

London, 17 October 2024

Response to ICO's Children's code strategy call for evidence

Section 1: Use of children's information in recommender systems

We outlined the issues we are considering in relation to the use of children's information in social media platform (SMP) and video sharing platform (VSP) recommender systems in the Children's code strategy progress update. Platforms' use of recommender systems is evolving and we would welcome new information or evidence.

While focusing on how children's personal information is used by social media platforms (SMPs) and video-sharing platforms (VSPs), services used by most children is important, it is also crucial to acknowledge the interconnected nature of these services with other digital services and products.

For example, data sharing and other processing activities often occur among such platforms and other types of services, such as EdTech tools used in schools. Our [evidence](#) shows that Google for Education shares children's data for commercial purposes beyond what children, parents, and teachers know or reasonably expect. This practice is unfair, opaque, and potentially exploitative.

The impact of the Children's Code ([Age Appropriate Design Code](#)) should be examined in the education sector. The ICO should take action to address data protection violations of EdTech companies and ensure that children are no longer being exposed to and their data being shared with additional commercial tracking services, including Google's ad service, TikTok, Amazon and Meta.

We are keen to understand whether the use of children's information in recommender systems might have particular impacts on children belonging to specific groups, including children with protected characteristics (eg disability, gender reassignment, political opinion, race, religion or belief, sex or sexual orientation). Please share any evidence on how the use of children's personal information in recommender systems may have specific impacts on children with one or more protected characteristics.

N/A

Do you have any further comments or evidence you would like to bring to our attention regarding the use of children's information in recommender systems that have not been captured elsewhere?

[Recent regulatory decisions highlight the increasing global concerns](#) about data practices EdTech companies carry out in schools. While EdTech companies continue to violate laws, schools and local authorities bear the consequences of overburdening legal obligations.

It is striking that many countries have taken legal action against EdTech companies. But, by comparison, there has been strikingly little such action in the UK as yet.

The Online Safety Act 2023 exempts schools, [leaving EdTech unregulated](#), and [the Children's Code doesn't fully or clearly apply to EdTech](#). The problematic consequence at present is that children can't enjoy their education or other rights while being sufficiently protected in the classroom, since their data is being shared with social media company analytics.

[Evidence](#) shows that children's data are processed to feed into SMPs, VSPs and other services using third-party tracking for commercial purposes. There is an urgent need for the ICO to explicitly state that the Children's Code applies to all EdTech (whether data controller or data processor) that children use.

The ICO should address challenges relating to widespread invasion of children's privacy through data collection and often little evidence to support the claimed learning benefits. Shifting at least part of the burden of demonstrating compliance away from schools and onto the companies that make profit from children's data obtained in education is needed.

Section 2: Use of personal information of children under 13 years old

Please provide any additional information or evidence you have regarding recent developments in age assurance technologies, in particular: evidence about the effectiveness of profiling techniques to identify users under 13 years old on a platform; evidence of approaches by social media platforms (SMPs) or video sharing platforms (VSPs) to reduce the potential risk that under 13s try to circumvent age assurance; and evidence of innovative new age assurance practices for (i) services that require users (including children) to be logged in; and (ii) services that do not require users to be logged in.

N/A

Do you have any further comments or evidence you would like to bring to our attention regarding use of personal information of children under 13 years old that have not been captured elsewhere?

These platforms are connected to other platforms and services that children use daily, especially in educational settings. It is important to recognize and consider the pervasive data processing activities that take place and the interconnected nature of these services and products, particularly those offered by big tech companies such as Google.

For instance, children might use [Google Classroom](#), and their data could then be processed by other Google services like YouTube (and shared for commercial purposes with companies such as TikTok, Amazon) as addressed elsewhere in this response. We

also emphasise that [schools, parents, and teachers](#) struggle to navigate today's complex data infrastructures.

The ICO should, therefore, continue to listen to various stakeholders, adopt [a child-centred approach and hear from children themselves](#) (diverse groups of children), and employ tools to empower them more effectively through for example, [raising awareness about their rights](#).

The ICO should revisit its best interests framework. The [DFC report](#) on 'the best interests of the child in the digital environment' examines the concept in relation to the digital environment, clarifying both what 'best interests' is and what it is not and highlights that there is evidence that 'best interests' is being misunderstood, or even misused or abused. The ICO has the responsibility to bring clarification to uncertainties, set the rules and expectations high in its best interests framework for all online services, including but not limited to SMPs and VSPs.

