GSMA response to the Information Commissioner's call for consultation on the Age Appropriate Design Code

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The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators with almost 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces the industry-leading MWC events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences.

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GSMA Response: ICO Call for Consultation on the Age Appropriate Design Code

The GSMA would like to thank the Information Commissioner for the opportunity to provide feedback on the Age appropriate design code (the Code). The GSMA welcomes the opportunity to work closely with stakeholders to help shape the Code.

Mobile Industry's Commitment to Protecting Children

The GSMA and its mobile network operator (MNO) members are committed to enabling young people to access opportunities through mobile safely and responsibly, while actively combatting the misuse of mobile technology to exploit youth. The GSMA recognises that the United Nations Convention on the Rights of the Child (UNCRC) sets out the specific rights that all children, everywhere, are entitled to in order to survive and thrive, to learn and grow, and to reach their full potential. The GSMA welcomes the ICO's recognition of the benefits brought by the UNCRC in its Age appropriate design code. The best interests of the child (Art. 3, UNCRC) should represent a priority to information society services (ISS) when developing and offering services that are appropriate for children.

In September 2018, the GSMA submitted its first response to the ICO's call for evidence and views on the Age appropriate design code, providing some examples of existing frameworks/guidelines for the mobile industry on protection of children's data, safety, and digital empowerment. Those include (not exhaustive):

- GSMA Mobile Privacy Principles[1]
- GSMA Privacy Design Guidelines for Mobile Application Development[2]
- Guidelines for Industry on Child Online Protection (GSMA, UNICEF, International Telecommunications Unit)[3]
- 2018 UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression (GSMA as contributor)[4]

Further references to the aforementioned guidelines will be made in this response.

Mobile Industry and Applicability of the Age Appropriate Design Code

Scope

The proposed Age Appropriate Design Code specifically focuses on ISS likely to be accessed by children. An ISS is defined as 'any service normally provided for remuneration, at a

[1] GSMA Mobile Privacy Principles, available at: https://www.gsma.com/publicpolicy/wpcontent/uploads/2016/02/GSMA2016_Guidelines_Mobile_Privacy_Principles.pdf
[2] GSMA Privacy Design Guidelines for Mobile Applications Development, available at: https://www.gsma.com/publicpolicy/wpcontent/uploads/2012/03/gsmaprivacydesignguidelinesformobileapplicationdevelopmentv1.pdf
[3] Guidelines for Industry on Child Online Protection, available at: https://www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-COP.IND-2013-PDF-E.pdf
[4] 2018 UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression, available at: https://www.unicef.org/csr/files/UNICEF_Childrens_Online_Privacy_and_Freedom_of_Expression(1).pdf

distance, by electronic means at the individual request of a recipient or service'[5]. In contrast, mobile network operators (MNOs) typically provide electronic communications services (ECS), as defined by the European Electronic Communications Code (EECC) (Directive 2018/1972)[6]. MNOs do not commonly host data or have control over content accessed by users and do not provide ISS (except for applications to monitor usage, for example). As such, the ICO's Code would not typically apply to MNOs. The GSMA considers this the right approach. It is also important to note that whilst many children use mobile phones, MNOs do not contractually engage with children.

The consultation document provides examples of services it proposes to be captured by the Code: apps, programs, websites, games or community environments, and connected toys or devices with or without a screen.

Toys or devices are a means to access ISS and are not, in themselves, ISS - the GSMA considers this is an important distinction. Where companies offer ISS services that children are likely to access [and children can go online and receive them], the GSMA agrees these should be captured by the Code. Where companies only provide the means (whether that is through a mobile phone, a laptop, a watch, a SIM card or smart TV, etc.) through which customers can access ISS, the GSMA considers this falls outside the ISS definition and should not be captured in the scope of the Code. The scope of the Code would be hugely expanded if companies providing the means to access ISS were to be included; for example, a range of vendors - from large department stores to smaller online retailers - would all fall within scope. The GSMA and its members believe it would be helpful if the scope of the Code were clarified in this regard.

Children as likely users of ISS

Moreover, in order to identify which users are children (i.e. 'market research' or referring to 'current evidence on user behaviour', as per the Consultation), MNOs would potentially be required to collect data that is currently not collected and/or profile users. This would create a tension between processing additional information in order to identify a type of data subject[7] and complying with core privacy principles, such as data minimisation, storage limitation, purpose limitation and security obligations. Although this tension was acknowledged in the Code, when discussing the process of collecting and reporting data for age-verification purposes[8], some consultation respondents may suggest certain profiling

[5] *See* page 11, Age appropriate design code, available at: https://ico.org.uk/media/about-the-ico/consultations/2614762/age-appropriate-design-code-for-public-consultation.pdf.

