

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow SK9 5AF

Sept 3, 2020

Dear Ms Denham / Office of the Information Commissioner

I write to ask for clarification on the application of the Age Appropriate Code of Design.

The ICO website states on ISS, "If an ISS is only offered through an intermediary, **such as a school**, then it is not offered 'directly' to a child."¹

This appears to suggest that the ICO has decided that apps used in school (or at home at the school's request such as Google Classroom or hundreds of homework apps) are not ISS and that therefore the Code does not apply to them.

However, in the ICO website text at the launch of the Code was stated:

"This code applies to "information society services likely to be accessed by children" in the UK. This includes many apps, programs, connected toys and devices, search engines, social media platforms, streaming services, online games, news or **educational websites** and websites offering other goods or services to users over the internet. It is not restricted to services specifically directed at children."²

These appear to be conflicting or at least unclear positions compared together, and when compared with the GDPR and EDPB guidelines.

EDPB guidance (para 129) suggests: "The online delivery of a service would fall within the scope of the term information society service in Article 8 GDPR."³

To determine the scope of the term 'information society service' in the GDPR, reference is made in Article 4(25) GDPR to Directive 2015/1535. 'at the individual request of a recipient of services' means that the service is provided through the transmission of data on individual request." We believe this applies to children using edTech on an individual basis, and there is no caveat made in the DPA 2018 for "an ISS only offered through an intermediary".

If an ISS⁴ [apps/platforms] draw data directly from the data subject (the individual child), we believe that the computer 'transmits data on individual request' i.e. based on the child logging in, giving instructions, entering data, doing a task and the collection of behavioural data—and it is this data transmission that makes an app or platform an ISS, not whether the school has a contract with a company to process data 'at the request' of a school.

The questions we would like the ICO to clarify:

1. Does the Code apply to ISS such as edTech apps and platforms in educational settings?
2. Does the Code *only* apply to ISS processing on the basis of consent (and Article 8)? If so this is mostly invalid in schools and negates its application.
3. Or is it contextual i.e. the ICO intends for educational websites to fall under the Code when a child uses them without their school requiring them to (i.e. it applies on a consent basis as a

¹ ICO website on IS <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/what-are-the-rules-about-an-iss-and-consent/>

² AACOP launch website <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/services-covered-by-this-code/>

³ EDPB Guidelines 05/2020 on consent under Regulation 2016/679

⁴ Annex 1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L1535>

private citizen but not a pupil), so *in school* the Code would *not* apply to the same app that it would apply to if signed up for at home.

Thank you for your clarification.

Sincerely,

J Persson