

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),

In terms of deciding the various age brackets, both the development of children’s literacy skills, and their capabilities and knowledge of the online world through their education are important. The Commissioner should also take into consideration the report of the Byron Review, Safer Children in a Digital World

<https://www.iwf.org.uk/sites/default/files/inline-files/Safer%20Children%20in%20a%20Digital%20World%20report.pdf>,

which examines “whether the mechanisms by which children learn through ‘virtual’ worlds could be the same as those through which children learn in life” and looks at development stages, risk management and specific developmental age bands in the context of young people’s use of online services: “Given what we know about children’s brain and functional development, we need to offer support to their under-developed abilities (critical evaluation, lack of inhibition, ability to judge sources of information and make socially acceptable decisions). This support needs to change as children’s abilities develop”.

Recent research by the National Literacy Trust found that there is a “dangerous lack in the literacy skills that children and young people require to navigate our digital world”.

<file:///C:/Users/katej/Downloads/Fake news and critical literacy - final report.pdf>

Basing the age brackets in literacy and critical literacy development would mean considering the ages at which children and young people might be considered to become readers, independent readers, and critical readers, and how these skills and capabilities change as they grow up.

To inform this decision, Childnet recommends that the Commissioner makes use of a recent publication by the UK Council for Child Internet Safety (UKCCIS) called Education for a Connected World [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683895/Education for a connected world PDF.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683895/Education_for_a_connected_world_PDF.PDF) , launched by the DCMS in 2018. It is a comprehensive framework for online education that details the skills, competences and knowledge that children should develop at each age group as follows: under 7, 7-11, 11-14 and 14-18. Education for a Connected World uses age groups that roughly mirror Key Stages in the curricula for schools in England, Wales and Northern Ireland and is similar to the age breakdowns used in the education system in Scotland.

For instance, by the age of 11 should be able to “create and use strong and secure passwords” and “explain how many free apps or services may read and share my private information (e.g. friends, contacts, likes, images, videos, voice, messages, geolocation) with others.” By the age of 14, the framework indicates that young people should be able to “make informed choices” about app permissions and common online services’ terms and conditions. By the age of 18, young people’s knowledge and understanding progresses and they would be expected to be able to “describe key aspects of the law governing data use (e.g. DPA, GDPR) and, from my own media research, [giving] examples of those laws and their impact”.

The framework is not a statutory part of the curriculum in any part of the UK; it expands upon and draws from the elements of the curriculum that

focus on teaching and learning how to use technology safely and respectfully. It does not represent the current knowledge, understanding and experience of children and young people today, but “describes the Digital knowledge and skills that children and young people should have the opportunity to develop at different ages and stages of their lives. It highlights what a child should know in terms of current online technology, its influence on behaviour and development, and what skills they need to be able to navigate it”. Nevertheless it provides a sound starting point for delineating the points at which most young people may have reached certain developmental milestones as regards their online education and experience.

It should be noted that for children and young people with Special Educational Needs and Disabilities (SEND) other legislation considers that they are considered young people until the age of 25, with development milestones reached at a different pace and age. The Commissioner should take the needs of all children into account when deciding on the age brackets to make them meaningful.

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)

Childnet welcomes the inclusion of the UNCRC within the code, particularly with reference to the treatment of anyone under the age of 18 as a child (Article 1) and therefore to be included in this legislation. Along with Article 1, Articles 2-4 should underpin the Code – including the right to non-discrimination, respect for the views of the child, and the protection of rights. Article 12 is also key – it is crucial that the best interests of the child are paramount in relation to data protection.

Childnet considers the following Articles also have particular relevance for the Commissioner in designing the Code:

Articles 4/5 – concern the responsibility of Government to uphold children’s rights and to create an environment in which parents can fulfil their role as nurturers of children. The Code represents an opportunity to require online services to take steps to ensure that the environment in which they operate informs parents about how their services operate in relation to data and privacy, using channels and methods that they can reasonably be expected to access and understand, so that parents can make informed decisions about their children’s use of online services according to their evolving capacities.