The ICO should clarify in relation to children's data that "in most cases it is not necessary to evoke best interests but rather to respect, protect and fulfil the full range of rights in the UNCRC; best interests is not a replacement for other or all of children's rights, nor are children's rights a matter of pick and mix.' It should also clarify that 'In certain situations – such as when several of a child's rights are in tension, or where third party claims jeopardise children's rights – a "best interests" determination should be sought. Such a determination informs the standard of expected conduct for digital service providers" (see [Livingstone et al., 2024](#)).

The ICO (or other public or regulatory body) should provide the framework and process for a best interests determination, not businesses. To ensure they protect, respect and remedy the full range of children's rights, businesses whose operations impact on children in any significant way should undertake a Child Rights Impact Assessment. This ensures a holistic not partial or only protectionist assessment of the impact on children's rights.

The ICO should consult children of different ages and diverse backgrounds and abilities themselves before moving forward with its strategy, adopt a [child-centred approach](#) and include their voices in these discussions, respecting their right to be heard, which is already encouraged by the ICO and we believe moving forward this strategy should be no exception to this.

Section 3: Final views and details about you and your organisation

To assist our understanding of the areas we regulate, we would like to know about you. Your information will be processed in accordance with our [privacy notice](#).

Responding as an academic

Impacts

The ICO is committed to making timely, informed and impactful decisions, drawing on evidence and insight, and understanding the impacts of our interventions to ensure that we are making a material difference. As such, we are keen to understand the impacts that the Children's code has generated, and any changes you would like to see the ICO's Children's code strategy drive for children that use social media and video sharing platforms in the UK.

Please note, the impact questions have been designed based on the type of respondent. **Please only respond to those that are relevant to you or the organisation you are responding on behalf of.**

Questions for all other respondents (i.e. those responding as an individual, or on behalf of an organisation that has not already responded to questions 14-22 above)

What changes would you like to see the ICO's [Children's code strategy](#) deliver for children that use social media and video sharing platforms in the UK? Please provide detail of the type and scale of changes you would like to see, and what impact (positive or negative) these changes would have.

[The Digital Futures for Children report on the Impact of regulation on children's digital lives](#) explored how the new developments in legislation and regulation may benefit children's digital lives and examined the impacts of legislative and regulatory measures focused on children's online privacy and safety over the period 2017-24.

The study finds that a peak of 42 changes was recorded in 2021, the year the Children's Code (AACDC) came into effect. Some of the most important changes recorded, linked to legislation and regulation, included social media accounts defaulted to private settings, changes to recommender systems and restrictions on targeted advertising to children.

This shows that the regulation makes a significant change, however, there is still need to further explore the so-claimed benefits which become important when determining what is in children's best interests and in respect of their rights.

Overall, we would like to see a minimum scale and extent of such changes in the next year. Moreover, we strongly believe that there is a need to further focus on establishing what good looks like in addition to avoiding risks and harms rather than solely emphasising the avoidance of risks and harms children might encounter. The latter is crucial but is not enough to ensure that children's rights are respected and [best interests](#) are a priority.

Final reflections (for all respondents)

To what extent do you support the action that the ICO is taking to ensure that social media and video sharing platforms comply with data protection law and conform with the standards of the Children's code, as outlined in the [Children's code strategy progress update](#)?

I am fully supportive of the action that the ICO is taking in this area

Please explain your response.

We strongly encourage the ICO to take action in this area, as we have witnessed that [regulation](#) and [enforcement](#) makes a significant impact in creating a better digital world for children which they deserve.

Do you have any final comments you would like to share that have not been captured elsewhere?

We believe it is important for the ICO to address challenges relating to the availability of applicable remedies for children. General Comment 14, para 15(c) (see also General Comment 25 (para 44) requires governments to establish "mechanisms and procedures for complaints, remedy or redress in order to fully realise the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her."

Our research reveals the opaque data and design practices to which children are subjected as part of their daily school lives. It appears that, at present, it is very difficult for children to understand and cope with data processing decisions made on their behalf or to exercise effective recourse to remedy concerning their rights and best interests in relation to the data processing conducted through digital services. We encourage the ICO to consider provision of effective remedies and the data processing activities that take place in the context of EdTech services and products and SMP and VSP recommender systems when furthering its work on the Children's Code.

Our previous research clearly showed that the inclusion of certain services and definitional limitations (e.g., [classifying EdTech as an ISS](#)) resulted in many digital services and products avoiding compliance. While we believe that focusing on SMP and VSP recommender systems is well-needed, it is also important to consider the interconnected nature of these systems and the broader data processing activities that might not be immediately apparent.

If you are happy for your organisation's name to be viewed alongside your feedback, please provide the name of your organisation below.

