

SuperAwesome response to the ICO's Age Appropriate Design Code Consultation

May 2019

We welcome the opportunity to comment on your consultation on the development of an Age-Appropriate Design Code, building on our earlier contribution to your Call for Evidence.

About SuperAwesome

SuperAwesome builds and operates kid-safe tools and technology to enable the under-13 digital media ecosystem. Our 'kidtech' is used by hundreds of companies worldwide to enable safe and data-privacy compliant digital engagement with children.

SuperAwesome's customers operate in industries including toy, film, entertainment and video games. From our London headquarters, our team of 150+ employees - including more than 35 software engineers - are developing and deploying technology infrastructure built on our core principles of: *Privacy by Design*, and *Responsibility by Design*.

Our over 5 years' of experience in applying Privacy by Design principles to build kidtech gives us a unique insight into practical, technology-based solutions to the most difficult challenges in making the internet safer for kids.

Introduction & Comments

Having submitted extensive material to the original call for evidence we limit ourselves in this response to a set of specific comments on key aspects of the draft consultation. We would also like to reiterate some elements that we believe are missing from the Code.

1. Definition of ISS (p.11)

We acknowledge that the definition of an ISS includes all online services which are funded in some form (including by advertising) by the user of the site/service, and that this excludes "websites about real-world businesses that don't sell product or access an online service is not an ISS".

However, we would like the ICO to provide more clarity on the obligations of websites or apps that are visited by children, but would appear to be excluded by the above ISS definition. For example, a toy company's website that does not sell product but may feature content appealing to children, including games and videos. Would that be in scope of the Code?

Another example is the website of cBeebies—although this is paid for via the TV Licence, would this count as remuneration in the sense of an ISS?

2. Scope of Code vs other regulatory regimes

Given the number of initiatives currently underway to strengthen online protections for children, and the broad scope of the proposed Code, it will be very important for the ICO to align the Code with existing legislation, as well as to clarify which rules take priority in the event of overlap, in particular:

- The Code's proposed rules on age-restricted advertising and how these interact with the remit of the ASA and the CAP Code.
- The Code's approach to profiling and profiling for marketing purposes and how this is to be interpreted in the context of the GDPR's relevant provisions.

3. Age of a child

The Code in its current form applies to those ages 18 and under, which is in accordance with the UNCRC. However, this creates an inconsistency with both the advertising industry's self-regulatory CAP Code (which defines a child as under 16) and the Data Protection Act 2018 (which defines a child as under 13). This is likely to bring confusion and complications in applying the Code. We would advocate for a middle-ground age of 16 to make it consistent with the GDPR's default position. Moreover, this age would make it easier for businesses to operate globally, with the proposed revisions to the Child Online Privacy Protection Act and recent California Consumer Privacy Act making the age of consent at 16.

4. Age verification

The Draft Code supports the use of age verification and does not stipulate any prescriptive techniques. We welcome this non-prescriptive approach as it allows for future innovation and development of these technologies. However, the ICO has failed to take proportionality into consideration, which is a key aspect of the age verification section of the EDPB's Guidelines on Consent under the GDPR. Moreover, the ICO should make it clear in the Code how to balance increased data collection for age verification against the data minimization principle.

5. Missing from the Code

There are several suggestions we made in our original submission which we think remain particularly relevant, as they relate to the design of monetisation mechanics in kids' sites and apps. When kids' content is funded by advertising, it is important not only to make sure the ad itself is not tracking, that the ad content is safe, but also that the ad does not drive kids away from a kid-safe site to an inappropriate or adult destination:

1. **Avoid linking to non-child-directed sites**—many advertising campaigns directed at children, and running on child-directed sites, allow users to click out to a social media page, or an e-commerce site, or to the advertiser's home page. In nearly all cases, none of these sites are considered child-directed, and hence they are all likely to **(a)** collect personal data from all visitors, and **(b)** contain content that is not age-appropriate. In particular, when children are using a shared device, they are highly likely to see advertising or content targeted behaviourally at a parent, which is often inappropriate, eg alcohol for example.

Child-directed adverts should either **(a)** always link to child-directed sites, ideally a landing page created specifically for this child-directed campaign—one with age-appropriate content, no third-party trackers, and only internal performance analytics; or **(b)** use a messaging 'bumper' to inform the child that it is leaving a safe site and going to an adult page for which it should seek permission from a parent. An alternative to the latter is to use a so-called parental gate—posing

a math question or other challenge only an adult can answer—before transferring the user to an adult social media site or similar.

2. **Enforce human moderation of every advert**—the rapid growth of programmatic distribution of advertising means that millions of adverts are being served to users without any matching of the ad content to the context where it is being displayed. As has been widely reported, many advertisers do not fully know where their ads appear, and most publishers have little knowledge or control of what ads are being delivered to their sites by the major ad networks. Even when the relevant campaigns are in principle appropriate to children, it still means that—for example—11+ rated video games may be advertised on child-directed sites whose primary audience is 4-6.

We recommend that children’s adverts be required to be moderated *in relation to their delivery context* by a human being. In other words, a person on the advertiser side or publisher side should review each ad creative in full knowledge of where it will be served, in order to ensure CAP Code compliance and age-appropriateness to the site. Adverts and sites should be tagged by the moderator for the correct age bracket: pre-school, kid, tween, young teen.