Information Commissioner's Office

Consultation:

Age Appropriate Design code

Start date:15 April 2019

End date: 31 May 2019

ico.
Information Commissioner's Office

Introduction

The Information Commissioner is seeking feedback on her draft code of practice [Age appropriate design](#) - a code of practice for online services likely to be accessed by children (the code).

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.

The code is now out for public consultation and will remain open until 31 May 2019. The Information Commissioner welcomes feedback on the specific questions set out below.

Please send us your comments by 31 May 2019.

Download this document and email to:
ageappropriatedesign@ico.org.uk

Print off this document and post to:
Age Appropriate Design code consultation
Policy Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation please telephone 0303 123 1113 and ask to speak to the Policy Engagement Department about the Age Appropriate Design code or email ageappropriatedesign@ico.org.uk

Privacy statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public or a parent). All responses from organisations and individuals responding in a professional capacity (e.g. academics, child development experts, sole traders, child minders, education professionals) will be published. We will remove email addresses and telephone numbers from these responses but apart from this, we will publish them in full.

For more information about what we do with personal data, please see our privacy notice.

Section 1: Your views

LGfL (The London Grid for Learning) is a community of schools and local authorities committed to using technology to enhance teaching & learning. We support and welcome the proposals outlined in the Age Appropriate Design Code, and hope that the comments and recommendations set out below will serve to enhance and strengthen the code before it is published.

Q1. Is the '**About this code'** section of the code clearly communicated?

YES

Q2. Is the '**Services covered by this code'** section of the code clearly communicated?

YES

The code applies to services that aren't specifically aimed or targeted at children, but are nonetheless likely to be used by under 18s. Therefore clarity would be useful around how this judgement will be made, e.g.
- any steps taken in the service's DPIA
- evidence/numbers of young people using the service or similar services
- measures in place to prevent young people from accessing the service

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Standards of age-appropriate design

Please provide your views on the sections of the code covering each of the 16 draft standards

1. 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.

2. Age-appropriate application: Consider the age range of your audience and the needs of children of different ages. Apply the standards in this code to all users, unless you have robust age-verification mechanisms to distinguish adults from children.

3. 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.

4. Detrimental use of data: Do not use children's personal data in ways that have been shown to be detrimental to their wellbeing, or that go against industry codes of practice, other regulatory provisions or Government advice.

5. 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).

6. 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).

7. Data minimisation: Collect and retain only the minimum amount of personal data necessary 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.

8. Data sharing: Do not disclose children's data unless you can demonstrate a compelling reason to do so, taking account of the best interests of the child.

9. Geolocation: Switch geolocation options off by default (unless you can demonstrate a compelling reason for geolocation, taking account of the best interests of the child), and provide an obvious sign for children when location tracking is active. Options which make a child's location visible to others must default back to off at the end of each session.

10. Parental controls: If you provide parental controls give the child age appropriate information about this. If your online service allows a

parent or carer to monitor their child's online activity or track their location, provide an obvious sign to the child when they are being monitored.

11. Profiling: Switch options based on profiling off by default (unless you can demonstrate a compelling reason for profiling, taking account of the best interests of the child). Only allow profiling if you have appropriate measures in place to protect the child from any harmful effects (in particular, being fed content that is detrimental to their health or wellbeing).

12. Nudge techniques: Do not use nudge techniques to lead or encourage children to provide unnecessary personal data, weaken or turn off privacy protections, or extend use.

13. Connected toys and devices: If you provide a connected toy or device ensure you include effective tools to enable compliance with this code

14. Online tools: Provide prominent and accessible tools to help children exercise their data protection rights and report concerns.

15. Data protection impact assessments: Undertake a DPIA specifically to assess and mitigate risks to children who are likely to access your service, taking into account differing ages, capacities and development needs. Ensure that your DPIA builds in compliance with this code.

16. Governance and accountability: Ensure you have policies and procedures in place which demonstrate how you comply with data protection obligations, including data protection training for all staff involved in the design and development of online services likely to be accessed by children. Ensure that your policies, procedures and terms of service demonstrate compliance with the provisions of this code

Q3. Have we communicated our expectations for this standard clearly?

