

General Data Protection Regulation Roundtable Meeting

The aim of the meeting, organised by the LSE Media Policy Project, the UK Council for Child Internet Safety's Evidence Group, the Centre for Digital Democracy and the School of Communication at American University, was to explore how the GDPR may affect children's internet use and rights. This included questions of the evidence on which the GDPR was based, the conflict between the right of participation and the right to protection, and the appropriate age of consent for children to be able to access 'information society services'.

This meeting included representatives from many different sectors; Academia, Children's advocacy, Consumer protection advocacy, Government, the ICO, Regulatory opinion, Legal opinion, and Industry. The roundtable took place on Friday 14 October 2016 at LSE, and was conducted under the Chatham House rule.

Meeting overview

The purpose of the meeting was to identify the range of issues, priorities, common ground and differences of opinion surrounding the topic of children and the GDPR. The aim is to kick start a wider discussion in the UK, and to help plan a European meeting, possibly in January 2017.

Process of implementing GDPR in relation to children, key decision points and difficulties, e.g. code of conduct

→ Participants clarified that the GDPR will apply in the UK from 25 May 2018 assuming that we are still a member state on that date. The decisions on how precisely how to enable that are still outstanding. From the UK government's perspective, the focus is currently on Brexit and in respect of the data protection package, there is much attention being paid to the question of future adequacy arrangements.

→ Contributors agreed they had come with the intention of listening to the various opinions present.

→ Age of consent: The final Council text left it to individual Member States to introduce domestic legislation law, as there was no consensus within the Council over what the age limit, if any, should be. During trilogues the European Parliament was keen for there to be an age specified in the regulation and 16 was the proposed age, which reflected some member states' existing law. However, the UK regarded this as too inflexible, and thus the compromise of the age being specified as 16 but with member state discretion to lower it to no less than 13 years was arrived at. However, ministers have yet to confirm that this discretion will be exercised and stakeholder views will be sought on this and other issues before the UK government sets out its specific proposals.

→ Lawfulness of processing: at a recent expert group hosted by the European Commission, discussion had focused on the differences in wording between article 6)2 and 6)3, which state broadly that Member States can add more specific requirements for the lawfulness of data processing if they want, and that the standards for legal compliance, or public interest data processing can be left to Member state law.

→ Consultation of children: Participants did not recall any government consultation of children on the question of age of consent.

→ Timeline: this would be dependent on decisions to be taken by the UK government on the legislative approach to implementation, whether through primary or secondary legislation. Consideration is still being given to this.

Regulatory opinion:

→ Some participants are waiting for greater clarification from the government's position on key issues before issuing instructions on how to best comply with the GDPR. Some preliminary work has been planned around codes of conduct but nothing substantial yet. Some participants are present at the roundtable to help inform the writing of a paper they are producing on the GDPR, and want to talk to others with the same area of interest. From an ICO perspective, the timetable presents a challenge, if they are to get their suite of guidance into position on time.

→ So far, **ICO** has given some evidence to various committees focusing on children and the internet, including the Article 29 working party. Also need to factor in the dependencies in terms of national legislation changes. Since the referendum the focus has been on key principles, such as risk.

→ The ICO is more focused on looking at children's online competence rather than a specific age limit, based on the way in which children currently use information society services.

Children's advocacy:

→ Thought UK position on children's access to information society services was good, should be based on the individual competence of the child, but this is impractical. For a provider of information services to decide competency, they would have to compile huge amounts of personal data. Therefore, reluctantly concluded that there has to be fixed age limits. What the age limits are should be based on contemporary research, not data that was looked at in the 20th C before web 2.0 existed.

→ Suggested to participants that any consultation on the age of consent could become a political decision, and conclude that 13 was an adequate age. Expectation is that many Member States will be happy with 16 for age of consent. Anyone who doesn't do this is going to have to say why. Any decision on this should be related to evidence regarding the experience and competences of children.

