

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),

Different levels of maturity and communication styles obviously vary between the age brackets. ISS should be required to impose design standards which impose the highest barriers to access for the lower age brackets (under 13). Access should be denied without the presence of a responsible adult, as indicated by a payment card. However, it is important to point out that cultural and socioeconomic differences should also be taken into account in setting design standards.

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.

N/A

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)

CRC core principles - and relevant design standards.

Non-discrimination

Care should be taken to be inclusive of all cultures, ethnicity and levels of ability in the design of communication around the processing of personal data. For example, an approach which embraces a majority group might exclude less represented cultures or immigrant or ethnic groups.

Best Interest of the Child

See above. Before and as data is processed, children should be informed in appropriate language of their rights including the right of erasure, and how those rights can be enforced. Standard icons may be helpful. Standards should also enable access to the child's legal guardian who may be in a better position to gauge the child's best interests - taking overall responsibility for the processing of that child's data - especially when the child is very young.

Design should aim at establishing parental consent, offering robust processes for verifying the identity of purported guardian/adult and their role in that child's life.

One approach would be for the standards to specify a standard higher than 'reasonable effort' in verification processes. Processing of data should not proceed until verification of responsible adult has succeeded. Privacy by design ought to be the overriding principle and PbD needs to be explained in guidance in ways which are relevant to protecting the

interests of children. In particular the safeguarding of children against on-line grooming as social media in particular offers unprecedented opportunities for child exploitation.

Development and Protection

Design standards should work towards 'Data minimisation' principle with regards to collecting as little as possible and only keeping data set for as long as necessary. This in particular needs strong enforcement with regards to children's legal rights.

enable automatic erasure of personal data as a default if consent to retain data is not obtained periodically - say on an annual basis - by the child and a responsible adult.

Each data set collected should be subject to methodical, repetitive and consistent prompting (interactive interface) before and after which emphasises the purpose and use of the data as well as reminding the child of their rights in a transparent way ie. 'child speak' bearing in mind the age group of the child as primary school age needs will be different to those of a teenager. Design should also clearly communicate how breaches will be reported and steps to be taken by the child in the event of any concerns about the use of their personal data - including erasure requests.

Passive collection of personal data (use of geolocation technology) should be redesigned with the principle of Privacy by Design in mind & data minimisation. i.e. introduce an active element (consenting, etc). Design should also facilitate the detection of improper use of data collected (alerting the user and/or authorities, valid data via built-in tools to check data integrity.

Participation

Another principle of the Convention, participation can be built into the process - with a liberal use of prompts and questions inviting responses from the child to key aspects of their interaction with the ISS.

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,
- 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.

Online bullying and blackmail have become a real problem among young people. Since the new anti-grooming measure that came into effect in April 2017, police in England and Wales have recorded 3,171 crimes involving sexual communication with a child which averages out at about nine per day with the youngest child according to statistics being just five years of age.

Facebook, Snapchat and Insta were used in 70% of the 2,097 of cases where police revealed the methods and the number of calls to Childline for counselling sessions about cyberbullying have gone up also, increasing by 12% to 5,103.

Finding ways to facilitate the child's exercise of the right of erasure is of critical importance.

A suggestion of machine learning or AI tools to detect suspicious behaviour would be appropriate in these instances.

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.

More robust age verification processes will receive strong pushback from social media platforms whose business models rely on user growth and engagement. It's not in their commercial interests to make it more

difficult for a user to sign up, although it should be in their ethical interest to ensure children under the age of consent cannot create an account. Or if they do, this should be checked with a guardian.

Challenges will also arise around applying design standards around gamification. As above, it's in the companies' commercial interests to keep the user engaged for as long as possible and this may have a detrimental impact on a child.

There is an opportunity to set a bar to harmonise all legal and corporate content with regards to privacy and terms of use (eg. T&C's, privacy notices etc) into language that a child can understand and make an informed choice about. Allowing the child to weigh up creating an account vs handing over their personal data is in support of the 'Best interests of the child'.

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

Provision of fresh guidance. For example, guidance on for child friendly privacy notices. Updated guidance on how to handle parental consent.

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.

For all age groups under the age of consent there should be robust age verification processes that link directly to a responsible adult.

For each age group there should be easy to understand language around privacy, prompts and appropriate alert functions for the child to report inappropriate content, bullying etc.

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

<https://www.natgeokids.com/uk/register/#!/register>

Clear registration process, asks for parent/guardian's email if child is under age of consent. A good example of age verification process.

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

- Limiting screen time with locking / time-out feature to encourage child to take a break.
- Ban on more than one account being set up per IP address. This will stop multiple accounts being set up by adults seeking to access children online and also stop online bullies / trolls from opening more than one user account to target an individual.

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:

[REDACTED]
[REDACTED] I would be able to offer views of UK parents via surveys, polls and opinion pieces, my own views [REDACTED] and also specialist knowledge working in privacy with a particular interest in children's privacy and their holistic digital experience, to include screen time, physical, mental and emotional well-being whilst engaging in digital and on-line activities.

I have written a number of pieces for [REDACTED] on children in digital, am regularly on TV and national radio discussing these issues and will continue to advocate for safeguarding of children online.

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.

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	
A body representing the views or interests of parents? Please specify: [REDACTED] and [REDACTED]	
A child development expert? Please specify:	
A provider of ISS likely to be accessed by children? Please specify:	
A trade association representing ISS providers? Please specify:	
An ICO employee?	
Other? Please specify: Associate of [REDACTED] data protection compliance consultancy with a particular interest in children's privacy.	

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