

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),

Commercial digital marketing that is targeted to both children and adolescents incorporate a complex range of techniques and applications that do not permit the use of age-based developmental distinctions that can operate in other settings. The Center for Digital Democracy (CDD) respectfully urges the ICO to adopt the **“precautionary principle”** as a design guide baseline for commercial entities that target young people online. CDD has been the leading NGO in the U.S. working on youth privacy issues. It led the effort to have Congress enact the Children’s Online Privacy Protection Act (COPPA) in 1998. CDD also was the prime consumer group advocating for the 2012 COPPA expansion by the U.S. Federal Trade Commission, which added a number of additional safeguards, including those based on EU approaches—such as including persistent identifiers and device IDs as personal information.

As the ICO recognizes, including its recent review of Cambridge Analytica and political online advertising, contemporary digital practices are shaped by the continuous interplay of data collection, analysis, profiling, tracking and targeting. These processes increasingly operate across all the devices a young person (and others) use. They also benefit from the routine use of geo-location tracking and analysis

Decision-making about ad and editorial content targeted to users can also be determined in near-real time. In addition, commercial ad practices focused on young people employ an array of techniques that are deliberately designed to undermine conscious awareness of data collection and related marketing. They include eye-tracking and other implicit persuasion measurement designed to ensure the ads trigger the right emotional responses; influencer marketing that encourages young people to emulate the behaviours of paid or other celebrities; social media marketing where group dynamics help shape actions from others; so-called “immersive” marketing involving the use of video—and now Augmented and Virtual Reality. “Branded Content” and forms of so-called “Native” advertising are growing in scope in the UK where the distinctions between editorial and ad content are expressly blurred.

The United Kingdom has one of the most sophisticated and comprehensive digital marketing systems; it is the second largest market (after the U.S.) for the purchasing of data used for digital and other marketing. For example, with companies such as Experian and Acxiom it has a robust system involving the collection and use of data, including the targeting of individuals and families; £4.52 billion is predicted to spent in the UK using so-called programmatic advertising, where individuals are targeted in milliseconds using an array of “Big Data” approaches; Influencer marketing to youth is very robust in the UK; YouTube, the leading video platform for children, operates in the UK as part of a far-reaching Google data-driven marketing apparatus; Facebook’s market research system helps marketers understand how children can influence (“pester”) their parents buying behaviours; eye-tracking and other “neuromarketing” techniques are used to develop digital marketing campaigns in the UK.

As studies conducted by Ofcom reflect, including an analysis written by Prof. Sonia Livingstone of LSE, there is a large gap among children in their understanding of data-driven digital marketing construction. Most adults don’t understand the process either. Cambridge Analytica’s business model was not a unique development—it was emblematic of how digital data and marketing practices operate in the global online world everyday (profiling, data integration, psychometrics, message refinement, targeting, measurement).

In the United Kingdom, young people are subjected to a wide array of data and commercial digital marketing techniques. For example, teens are targeted using “omnichannel” practices that involve social and mobile media, influencers, native advertising and more. Some of these campaigns raise public health concerns, such as when they are used to promote unhealthy eating linked to the obesity epidemic in the UK. The ICO should develop a Design Code that places the burden of evidence on the marketer and data company that its practices don’t undermine the privacy and well-being of minors under 18, with special safeguards for the 12 and under age category. These campaigns require independent oversight to ensure that all age groups below 18 are treated fairly.

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.

Data-driven commercial marketing applications for both children and adolescents take advantage of the following fundamental elements that shape young peoples' online interactions: Ubiquitous Connectivity, Engagement, User-Generated Content, Personalization, Social Graf and Immersive Environments. These are also now driven by "Big Data" connected analytical systems fed a constant stream of location and interaction data. What occurs is the purposeful creation of youth-targeted interactive and data connected "experiences" across devices and time. Much of social media marketing for teens is created in ways that trigger a young person's need to connect with peers (and in that way enabling more data collection from themselves and their networks of friends). Younger children want to participate and play a key role in the family unit, which is the basis for the "pester power" marketing applications researched by Facebook and others (note UK focus). The ICO should note that commercial digital marketing invests in enormous amounts of user related and data research related to young people, given their importance in revenue generation. New methods of appealing to youth, and facilitating data interactions, are developed on an on-going basis. In a report on the MRS Kids and Youth Research conference held in London last year, which was focused on "Understanding Generation Alpha," a key finding was that "[T]he blurring of advertising boundaries by digital media is confusing children, with many unable to differentiate between paid-for and organic results on Google."

As the ICO knows, leading experts and former industry executives have acknowledged how digital products are purposefully designed to foster addictive behaviours. For example, marketers know that our deep personal relationships with mobile devices create psychological and emotional connections that help them trigger desired data related behaviours, such as with clicking, viewing, sharing, commenting, etc.

