

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

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



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):

Not at all appropriate
Not really appropriate
Quite appropriate
Very 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),

There are many ways of determining age ranges – your document details one, classifying through key stages may be another. Our [Cybersafe research](#) from 2016 indicates that parental concerns around online safety peak when children are within the 10-13 age range, is lower with younger children, and tends to drop off in the later teenage years. For younger children there is an increasing choice of products designed for pre-school and KS1 and this, combined with the reality that most younger children are not navigating the internet by themselves, but with parental engagement and

oversight suggests that the design code could focus on where the problem is greatest and fix that first. This is important since the services children start to use aged 10+ are typically the same services that have been designed for use by adults. In this context, the gap to be fixed here is the space between toddlers and older teens, with a real focus on designing with safety for the cohort that are growing their independence online between the ages of 10-13.

Parents' main online concerns for their children are those which could damage the child's emotional well-being or put them in physical danger, principally: sexual content, inappropriate content they find themselves, violent content and strangers/grooming. However, as children's Internet use becomes more social, new risks emerge and levels of parental concern increase.

The ages of 10-13 are a transitional period, when levels of parental concern are at their highest. It is during this period that children begin to engage in a wider range of online activities, including social networking, email, use of apps and instant messaging and when parents start showing concern about online bullying, and when they move from primary to secondary school.

Our most recent research on transition year suggests that parents are concerned primarily about bullying (both on and offline) and whether the child will be pressured into participating in the latest crazes (73%) and using the same apps as everyone else (75%).

Our research suggests that the ages of 10 to 13 represent a critical moment at which parents feel most concerned about their children's internet use and would most welcome a strong intervention on age appropriate design. This echoes recommendation 17 from the 5Rights report into [Disrupted Childhood](#): which requests the Government:

"Undertake a public health campaign that explains the dangers of compulsive design strategies and their effects on children, as they move from primary to secondary education. Aimed at Year 6 children and those that care for and teach them, to counteract the 'cliff edge' explosion of usage identified by the Children's Commissioner for England."

If ICO were to link these insights with the work of the UKCCIS Education Working Group on their Education for a Connected World document – which is a framework of skills and competencies that children and young people aged under 7 to 18 are expected to have it's possible to see a way where parental concerns, childhood development and industry could coalesce.

We would also ask the ICO to really consider the merits of splitting the under 9 age group – we are not convinced this is a necessary step and suggest the required industry investment may be better spent addressing the main areas of concern.

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.

OFCOM have done a significant amount of work on [children's digital literacy](#) which gives a detailed picture of what children are actually doing online, and for how long, by age. Using these insights which include time spent: gaming, vlogging and livestreaming, messaging and social media, creating their own content, ICO could create a list of areas / sectors / markets which should be covered by the code, based on what children and young people are actually doing. In our judgement, material change will only come from a code which embraces a comprehensive list of online activities.

If, to that list of activities, we overlaid the expectations of what children should know, understand and be able to do, by age with data privacy and security (which can be found in the UKCCIS document) we have a strong starting point. Marrying an understanding of how children spend their time online, with a recognition of what we could expect from their age and stage provides a solid foundation for the scope of the code.

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)

It seems axiomatic to us, that article 17, (clause e) and article 20 (in full) should prevail over all other interests. This extract from article 17 refers to information and material injurious to well-being, which seems sufficiently flexible as to be future proof.

"Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18."

As the excellent Disrupted Childhood Report from 5Rights demonstrates powerfully, there is an imbalance in the relationship between parents and children and the apps and games that have been designed to engender stickiness. As they state:

"It is unreasonable to design services to be compulsive, and then reprimand children for being preoccupied with their devices."

This chimes with our own recent research on screen time – where parents resented having to fight for their child's attention and hated the type of parenting the constant pull of the screen lulled them into.

Therefore it's hard to draw any other conclusion than, children and parents and the relationship between them can be disadvantaged. This situation is a creation of our own making – and is therefore something that could be changed.

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.

We would agree that all of these classifications are relevant and require action / adoption by the wider internet commercial community. Moreover we would recommend that these classifications form the de minimis standard, rather than the standards ceiling.

As part of our work with the Royal Foundations Taskforce for the prevention of cyberbullying, we undertook research into [parent's attitudes to cyberbullying](#).