Article 13 – considers freedom of expression and the child’s right to get and share information, “as long as the information is not damaging to them or others”. While this Article also refers to the responsibility that children have to respect the rights, freedoms and reputations of others, it does not detract from their right to receive and share information in the ways they choose. The Code will need to take this into account to make sure that children can exercise their full right to access information online, while upholding the limits of the Article, that states that children should be protected from accessing and sharing information online that is damaging to them or others.

Article 16 – states that children have a right to privacy and that the law should protect children from attacks against their reputation and way of life as part of their right to privacy. The Code as it is developed should require online services to put in place procedures, content, partnerships, tools and support for young people that enable and empower them to look after their own privacy and respect others’ privacy. It should also require that online services put in place sufficient mechanisms to quickly, efficiently and transparently respond where this does happen in order to provide children and young people with adequate redress and confidence in continuing to use online services. Providing all children and young people – as a vulnerable group – with the reassurance that content can be removed where that contravenes their right to be protected from attacks against their privacy under the UNCRC, adheres to one of the core principles of the UNCRC, that of respecting the views of the child.

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.

Childnet welcomes the establishment of a shared taxonomy as regards the Code, and provides some thoughts on particularly terminology to be used in developing the Code.

Design

Design with regard to data processing in online services should include not only function, but also form of online services. The development of the Code should take into account not only what online services do, as regards processing of personal data of children and young people, but also how they look and what they communicate, and how words, imagery, design constructs and functions operate together and are used to persuade individuals to disclose personal information. Good practice should be that information is presented clearly, prominently, in an age-appropriate way, ensuring that the user understands the online environment in which they are present, and whether what they contribute to it is private or public, for instance.

Data processing

Processing means any operations regarding how data is gathered, arranged, stored, shared or destroyed.

Services 'likely to be accessed by children'

This means that the Code needs to apply to any online service that is aimed at or likely to be accessed by under 18s, whether or not it is specifically designed to appeal to them.

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.

Childnet welcomes the inclusion of all the aspects of design proposed by the government which the Commissioner should take into account when developing the Code. Below we provide some thoughts on some of the areas.

Default privacy settings

Safety by design, privacy by design and privacy by default should be the guiding principles for all products and services/ features and functionalities addressed to, or used by, children. For example, Facebook introduced a private by default setting for all new users in 2014.

The Code must offer a high bar of privacy by default, rather than as an option that users must engage with and set themselves. This would help protect children’s privacy as a norm on all online services that they are likely to access,. The process of engaging with and requiring an action to become more public would be a ‘teachable moment’ for young people, ensuring they have good understanding of the environment of the online service they are using.

Criteria, rating and labelling of data privacy should as far as possible be standardised across different services, meaning there would be clarity about what the privacy offer is. This would provide an important advantage to young people in increasing their understanding of data privacy; they access a huge range of types of services and these change regularly as they grow up.

Children must have the ability to change settings, as well as the information presented to them in an age appropriate way to understand the impact of any decisions they make and to make informed decisions. Good practice should include regular reminders for children about the decisions that they have taken, and prompts to review their decisions as they grow up. Adults should also be reminded regularly to review privacy settings on their devices and services, since in many families, adult-owned devices are regularly accessed by children.

Privacy settings should not be used to unnecessarily restrict or block children from online services, as this could impact on their right to get and share information (Articles 13 and 17 of the UNCRC) as well as their freedom of association (Article 14).

Data minimisation standards

Children and young people do not have a full understanding of the extent to which their personal data is collected, used or shared by online services they use. This contravenes their rights as children. Data processing must be determined by, and aligned to, a child's exact use of a service, and only during the time they are actively using a service. Young people surveyed by Childnet have different ideas about the amount and nature of data different online services really need in order to make them work properly – citing “none other than date of birth”, “age, location, interests” and “mobile number, email and name, and often age”, they typically cite a much larger range of their data that companies hold – “History, amount of usage, searches, contacts, age, affiliations, name ...” (young people aged 13-17).

Specific and age-appropriate methods and language must be used in communicating to young people about the reasons for data collection, so that young people can, where required, give meaningful consent. This also means that data minimisation must be by design and not require additional user management.