1. **Best interests of the child**
YES
2. **Age-appropriate application**
YES
3. **Transparency**
NO - it would be useful for services to consider children with specific needs, e.g visual impaired or SEND when developing different levels of information explaining their terms.
4. **Detrimental use of data**
YES
5. **Policies and community standards**
YES
6. **Default settings**
YES
7. **Data minimisation**
YES
8. **Data sharing**
YES
9. **Geolocation**
YES
10. **Parental controls**
YES - it would be useful however to point out that data used for providing a parental monitoring service should not be used for any other purposes, and that this provision is not a substitute for compliance with the code.
11. **Profiling**

NO - It would be useful to reference or give guidance specific to curriculum tracking software necessary in schools (e.g. a Maths tracker which requires lots of information).
12. Nudge techniques
YES
13. Connected toys and devices
YES
14. Online tools
YES
15. Data protection impact assessments
YES
16. Governance and accountability
YES

Q4. Do you have any examples that you think could be used to illustrate the approach we are advocating for this standard?

NO - We feel that all the themes below are already well exemplified in the document.

1. **Best interests of the child**
NO
2. Age-appropriate application
NO
3. Transparency
NO
4. Detrimental use of data
NO

5. Policies and community standards
NO
6. Default settings:
NO
7. Data minimisation
NO
8. Data sharing
NO
9. Geolocation
NO
10. Parental controls
NO
11. Profiling
NO
12. Nudge techniques
NO
13. Connected toys and devices
NO
14. Online tools
NO
15. Data protection impact assessments
NO
16. Governance and accountability
NO

Q5. Do you think this standard gives rise to any unwarranted or unintended consequences?

1. **Best interests of the child**
NO

2. Age-appropriate application
NO

3. Transparency
NO

4. Detrimental use of data
NO

5. Policies and community standards
NO

6. Default settings
NO

7. Data minimisation
NO

8. Data sharing
NO

9. Geolocation
NO

10. Parental controls
NO

11. Profiling
NO

12. Nudge techniques
NO

13. Connected toys and devices
NO

14. Online tools
NO

15. Data protection impact assessments
NO

16. Governance and accountability
NO

Q6. Do you envisage any feasibility challenges to online services delivering this standard?

*YES - we have identified the following which apply to all the below 16 points:

- **Third-party organisations** - the supply chain will make it hard to enforce, e.g. when a product is bundled with misleading, unclear or or unhelpful information by the said third party. For example, there have been instances of games consoles being sold in shops and packaged with a paper flyer for Fortnite - where the console is for young children, this is very unhelpful.

- **Schools, parents and facilitators of technology for children may accidentally or otherwise bypass conditions** - both parties will need support or guidance (e.g. from DfE).

- **Age-appropriate marketing** - whilst it may not fall within the scope of this code, it may nevertheless undermine the code, e.g. clothing made for very small children with Fortnite or Playboy branding on it will undermine the age-verification process by subconsciously passing the message that under-age use is allowed.

1. **Best interests of the child**

* As above
2. Age-appropriate application
* As above
3. Transparency
* As above
4. Detrimental use of data
* As above
5. Policies and community standards
* As above
6. Default settings
* As above
7. Data minimisation
* As above
8. Data sharing
* As above
9. Geolocation
* As above
10. Parental controls
* As above
11. Profiling

* As above
12. Nudge techniques
* As above
13. Connected toys and devices
* As above
14. Online tools
* As above
15. Data protection impact assessments
* As above
16. Governance and accountability
* As above

Q7. Do you think this standard requires a transition period of any longer than 3 months after the code come into force?

- **Time frame** - we believe that the three month period is very short, and if it includes a school-holiday period, the 3 months are further curtailed. For a school to check on software it is using, the time period is therefore very short.

1. **Best interests of the child**
See above
2. **Age-appropriate application**
See above
3. **Transparency**
See above

4. Detrimental use of data

See above

5. Policies and community standards

See above

6. Default settings

See above

7. Data minimisation

See above

8. Data sharing

See above

9. Geolocation

See above

10. Parental controls

Many parental controls in existing products or ecosystems are clearly rushed and not well thought out. A short period of time to develop these might give companies an excuse to not carry out extensive UX testing.

