

Elizabeth Denham
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Dear Commissioner Denham,

CC: Rt Hon Jeremy Wright QC MP, Secretary of State for Digital, Culture, Media and Sport

Re: The Draft Age Appropriate Design Code for Online Services

We are writing this letter as a coalition of industry representatives who are committed to protecting children and young people online whilst ensuring they continue to have access to the many benefits of the digital economy. We are concerned that the Age Appropriate Design Code, as currently drafted, will not achieve its stated objectives and risks having an adverse effect not just on the diverse organisations providing digital services, but on their users and also the children that this code seeks to protect. Given the significant nature of our collective concerns about the draft code we believe far more time should be allowed to consult and reconfigure the code so that it can meet its objectives without creating such adverse and damaging outcomes

Having considered the proposals set out in the draft Code carefully we do not believe that they achieve the stated ambition to protect children. Instead we believe they will create a new set of risks and vulnerabilities. Due to the very onerous requirements to reconfigure services we believe that the code would lead to arbitrary age-gating that would restrict children's ability to benefit from the online world while seriously limiting their rights outlined in Article 13 of the UN Convention on the Rights of the Child to seek, receive and import information and ideas of all kinds.

This is as consequence of the Code's ambitious requirements which are significantly more demanding than those under GDPR. The Code appears to go beyond the scope of guidance as required under S.123 of the Data Protection Act 2018 and is significant different to previous Codes of Practices issued by the ICO. In particular, the requirements go far beyond privacy issues and cross over into content decisions, requiring fundamental changes to the way products and services are provided for different age groups. Due to this huge burden, it will be simply uneconomic for many providers of online services, particularly smaller providers, to tailor their products to different age groups. Organisations of all types and sizes, including many not-for-profits, start-ups and SMEs, may be forced to simply withdraw their services from young people altogether through the use of agegating. The long-run consequences of the Code for the competitiveness of the UK's digital industries are almost certainly going to be negative, with smaller providers - who are least able to absorb the inevitable costs - hit particularly hard by the requirements.

Although the ICO recognises that age verification and age-gating is not a silver bullet, the code will inevitably encourage much greater reliance on it. This would have the perverse outcome of requiring significantly more data collection of both adults and children, in direct contradiction to the principle of data minimisation. We are concerned that more data collection runs contrary to the spirit of GDPR and could create new security vulnerabilities due to the wide range of online services that will be required to collect this highly personal and sensitive data.

The inherent burden and risks involved from these extensive measures would be limited if targeted at a small set of companies, using a risk-based approach, and focusing on where harm is evidenced. However, the scope of the draft Code casts a far wider net than this, placing requirements on any website, app or service 'likely' to be accessed by a child.

'Likely' is interpreted very broadly in the draft Code to the point where it perhaps is more accurate to define it as 'able to be accessed by a child'. We do not believe this was Parliament's intention when drafting the relevant legislation (s123 of the Data Protection Act 2018) and would encourage the ICO to make the Code truly proportionate and risk-based by focusing on where children are most likely to be found and exposed to harm online. Other interpretations of 'likely' exist in similar regulatory spaces and should be examined; for example from the Competition and Market Authority's Principles for online and app-based games or well-established CAP Code rules for online advertising. Using a well-established definition would also be helpful to ensure consistency and better understanding and compliance from industry.

With such a wide range of concerns we urge the ICO to extend the consultation period and ensure that the implementation period is sufficient to give all those in scope the time to adapt. The ICO very helpfully commissioned research (*Towards a Better Digital Future*) to explore the views of parents, carers and children on a range of issues. We would encourage the ICO to also conduct an economic impact assessment and technical feasibility study to better understand the impact on those companies and organisations who will have to comply with the Code.

We all remain committed to creating a safe and secure environment for children to operate online and stand ready to provide assistance in amending the Code so that it achieves its objectives while maintaining the myriad of benefits that online services give to children.

Yours sincerely,

