

## **IWA Data Protection and Children’s Rights Submission to the Data Protection Commissioners Office**

This submission is being made in response to the Data Protection Commissioners public consultation on issues relating to the processing of children’s personal data and the rights of children as data subjects under the General Data Protection Regulation (GDPR).

The IWA submission is structured to respond to each of the questions as set out in the public consultation document. Please do not hesitate to contact us if you need further clarity in relation to the responses contained in this submission.

<b>DPC Questions</b>	<b>IWA Response</b>
1. What methods could organisations who collect and use children’s personal data employ to easily convey this transparency information to children?	<p>Children learn in different ways. Organisations need to develop multiple strategies that will be create a learning opportunity for the children that they work with to ensure that the message is heard, understood and that they can clarify anything that they do not understand. The following methods may be useful depending on the age, cognitive ability of the child and the relationship that the organisation has with them.</p> <ul style="list-style-type: none"> <li>• Presenting the important information to them in one-to-one or group sessions.</li> <li>• Promote the key messages through posters, online platforms</li> <li>• Implementing accessible policies that they can understand using pictures and text formats</li> <li>• Ensure the parents/guardians are informed of the key information that they need to know so that they can answer the questions that their children will ask them</li> </ul>
2. What approach should be used by organisations whose products or services are aimed at both adults and children? For example, should two separates sets of transparency information be provided that are each tailored according to the relevant audience?	<p>Every organisation should have standard operating procedures in place governing how they manage children’s data The procedures could be tailored to adults and children but there would need to be specific procedures for managing the differences between the age groups. It would be useful if the DPC produced guidance on the specific differences that exist so that we can measure our procedures against them.</p>
3. At what age or in what circumstances should a child be able to make an access request to an organisation and receive a copy of their personal data? Is age the only relevant	<p>16 would seem like a reasonable age for a child to be able to make a request but there are other factors that need to be considered. The nature of the data being requested would be important to consider because there may be very distressing information that they may need</p>

<p>factor and if not, what other factors should be taken into consideration?</p>	<p>support to unpack and understand. The cognitive ability of the child is also a key consideration to be taken in to account. Their age may be appropriate but if they have a limitation to their cognitive ability this may require specialist supports in place for them i.e. an assessment of their cognitive ability in advance of releasing the data. This may depend on the nature of the data being requested.</p>
<p>4. In what circumstances should a parent be able to make an access request and receive a copy of their child's personal data? Is there an upper age limit after which a parent should not be able to make an access request for their child's personal data? Are there circumstances where both the parent and child should have to jointly make an access request for the child's personal data?</p>	<p>There may be a requirement for parents to make an access request if it is relating to serious issues i.e. health or wellbeing issues or service provision data. The age of 16 is regarded as an age when children can make certain decisions without parental involvement. There is a consideration in relation to the nature of the information that the parents are seeking to obtain. If they require information with legitimate interest should they be able to make that access request with or without the agreement of the 16 year old? There may be scope to develop a joint access request arranged for a child's personal data and that this could be developed at a younger age to educate the child about their data rights.</p>
<p>5. How should the balance be struck between a parent's right to protect the best interests of their child and the child's right to privacy when organisations are dealing with access requests for the child's personal data?</p>	<p>The cognitive ability of the child needs to be considered and specialist assessments may be required where there are concerns that the child lacks the ability to understand what they are requesting. There may be requests made by parents that are seeking to harm a child and this requires consideration and further advice by the organisation if they have concerns in this regard. It would seem logical that the thought process should include some criteria as to why the parent is seeking the data and that this can provide some basis for the decision to provide the data.</p>
<p>6. At what age or in what circumstances should a child be able to make an erasure request to an organisation and have their personal data erased? Is age the only relevant factor and if not, what other factors should be taken into consideration?</p>	<p>Similar to above reasons the cognitive ability of the child needs to be considered beyond their actual age. The nature of the data being erased would need to be considered to ensure that the erasure does not harm the child in any way. They may need support to consider any ramifications that they may regret in the future.</p>
<p>7. In what circumstances should a parent be able to make an erasure request on behalf of their child and have their child's personal data erased? Is there an upper age limit</p>	<p>There may be a requirement for parents to make an erasure request if it is relating to serious issues i.e. health or wellbeing issues or service provision data. The age of 16 is regarded as an age when children can make certain decisions without parental involvement. There is</p>

<p>after which a parent should not be able to make an erasure request for their child's personal data? Are there circumstances where both the parent and child should have to jointly make an erasure request?</p>	<p>a consideration in relation to the nature of the information that the parents are seeking to erase. If they legitimate interest to request the erasure should they be able to make that access request with or without the agreement of a child aged 16 years of age? There may be scope to develop a joint erasure request arranged for a child's personal data and that this could be developed at a younger age to educate the child about their data rights.</p>
<p>8. If an online service provider is relying on consent as their legal basis (justification) for processing children's personal data, what methods could/should be used to verify that a child is 16 or over in order that the child is granted access to the online service without the need for parental consent?</p>	<p>The child could provide a trusted adult that would need to verify their age. There is still scope for the child to get passed this if they invent such a person and provide the consent themselves. It could be very difficult to implement a process that is waterproof, but introducing a twostep verification process would create an opportunity for the child to consider how far they want to pretend that they are older than they are. It would also provide a dilemma for the trusted adult if they are going to vouch for the child and state that they are older than they are.</p> <p>Due to the many negative effects of Social Media / Online Services / Platforms available for use by Children / Young People, such as:</p> <ul style="list-style-type: none"> <li>• spending too much time online and being disconnected from the real world</li> <li>• Viewing the on-line world as reality</li> <li>• being the victim of online bullying</li> <li>• damaging your online reputation</li> <li>• having your personal information shared online</li> <li>• being harassed or annoyed by someone you do not want attention from</li> <li>• being the victim of an online scam</li> <li>• having reduced self-esteem (for some teenagers)</li> </ul> <p>Providers have an absolute responsibility to protect Children's Rights. The pendulum of power swings in the favour of service providers, who absolutely must always continue to work on methods of protecting children who will engage with them online, it is of paramount importance that online service providers can clearly explain how personal data will be processed, what personal data is, and they must always make it clear and easy to opt in and to also opt out.</p>

