

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):

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.

techUK believes that the proposed age ranges put forward by the ICO in the call for evidence document are not appropriate and will not achieve the desired aims of the Code of Practice for Age Appropriate Design, as envisaged during the Parliamentary debate on the Data Protection Act 2018.

While techUK understands why the ICO has sought to group age ranges in order to tailor certain requirements at particular ages, techUK believes this will instead lead to additional complication for both users (children) and online service providers.

It is well known and understood that children develop at different paces, and developmental needs vary from child to child, rather than necessarily from one age to another. While a three-year old naturally has entirely different developmental needs to a 17-year old, that is not to say that a 17-year old’s development may be more aligned to a 15-year old. However, these relatively arbitrary age ranges would put 15 and 17-year olds in different brackets, and therefore suggest they require services to be designed differently.

Setting five different age ranges also increases the confusion and complexity for both the users (children) and service providers. The expectation is that it would require service providers to design five different versions of their service, depending on the ages of the consumers the service is aimed at.

For SMEs and start-ups this is particularly burdensome. Moreover, information society services will often be used for prolonged periods of time meaning children could move between more than one age bracket, requiring additional changes to the product they have become used to.

Additionally, by grouping users into specific age ranges online services would have to collect more personal data about their users than is strictly necessary to deliver the service being offered to the data subject. This would stand in clear tension with the recently implemented EU General Data Protection Regulation and the UK Data Protection Act 2018, in particular the data minimisation requirements under those regulations.

Instead, techUK would suggest that the ICO follow a principle-led approach to age appropriate design, rather than specifying specific age ranges for companies to design their services towards. A principles-led approach would allow sufficient flexibility to recognise the different development paces and needs of children at different ages. A less prescriptive approach would also avoid the creation of additional personal databases.

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.

Definitions

It is extremely important the ICO consult widely with the public, industry and third sector when determining the meaning and scope of the terms in the code. There is a clear need to explain the exact definitions and objectives for each term, for example the difference between automated and semi-automated profiling.

Where possible the ICO should give precedence to accepted definitions currently used across industry, other regulatory bodies, or those enshrined in law, to ensure consistency. For example, the Committee on Advertising Practice has several accepted definitions in the space of online advertising, such as product placement, that the ICO align itself with when looking at the issue of 'transparency of paid-for activity such as product placement and marketing'. The creation of multiple definitions for the same terminology would lead to confusion within industry and may create tension amongst regulatory bodies.

Scope of Code

There is also a greater need for clarity regarding the overall scope of the code, for example guidance over which information society services children would be "likely to access" and therefore be subject to the code.

Proportionality is key here to avoid unintended consequences. Many websites, such as BBC Bitesize, will be predominantly used by children and therefore should fall within scope. However, it is "likely" that children under the age of 18 will access an incredible range of information society services and have their personal information collected. The Code should be in clear in focussing on those information society services that are targeted at children or where children make up a significant proportion of their user base.

Evidence of harms

When considering which terms should be taken into account in the code the ICO should be driven by the evidence of the harm that needs to be addressed, rather than the presumption. If we do not define the harms the Code is looking to tackle, then we risk implementing a design system that does not sufficiently address them or may only serve to deprive children of the full opportunities they can enjoy online for fear of a perceived harm.

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.

Assumption of harm

A key challenge when setting design standards for processing of children's personal data by providers of ISS are the unintended consequences. There appears to be a broad assumption made in the Code that data collection and processing is harmful. This does not appear to be evidenced.

There are many benefits to data collection, both for the user and the service. Implementing privacy by default could have significant impacts on the legitimate provision of these products or services to users, including children. For example, data collection and diagnosis is used to improve products, cyber-security and safety; while geo-location data is critical to creating mapping services or communities like Foursquare. Likewise, on many mobile devices these types of data are only collected by ISS once apps try to access this data, and permission has been granted.

Moreover, while terms and conditions are often frustrating, they are legal documents setting out rights and responsibilities. Simplified terms and conditions, such as those produced by the Children's Commissioner, are helpful for users to understand their basic rights more generally. However, they cannot be substituted for full terms and conditions, which under GDPR will need to be more digestible for users to provide their informed consent.

Allocating responsibility

There is also a challenge in identifying exactly where responsibility would lie. One of the main ways in which children access information society services is through a shared or second-hand device, likely set up by and for the parent. This would mean that they are unlikely to have age appropriate design set by default even though they are highly likely to be used by children. If both parent and child use video-on-demand services, should age appropriate design be set by default or is it the responsibility of the parent to 'activate' safety features? If a shared family account is used on streaming services, how can the data controller establish what data can and cannot be collected?

