

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):

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),

CCO considers the proposed age brackets to be very appropriate in setting design standards for the processing of children’s personal data by providers of ISS. Although each child is unique and develops at different rates, there are key differences between certain age groups which are reflected by the age brackets proposed.

Although we support the age brackets proposed, CCO would like to raise the possibility of including a 0-2 age bracket. This may help futureproof the Code in light of evidence showing that children are beginning to participate in the digital world at younger and younger ages. The growth of the Internet of Things also means that children are engaging with online services at earlier ages: for example, although it appears that most connected toys are currently targeted at children aged 3 or over, it may be that a market for toys aimed at under

3s develops. Furthermore, connected baby cameras are already used by many parents to monitor infants – connected cameras are not “accessed by children” as such, given that the infants involved are passive subjects rather than active participants and their relationship with the ISS is entirely mediated by the parent. Nevertheless connected cameras and similar devices for babies do process children’s personal data and it could be argued that children involved *indirectly* access the ISS. With these concerns in mind, a 0-2 age bracket could add value by compelling ISS providers to consider the implications of their services even when children’s engagement with the service is entirely (or very heavily) mediated by their parents or others.

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.

Earlier this year CCO published Life in Likes: a report exploring social media use by 8-12 year olds, based on focus groups with children in years 4-7. We aimed to understand how children in this group use social media (e.g. which platforms they tended to use), and its impact on their wellbeing. The findings are broken down by school year, giving important insights into the developmental needs (in an online context) of children in this group.

The key message from the research was that the transition between primary and secondary school, i.e. the 10-12 age bracket, is a particularly crucial time, with children’s use of social media and their needs changing greatly at this point.

Below are the key points relevant to setting design standards for processing children’s data:

- 8-10 year olds use social media in a playful, creative way - often to play online games – whereas children aged 11-12 use it to keep up with friends and follow celebrities. These differences are reflected in the platforms most popular with each group: Snapchat, Roblox and Music.ly among 8-10 year olds; Snapchat, Instagram and Whatsapp for 11-12 year olds.
- 8-10 year olds often access social media using their parents’ devices or accounts. This meant that their time spent on social media is naturally limited. However, the privacy settings on parents’ devices may be set at a lower bar than on a device specifically intended for a child’s use. There needs to be consideration of how the Code will help to protect children using their parents’ devices.
- Most children aged 10-12 have their own phones and accounts and see it as important to be on social media around the clock, including in school hours. They do not want to miss out on conversations as they unfold and they do not want their friends to think they are ignoring them. The Code’s provisions addressing strategies which encourage extended user engagement are therefore particularly relevant to this group.
- Children aged 8-11 avoid giving out personally identifiable information, e.g. their school or home address. They have learned this in e-safety lessons at school. However, these safety messages tend to be learned as rules rather than general principles which can be applied in new contexts. For example, children may avoid uploading photos of themselves in school uniform but are less concerned about ensuring they do not interact with adults on Roblox.

- Children aged 11-12 understand safety messages but are likely to prioritise looking good in photos and videos than hiding identifiable information. As younger children find it difficult to apply their knowledge about data privacy and older children may prioritise other things, it is important that there are high default privacy settings and data minimisation standards for both groups.

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)

In April 2017 Professor Sonia Livingstone prepared a report for CCO setting out the case for a UNCRC General Comment on Children's Rights and Digital Media. As part of this work Livingstone suggested possible content for the General Comment, including with respect to processing of personal data, which will help the Commissioner understand the UK's obligations in this area under CRC. In a similar piece of work, Livingstone produced a draft of what the CRC might look like if produced today, incorporating the digital dimensions of rights, as part of our *Growing Up Digital Taskforce*. Both of these documents shed light on the UK's obligations under the CRC in the digital age, including our obligations with respect to the processing of children's data by providers of ISS.

In summary, of most direct relevance is article 16, the right to privacy. Most children identify privacy as one of the three most important rights in the digital age. However, it is seen by children as negatively impacted by digital media.

Explaining what article 16 requires of States Parties in the context of the digital age, Livingstone identifies:

- Support for children to understand the nature of privacy online in order to promote the capacity to make safe choices;
- Elaboration of the implications of the digital environment for children's privacy rights;
- Development of appropriate legislative and policy frameworks to balance rights to privacy with the need for protection;
- Raising awareness of the nature of privacy and its breaches online;
- The introduction of regulatory frameworks for the industry, including through international bodies;
- Consideration of growing potential for surveillance, including by parents, on privacy rights of children.

Although article 16 is particularly pertinent for the Commissioner to consider when drafting the Code, a child's right to privacy in the digital age affects the extent to which (or how) they can realise many other rights expressed in CRC. These include:

- Article 8: protection of the child's right to a name, nationality and family life. In the digital age, a child's right to preserve their identity must be protected from the threat of hacking.
- Article 9: the child's right to keep in regular contact with both parents, as long as this is best for them. In the digital age, relatives who pose a threat should not be able to track the child online.
- Article 17: a child's right of access to information and protection from harmful information. Children may wish or need to keep information they access private from their parents – this includes children living in abusive households who need to access helplines and children exploring their sexuality in hostile families or communities, but also children who are simply maturing and experimenting.