11. Profiling

See above

12. Nudge techniques

See above

13. Connected toys and devices

See above

14. Online tools

See above

15. Data protection impact assessments

See above

16. Governance and accountability
See above

Q8. Do you know of any online resources that you think could be usefully linked to from this section of the code?

For all the below, the 5 rights code is also useful to consider.

1. **Best interests of the child**
NO

2. **Age-appropriate application**
NO

3. **Transparency**
NO

4. **Detrimental use of data**
NO

5. **Policies and community standards**
NO

6. **Default settings**
NO

7. **Data minimisation**
NO

8. **Data sharing**
NO

9. **Geolocation**
NO

10. **Parental controls**
NO

11. Profiling
NO
12. Nudge techniques
NO
13. Connected toys and devices
NO
14. Online tools
NO
15. Data protection impact assessments
NO
16. Governance and accountability
NO

Q9. Is the '**Enforcement of this code'** section clearly communicated?   YES
Q10. Is the '**Glossary'** section of the code clearly communicated?   YES - this is short and succinct
Q11. Are there any key terms missing from the '**Glossary'** section?   NO

Q12. Is the '**Annex A: Age and developmental stages'** section of the code clearly communicated?

YES

Q13. Is there any information you think needs to be changed in the '**Annex A: Age and developmental stages**' section of the code?

NO

Q14. Do you know of any online resources that you think could be usefully linked to from **the 'Annex A: Age and developmental stages**' section of the code?

YES

- **Hopes & Streams** - LGfL's Online Safety Survey of 40,000 UK pupils, providing an insight into their online lives and experiences: https://www.lgfl.net/online-safety/hopesandstreams
- **Jessie & Friends** (4-7 year olds): https://www.thinkuknow.co.uk/parents/jessie-and-friends-videos/
- **RSPH #NewFilters** - Report from the All Party Parliamentary Group on Social Media and Young People's Mental Health and Wellbeing Inquiry: "Managing the Impact of Social Media on Young People's Mental Health and Wellbeing': https://www.rsph.org.uk/our-work/policy/wellbeing/new-filters.html

Q15. Is the '**Annex B: Lawful basis for processing'** section of the code communicated?

YES - but:

- With the caveat that the **language used in Annex B**, compared to that in Annexes A and C respectively, is much more technical, legal, and sophisticated and therefore perhaps harder to understand for a more **casual reader/smaller app developer**
- bear in mind that **many apps are designed by children/young people**, who might also find the language and terminology difficult to understand

Q16. Is this '**Annex C: Data Protection Impact Assessments'** section of the code clearly communicated?

YES

Q17. Do you think any issues raised by the code would benefit from further (post publication) work, research or innovation?

YES, for the following areas:

- **Enforcement** - "strong" examples of ICO punitive actions against organisations that have breached data protection standards relating to children and young people - perhaps a link to ICO cases?
- **Impact** - research will be needed to demonstrate the impact of the code and that change has occurred
- **Compliance** - schools, parents and others will want an easy way to check if a product meets the terms of the code, especially for legacy products

Additionally, a **strong marketing campaign** will be required to increase awareness of the code - this will also help with reporting and enforcement.

`` Section 2: About you

Are you:

A body representing the views or interests of children? Please specify: **LGfL** (The London Grid for Learning) is a community of schools and local authorities committed to using technology to enhance teaching & learning	**X**
A body representing the views or interests of parents? Please specify:	☐
A child development expert? Please specify:	☐

An Academic? Please specify:	☐
An individual acting in another professional capacity? Please specify:	☐
A provider of an ISS likely to be accessed by children? Please specify: **LGfL** (The London Grid for Learning) is a community of schools and local authorities committed to using technology to enhance teaching & learning	X
A trade association representing ISS providers? Please specify:	☐
An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public or a parent)?	☐
An ICO employee?	☐
Other? Please specify: **LGfL** (The London Grid for Learning) is a community of schools and local authorities committed to using technology to enhance teaching & learning	X

Thank you for responding to this consultation.

We value your input.