5Rights welcomes the launch of the Information Commissioner's draft Age Appropriate Design Code

A new deal between children and the tech sector?

The digital world was imagined as one in which all users would be equal, yet one third of internet users are children.[1] Nearly one billion children are growing up in an environment that systematically fails to recognise their age and the protections, privileges, legal frameworks and rights that together constitute the concept of childhood. The Age Appropriate Design Code, the first of its kind anywhere in the world, will change this by providing the specific protection that children require online. A consultation on the draft will run for 6 weeks, ending on 31st May. We encourage all stakeholders to participate in that consultation.

Details of the draft Code and consultation can be found here: https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/04/ico-launches-consultation-on-code-of-practice-to-help-protect-children-online/.

Overview

- Data determines the content children see, the people they can be contacted by, the ads they're bombarded with, the amount of time they spend online, and increasingly it is used to direct or manipulate their behaviour.

- The Age Appropriate Design Code, the first of its kind in the world, sets out the specific protections that children need for their data. It will recalibrate the norms of how companies use big data in relation to small people. The Code will redress the balance between the needs and safety of children and the commercial interests of online services, so that children can flourish online.

- The Code will create an online environment that is suitable for children by design and default. We believe in the power of technology to transform lives and be a force for good. Online services can enhance the lives of children when designed with children in mind.

Legislative background

The Data Protection Act (DPA) 2018 updated UK data protection law and implements the GDPR in the UK. Baroness Beeban Kidron, with cross-party support, introduced an amendment that gave effect to the requirement to offer children specific protection. **That amendment became section 123 of the Act and requires the Information Commissioner to introduce an Age Appropriate Design Code (the Code) to set standards that make online services 'age appropriate'.**

The Code was introduced with the support from across the charity and children's sector, parliament, and academia, as well as key figures from the world of tech.

About the Code

The Code will apply to all online services 'likely to be accessed' by a child, and requires such services to have regard to:

- the different needs of children at different stages of their development

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[1] One in Three: Internet Governance and Children's Rights, S. Livingstone, et al, Unicef, January 2016

- the UK's obligations under the United Nations Convention on the Rights of the Child (UNCRC)

Importantly, these requirements mean: that the Code applies to a wide range of services not only those that are aimed at children; that the best interests of the child shall be a primary consideration in all matters that affect them; and that a child is anyone under the age of 18.[2]

The Information Commissioner must have regard to the Code as she carries out her duty to promote the data privacy of individuals in the UK and uphold information rights in the public interest. It will be enforced, and significant penalties, applied in line with the GDPR.

5Rights believes the Code will cement a new deal between online services and children.

The Code's provisions

The Code contains 16 interconnecting provisions that set out the requirements online services must meet to make their services suitable for children. The full list of provisions can be found in the [draft Code on the ICO's website](). They include:

- **Providing an age appropriate service:** Online services should consider the age range of their audience and the needs of children of different ages. Services may do this by identifying which of their users are adults and/or which of their users are children, but if they can't be confident, their service as a whole must meet the child-friendly standards in the Code. This will finally require services to recognise and cater for their child users, while allowing services to decide how best to do so.

- **Transparency:** The Code introduces the simple requirement that children must be able to understand the information that is presented to them by online services. That means published terms must be concise, prominent, and in clear language suitable to the age of the child reading them.

- **Upholding policies and community standards:** More importantly, the Code will require online services to uphold their own published terms. Whether age restrictions, privacy notices, or content and conduct rules, an online service must 'follow the overarching principle that you say what you do and do what you say', or face a penalty.

- **Nudge techniques:** The Code will prevent online service providers using 'nudge techniques' to lead or encourage children to provide unnecessary personal data, weaken or turn off privacy protections, or as a tactic to extend their use. For example, it will stop the insidious practice of timed notifications being used as a method to punish a child's absence online.

- **Detrimental use of data:** The Code will ensure that online services are not promoting behaviour that is detrimental to a child's health or wellbeing. It points to established and evidence-based guidance to identify what might be considered 'detrimental', and makes clear that if there is any doubt, a precautionary approach should be taken.

- **Profiling:** A contributing factor to the tragic case of Molly Russell was the graphic content promoting self-harm and suicide that she had been accessing on Instagram. Importantly, rather than Molly having to seek this content out herself, it was being recommended to her based-on data drawn from her viewing and browsing history (i.e. data that was used to profile her)*.* The

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[2] Article 3, UNCRC

Code will require online services to switch off profiling by default, and profiling will be prohibited altogether if appropriate measures aren't put in place 'to protect children from harmful effects.'

- **Location services**: Under the Code, geolocation tracking must be off by default for children, and 'options which make a child's location visible to others must default back to off at the end of each session'. The ease with which the [real time and predicted location of a child](#) can be tracked using data from the apps they use is alarming and open to abuse. The [National Crime Agency](#) and several [police forces](#) have issued warnings that services collecting geolocation data could be used to groom, stalk, sexually exploit or abduct children. Children report that these services can also lead to feelings of isolation and exclusion, and they even allow services to manipulate children into going to particular locations (e.g. the well-publicised deal between Pokémon Go and McDonald's, which saw thousands of children driven to fast-food outlets by the game).