9(a). What methods could/should online service providers use to ensure that the person providing consent in these circumstances is <i>actually</i> the holder of parental responsibility over the child?	If they linked the child's account to the profile of the parent's account if they have one. This may provide a verification process for this process. It would have its limitations as they could set up bogus accounts for the parent or the parent may not have a profile for that provider. Could they include a legal commitment that poses the question that they have to consider if they have the legal basis for providing the consent?
9(b). What constitutes a "reasonable effort" made by organisations to verify such consent is being given by a person who is actually the holder of parental responsibility over the child? How should "reasonable efforts" be measured in this regard?	Organisations should develop methods to audit / check / verify data that is being supplied to them to verify ages online.  Results of their verification audits should be made known, especially if they are finding evidence to show that younger children are cheating verification steps to access online services, thus allowing society / parents to take steps to further protect children.  All children, including children with disabilities are naïve to online dangerous and will always crave inclusion, fun and excitement – therefore reasonable effort must be made to effectively verify consent – not just online tick boxes.
10. Prior to 25 May 2018, there was no law setting the age of digital consent in Ireland, but many online service providers required users to be at least 13. If an online service provider now is aware that an existing user of their service is under 16, should the user be locked out of the service until they reach 16?	It would not be realistic to enforce such a requirement as it would result in the majority of those children creating false identities so that they could continue to use the services. The criteria for ensuring that there is parental consent in place needs to be strengthened by the service providers. There are extensive profits being made by the industry that they need to take their responsibility seriously and invest in researching the best way to protect the most vulnerable online users.
11. How should such online service providers ensure they comply with different ages of digital consent in different Member States?	Invest in local infrastructure to ensure that their products and services are compliant in the jurisdictions that they are operating in.
12. In the case of marketing to a child, what factors should be taken into consideration when balancing an organisation's own legitimate interests	The cognitive ability of the child needs to be factored in to all aspects of communicating with children. A child with a disability is far more vulnerable than a child without a disability and the safeguards need to be put in

<p>in conducting direct marketing and the interests and rights of a child who is being marketed to?</p>	<p>place to ensure that they are not being targeted by inappropriate products or services. This is a difficult area because the child with a disability has rights and needs to know about the products and services that are suitable for their age and stage of development but the service provider has a duty of care to try to ensure that they only market information that is suitable to that child's age and ability. There is a responsibility on the parents of the child to ensure that they are monitoring the information that their child is receiving especially if the child has an intellectual disability or learning difficulty. If the service provider created a reason why the child should have restrictions on the ads that they receive and that this is an option that can be managed by the parent with input from the child then that could be a very useful mechanism to include.</p>
<p>13. Should organisations be prohibited from profiling children for marketing purposes? If so, should this be age-dependent or dependent on other factors? If so, what are these other factors?</p>	<p>Yes and No. Yes on the basis that the information that is being harvested about children is very invasive and intrusive in their lives. No on the basis that at times there may be useful ads presented to a child that provides options for them that others may not consider relevant to their lives. This can be a factor when a child has a disability and others do not consider that they may be interested in activities or services that a child without a disability of a similar age would be interested in. The factors that need to be considered are age and also cognitive ability as described earlier in this submission.</p>
<p>14. What measures should organisations take to incorporate the principles of data protection by design and by default into the services and products that they offer to children?</p>	<ul style="list-style-type: none"> <li>• Clear easily understandable explanations about data privacy / personal data / data sharing / consent / opt ins / opt outs, in children's language</li> <li>• Continuously improve verification steps online.</li> <li>• Develop and publish age / consent verification audit methods</li> <li>• Relate issues detected with children engaging with relevant online service provider publically, in order to allow parents / schools / agencies etc. to be aware, advise &amp; monitor children's activity effectively.</li> </ul>
<p>15. Do you think products/services that are used by or offered to children should have built-in default privacy settings that vary according to the age and evolving capacities of a child? For</p>	<p>Yes there should be stricter privacy settings. In particular the default settings should be the highest level of privacy rather than it being public as the default. If a child decides to opt for more public settings there should be an option to involve parental consent as a possible two</p>

<p>example, should there be stricter privacy settings for younger children? How should these variations in the privacy settings be given effect?</p>	<p>step verification process or that the parent who is linked to the profile receives a notification that the profile has been changed. There could be warnings provided to children in an accessible format such as cartoon characters pointing out the risks that the child is leaving themselves open to rather than a text heavy warning notification.</p>
<p>16. Are there any other particular issues you would like to raise with the DPC in connection with the subject matter of this consultation?</p>	<p>Due to the nature of some children/young people with disabilities, they can be isolated physically, and so heavily rely on online services, for this group of people in particular they are most at risk for developing a sense of the online community as their real-life community.</p> <p>All online providers offering services to children must seriously consider this in all of their security measures, communications and marketing materials.</p>