Response to ICO Age-Appropriate Design Consultation

31 May 2019

1. We welcome the code and support the need for stronger safeguards for young people online; the explicit prioritisation of children's needs over commercial interests is a welcome realignment, and reflects rules and regulations developed elsewhere in the economy which acknowledge the legal status of children as people requiring additional protections over and above those afforded to adults. We think a precautionary principle in relation to services that children can access is an appropriate one.

2. We acknowledge alignment with the code may have both commercial and technical implications for existing businesses, and that the impact of these must be fully considered as the ICO continues to develop and then implement the code.

3. These proposals create important new obligations for businesses. As with all regulation, there is a risk that - if applied disproportionately - there could be negative consequences by limiting the ability of some beneficial services to operate, or limiting young people's access to information.

4. In particular, there are important distinctions between different types of services – for example between those that are targeted at young people; those that can be accessed by a young person and those that are 'likely' to be accessed by a young person. We believe this consultation will prompt a valuable debate as to how these differences should be understood and the degree to which the application of the code varies by the type of service.

5. However, we believe the proposed code also creates important incentives for economic growth, innovation and the development of a stronger ethical basis of online services. In particular, it could help encourage the development of better systems to understand the impact of online services; greater investment in services that are beneficial to young people; and the development and wider use of third-party verification systems.

   Understanding harm and developing beneficial services

6. We hope that the strengthened requirements to act in the child's best interests will help prompt more work to understand the impact of digital services on young people – both negative and positive. We hope that the code will promote engagement by service providers in research to understand how online services can help or harm young people. We expect the draft code to prompt a useful discussion on the extent of obligations on service providers to take reasonable steps to pro-actively identify where harm may be occurring.

7. The rapid evolution of businesses, services and markets makes it particularly important to generate clear evidence on benefits and harms. Research and public debate can help to establish the benefits to young people of services using

personalisation and profiling. Obvious use-cases may include using data to avoid delivering content that may be harmful in a specific context; or using data in educational contexts to identify how best to support a child's learning.
The CDEI would be keen to work with the ICO to build the evidence needed to understand better which harms can arise in specific contexts, and to evaluate the impact of the code on outcomes for children, ISS providers and markets. CDEI's Targeting Review (see Appendix) may be of relevance and we look forward to sharing the results of that work.

Age verification

8. To comply with the code, service providers may need to more reliably identify whether and when children are using their services, making age verification more widespread. This could result in more extensive collection of personal data by service providers. The use of third party ID management and age verification services would allow the objectives of the code to be reached in a manner more inkeeping with the principle of data minimisation. We would encourage the ICO to explore how the code can be implemented in a way that affords stronger protections of personal information.

9. The market for ID management and age-verification tools is developing rapidly and relatively immature. While we recognise that the implementation of this code will create additional burdens for some businesses, we would also highlight that it may create opportunities for the development of other industries – including age verification and ID management – that are valuable and beneficial, and that may drive growth among UK businesses.

10. Effective age verification may also involve novel technologies such as facial recognition, bringing their own ethical and privacy risks. We would encourage the ICO to consider how the application of this code would encourage the development and use of ID management and age verification services that are robust and ethical.

11. Done well, developments in age verification technology may be expected to form one part of a wider ethical data infrastructure encompassing services to support the enactment of digital rights, innovations in UI/UX design, and innovating ways of communicating information and choices to young people.

Appendix: CDEI's Targeting Review

Data-driven technologies and the internet provide the tools to target content, products and services to different individuals at massive scale and relatively low cost in highly sophisticated ways. These tools - and the breadth and depth of data involved - distinguish online targeting from the broader targeting of populations that has been used for years.

Online targeting helps people navigate the web and provides them with relevant and engaging content. But they can also pose risks to autonomy, the protection of vulnerable people, trustworthiness of content, fair markets, and social cohesion. Online targeting is complex and poorly understood. It is underpinned by largely opaque flows of data which are difficult for individuals to understand, let alone control.

We are reviewing the benefits and harms of online targeting, exploring the tradeoffs between the two and how people might experience them differently. We aim to identify opportunities for improved governance and emerging technological developments to facilitate the benefits and minimise the risks of harm. This includes looking at the potential for online targeting approaches - with the appropriate safeguards - to be used for beneficial purposes.

There are a number of specific areas of overlap between this consultation and our review:

Standard 4 (Detrimental Use of Data)
We welcome the ICO's position on services designed to extend user engagement in ways that may subvert users' autonomy. We note however that many engagement-extending design features do not rely directly on personal information about the user and are of general application/effectiveness (autoplay, pull-to-scroll, basic forms of gamification, for example).

Standard 7 (Data minimisation)
We also welcome the consideration of disaggregated consents, in particular that there may be a difference between data collected for the essential running of a service and for the personalisation of that service.

Standard 11 (Profiling)
We also welcome the consideration of the use of children's personal data for the purposes of profiling and recommending content. We agree that organisations using data to automatically recommend content to people - including children - should bear some responsibility for the content they recommend, even if it is user generated.

We look forward to working with the ICO as we develop our research and recommendations. We aim to publish a final report with practical recommendations to government and others in December 2019.