Age Appropriate Design Code

A difficult compliance hurdle lies ahead for games developers

Regulator: The Information Commissioner's Office (ICO)

RISK BAROMETER:

JURISDICTION RELEVANCE:

UK

TIMELINE:

Factoring a 12-month transition period, enforcement will begin on September 2nd 2021.

WHAT YOU SHOULD KNOW:

- On April 15th 2019, the ICO released a draft Age Appropriate Design Code for consultation - part of a backdrop of reforms intended to make the UK the safest place in the world to be online, especially for children. The final Code was published, with limited modifications, on November 23rd. As of September 2nd, the Code has come into effect, leaving a 12-month compliance window.

- The Code contains fifteen guiding principles whose underlying objective is to prioritise the protection of children's privacy over all other considerations. The scope is extensive - think age-appropriate application and parental controls, minimising the use of personal data and data impact assessments, child-friendly explanations, high default privacy settings, an off-by-default approach to profiling, geo-location, nudge techniques and a precautionary approach to so-called "sticky areas" such as reward loops, notifications, and auto-play.

- The Code can apply to any service "likely to be used by under 18's." In practice, this will mean navigating a complex decision tree as to whether your game is in scope, factoring features such as cartoonish characters and graphics or demographic data about the appeal of your genre. If your game is not in scope, you will need to provide cogent reasoning for exemption.

- The Code will be "a key measure of compliance" with data protection regulations. Companies in breach may be subject to fines up to €20 million or 4% of your annual worldwide turnover, whichever is higher.

- To assist implementation, the ICO has published a web hub containing DPIA templates and an FAQ, which explicitly states that age-gating is not a requirement of the Code. However, the FAQ further explains that, in order to avoid the high privacy by default settings demanded by the Code, "you will need to decide how to go about establishing age." [1]

MOST TELLING:

"The best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child" (the Code).

DELANY & CO HOT TAKE:

Doubtless, in recognition of an absence of practical guidance, the ICO has opened the door to further feedback on areas of the Code where more direction is necessary – an effective unofficial continuation of the consultation. Developers must act now to review the Code and identify those areas where it is unclear how the principles translate into tangible compliance. Companies likely to be in the ICO's crosshairs are those that have not gone out of their way to consider whether the Code applies to their services, and if so, how they might take steps to meet the guiding principles.

Endnote [1] Risk dependent methods mentioned include self-declaration, artificial intelligence, third-party age verification services, account holder confirmation, technical measures and hard identifiers.