→ Other participants also supported the evidential requirements of **Children's advocacy**, and agreed age limits research should move with current research on children's digital literacy. From a consumer rights perspective, much of the focus is currently on online profiling and transparency issues. Whatever the decision is should be based on research, and the way children use technology. Believed that the focus should be on educating children to be digitally competent and literate, as well as teaching children how to enhance their online privacy, rather than purely an age limit.

Identification of online harms

Children's advocacy:

→ Between the ages of 9-16; children face safety problems, media literacy challenges (terms and conditions, contracts, digital footprint), and there are concerns over the use of data for commercial messaging, targeting children.

→ Referenced digitalads.org, which identifies many of the ways in which children are targeted and profiled for digital marketing. Any research on this topic should include analysis of big data, digital advertising analysis of which children are often the key target market. This includes cross device tracking, highly sophisticated geo location tracking, neuro marketing and identity management to try and shape perceptions and behaviours. Facebook was identified as a key operator of these techniques in relation to children. Future policy should afford teens greater control over these processes.

→ Age verification: this is a poor mechanism for harm prevention. This was raised in the 1990s when the Children's Online Privacy Protection Act was passed in the USA. COPPA's goal was to get companies marketing to children to develop fair practices for marketing towards children. This opportunity should be used to develop fair marketing and big data collection practices for teens. Companies' practices regarding advertising should be limited. Commercialisation and the internet are intertwined. Fresh dialogue is needed between all stakeholders to ensure a balance between participation and protection.

Industry

→ Important to remember the internet doesn't just mean social networking, gaming is often forgotten as an advertising conduit. Industry doesn't want to make choices on a child by child basis, as regulatory certainty is good for business.

→ Age verification: this could lead to collecting even more invasive data on children in order to confirm their age. However, most major online platforms have mechanisms in place, for example parental reports, that prevent under 13's using those platforms by removing their accounts. The more friction there is for business early on in user engagement, the harder it is to gain users, so hard regulation is better, but still a challenging conversation to have. CAP and ASA are good methods of regulation for advertising and work well.

→ Advertising: much of this is automated. A company might buy a display advert and not know where the advert will display, as organisations just buy units of advertising. The

middlemen involved in this process should be included in the conversation. Certain types of ads restricted on basis of age, and country; Sweden is an extreme example.

→ Participation: cited a new online platform specifically for children as a good way to encourage children's participation. Says having some measure of information helps provide services in a way that is safe. These platforms are difficult to develop and iterative. It's difficult to build a children's product due to different compliance requirements in different countries, how can industry reward content creators without advertising revenue?

→ Child abuse: A social media company developed a programme that could detect when users were lying about their age to talk to a younger person. However, in Germany, the data protection authority told them to disable it for privacy reasons. There must be a conversation about which rights/ safeguards are prioritised.

Children's advocacy:

→ Agreed with other participants and said the debate is not purely around commercial exploitation; one cannot have a good internet experience without protection. However, age verification is the key question within Europe. It could turn out that age verification is privacy enhancing. Some privacy options can restrict industry's ability to gain personal information, by having age verified by a third party.

→ **Academia** suggested this could lead to children being denied access to services, and that children also have a right to freedom of expression. **Children's advocacy** responded that these measures could be privacy enhancing rather than merely protective. Some participants agreed with **Children's advocacy** that technologies are being developed, as is a policy position, in the form of a cabinet working group, but says age verification still require a lot of data intrusion.

→ Advertising: some participants questioned if , from a consumer rights perspective, it was not possible to develop platforms that don't depend on profiling and advertising for their funding. However, other participants stated that there are subscription models for platforms that exist; however, this is regulated in a different way - for example if a subscription funded platform provides original content as part of their service, they will be regulated like a television network. From an industry perspective, this generates non trivial additional cost. Such models also exclude those who cannot afford it from not being profiled, which is unfair. The internet as a whole has not been able to solve the problem of generating revenue for content creators.

