Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

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

V1.0 20180626

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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):

RESPONSE:

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).

RESPONSE:
Experience working with Information Society Services for more than a decade as an FTC approved COPPA safe harbor and as experts in solutions for supporting child privacy online, PRIVO supports the age ranges defined above. The age ranges reflect the differing levels of sophistication of the users and support an ISS to identify when the involvement of the holder of parental responsibility maybe required. The ranges also reflect

educational levels that will support an age appropriate design code such as language directed to a user to ensure informed notice is provided and how the notice is delivered. This is vital for the user's understanding of privacy implications fo when interacting with an ISS.

The following age ranges support practical design guidance in terms of who the ISS language addresses in the User Experience (UX), flows for collection and processing of personal data and privacy notices should vary according to age range and level of involvement from the holder of parental responsibility:

2-5 – we work with dozens of apps that are designed for very young children.
6-9
10-12
13-15
16-17

For example: 2-5 years olds- language in notices and the User Interface (UI) and User Experience should be directed to the holder of parental responsibility. In an ISS directed towards 6-9 and 10-12 year olds the language should be addressed to the child in clear and simple terms and where required to the parent if for example consent is required from the holder of parental responsibility.

Industry is confused by the definition of child directed. PRIVO strongly recommends adopting audience definitions as per the US Children's Online Privacy Protection Act.

These would help solidify the age ranges outlined in the design code:
Primary child directed;
Child directed mixed audience;
General audience;
Adult directed.

The 2-5 age range is preschool and demands greater parent involvement and oversight.
Children 6-9 need a degree of autonomy with some parent involvement and oversight.
The 10-12 age range as above but with a greater degree of autonomy.
The 13- 15 age range need greater autonomy and lesser parent involvement.

The 16- 17 need autonomy and no parent involvement but greater level of privacy education in the experience.

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.

As an FTC approved COPPA safe harbor and privacy solutions provider our views and evidence stem from working with companies ranging from major platforms to smaller start-ups across several hundred apps, websites and more recently connected toys which include ages ranging from preschool to 17 year olds.

Age range 10-12 will more times than not attempt to "age up" when presented with an age gate. Industry only needs to look to the thousands of accounts closed on Facebook weekly when the platform has actual knowledge the user has "gamed "the registration or the inappropriate images of 10-16 year olds on Instagram.

This age group is sophisticated in its use of technology but lacking the maturity to deal with the emotional impact, safety and privacy issues they face online.

The developmental needs include online education, guidance, safety and privacy settings they can control.

Where an ISS has knowledge that it attracts this age range it should meet the needs of the age range or should block using an age gate and verify all users ages at registration. If The directed to children mixed audience definition Is a low friction way to handle the audience age appropriately. However, it should not be used as a way to block children from the ISS. which experience shows simply incentivizes a child to age up. Instead a restricted experience or an experience that requires the lawful basis of consent should be provided.

Age gates should include mechanisms to prevent the user altering their age once they realise that they have entered an age below the age needed to participate in the ISS. For example, no back buttoning, dropping a cookie to prevent changing in the session and until the browser has been closed.
Age gates should only be used to screen users where there is a mixed audience including the following two scenarios:

The ISS is targeting users at or above the age of consent in the respective EU member state but may attract some users below the age of consent.

The ISS is for users at or above the age of consent and is blocking users below the age of consent.

The ISS is for users who below, at or above the age of consent and the need for requesting and gaining consent from those under the age of consent needs to be facilitated.

PRIVO is working closely with a major US not for profit publisher and television company on an adaptive learner user flow that allows for parent engagement at differing stages of the child's play and seeks to accommodate age ranges' impact on usability and understandability. Ultimately the goal is to design the most effective methods in light of reasonable technology for obtaining informed consent.

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)

RESPONSE:
With specific regard to chat room functionality and free type user generated content the rights of the child should be considered when the holder of parental responsibility submits a SAR. There is no provision to protect the rights of the child if there is an issue regarding the parent that has been raised by a child online unless the service is a counselling service. Chat rooms constantly deal with moderated content that involves children discussing personal issues that can include family problems PRIVO suggests that an ISS with such functionality should design their processes for actioning rights with this issue in mind and build in safeguards for children when such an instance arises. Moderation functionality allows for the capture of the chat or user generated content and a process to flag for human review should be built into the back end of any such service.

A child should have the right to bind themselves to an adult for the sole purpose of vouching for the child's age in order to prove to an ISS the

age of the child and accordingly to be afforded the appropriate rights and protections.

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.

RESPONSEPrivacy Settings:
An ISS will not design settings that default to private as it undermines the proposition of sharing platforms.
The terms should be explicit when explaining the meaning in the code for example:
all public sharing is defaulted to off.

Data minimisation: ISS must be in a position to show a reasonable justification for the collection of all personal data and its processing. Many ISS collect more data than is needed to provide the service.

Presentation and language in privacy notices: the code should be specific as to the points at which the notices are served for example a link to the privacy notice should be on the home page or landing screen of an ISS, and must always be accessible to the user, it should also present at each point that data is collected.
There is much confusion in the gaming industry currently regarding whether two policies are needed in child directed services, one for children and one for the holder of parental responsibility.
The code should be specific about when a policy is required for a child for example when the user is in the 6-12 age bracket or older. This age range should include a policy for parent and child. The age range 3-5 should include a policy written for an adult.