- **Connected devices:** The privacy or security standards for connected devices in the home, whether toys or TVs, are consistently found wanting. As our homes become more connected and 'smarter', the Code will ensure that the security and safety of children is considered as a whole.

What happens next?
- The ICO launched the draft Code on Monday 15th April
- The consultation on the draft Code will run for 6 weeks until Friday 31st May.
- After considering the responses and making its amendments to the draft, the ICO will lay the Code before Parliament. After 40 sitting days it will become law.

More details can be found here: https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/04/ico-launches-consultation-on-code-of-practice-to-help-protect-children-online/.

About 5Rights
Working closely with children, we operate in the engine room of the digital world: supporting enforceable regulation and international agreements, developing technical standards and protocols, and helping businesses re-imagine the design of their digital services.

5Rights imagines/demands a digital environment that anticipates the presence and meets the needs of all children, so they can access it *knowledgeably, creatively, and fearlessly*.

For further comment or information please contact 5Rights Policy Lead Jay Harman on 020 7502 3818 or jay@5rightsfoundation.com.

FAQs

What if tech companies say the changes proposed are not possible?

- Expert technical input to the drafting of the Code has made clear that all of the Code's requirements are technically practicable - this is an issue of corporate will and political mettle.
- The sector must take responsibility for the business model they benefit from and start applying their resource and creativity on behalf of children.
- This is a fast-changing area and we have seen historically that once standards or regulations are put in place, the technology soon follows.

A sector that promises to take tourists to the moon, fill our streets with driverless cars, and use AI to cure currently incurable disease – is more than capable of proving children with basic protection online. To suggest anything else is preposterous.

Will the Code hamper innovation?

- Demanding safety by design and by default actually *reinforces* innovation by necessitating the development of new features and services that better cater for children.
- Implicit to the Code is the recognition that technology and the internet play a hugely important role in children's lives. Far from wanting to undermine innovation, we want to promote innovation that anticipates the needs of children.
- Fundamentally, however, online services used by children must be suitable for children – that is the price of doing business.

Innovation that doesn't respect the rights of children is not innovation – it's exploitation.

Will this just mean kids being locked out of huge swathes of the internet?

- No. It will make huge swathes of the internet suitable for children in a way they haven't been before.
- Children are a third of internet users world-wide. If companies lock them out, others will spring up to take their place.
- The ICO has also made clear that it will take a sensible and proportionate approach to regulation.

If online services decide that they aren't willing to make the simple changes necessary to keep children safe, you have to ask whether children really should be using those services.

Will the Code have the effect of infantilising all users, including adults?

- Children are currently treated as adults in the online world. This situation does not reflect the cultural or legal norms that protect children in other settings and is eroding the concept of childhood itself.
- Promoting the rights of children does not threaten the rights of adults. It is well within the abilities of the sector to promote the rights of all their users.

The Code requires that children be treated as children. For the tech sector to do otherwise in the name of protecting the freedoms of adult users is disingenuous and dangerous.

Is the Government trying to clamp down on the internet (Nanny State)?

- It is a duty of government to protect its citizens, particularly the vulnerable. The Code simply extends these protections to the online world, requiring online services to promote the rights and wellbeing of children.
- Silicon Valley has tried to spread a theory of exceptionalism – the idea that it should be immune from the rules and standards that apply to everyone else. But a sector that has such a profound impact on so many aspects of life – and on children – cannot be exempt.

We decided 150 years ago to take children out of the chimneys and put them into schools. Protecting children in that era didn't represent an attack on the industrial revolution, just as protecting children now isn't an attack on the digital revolution.

Is it not the role of parents to protect their children online?

- Parents and carers are the first line of support for any child. Parenting has always been hard but tech sector norms which treat children as adults have made it much harder.
- The Code supports parents by creating an environment that is designed with children in mind and will replace one that systematically fails to cater for their needs.

Parents repeatedly cry out for the sector to support children – the Code demands that companies uphold their corporate responsibilities to children in a way that supports parents.

Will the Code limit a child's screen time?

- Debates about the optimum screen time length for a child or the impact of excessive screen time miss the point. The concern is what the child is doing online, whether they are in control of it, and how the companies are using their data in ways that may be detrimental to them.
- Many online services use sophisticated nudge techniques, reminiscent of the technology used to promote gambling addiction, that are creating demands on children they do not have the capacity to challenge. (See 5Rights report *Disrupted Childhood*).
- Gaming addition in under 18s is now formally recognised by both the World Health Organisation and the NHS. The CMO has called for 'addictive capabilities' to be redesigned.

Features that nudge children towards staying online, only benefits tech companies who want to yield more data and as a result increase their profits. They are commodifying childhood in a manner that is harmful for children.

How is the Code different from the Online Harms White Paper?

- Both the Code and the White Paper are part of the UK's mission "to make the UK the safest place in the world to be online", so are completely aligned. But the proposals in the White Paper will still take years to become law.
- The Code will be in force before the end of this year and is therefore the first concrete step towards that vision.
- The Code is specifically concerned with Data Protection of children under the age of 18, and builds on both GDPR and the Data Protection Act 2018.

The Age Appropriate Design Code is the first piece of legislation/regulation anywhere in the world that demands online services to put the interests of children above their own commercial interests – it demands a new deal for children.