The language and presentation of terms and conditions and privacy notices

Very few young people or adults attempt to read these before agreeing to them and the lack of clarity impacts negatively on young people's understanding and trust around handing over their data; one person surveyed said that online services need to, “be clear. These days, companies have everything, and it can be easily leaked or sold for profit like the Cambridge Analytica scandal.” The Code must require online services likely to be accessed by young people to present notices in age appropriate ways that children can understand, to enable them to make informed decisions about whether to consent or not. While setting a reading age appropriate to the youngest users of an online service goes some way to address this, Childnet, in its work with young people, frequently hears them ask for presentation of Ts&Cs and privacy notices that young people can reasonably engage with given their developmental level, don't take long to engage with and are clear.

Young people surveyed by Childnet suggest online services “make a short video on it before you agree to it”, and that online services should “Properly explain rather than stating the law”. Properly explaining would prohibit catch-all phrases such as the gathering of personal data to “provide, troubleshoot and improve services” that provide a legal starting point for the justification of gathering and processing non-essential data.

Moreover, where a significant number of young people younger than the legal age limit for an online service are nevertheless using it, information

must be presented to the audience in an age-appropriate way that recognises this. Too often Terms and Conditions are a one-off moment, and there are more opportunities to convey the key elements of this agreement. There is scope, for example, to bring key elements of this as reminders to users in their everyday use of the service, or make available a check-up on their privacy.

The Commissioner should look at ways to ensure better presentation of this information, to ensure the young people using them can understand what they are agreeing to, as well as the consequences for not presenting this information in this way.

Uses of geolocation technology

Unless a geolocation is critical to an online service working properly for a young person, it should be off by default, and where it is used, it should expire as soon as a young person stops using a service, at the first opportunity. Online services must be required to carry out risk assessments for geolocation services in products that are likely to be accessed by under 18s.

When a child's location is being tracked, it should be obvious to the child, through on-screen symbols or colours, and they should be told if their location is being shared with another person or user.

Geolocation should, as a principle, be used by young people to enhance an online service rather than to access it. Children and young people should not be excluded from using an online service if they choose not to share their location. Code of practice for the provision of location services (on mobiles), 2004, provide some useful and relevant principles here.

Automated and semi-automated profiling

Childnet asked a group of young people aged 13-17 what they thought about online services using information about them to show them things that might be interesting. Their experiences are not particularly positive – one respondent said "Their algorithms ... often don't actually show you things you'd be interested in but instead show you advertised videos that they'd make money from." Most said that the sites rarely or never show them things that are relevant.

In the discussion around profiling, there is the potential for positive use, in that knowing the age of a child can ensure defaults on safety settings are implemented correctly, and prevent inappropriate advertising.

Transparency of paid-for activity such as product placement and marketing

This must always be clear, prominent and transparent to the user. Advertising should be sufficiently prominent to identify the marketer and commercial intent. Since children and young people are vulnerable to the pressure of advertising, the characteristics and quantity of paid-for content should be aligned to a child's development needs. Children should learn about advertising, how it works and the commercial intent of marketing communications in school, as part of PSHE and literacy. The findings of Childnet and the National Consumer Council's report, Fair Game?, are still relevant today.

User reporting and resolution processes and systems

Many children and young people under-report, and face barriers in reporting, especially where the nature of the report concerns personal data or information, or where the data is inaccurate, defamatory or illegal. Childnet's own research with 13-17 year olds found that nearly 40% of young people tend to ignore it when they experience online sexual harassment, rather than report it, because of embarrassment, a concern about the consequences of reporting, or a belief that nothing would happen as a result. In fact, nearly half (43%) said "I don't think it would help", and similar number said they wouldn't bother reporting because they would be worried about what would happen next.

The Code represents an opportunity to require online services to communicate better and in an age-appropriate way with young people so they can understand how to report, what happens if they do, and ensure that where young people do report, their privacy is protected. Online services should also be required to respond to reports, according to universal reporting standards that include indicative timescales that can make a real difference to young people's experiences of abuse of their privacy and data; this is a key area where young people's frustration with online services is clear. According to Childnet's research as part of our deSHAME project <https://www.childnet.com/our-projects/project-deshame>, one 13-year-old said "I've tried reporting stuff before but it's a long process cause like say Instagram or Snapchat you'd get a reply maybe after a week, a month or something. By the time it finishes then something else could have happened".

