

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),

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.

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)

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.

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.

We would support the imposition of design standards for “presentation and language of terms and conditions and privacy notices.” We would argue that design standards for the “presentation and language of terms and conditions and privacy notices” should not be solely based on a reading age calculated in accordance with a particular reading age calculator. Similar, information about rights and advice from specialist advocates should be presented in language that can be understood by readers. We would argue that where a service has users in more than one age bracket consideration should be given to drafting information differently for readers in each age bracket, and that information should be drafted in order to be understandable to foreseeable readers, not simply intended readers. Therefore, if it is foreseeable that a child of 13 will use an ISS, the presentation and language should be tailored to that foreseeable user.

Our research, which was conducted with adults,¹ demonstrates that reading scores should not be the only mechanisms used for determining whether a document can be understood by a reader. This is because (a) it is possible to manipulate a document to reach a particular reading score, especially if the required score is based on a single reading score metric produced by a single calculator; (b) reading scores are (generally) document level metrics, and therefore a reading score which shows that a document complies overall with a regulatory requirement may mask parts of a document that cannot be understood; and (c) reading scores do not measure how readers interact with particular parts of documents, and do



not show how they understand the information presented, even if the reading score complies with a particular requirement.

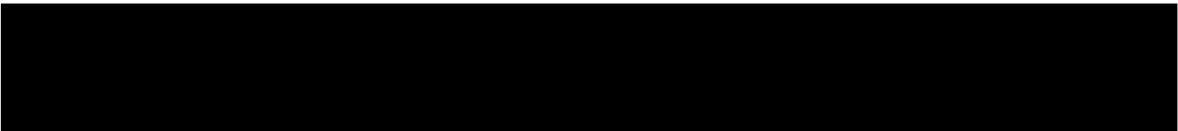
We suggest that the Commissioner use more sophisticated techniques to understand the interaction between children and terms and conditions and privacy notices. In particular, we would suggest that (in regulatory enforcement action) the Commissioner consider using eye-tracking to assess the ways that children in particular age brackets understand terms and conditions and privacy notices. This technique² allows examination of consumers reading behaviour, and identification of word-level processing bottlenecks that may impede readers' ability to understand documentation. In eye-tracking research conducted with adults, we have identified drafting practices which make comprehension more difficult whilst not necessarily increasing reading scores, such as separating definitions from the clauses in which they are used, using provisos to modify the apparent meaning of a clause, and using unexpected word combinations.

As well as age, interacting vulnerabilities should also be considered, and where a foreseeable user is likely to have reduced comprehension ability due to circumstances other than age then the information provided should be provided in a form accessible and tailored to them. For example, consideration should be given to aural methods for transmitting information, or the use of "comic contracts."³

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

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.



³ <https://theconversation.com/comic-contracts-and-other-ways-to-make-the-law-understandable-90313>; <https://www.forbes.com/sites/katevitasek/2017/02/14/comic-contracts-a-novel-approach-to-contract-clarity-and-accessibility/#76df64487635>.

Name: [REDACTED]

Email: [REDACTED]

Brief summary of what you think you could offer:

Testing of terms and conditions and privacy notices (and alternatives such as comic and aural contracts) to explore how readers understand them. We are currently developing a research project to do this and would be interested to engage with the Commissioner in this regard.

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.

Consideration should be given to the interaction between the age appropriate design code and consumer law. Particularly where terms and conditions are not transparent, consideration should be given to their compliance with the Consumer Rights Act 2015, especially where the site is a paid-for subscription service. Further, the role of the Consumer Protection from Unfair Trading Regulations 2008 should be considered, and particularly whether regulation 5(3)(b), which makes it an unfair commercial practice to fail to comply with a commitment in a code of conduct, applies to the age appropriate design code or whether a failure to abide by the age appropriate design code amounts to a commercial practice that "contravenes the requirements of professional diligence" contrary to regulation 3 of the 2008 Regulations.

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 type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>

Other? Please specify: Academics	<input type="checkbox"/>
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**Thank you for responding to this call for evidence.
We value your input.**