Children's digital literacy and education

Academia:

→ Digital literacy: If efforts focus too much on producing an age limit, there will not be enough emphasis on the long term solution and responsibility to provide digital and online literacy, training, education, etc. at all level (commercial and government). Age limit

discussion should consider the position of children, not just industry; not just in terms of top down regulation, but also horizontally, in terms of societal benefit.

→ Looking through the regulation, education is only mentioned twice. Focus has been on advertising rather than structural issues presented that allow children to be manipulated; for example, constantly changing monitoring practices. Without education children and parents won't be able to make a meaningful decision outside of the digital advertising/ not advertising paradigm.

→ The GDPR in its current form puts the onus for making decisions about the use and appropriateness of individual information society services on parents and children, when, arguably, industry should offer services that are free of monitoring practises. The GDPR could be more explicit in what industry can and cannot do with personal data, which would resolve some of these issues.

Parental consent and responsibility

→ Some participants were astonished by the lack of discussion around parental capacity to understand children's internet rights. The debate is usually about deferring control to parents. This means the assumption is that 'parents will not give them consent', and therefore children will not get access to services; participants felt this was being framed differently to the debate about content filtering and blacklisting.

→ Many participants hoped that the GDPR might encourage debate to clarify and articulate the nature of children's internet rights. Suggested if children have rights then someone has to be responsible for upholding them, perhaps not just the parents, which the current situation expects. Some felt that parents need back up from legislation, as parents' regulation of children's internet use is an extremely complex and difficult issue. This led some participants to conclude that parents are the best people to ask for consent, as they know their own children best. Parental consent in the online space is applied in a completely different way to other contexts. There needs to be a debate about the nature of parental responsibility in this context.

Children's advocacy:

→ Suggested deciding what information society services are appropriate for children to access independently is a collective responsibility, and that there is also high degree of corporate responsibility about engaging in responsible practices. There is a need to create a set of standards across the environment for services provided to people under the age of 18.

→ Given the contemporary nature of digital media system it is no longer possible for an individual to understand the processes behind advertising online experience e.g. programmatic advertising (auctioning for predictive analytics). Two complaints have been filed at Federal Trade Commission for YouTube Kids, environment filled with stealth marketing, behavioural marketing. This process needs to be talked about because most parents and children are completely unaware of it.

→ Some participants said that recent industrial research suggested that parental response to parental consent and verification differed from culture to culture. COPPA uses a minimum payment by debit or credit card; however, some parents within countries in this research such as Germany found this measure very intrusive and disliked it.

→ There should also be focus on other recitals and articles (such as those on data profiling or codes of conduct) in the GDPR that provide opportunities to implement good practices.

→ There should be debate about whether the principle of fairness (outlined in Chapter 2, article 5 of the GDPR) should be equally implemented for both children and adults. Children are not defined within the legislation. Companies should be asked to implement certain practices, and looking at the wording of the GDPR there are indications on how to advance both protection and participation.

Digital literacy, education and corporate responsibility

Academia:

→ A study conducted on children's opinion, with a sample of 1000 children, suggests that children perceive online and offline experiences very differently. Increasingly, future online and offline experiences will be seamless, and will not reflect the environment discussed within the legislation.

→ Digital literacy and education: Department of Education doesn't prioritise the issue of online engagement or education with regard to sex and relationships education, but children and families have a very good idea about how they want to engage. There needs to be a clearer understanding and definition of participatory engagement, given by families and children. Academia accepted that Industry had different priorities in this regard, but endorsed a shift away from the commercialisation of information society services, particularly advertising. Routinized use of data is not even being talked about, and many are not even aware of the conversation. A move away from a 'tick box culture' would not directly benefit industry, but would empower civil society. Many large internet companies signed up to the European Commission's CEO Coalition to make the internet a better place for children in 2011, but not much substantial has happened in that time. Online empowerment and participation should be the key focus.

→ Corporate responsibility: EC cookies regulation is a perfect example of tick box culture - these are take it or leave it choices. Consent mechanisms and choices should be more granular, being able to opt in or out of certain services without losing all benefits. This would also educate participants about what they are signing up to.