The general principles expressed in CRC also have implications for the processing of children's personal data by ISS providers:

- Article 2: non-discrimination. For example, in the digital age this may require the UK to consider how children's data might be used to profile children, including in a discriminatory way – during childhood but also in adulthood.
- Article 3: best interests. This may require the UK to ensure that ISS providers can demonstrate how when acting their primary consideration is the best interests of the child.
- Article 6: optimum development. This reiterates the importance of taking an age-appropriate approach with sensible age brackets, as has been proposed.
- Article 12: right to be heard. This requires the UK to consider the views of children when developing policy in this area and to promote digital citizenship.

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.

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.

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

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.

CCO supports design standards being developed in each of the 11 areas proposed in the consultation. Below we discuss the areas where we have specific views or evidence on what those design standards should look like.

- **default privacy settings,**

Evidence suggests that the overwhelming majority of people do not change their privacy settings. Doing so can be a complex task – for adults, but especially children, who may also not understand the implications of sharing data.

CCO therefore believes that **by default, privacy settings on children's accounts should be set as high as possible**. The protections offered by this will vary by platform, for example:

Google: Search, browsing and location histories automatically forgotten.

Facebook: friends lists private, friends not able to post to a child's timeline on their behalf without approval.

Instagram: user must approve someone before that person can follow them.

Snapchat: only friends can contact the child, only friends (or a smaller group within the friends list) can view stories.

Furthermore, CCO is concerned about accounts which do not belong to children, but which are used by them. Our Life in Likes research shows that 8-10 year olds who are beginning to use social media for the first time tend to do so using their parents' devices and their parents' accounts. We therefore believe that default privacy settings must be set as high as possible **for all users**, both adults and children, so that children who might access an adult's account and are protected.

- **the presentation and language of terms and conditions and privacy notices,**

If children are to be empowered users of online services, they need to understand the conditions of participating. Terms and conditions and privacy notices for online services are often thousands of words long and use complex language that is inaccessible to children. This means that children cannot make properly informed choices about how they use the internet, with implications for their data privacy.

In recognition of the problem, CCO worked with Tes and legal firm Schillings last year to develop simplified terms and conditions for the most popular online platforms with children and young people: Facebook, Instagram, Snapchat, WhatsApp and YouTube. Each document reduces the terms and conditions of the platform to just one page and is expressed using simple, everyday language. When we tested our Instagram document with a group of young people, we found that they understood it easily. One young person produced the following summary:

"You are allowing them to keep, use and share your name, school, where you live, likes/dislikes, where you go, "who you are chatting with" and private messages – when they share this with other companies, which you have allowed them to do by accepting the Terms and Conditions and ticking the box, they are not responsible for what these 3rd parties do with that data collected- like a detailed portrait of you as you live your life through the internet"

Our simplified terms and conditions for the five platforms can be found [here](#). **We would encourage the Commissioner to use them as a reference point for judging the level of simplicity that can be achieved, and therefore what should be expected from ISS providers** when producing their own age-appropriate terms and conditions and privacy notices. Children have also told us that pop-ups can be an easier way to receive information than lists of words which is something else that ISS providers should consider.

- **the sharing and resale of data,**

CCO is currently undertaking a project exploring the implications of increasing volumes of personal data being collected during childhood. We are concerned about the possible long-term implications that this data might have on children's lives – not only when they are children, but also in the long-term as they grow up and become adults. If data about children is shared or sold and then linked with data from different sources, it could be used to create

detailed profiles which may be used to make decisions about individuals, such as whether they can get credit or whether they are offered a job. We do not believe that data gathered in childhood should be used in this way. **We therefore believe that the sharing and selling of children’s personal data should be extremely limited**, to reduce the likelihood that it falls in the hands of organisations that might use it in this way.

- **the strategies used to encourage extended user engagement**

Some ISS providers are tackling extended use by introducing features which alert users when they have been using an online service for a set amount of time, or which lock them out when they have used it for a certain length of time (as determined by parents or carers). For example, new pop-ups on YouTube encourage children to “take a break”, while Apple’s Time Limit function allows parents to block children’s ability to use certain categories of apps after their allowance runs out. Although this is a helpful step forward, CCO believes that bolder action should be taken in the Code by requiring ISS providers to **switch off addictive features of their services by default**. This would include features such as YouTube autoplay and Snapchat streaks.

Turning off features such as these by default will tackle the root of the issue which causes children to *want* to spend extended lengths of time using online services. It may result in less conflict between parents and children concerning the amount of time they should be allowed to spend on devices. It will also do more to empower children than time allowances, as they will be more likely to limit their use of their own accord rather than being forced to.

- **the ability to understand and activate a child’s right to erasure, rectification and restriction,**

It is unrealistic to expect all children to be able to enact their data rights themselves. CCO supports 5Rights’ call **for standardised tools to be offered within services** to allow children to enact their data rights in a simple and straightforward way, e.g. click-through mechanisms for deletion, retraction or correction for anything they themselves have put up.

In the past CCO has called for the creation of a Children’s Digital Ombudsman which would mediate between under 18s and social media companies, helping them to get content about them removed from the internet. We think that there is still a need for **an independent body to help mediate between children, social media companies and other ISS providers** in order to address a number of issues, including data privacy. This could take the form of a new body or extending the scope of an existing body – for example, it could be that the ICO develops a child-facing service.

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]@childrenscommissioner.gov.uk

Brief summary of what you think you could offer: the Children's Commissioner promotes the rights, views and interests of children in policies or decisions affecting their lives. We particularly represent children who are vulnerable or who find it hard to make their views known. We would be more than happy to feed our insights in as you develop the content of the Code.

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:

A body representing the views or interests of children? Please specify: Children's Commissioner's Office	<input checked="" 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.**