Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date:27 June 2018
End date: 19 September 2018

ico.
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 <u>Digital Childhood – addressing childhood development milestones in the Digital Environment</u> 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 <u>literature review of Children's online activities risks and safety.</u>

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):

Quite 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),

Aligning broadly with school key stages would seem appropriate and appreciate the difference as children become 13. SWGfL would suggest considering 'Education in a Connected World'; a framework of digital competencies developed by UK Council for Internet Safety and published by DCMS in 2018. The framework uses age brackets that mirror UK education systems – early years-7, 8-11, 11-14 and over 14. The transition in at age 11 typically between primary and secondary phasing is a significant one, especially in digital terms

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.

We see much variation in technology use for the 10-12 year old bracket given the transition from primary to secondary schooling – the standards for a 10 year old will vary significantly to that of a 12 year old

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)

SWGfL would refer to the UK Safer Internet Centre response for this question

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.

Services Accessible for Children

The code should apply to any online service that is accessible to anyone under 18 as defined in their terms and conditions or privacy statements, for example this would include those services accessible to anyone over 13 years old

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.

SWGfL welcomes a 'better by design' approach and suggests the following opportunities and challenges in settings design standards

Terms and Conditions

SWGfL would suggest that provider Terms and Conditions and Privacy statements are there for the benefit of the provider rather than the user. The majority of the children and adults that SWGfL and UK Safer Internet Centre have spoken to do not read Terms and Conditions together with Privacy statements. The report Growing Up Digital by the Children's Commissioner in England (Jan 2017) makes exactly this point and calls for clearer statements.

Over recent years there has been work to better illustrate and articulate the details contained within terms and conditions and highlight the use of 'labels'. We are all familiar with nutritional labelling on food, laundry labelling on clothes and eco labels describing energy ratings on items, but terms and conditions and privacy statements remain resolutely inaccessible, especially for children. Labelling will enable users to understand, at a glance, aspects of the terms and conditions, in particular what data is collected and how it is used. SWGfL, on behalf of UK Safer Internet Centre, has an active project to utilise labelling technologies and recommends that labelling for terms and conditions is considered

Whilst labels would be a significant improvement, terms and conditions are still important to cover all aspects of the services, however the readability and accessibility of these should be directly equivalent to the

age of users able to access the service. For example services which are designed for anyone over 13, should be accessible to a 13 year old old and measured using reading indices (eg http://gunning-fog-index.com/). Currently providers are required to record that users 'accept' the terms, but would suggest that acceptance is only possible if users 'understand'. Providers should therefore evidence that users both understand and accept.

Providers should be required to notify users of changes to the terms and conditions or privacy statements

User reporting and resolution processes and systems
Reporting mechanisms are important for ISS to provide. In line with ISS community standards, children should have recourse to complain, to have their data removed and/or harmful content removed from the providers services

UK Safer Internet Centre has just released a national 'Reporting Harmful Content' hub that accepts complaints from users aged 13 and over who, having reported content to an ISS, the complainant considers the provider to have taken no or insufficient action. The hub will consider the complaint and provide a more in-depth response and/or work with the ISS to remove the content

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

Schools
SWGfL created and released an online safety self review mechanism - 360 degree safe in 2009 and currently used by over 12,500 schools. The system enables schools to rate their provision against a set of 28 different aspects to determine their performance and create a development plan. This rating data discloses the relative performance of all schools and is captured in an annual 'state of the nation' assessment report (www.swgfl.org.uk/report2017).

Data Protection is one of the 28 aspects and is in context of the "ability of the school to be compliant with the current Data Protection Act and Freedom of Information legislation (which includes the General Data Protection Regulation compliance). It describes the ability of the school to effectively control practice through the implementation of policy,

procedure and education of all users". In 2017 we concluded that the relative performance of data protection was weak in comparison with the other 27 aspects – it ranked as 22 out of 28. The data suggests that 33.371% of schools have no data protection policy (either no policy or policy is in development). There is further data and evidence within the dataset and report relating to schools management of data and information.

As a further effort to support schools with their data protection processes, a data protection self-review tool, 360data was launched in June 2016. 360data is based on the same mechanism as 360dgree safe but provides 16 aspects for self-review alongside policy templates. The online self review application supports and challenges schools in assessing and rating their current data and information security provision. Whilst the numbers of participating schools are not statistically representative, the aggregated rating data suggests that weaknesses include Data Protection Impact Assessments as well as how Governors are involved and the Third party arrangements that schools have.

It is clear from this evidence that schools require significant help and support and would welcome ICO engagement in supporting both SWGfL and UK Safer Internet Centre in addressing this issue.

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.

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

360 degree safe – www.360safe.org.uk
360data – www.360data.org.uk

Example of using AI to read Terms and Conditions / Privacy statements
Polisis - https://pribot.org/polisis
Usable Privacy – https://usableprivacy.org/

https://moviestarplanet.zendesk.com/hc/en-gb/categories/201435769-MovieStarPlanet and https://web.popjam.com/home are simple to understand, and easy to navigate.

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 ████████████

Email ████████████████████

Brief summary of what you think you could offer

SWGfL (www.swgfl.org.uk) is a charity working with schools and other organisations to provide safe and secure online access and resources. SWGfL has developed an international reputation within online safety and recognised with a number of awards. It is a founding member of UKCCIS (UK Council for Child Internet Safety) and has spoken at conferences across Europe, America and Africa.

SWGfL, alongside partners Childnet and Internet Watch Foundation, lead the UK Safer Internet Centre as part of the European Commission's Safer Internet Programme. The Centre is the national awareness centre and is responsible for raising the nation's attention to online safety issues as well as managing online criminal content and supporting professionals via its unique helpline.

SWGfL has built a global reputation with supporting schools with online safety, evidence from its array of multi award winning services, for example 360 degree safe and BOOST. 360 degree safe is enabling over 12,500 schools to review and improve their own online safety provision.

SWGfL would be able to work with the ICO in a variety of ways, including with schools to both from an sector perspective but also from the education of children and parents

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:	☒
A body representing the views or interests of parents? Please specify:	☒
A child development expert? Please specify:	☐
A provider of ISS likely to be accessed by children? Please specify:	☐
A trade association representing ISS providers? Please specify:	☐
An ICO employee?	☐
Other? Please specify:	☐

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