Geo location processing: the code should be specific to avoid doubt on what lawful basis a child's exact location could be tracked. PRIVO considers this personal data "high risk" and the lawful basis for processing this data should be consent. The language of the code should cover all geo location for the avoidance of doubt – address to town and street level, exact postal address, post code, location coordinates (latitude and longitude).

Automated profiling – the code should identify behavioural / interest-based advertising as profiling, remarketing and tracking across ISS. Children below the age of consent are not fully aware and informed of the implications of profile building that comes from the ads that attract them or the generation of revenue from their behaviour. They are also not aware of the addictive nature of some ISS particularly platforms and communities.

Other aspects of design to be considered in a code:
Adaptive and behavioural learning and play should require ability for a child to initiate a request for consent from the holder of parental responsibility where consent is the lawful basis for processing the personal data. Adaptive and behavioural learning require profile building. PRIVO is working closely with a major US not for profit publisher and television company on an adaptive learning user flow that allows for parent engagement at differing age ranges to design the most effective methods of obtaining informed and reliable consent in light of reasonable technology.

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.

RESPONSE:
Privacy by design needs to be adopted at the concept stage. There are hundreds of ISS that would struggle to change the architecture of their service to meet potential elements of a code including pop up just in time notices and mechanisms to action rights within the ISS.

The code should stipulate that all ISS in production or released at a certain date must meet the code's requirements. All existing ISS with a release date before the code is published should be required to make best efforts and reasonable adjustments and to show those best efforts if the regulator requests.

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

RESPONSE:
A working group of industry wide experts should be set up to support the ICO to work with ISS to address challenges and define solutions.

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.

RESPONSE:

Methods of serving notice should be appropriate to age range and could include text, visual and audio prompts and standadarised approaches for parents and children.

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

RESPONSE:
Rooster Money app.

Toca Boca apps.
Kudos app.
Marco Polo Learning apps.
Imaginormous.com and Roalddahl.com.
Beano.com.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

RESPONSE:
Acceptable methods for gaining verifiable consent from the holder of parental responsibility should be included in the code. The methods should be enumerated, and the code should allow for the approval of new methods. Standards should be agreed and adopted by ISS where consent is the lawful basis for processing data.
The code could adopt COPPA's standards for verifiable consent and could include the sliding scale of consent where by the level of consent required is mapped to the level of risk the collection and processing of the personal data poses.

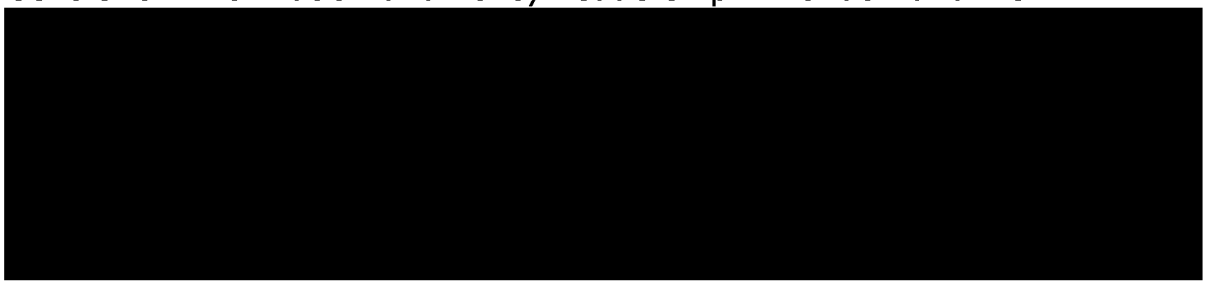
Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name:
[redacted]
Privacy Vaults Online, Inc., d/b/a PRIVO
[redacted]

[redacted]
Privacy Vaults Online, Inc., d/b/a PRIVO
[redacted]

Brief summary of what you think you could offer:
[redacted]
PRIVO works with major kid's brands, app developers,

websites, third party service providers and other online services to make ensure their existing or proposed properties are compliant with digital privacy regulations. PRIVO has many years of being in the trenches to provide expert, yet realistic advice to help online properties grow while adhering to key regulations. It has been an FTC approved COPPA Safe Harbor since 2004. PRIVO co-authored the Minor's Trust Framework. It is a member of the Future for Privacy Forum in Washington DC and the Centre for Information and Policy Leadership in London and DC.



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: PRIVO is a neutral third-party FTC approved COPPA safe harbor and privacy solutions expert with a GDPRkids Privacy Assured Program and an identity and consent management platform. PRIVO is a Member of Centre for Information and Policy Leadership (CIPL), authored the Minors Trust Framework	☒

(MTF) published to the Open Identity Exchange Registry and housed at the Generational Trust Alliance. In addition, PRIVO is an active member of the Future of Privacy Forum (FPF) and was part of the original Identity Ecosystem Steering Group (IDESG), which is now part of Kantara.	

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