The reporting process requires transparency for young people, as well as feedback for users as to the outcome of a report and advice as to what to do next. It is vital that all users, including children, have confidence in the reporting systems and transparency and feedback is crucial to this.

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

Uses of geolocation technology

Geolocation should, as a principle, be used by young people to enhance an online service rather than to access it. Children and young people should not be excluded from using an online service if they choose not to share their location. Childnet recommends that the Commissioner have reference to the recommendations in this [Code of practice](#), for the provision of location services from 2004, as a useful guide when developing the Code.

The strategies used to encourage extended user engagement

Many children and young people are aware of the impacts of spending a lot of time online, and of techniques that can be used to set limits themselves and take responsibility. The Code should recognise that compulsive use of technology is high risk and can contribute towards physical and mental ill health, and should ensure work to ensure policy coherence in development of public policy across government.

In preparation for this submission Childnet surveyed the views of our Youth Board. While some individuals feel they “always” spend more time than they’d like to using online services, they suggest strategies and ideas to manage this, for example, “get an app that tracks how much time you spend on your phone, turn it off and go out without it” to counteract their excessive engagement.

However, it should not be up to children to take sole responsibility for their engagement with online services. Online services need to do more to make it easier for young people to switch off, including:

- an opt-in to the auto-play feature on video streaming, with the default as off for under 18s
- a notification telling young people “you’ve caught up now” as they scroll through updates, for instance already used by Instagram
- upon signing up for an online service, all notifications, buzzes read receipts and other alerts designed to increase user engagement should be switched to off as default with regular opportunities to review notification settings and clear language to explain the impact of changing a setting
- regular reminders of time spent on an online services

While young people can be supported with strategies to help them monitor their use of online services, parents also have a role to play in this. In our work, Childnet regularly supports parents through workshops,

and Childnet has developed a 'family agreement' which parents and children can use together to agree limits on screen time and how children access online services.

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 UK Council for Child Internet Safety (UKCCIS) produced a set of guidance for social media platforms. Childnet recommends that the Commissioner use this and take it into account when developing the Code, especially the recommendations and guidance around privacy.

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.

Name [REDACTED]

Email [REDACTED]@childnet.com

Brief summary of what you think you could offer

Childnet's mission is to work in partnership with others around the world to help make the internet a great and safe place for children. At the heart of all our work is the belief that when used properly the internet is a powerful, positive tool for children and young people. We strive to take a balanced approach, making sure that we promote the positive opportunities, as well as responding to the risks and equipping children and young people to deal with them.

We work directly with children and young people from the ages of 3 to 18 on a daily basis, as well as parents, carers, teachers and professionals,

finding out about their real experiences online, and the positive things they are doing as well as sharing safety advice.

Working directly with these audiences is important in helping us to equip them to stay safe online and informs the resources that we develop for them. The conversations that we have with them also helps to inform how we develop and respond to policy issues and the messages that we take to government and the internet industry about the real experiences of children and young people and what needs to be done to make them safer. Listening to the needs of children and young people and the adults who care for them, coupled with our focus on the online world puts us in a strong position to present an informed and balanced approach.

In responding to this consultation we have consulted with young people on our Youth Board and who are part of Childnet's education programmes, and this feedback is live and ongoing. As such it can help to inform the Code as it is developed and ensure that it responds to the needs of the children and young people that are its concern. We will be pleased to provide further evidence and expertise where needed.

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:

<p>A body representing the views or interests of children? Please specify: Childnet is a charity working in partnership to help make the internet a great and safe place for children; Childnet works directly with children and young people and at its heart seeks to understand and communicate children's voices and opinions to decision makers.</p>	<input type="checkbox"/>
<p>A body representing the views or interests of parents? Please specify: Childnet works directly with parents on a daily basis, and is in a position to provide insights as to their understanding and concerns regarding their children's online engagement.</p>	<input type="checkbox"/>
<p>A child development expert? Please specify:</p>	<input type="checkbox"/>
<p>A provider of ISS likely to be accessed by children? Please specify:</p>	<input type="checkbox"/>
<p>A trade association representing ISS providers? Please specify:</p>	<input type="checkbox"/>
<p>An ICO employee?</p>	<input type="checkbox"/>

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