[6] ECS is defined as a service typically provided for remuneration via electronic communications networks, which consists of (1) internet access services, (2) interpersonal communications services, or (3) services consisting wholly or mainly in the conveyance of signals; See pages 4-5, Directive (EU) 2018/1972 Of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN

[7] This tension is also reflected in Article 11 GDPR on Identification. While identification of a specific user is different than identifying whether a user is a child, the fact remains that data collection and processing should be as narrowly tailored as possible in order to achieve a specific purpose.

[8] *See* page 24, Age Appropriate Design Code, available at https://ico.org.uk/media/about-the-ico/consultations/2614762/age-appropriate-design-code-for-public-consultation.pdf.

techniques to identify children. Such actions could imply that organisations would need to create systems and/or new databases to process or retain information about children, which may run counter to children's own right to privacy (Article 16, UNCRC). Additionally, hosting new large databases of children's information could create a potentially unnecessary breach vulnerability.

GSMA guidelines

The GSMA has developed Privacy Design Guidelines for Mobile Application Development, which aim to articulate GSMA's Mobile Privacy Principles in functional terms and drive a more consistent approach to user privacy across mobile platforms, applications and devices. To the extent that an MNO might be involved in offering an ISS likely to be accessed by children, these guidelines would apply. In addition, where third parties are involved, for example, in the process of creating an application or device on behalf of an MNO[9], they should adhere to data protection by design and the principle of accountability, ensuring that third parties handle data responsibly and in accordance with existing legislation/frameworks.

The GSMA and its members take the privacy and confidentiality of users' information (with special regard to children) seriously and are committed to the responsible use of data. The GSMA continues to work, in partnership with our members and stakeholders such as UNICEF, Child Helpline International, Interpol, etc. to support children's rights online. The GSMA thanks the Information Commissioner for this opportunity to respond to the Consultation and is available for any specific questions in relations to its response.

Appendix:

Mobile Industry Approaches to Safeguarding Children's Data and Identity Online

In its questionnaire, the ICO requests examples. Please find below some examples from various guidelines/frameworks designed by the GSMA and members that are convergent with proposed guidelines of the Age appropriate design code.

ICO Principle	Description	GSMA examples
Best interests of the child	The best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child.	- Introductions for both UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression as well as Guidelines for Industry on Child Online Protection recognise the importance of the UNCRC.
Transparency	The privacy information you provide to users, and other published terms, policies and community standards, must be concise, prominent and in clear language suited to the age of the child. Provide additional specific 'bite-sized' explanations about how you use personal data at the point that use is activated	Guidelines for Industry on Child Online Protection (COP) - 'Applications that are intended for children and adolescents should…help such users to easily understand the consequences of installing or using an application or service' (p. 18) UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression

[9] To the extent that mobile operators are developing an application for their own service that is designed for children.

		- 'Children are informed about their rights to privacy and freedom of expression, and understand how these rights are affected by actions such as data collection, filtering and content moderation.' (p. 10) - 'Children can easily access transparent reporting mechanisms that are adapted for their levels of digital literacy and understanding, bearing in mind their age, maturity and evolving capacities' (p. 10) ICT Coalition for Children Online: 'Provide clear information to users on all available report and review procedures.'
Policies and community standards	Uphold your own published terms, policies and community standards (including but not limited to privacy policies, age restriction, behaviour rules and content policies).	UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression - Contains a checklist that can be used to ensure companies uphold child safety / integration measures in place - Annual CSR Reports by MNOs also include section on Children
Default settings	Settings must be 'high privacy' by default (unless you can demonstrate a compelling reason for a different default setting, taking account of the best interests of the child).	GSMA Privacy Design Guidelines for Mobile Application Development (ON Social networking and social media) - 'Underage users require more privacy protective defaults and other protective measures' (p.15). -'It is also about ensuring defaults for personal profiles for users under age 18 are set to private' (p. 15).
Data minimisation	Collect and retain only the minimum amount of personal data you need to provide the elements of your service in which a child is actively and knowingly engaged. Give children separate choices over which elements they wish to activate.	UNICEF Industry Toolkit on Children's Online Privacy and Freedom of Expression - 'Children's data are kept to what is minimally necessary, and are accurate and up to date' (p. 8) - 'Under the principle of data minimisation, data collection on children should be limited to what is necessary for a specific purpose, such as to provide a specific platform, a website, product, service or application' (GDPR, Art 6 (1)(c)) , also in Toolkit GSMA Privacy Design Guidelines for Mobile Application Development - 'Minimise information you collect and limit its use...An application must access, collect and use only the minimum information required' (p. 5)
Online tools	Provide prominent and accessible tools to help children exercise their data protection rights and report concerns.	GSMA Privacy Design Guidelines for Mobile Applications Development -'Give users tools to report problems regarding an application: Users must be provided with information explaining how they can report applications that they suspect, or which are found to breach the privacy and security of their personal information. Procedures should be established and maintained to deal with such reports and address any specific threats and risks' (p.27) - Providing effective avenues for children to report infringements/abuse. Notice and Takedowns (Guidelines for Industry on COP, p. 5)