and age-gate for minors. Adults will see the warning and will have to click further to view the video. Children simply won't be shown the video in question.
 - Our Social Reporting tool, launched in 2011, which empowers people to self-resolution and suggests to teenagers they reach out to someone they trust
 - Our dedicated commitment to supporting vulnerable young people, with the ongoing iteration around our suicide and self-harm support resources.
 - Strict [advertising policies](#), particularly around regulated goods (alcohol, health supplements, tobacco) and other topics such

as gambling, dating, subscription services. Every advert on Facebook is reviewed before it is shown.

- Page admins are required to clarify the audience suitable for their page and can restrict access to under 18s depending on content. We ask that page admins age-gate their pages when it promotes regulated goods such as alcohol, tobacco, or products aimed at an 18+ audience.
- Under the GDPR there are already specific measures aimed at protecting teenagers which will give them extra levels of protection in addition to age of consent requirements, for example:
 - The burden on companies for claiming they have 'legitimate interests' to process personal data is set higher when that data is provided by a teenager [Article 6(1)(f)].
 - Any communication by companies to users about how their data is being processed has to be done in language that is easy to understand, in particular when communicating with a teenager [Article 12(1)].
- Importantly, the design journey is never over. Facebook is highly committed to improving people's experience of its own services as well as investing in new innovations and approaches to support improvements across the industry. In recognition of the need for improved approaches across all digital services we recently launched TTC Labs. TTC Labs is an open platform for sharing and innovation and contains insights from leading experts in academia, design, and law, in addition to prototype designs from the design jams, template services and open-source toolkits for people-centric design for transparency, trust and control of data. Working collaboratively, and based on open-source approaches, TTC Labs seeks to pioneer new and more people-centric best practices for people to understand how their data is used by digital services, in ways that they find easy to understand and control.

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.

- Design principles appear to be more useful than design standards. Different services are used in different ways and the best design is sensitive to the user and the context. It is important that the principles adopted by the ICO provide sufficient flexibility to foster innovation and creativity.

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

- We welcome that the Commissioner has said that the ICO will consult with children in order to gather their views and understand their needs.

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]

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: Facebook inc.	<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.**