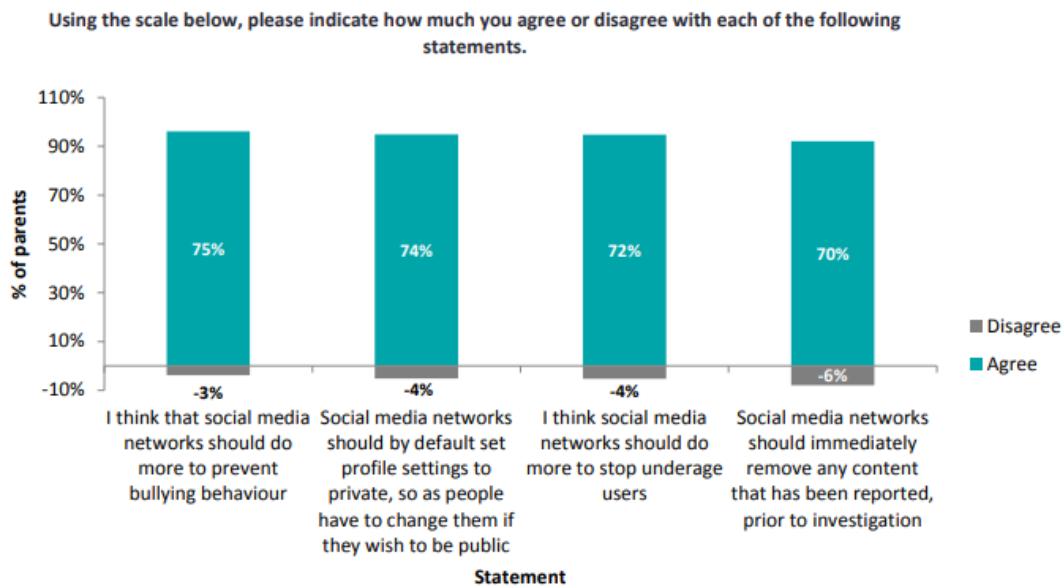


Chart 13: Q. Using the scale below, please indicate how much you agree or disagree with each of the following statements. Base: All participants (1500)

A significant majority of parents told us that they felt social media networks should

- a) have the default setting on private so you have to make a conscious decision to make them public (74%)
- b) do more to stop underage users (72%) and
- c) immediately remove any content that has been reported prior to investigation (70%)

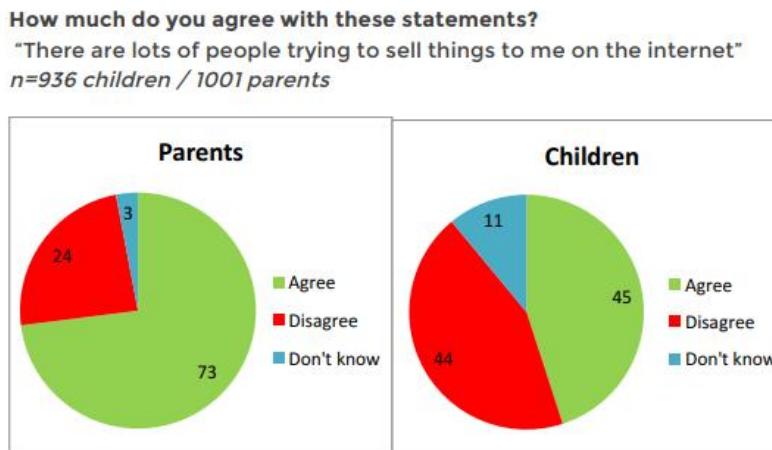
Whilst there are many parents that knowingly allow their children to use social media underage, breaking the providers terms and conditions, we believe this is not necessarily because parents want their children on social media, it is in response to peer pressure and the fact they feel their child will be socially isolated if they are not involved. If there was mandatory age enforcement, this would help parents to ensure their children were accessing age appropriate services

Whilst automatically removing content that has been reported could prove challenging, perhaps when it comes to the accounts of 13-18 year olds this could be considered, as it is clearly something the majority of parents would feel comfortable with.

Finally, setting privacy to the highest level when an account is first set up is something parents feel strongly about, with over 7 in 10 agreeing this should be the case.

In our research [Pace of Change Dec 2015](#), we saw the difference between children and adults in their perceptions of whether the internet is used to sell them products and services. Importantly more than half of the children asked either disagreed or didn't know that there are "lots of people trying to sell me things on the internet".

