



The French Data Protection Authority (CNIL) has published recommendations for the protection of minors online

France follows the trend for European children's codes but there are points of distinction.

Regulator: The National Information and Freedom Commission (CNIL)

RISK BAROMETER:



JURISDICTION RELEVANCE:

France

TIMELINE:

June 2021

WHAT YOU SHOULD KNOW:

- Last year, the French Data Protection Regulator (CNIL) launched a survey into the digital rights of minors. The [results of this](#), combined with an extensive legal analysis of underpinning law (GDPR¹ / UNRC²) and workshops, have resulted in [8 recommendations](#), alongside a commitment to future consultation with industry actors.
- The recommendations reflect a trend towards comparable data protection guidance across Europe, and it is no surprise that the [UK Information Commissioner \(ICO\) Age-Appropriate Design Code](#) (AADC) and [Irish Data Protection Commission \(DPC\) draft Fundamentals](#) are referenced. There are, however, nuances:
 - » CNIL guidance is pro-active about the role of parental responsibility, including the need for education about parental controls (Recommendation 3) although these should be proportionate and GDPR compliant (Recommendation 5).
 - » Short of detailing hyper variegated adaptations for multiple under 18 age cohorts, the consent of both the child and a parent is advised for under 15's (Recommendation 4).
 - » Closely mirroring the AADC, T&C's, privacy policies and settings should be conveyed to children clearly (Recommendation 6), the use of 'nudges' or 'dark patterns' avoided and geo-location off-by-default.
 - » It is conceded that there is no 'miracle solution' to age verification since available technologies are either too intrusive or ineffectual (Recommendation 7). CNIL is

closely watching the ongoing [EU Pilot Project](#).

- › For now, CNIL endorses the ICO's stance that in low-risk instances, self-declaration may be sufficient and symbiosis with parental controls is envisaged. However, 'targeted advertising of minors' is specifically cited as a high-risk instance, where this is inadequate.
- » Data that is supplementary to the basic service should be off-by-default (Recommendation 8). Profiling of minors is acceptable only where it is consistent with their protection (e.g., facilitating age-appropriate services and content).

MOST TELLING:

'The determination by the person in charge of an online service of an age verification system should depend on the purposes envisaged, the target audience, the data processed, the technologies available and the level of risk associated with the processing.'

DELANY & CO HOT TAKE:

Some reprieve is found in the fact that 'proportionality' considerations for age checks refer to the *intended* audience ('publics visés') rather than the *actual* audience. It is the latter that has caused extensive compliance uncertainty for mobile games developers vis-à-vis the UK AADC. CNIL may have opened the gauntlet for industry to preclude enforcement action by suggesting industry standards and a certification program.