Regulatory opinion:

→ Online environments: There should be a consideration of the online environments that children will likely engage in. Environments with high levels of friction (Complex levels of engagement) are not just a problem for industry compliance, as children will merely move

to a frictionless online environment. For example, when trying to download a game for free, children will shift to a streaming or torrent service, where they may well encounter online pornography without intending to. This is a by-product of trying to protect copyright. Recommends there be a default system for age of consent, as research suggests only between 6-12% of parents actively engage on this issue.

→ Some participants were of the opinion that there is an onus on regulators to engage in education including children. Good examples of this are the Digital Competencies initiative and the Consumer Digital Competencies Initiative, both at European Level. German federation of Consumer Organisations has a database of educational materials, on the topic of digital literacy, including some designed for children. Conversation has not focused at all on the internet of things. Other participants said this had been picked up on by some sectors.

Article 35 and Impact assessment for services

Children's advocacy:

→ GDPR Article 35 imposes an obligation on every provider of information services of a commercial nature to carry out an impact assessment on the nature of their services. It is a requirement. Some privacy lawyers in the Commission and EDPS are starting to engage with this.

→ Social media companies have not yet made clear what they will do if parental consent not gained by a child. If social media platforms build in a process of gaining parental consent, then social media platforms and information society services could go below the age limit.

→ Children have independent legal rights that are not contingent on parental opinion. It is entirely possible the GDPR conflicts with those rights. As in Schrems vs Facebook, the GDPR could be attacked as contravening children's rights as per the UNCRC. However, other participants were of the opinion that the more legalistic the debate becomes, the more parents will have to be involved.

→ The key argument is to ensure the fundamental data rights of children are protected. As the GDPR gets implemented at member state level, an alternative policy idea could be developed, where data protection rights shouldn't conflict with other rights. Protecting children's data rights is paramount, even though it may take away children's legal authority. There needs to be a debate about the appropriate regulatory codes to protect young people.

Academia:

→ Article 35 risk assessment: If there is a type of processing that is high risk then an assessment needs to be done. However, this list of high risk data is not exhaustive. Supervisory authorities can add to the list; it may have to be decided pan-EU. Some

participants added that as there is no extensive or exhaustive list of what constitutes high risk data, it was now a stated priority of the Article 29 Working Party to compile it.

→ The Digital Policy Alliance have responded to the GDPR by assuming that many more companies will try to be age compliant than currently, outside of expected sectors. Publicly available standards 1296; requirements to reasonably assume you have checked age (three parties assume the responsibility to check age). However, this is about industry keeping children out (or at least giving the perception that they have tried) rather than making them digitally literate. Whilst it's a commercially savvy decision it's not in children's interests.

Codes of conduct

→ **Children's advocacy** said the European Commission expects standards to emerge, and for them to be consistent. ICO only operating in a supervisory authority. Some of the participants then described the structure and operation of the codes of conduct in more detail. The code is produced by associations within industry, and to be an approved code must be approved by, and have an independent monitoring body which is also approved by the supervisory authority. Questions remain about how industry would sign up, membership, payment, and process. **Children's advocacy** and **Academia** agreed that there will be multiple codes, many of which will affect children.

→ Some participants suggested that, from an industry perspective, part of the difficulty is the silo-ing of conversations around code of conduct, depending on the jurisdiction, such as hate speech. There are potentially as many codes of conducts as there are member states that concern media regulation (and its relation to children), which seems unworkable. Therefore, in relation to industry, harmonisation is preferable to fragmentation. Companies will already be regulated within provisions like the GDPR. This will require huge timescales and resources from actors within the tech industry, possibly without any benefit to children or consumers.

Conclusion

All representatives were thanked for coming in a collaborative spirit. As a result of the meeting it was agreed there was certainly scope for further discussion, potentially at the end of January. There was clear agreement on a number of issues, although all representative were aware of the difficulties of obtaining further evidence within the confines of a tight timetable. The Media Policy Project blog was outlined as a potential safe space for more combative debate.