

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

N/A

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),

N/A

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)

N/A

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.

N/A

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.

The Code offers an opportunity to reset the digital world to make it safer environment for children. Setting core design standards will establish clear principles for children’s engagement to mitigate risks while ensuring they can make the most of the potential it offers.

This new environment will be safer for children to navigate. By linking the design of services to the development needs of children, services will be age appropriate and will recognise children’s behaviours and particular needs. This reform will reduce children’s exposure to harm from inappropriate services or practices, which have been linked to detriment such as poor mental health or sleep deprivation.

The Code also presents an opportunity to educate children on their rights and how the digital environment is structured. This will help them to be active and knowledgeable participants in the digital environment, not just passive consumers.

For industry

It will also create a level playing field between all ISS to ensure that all operators share the responsibility of protecting children’s rights. At present, some ISS platforms have responded to public concern about the harmful impact on young people. However, the response to date has varied between providers, meaning that certain platforms go under the radar while others are subject to public scrutiny. Bringing in a Code with clear design standards will ensure a consistency in standards applied across the ISS landscape.

For society

Recent research has indicated declining consumer trust in online platforms: the Edelman Trust Barometer 2018 found that just one in four people in the UK trusts social media and two-thirds believe are not doing enough to prevent illegal and unethical behaviour, including cyber-bullying and extremism.¹ Research published by Ofcom this month (September 2018) found that 79% of UK adult internet users have concern(s) about aspects of going online with protection of children a key area of concern.²

¹ [Edelman Trust Barometer](#), January 2018

² Ofcom, [Internet users’ experience of harm online: summary of survey research](#) (September 2018)

A new system of safe design will help to give consumers a clear understanding of ISS platforms' responsibilities. Should companies deliver on this expectation, it would be a significant step to restore trust in internet companies, as well as in the wider regulatory and government environment and its ability to engage with pressing societal concerns.

Challenges

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

One significant challenge is that the UK would be a pioneer in taking this approach, and therefore the availability of international best practice or prior experience is curtailed. However, this is an opportunity for the UK to develop world-leading practices in relation to data, and to build a system which is design-led and therefore has the potential to be scaled up and rolled-out to new markets and platforms. This principles-based approach, which determines standards rather than focusing on specific technical features, also ensures regulation will be future-proofed against future technical developments.

The ICO also faces a challenge to harness the best technical expertise to understand and develop solutions. However, NGOs, academia and other civil society initiatives offer alternative sources of expertise.

In addition, there is an opportunity to forge a "coalition of the willing" amongst leading tech firms, many of which have already dedicated significant resources to safe design features. Through collaboration with those most engaged companies, there is an opportunity to create effective regulation which would eliminate poor behaviour and ensure all platforms are on an equal footing.

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 look forward to seeing the outputs of this consultation process and the thoughts of many experts across both the technology industry and children's organisations.

Our view, which has been formed through collaboration with the 5Rights alliance, is that the following standards are appropriate:

| | |
|---|---|
| Data Minimisation standards | Data expiry, data caps and time limits should be introduced as standard. |
| Default privacy settings | The Code must offer a high bar of data privacy by default. Data processing must be determined by, and aligned to, a child's exact use of a service. A child's data must only be taken during active use of ISS. |
| Uses of geolocation technology | Geolocation must be off by default and it must be made obvious to a children when his/her location is being tracked. |
| Automated and semi-automated profiling, | Criteria, rating and labelling of data privacy must all be standardised. |
| Transparency of paid-for activity such as product placement and marketing, | Paid for content should be clearly marked for children to recognise it. |
| The sharing and resale of data | Children's data must not be used in a way that might lead to their commercial exploitation. |
| The presentation and language of terms and conditions and privacy notices, | Terms and conditions, privacy and data agreements of ISS likely to be accessed by children must have a maximum reading age of 13. |
| the strategies used to encourage extended user engagement, | The Commissioner should define persuasive design characteristics so that they can be named, rated and labelled. The strength rating of persuasive design characteristics must contribute to an ISS overall privacy rating. |
| user reporting and resolution processes and systems, | Standardise the RRP placement and process to ensure that they can be easily understood by children. |

| | |
|---|--|
| <p>the ability to understand and activate a child’s right to erasure, rectification and restriction,</p> | <p>ISS should be compelled to enact basic rights by design (such as the right to retract, rectify, erase) by offering simple, standardised tools within services that children can recognise and readily access.</p> |
| <p>the ability to access advice from independent, specialist advocates on all data rights, and</p> | <p>Consideration should be given to how children could access specialist advocates to enable redress.</p> |

We make no comment on the design standards for each of the proposed age brackets.

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

Several ISS platforms are aimed at children and are designed appropriately. Online safety charity Internet Matters has a [list](#) of social networks for children which are aimed at different age groups.

Outside the digital space, TalkTalk developed a bespoke Kids TV remote using safe design principles. This piece of hardware locks children instantly into our Kids Zone platform, full of age appropriate content. Children are unable to leave this safe and secure environment without adult intervention via the master remote. It also incorporates a number of optional features designed to be relevant to children and parents e.g. a bedtime feature.

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

We support suggestions from other campaign groups which would see design standards to require:

- Autoplay default off upon each log-in;
- Notifications and summonses default off;
- Default streak holidays (and temporary absences from streak-type settings);
- Save buttons to allow tasks to be paused;
- Time out and disengagement opportunities which are standardised, easily accessible and frequently offered;
- Alternatives to data collection as a price of entry.

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.

N/A

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.

N/A

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: | <input type="checkbox"/> |

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