There remains a question about what obligation services have to inform others that operate through them where they are aware that the child using the device. For example, if a child registers their age on a mobile device or operating system and uses a search engine installed by default, would the operator be required to inform the search engine, so they could implement age appropriate design and if so, how does this fit with their obligations under GDPR.

Age verification

There will also be a significant challenge in identifying and verifying the age of the user in order to establish what age-appropriate design features are necessary to implement. Age verification is part of a much wider debate, and attempts ranging from the BBFC's adult age verification regime to GOV.UK Verify face profound challenges. Added to this, the debate on age verification to date has focused on verifying adulthood. There is an additional challenge in verifying childhood, when 10, 13 and even 15-year olds lack official forms of identification in the offline world.

Even if a technical system could be implemented it would run contrary to GDPR requirements on data minimisation and would create a specific database of child-specific data.

Alternative proposals to predict age based on user habits such as viewing history would also be fraught with difficulty and generally ineffective. Technology in this area is often overstated and predicting age based on search or viewing habits would not be perfect by any means.

Proportionality

Beyond these challenges we must also consider the ability of smaller services to redesign or create new services to incorporate the features required. This is especially difficult if different design standards are required for each age group.

In these scenarios only the largest would be able to comply, and the UK-based SMEs and start-ups would be the ones who suffer as they do not have the money, time or resources to design and implement prescriptive design standards. To be effective any design system must be proportionate to both the size of the service and the prevalence of children on it compared to their wider userbase.

Additionally, it is unclear how the sanctions regime would be implemented to international companies. If companies not in UK jurisdiction fail to comply or pay fines, would ISPs and other ancillary service providers be required to remove them from their platform as foreseen under the age-verification requirements passed in the Digital Economy Act 2017?

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

By moving away from the assumption of harms and building an evidence base underpinning the terms used in the Code the ICO presents greater opportunity for industry to act. This will give the opportunity for greater promotion and awareness of the tools designed by companies to give parents and children complete overview and control over the types of data collected on them and how it is used.

Empowering parents and children with the knowledge and tools to stay safe online must also form a critical part of this work. Here the ICO should look to support and build on existing industry campaigns such as Google's *Be Internet Legends* and *Be Internet Citizens* which are designed to give children confidence to explore the internet and build understanding about the information they are exchanging.

There is also potential to build on existing industry collaboration on content moderation to share more open source tools to help smaller companies in complying with elements on the age appropriate design code.

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.

Determining where the bar should be set in the areas and for each proposed age bracket is a difficult issue. Children's development is not always equal, and what is appropriate for some may not be others. Only parents are able to determine the exact boundaries that would be appropriate for their child.

At the same time this will depend on the type of ISS, the data being collected and the specific harm the Code is trying to address. Not all data should be treated equality – health and other sensitive data should not be held in the same standards as browsing data that is used to improve recommendations.

Rather than being prescriptive about the type of design code required for each term and age group, the design code should be principles-based, and proportionate to the aim of the service and prevalence of children on it. A system that would require a company to design and implement several design codes for each age group would impose a significant compliance burden that could only be reached by a few of the largest companies, cutting off competition.

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

Beyond the examples mentioned around awareness and education campaigns earlier in this submission there are many examples of good ISS design practice being used by industry.

At a product-level companies such as Google and Apple have implemented several parental control features allowing parents to decide exactly what children can and cannot do on a device, and notifying the parent about their child's activity. Likewise, Facebook have default privacy settings and Google's recent Android software changes mute notifications when the phone placed face-down.

Companies are also already collaborating at a domestic regulatory level. The Committee on Advertising Standards, a co-regulatory body that industry has been key in driving has drawn up specific rules against targeting advertising to obviously identifiable children. Changes have also been recently made to the CAP code to make sure sponsored content on social media sites by the likes of vloggers and influencers is identified as such.

The UK Council on Child Internet Safety is another example of good practice – with industry helping draw up good practice guidelines for social media and interactive service providers of all sizes. We hope that the new UK Council on Internet Safety will continue this work.

At a European level industry bodies have led in the creation of *Your Online Choices*, a specific market placed on online advertising so users can find out more about the information collected on them and how it is used, as well as giving them opportunities to manage and control what advertising they see.

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]@techuk.org

Brief summary of what you think you could offer

techUK represents the companies and technologies that are defining today the world that we will live in tomorrow. More than 950 companies are members of techUK. Collectively they employ approximately 700,000 people, about half of all tech sector jobs in the UK. These companies range from leading FTSE 100 companies to new innovative start-ups. The majority of our member are SMEs. techUK can draw upon both its own expertise and the experience of its members, as well as board membership of the UKCIS to share the latest thinking and best practice of online services.

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: techUK	<input checked="" 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.**