In summary, there are no easy formulations for the development of design guidelines and their relationship to youth development. The intersections between data-driven and interactive personalization, content creation, viral sharing, and cross-device behaviours must be addressed. The ICO should review the various marketing applications applied to commercial data collection for youth online, including influencer, social media, mobile, geo-targeting, Virtual Reality, etc. It should "Map" and identify where marketers must adopt appropriate safeguards and methods when they use marketing applications that can trigger the release of personal and group data.

Additional Sources: For example, Coca-Cola attributes Gen Z's deep persona connections to their mobile devices as an expression of narcissism" [Coca-Cola 'What's in a Name?' Times Square, Finalist In Physical & Digital," Eighth Annual Shorty Awards, 11 Apr 2016, <http://shortyawards.com/8th/coca-cola-whats-in-a-name-times-square-2>; Kids and Gaming in the UK. Viacom Research. 2015 <https://insights.viacom.com/post/kids-and-gaming-in-the-uk/>; Youth in Flux: Hyperaware and Wise Beyond Their Years. Viacom (UK) Research. 2017. <https://insights.viacom.com/post/youth-in-flux-hyperaware-and-wise-beyond-their-years/> ; Google hired anthropologists to study how consumers interact with their mobile phones. We see them as extensions of ourselves. Jacob Weisberg, "We Are Hopelessly Hooked," *The New York Review of Books*, 25 Feb. 2016, <http://www.nybooks.com/articles/2016/02/25/we-are-hopelessly-hooked/>. See also generally, Center for Humane Technology. <http://humanetech.com>

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)

We strongly support adopting the UN Convention standard for protecting minors. The ICO should conduct or commission a review of the leading digital marketing applications and how they are applied to youth under 18. It should then make a series of recommendations regarding design and data protection that reflect how the construction of commercial digital media impact the privacy and well-being of young people.

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.

We support the government list. And we respectfully urge the ICO to adopt our recommendation that it review leading digital marketing applications targeting youth. They should also include the growing use

of Virtual Reality, Machine Learning and Artificial Intelligence applications being widely deployed in youth digital marketing environments.

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.

We believe design standards for these and other relevant categories can be developed. The construction of commercial digital and data-collection connected environments for youth is not a secret. The industry makes clear its goals on impacting youth—in terms of generating individual and group data-connected actions and responses. CDD stands ready to assist the ICO in developing a template to help generate a framework for further action. The template would help industry, experts and families/caregivers understand the connections between the ad environment and the data collection/activation process. The ICO's design standard process will benefit all stakeholders, who ultimately want to ensure young people are treated fairly by the digital media system.

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.

The ICO should ensure that practices designed to undermine the privacy of children and adolescents are effectively addressed. For example, rules related to data collection and marketing applications involving Virtual Reality, Native Advertising, and Influencers, require special safeguards. So do techniques involving mobile/geo-location and social media advertising. We respond briefly to each:

- default privacy settings—*no collection for children and teens without meaningful disclosure, informed opt-in consent, either by parent or a teen. No data collection involving practices unfair to youth, including use of Native, Influencers, Lookalike Modeling.*
- data minimisation standards-see *above*.
- the presentation and language of terms and conditions and privacy notices—*Honest description of actual practices and*

- intent, as reflected by what marketers are promised in terms of capability and impact.*
- *uses of geolocation technology—No geolocation tracking for commercial purposes should be permitted.*
 - *automated and semi-automated profiling—No profiling conducted by machine or other technologies should be permitted, inc. via programmatic ad practices, cross-device analysis, etc.*
 - *transparency of paid-for activity such as product placement and marketing—No paid product placement, Native ads, branded content should be permitted, given the privacy risks.*
 - *the sharing and resale of data—No data sharing or sales of data gathered by minors under age 18.*
 - *the strategies used to encourage extended user engagement—The ICO should identify marketing tactics inappropriate when deployed for targeting youth and propose safeguards. Engagement is designed to trigger additional and ongoing data collection.*
 - *user reporting and resolution processes and systems—Useful, but most of these systems are beyond what an average person can address. It takes on-going monitoring from the ICO and other governmental and NGO bodies to ensure effective oversight and implementation.*
 - *the ability to understand and activate a child’s right to erasure, rectification and restriction—**We support.***
 - *the ability to access advice from independent, specialist advocates on all data rights—An important recommendation, esp. ensuring that consumer, data protection and child rights NGOs can play a meaningful compliance and oversight role.*
 - *any other aspect of design that the commissioner considers relevant—We urge the ICO to examine the impact of commercial data collection practices on youth of colour (multicultural marketing), who are often subjected to very unfair and manipulative techniques.*