We would therefore encourage the code to make it much clearer to children when content is advertising and when their data is potentially being monetised



Parents are far more aware of promotional activity online than their children are.
The majority of parents agree to some extent (73%) that there are lots of people trying to sell things to them online, whilst fewer than half of children do so (45%). Awareness increases with age, from 37% of 7-10s in agreement, rising to more than half (54%) of 14-17 year olds. Children across this age range tend to be more accepting of advertising online, especially as a trade-off for access to free apps and content.

In June 2018 we also asked parents and children about screen time. Whilst we learnt that children have significantly more screen time than their parents think, we also found

that 88% of parents said they had implemented some form of strategy to minimise/control screen time. We would urge the design code to think about how strategies to extend user engagement can be controlled to help relieve the pressure on parents who are finding it challenging to manage screen time in their households.



We think there exists currently a significant opportunity – a societal moment – when meaningful action can and most definitely should be taken. This comes from the alignment of a consistent media campaign to make the online world safer and the intensity of the political and corporate appetite to deliver meaningful change.

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.

Data is the new online currency – and there is no such thing as a free app. Whilst no parent would allow their child to walk the street dropping significant data points like litter, precisely because of the risk that entails, children are scattering their data points often unknowingly all over the internet, and often as a direct result of design standards.

Therefore we would recommend a default to data minimisation for child users, with a prohibition on:

- profiling
- monetarization
- sale or forwarding of children's data (forever)
- manipulation of data to create products and services designed to retain attention or time once the child becomes an adult

Furthermore we would recommend a presumption towards:

- right to erasure

- recognising the rights of child users
- child impact assessments – on all future products and services and all existing ones with a reasonably short timeframe.

Were we to create and embrace an online world where the needs of children were put first – as befits their special status – we could really have something very special – an online environment which facilitates children enjoying all the benefits of being online safely and securely. This would be one manifestation of behaviour being acceptable online that is not acceptable online.

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

Re-engineering apps and platforms to put children first will be a commercial challenge which will require political leadership from the very top. We suggest engaging both Silicon Valley CEO's and those of more local leading online providers to create a coalition of the willing – companies who are willing to stake their reputation on doing the right thing by children. This is hard and long term work.

This is something Internet Matters has a significant amount of experience in, building as we have an industry coalition designed to keep children safe online. In just 4 years, working together with our industry partners we reach 4.4m people per month with practical online safety advice, we have 80k followers on social media and for the launch day of our latest campaign, back to school, we have had over 300 pieces of broadcast coverage and 200 pieces of print media.

We would be delighted to share our insights and experience of building and sustaining a coalition if that would be useful.

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.

In addition to your list – which we have commented on, we would also refer you to the 5Rights position on this – which we fully endorse. The starting premise is that it should be as easy to get offline as it is to get on. This could be manifested in a number of ways including:

- Autoplay default off, and if changed, switch back to ‘off’ once a child logs out or navigates away.
- Notifications and summonses default off, such as buzzes, read receipts, pings and all other non-specific alerts.
- Default streak holidays (and temporary absences from streak-type settings).
- Save buttons (so children are not forced to stay online to complete a task).
- Time out and disengagement opportunities; standardised, easily accessible and frequently offered, even if it is not in services’ commercial interests.
- Barriers to software upgrades that automatically enhance or switch persuasive design features back on.

- Alternatives to data collection as a price of entry.
- And, an immediate end to the practice of gathering children's data for the purpose of personalising services to simply extend use.

Turning to the list you have identified:

- default privacy settings,
 - should be default on
- data minimisation standards,
 - should be default on, with the onus on the company to explain why it needs the data, what it will be used for and what data protection measures it employs.
- the presentation and language of terms and conditions and privacy notices,
 - should be designed and presented in a way children can understand
- uses of geolocation technology,
 - should be default off, and revert to off if put on once the child has navigated away
- automated and semi-automated profiling,
 - should be default off for all products aimed at or mostly used by children and young people
- transparency of paid-for activity such as product placement and marketing,
 - should be much more overt
- the sharing and resale of data,
 - should be made illegal for products and services targeted at and mostly used by children
- the strategies used to encourage extended user engagement,
 - should be stress tested under the presumption that this is a bad thing for children
- user reporting and resolution processes and systems,
 - should be much more transparent and fast
- the ability to understand and activate a child's right to erasure, rectification and restriction,
 - the right to erasure for children should be absolute – otherwise they are creating (or having created for them) a digital tattoo which can scar them for life rather than a digital footprint
 - the bar for getting items removed should be lower for children and should be done at the behest of an adult responsible for that child, as well as the child themselves.
- the ability to access advice from independent, specialist advocates on all data rights, and
 - agree
- any other aspect of design that the commissioner considers relevant.

