



ICO Age Appropriate Design Code

Joint position of the UK's Public Service Broadcasters (PSBs)

We welcome the ICO's consultation on age appropriate design and their efforts to reframe the online policy debate, putting the "best interests of the child" front and centre in line with the UN principle that the best interests of the child must be a "primary consideration". As trusted Public Service Broadcasters (PSB) we are committed to informing, educating, entertaining and protecting children on and offline.

PSBs have three unique features:

- At the heart of PSB is trusted and impartial news and UK-originated content that speaks to the different communities and nations of the UK, and distinctive programmes. These have become more, not less important, against the backdrop of deep division in the UK, concerns around the impact of globalisation and growing unease around fake news and disinformation.
- We help ensure that certain types of programmes get made –for example kinds of drama, comedy, documentary and factual programming, as well as original children's TV which would be much less well provided for if left to the market alone. It is therefore essential that we not only provide a trusted and safe space for children to access this type of content, but that overall we are able to continue to invest and make the type of programming that is important to children and helps unite families.
- It is core that PSBs have universality, namely that PSB programmes should be available to everyone, free at the point of use wherever they are in the UK.

To deliver our PSB remit, it is important that we can continue to innovate and invest, particularly in our online video on demand services, which is where audiences are increasingly coming to watch our content. To give the consumers the best user experience, and allow us to compete with global (often paid) streaming services, we too have to be able to offer device functionality and content recommendations that consumers feel comfortable with and are essential to the running of the service. For commercial PSBs we must also be able to innovate around advertising, combining mass reach with targeting in a brand safe, trusted and transparent environment. These all depend on our ability to collect, process and use data responsibly.

PSB services online are completely different to UGC and social media services offered by global online platforms. As PSBs we control all the content that we offer and are both licensed and heavily regulated by Ofcom in terms of our content output. The principles established in the EU's Audio-Visual Media Services (AVMS) Directive already provide an effective framework in protecting minors for both traditional broadcasting and the on-demand world. We are very careful about the type of advertising shown around children's

content which has to be appropriate for children in compliance with the CAP code and will be served contextually based on the programme content and not targeted to an individual. Furthermore any data we do collect is used for the functioning, enhancement and improvement of our services.

Under the draft code we are effectively presented with two possible options:

- 1) To make the whole of our service “child appropriate” or “high privacy” by default – this would mean an end to content recommendations, service personalisation, device functionality and targeted advertising that is reliant on data for all of our millions of registered users. It would amount to treating the whole of our services in the same way as we already treat any specific child online service (such as Milkshake! BBC iPlayer Kids and CITV), despite the BBC iPlayer, All4, My5 and ITV Hub being overwhelmingly used by adults.

If required to turn-off geo-locations this could also significantly impact on the type and range of content we can show on our service. This is because rights-holders can require us to geo-block acquired content to protect the territoriality of those shows.

In taking this option we would lose our ability to use data to enhance our service and (for commercial PSBs) to generate revenue through targeted advertising overall. To introduce targeted advertising under the proposed code and in the new suggested child-appropriate format we would have to ask all our users to verify their age, running into the same challenges we detail below.

We want to deliver the very best service and content that we can and believe that, first, personalisation can add significant value for users, making our on demand services more relevant and attractive to our viewers. It also helps point people towards publicly valuable content that they may not otherwise discover. Secondly, for ad-funded PSBs, in a global market for advertising revenue, commercial PSBs need to be able to innovate and personalise their offerings to compete with big global digital online platforms and generate revenue that can be invested into original UK PSB content.

Or

- 2) To introduce robust age verification. This would allow online service providers to move away from the assumption that all users accessing their sites are children if they can prove (through hard identifiers) that they are not.

The challenge for PSBs, is that by asking users to provide highly sensitive and confidential data – for example passport or credit card details for services like BBC iPlayer, ITV Hub, All4 and My5 – we undermine the critical perception of those services as free services which acts as a serious deterrent to users (whilst paradoxically raising costs for critical data protection and cyber-security measures to keep safe any sensitive information we might receive). As such there is a significant risk that users will simply stop coming to our sites. This drop-off will, in turn, impact our ability to sell advertising and return investment into programming content, damaging the virtuous circle of reinvestment in original UK PSB content. This approach will also result in age-gating our on-demand services, potentially excluding any children from our services (if we choose to move to +18 so we can use data to provide content recommendation and targeted advertising). This approach goes

against the principle of universality and also contradicts the “data minimisation” principle which is one of the key tenets of GDPR.

Neither of these options would be in the public interest.

In this new age of globalisation and fake news, PSBs provide particular value to UK citizens and consumers with our unique contributions to democracy, culture and the economy. However the draft code would disproportionately affect our ability to offer our services and invest in PSB content. Ironically the draft is far more likely to enshrine the dominance of global technology platforms – with users seeing them as akin to a utility and hence more amenable to the idea of sharing sensitive data for continued access. The draft code also risks potentially skewing the market in favour of paid services (where online service providers already have access to credit card details which could be seen as a form of robust verification).

Calls for a proportionate approach

We need to protect children online, and PSBs have been at the forefront of doing this, primarily by providing parental controls, content information and tools to help registered users control the use of their data. At the same time we also need to ensure that children and adults can continue to access our service and watch PSB content – from news to entertainment, drama to current affairs – and that PSBs are able to continue to invest in making and delivering these very programmes. Our ability to invest and deliver high quality content on our free-to-access online services is what maintains the attractiveness of those services for all consumers and ensures competition in the online distribution of content in the UK. However, the danger with the current draft code is that, in failing to take into account how PSBs already protect children’s personal data and privacy online, and in pushing a one-size fits all approach, **all** consumers wishing to have access to PSB services and content will be worse off.

For PSB online services we believe a proportionate response is appropriate that differentiates us from other, less regulated, online service providers. We therefore propose that PSBs are excluded from the scope of the Code, given that:

- all the content we offer on our services – both the editorial content and the advertising content – is under our full control and already subject to heavy regulation and rigorous compliance processes to ensure its suitability for viewers;
- all the content shown online adheres to the strictest standards of the Broadcast Code for linear TV services set by Ofcom as well as the rules for on-demand programme services;
- and
- we have in place a range of parental tools to help make informed and appropriate choices, for example G for Guidance rating, with accompanying programme information and parental lock through pin protection to ensure that the registered profile user can put in place these additional safeguards against children accessing inappropriate content via that account.

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