Professor Sonia Livingstone leads the [Digital Futures for Children](#) centre. This joint LSE and 5Rights research centre supports an evidence base for advocacy, facilitates dialogue between academics and policymakers, and amplifies children's voices. We adopt a rights-respecting approach to improving children's experiences of, and opportunities for, play in a digital world.

This consultation response draws on the DFC's work and has been prepared by Sonia Livingstone, LSE, and Ayca Atabey, DFC consultant and University of Edinburgh.

We may wish to contact you for further information on your responses. If you are happy to be contacted, please provide an email address below.

Please contact the DFC and/or Sonia Livingstone on the emails below:

info@dfc-centre.net

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Please also note useful sources below, as cited above:

1. Day, E., Pothong, K., Atabey, A., and Livingstone, S. (2022). Who controls children's education data? A socio-legal analysis of the UK governance regimes for schools and EdTech. *Learning, Media and Technology*, 1-15.
<https://doi.org/10.1080/17439884.2022.2152838>
2. Livingstone, S., Pothong, K., Atabey, A., Hooper, L., & Day, E. (2024) The Googlization of the classroom: Is the UK effective in protecting children's data and rights? *Computers and Education Open*.
<https://doi.org/10.1016/j.caeo.2024.100195>
3. Kidron, B., Pothong, K., Hooper, L., Livingstone, S., Atabey, A., & Turner, S. (2023). *A Blueprint for Education Data: Realising children's best interests in digitised education*. Digital Futures Commission, 5Rights Foundation. [[Report](#)]
4. Livingstone, S., Hooper, L. and Atabey, A. (2024). *In support of a Code of Practice for Education Technology. Briefing by the Digital Futures for Children centre for Amendment 146 to the Data Protection and Digital Information Bill*. Digital Futures for Children centre, LSE and 5Rights Foundation. [[Report](#)]
5. Livingstone, S., Atabey, A., Pothong, K. (2021). *Addressing the problems and realising the benefits of processing children's education data: Report on an expert roundtable*. Digital Futures Commission, 5Rights Foundation. [[Text](#)]

Research at LSE and 5Rights Foundation ■

6. Livingstone, S., Pothong, K., and Atabey, A. (2022) Our consultation response to DCMS's policy paper on 'a pro-innovation approach to regulating AI.' *Digital Futures Commission blog* [[Text](#)]
7. Atabey, A., Pothong, K., and Livingstone, S. (2023) When are commercial practices exploitative? Ensuring child rights prevail in a digital world. *Digital Futures Commission blog* [[Text](#)]
8. Atabey, A., Hooper, L., Livingstone, S., and Pothong, K. (2023) A step towards clarity: welcoming ICO's new guidance for EdTech on the Age Appropriate Design Code. *Digital Futures Commission blog* [[Text](#)]
9. Pothong, K., Atabey, A., Hooper, L., and Livingstone, S. (2023) Response to the ICO consultation: '[Likely to be accessed](#)' in the context of the [Children's code](#), May 2023.
10. Livingstone, S., and Pothong, K. (Eds.) (2022) *Education Data Futures: Critical, Regulatory and Practical Reflections*. 5Rights Foundation [[Online](#)]
11. Mukherjee, S., Pothong, K., & Livingstone, S. (2021). *Child Rights Impact Assessment: A tool to realise child rights in the digital environment*. Digital Futures Commission (5Rights Foundation). [[Report](#)]
12. Turner, S., Pothong, K., & Livingstone, S. (2022). *Education data reality: The challenges for schools in managing children's education data*. Digital Futures Commission (5Rights Foundation) [[Report](#)]
13. Hooper, L., Livingstone, S., and Pothong, K. (2022). *Problems with data governance in UK schools: the cases of Google Classroom and ClassDojo*. Digital Futures Commission (5Rights Foundation) [[Report](#)]
14. Livingstone, S., Cantwell, N., Özkul, D, Shekhawat, G., and Kidron, B. (2024). *The best interests of the child in the digital environment*. Digital Futures for Children centre, LSE and 5Rights Foundation. [[Text](#)]
15. Atabey, A., & Hooper, L. (2024). [International regulatory decisions concerning EdTech companies' data practices](#). Digital Futures for Children centre, LSE and 5Rights Foundation.
16. Hooper, L., Atabey, A., & Pothong, K. (2024). [Enforcement action improves privacy for children in education: more is needed](#). A brief analysis of recent changes to policies and practice in Google's Workspace for Education. Digital Futures for Children centre, LSE and 5Rights Foundation.
17. Wood, S. (2024). [Impact of regulation on children's digital lives](#). Digital Futures for Children centre, LSE and 5Rights Foundation.