Finally, on this point – we know from our own research that parents are really concerned about the risks their children may be taking around technologies they are less familiar with; such as livestreaming and vlogging. In fact for vlogging 86% of parents want to be asked for their consent before their child starts vlogging in public. This figure rises to 96% on livestreaming. Add to this heightened level of concern our evidence that suggests children start creating their own content for vlogs and streams aged 8-9 and there is a compelling set of reasons for ICO to intervene in this area.

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

There have been a number of innovations within the sector which have begun to demonstrate good practice and a level of cognisance of the protected status that children should enjoy. These include:

- Facebook privacy settings being default on
- Google's Family Link
- Lego's moderation strategy
- Changes to the Apple operating system

We have also created a [list](#) of social media networks that have been designed specifically for children – segmented into age groups. However, we should recognise that part of growing up digitally is to want to use apps and platforms that are designed for older children / adults. This is the same off line and is part of childhood.

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: Claire Levens

Email: claire.levens@internetmatters.org

Brief summary of what you think you could offer

Internet Matters

Since our launch in 2014 we have been striving to keep children safe online, raising awareness and empowering parents, carers & professionals through the provision of practical, simple and relevant advice. During this time we have made significant progress, as **with our industry partners we have:**

- 80k social media followers
- Reaching 4.4m people every month (average)
- 2.5m people visit each year
- Viewing 6.4 m pages of content

Collaboration is at the heart of Internet Matters. We remain committed to working together with industry, sector experts and policy makers, to support families across the UK.

To deliver our mission we have four strategic goals:

1. Product – **To bring together the best advice & support tools for parents in one place.**
Internet Matter is unique in that it seeks to not only create content/resources that address demonstrable need, but also to curate, organize and promote the resources of the wider sector. The breadth and scale of potential online harms are significant and our focus is ensuring parents not only get advice from Internet Matters but are also connected with advice from the many specialist organisations that can provide support, be that bullying, mental health, child sexual exploitation etc.
2. Channels – **To engage with our audience through the most effective channels at key moments.** The majority of Internet Matters funding is invested in driving awareness of how children can benefit from technology smartly & safely. In many ways we fulfil the role of a public service broadcaster, highlighting the potential risks in a way that inspires the audience to take action. We make regular mainstream TV appearances, and are often cited by mainstream media as the source for further advice.
3. Insight – **To be the voice of parents.** Insight drives our strategy and as a result we have made a significant investment in ongoing qualitative and quantitative research with families, with regard to their needs, attitudes, concerns and experiences with online safety. We also use this research to independently evaluate the impact and effect that our services have with families.
4. *Partnership – To partner with the biggest organisations in the UK digital economy to maximise reach & impact.* We believe that those that profit from children using the internet have a responsibility to help families manage the potential risks and harms. Internet Matters seeks to create an industry coalition that allows the breadth of industry to contribute to a unifying and impact initiative. We are proud to work with the following organisations:

Founding Members: **BT, Sky, TalkTalk & Virgin Media**

Members: **BBC & Google, EE, PlusNet, Now TV**

Corporate Partners: **Huawei, Facebook, Instagram**

Supporters: **Twitter, Dixons Carphone, Nokia, Kurio, Smoothwall & KCom**

All these organisations have contributed both financially and in-kind to Internet Matters and we are continuing to make progress in securing new Partners & Supporters. In the past we also have undertaken projects with Disney, Halifax, Barclays, Impero and McAfee.

We would be delighted to explore the opportunities to work more closely with ICO. One of the most valuable things we can do is to share the insights from a regular research with parents. Every quarter we poll 2000 parents on a range of issues and have space for a different theme each time. We're currently working with the BBFC on polling parental views on age verification and would be delighted to work with ICO on parental views on data privacy.

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.

none

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify: Internet Matters is an evidence led, business backed consumer facing organisation, created to help parents keep their children safe online.	<input checked="" type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify:	<input type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

Thank you for responding to this call for evidence.

We value your input.