



American Chamber of Commerce Ireland

**Submission to the Consultation on Digital
Age of Consent
Department of Justice & Equality**

1st December 2016

Executive Summary

The American Chamber of Commerce has engaged extensively with its member companies on the European General Data Protection Regulation (GDPR).

The American Chamber of Commerce is committed to a strong data protection framework and believes it is essential to gaining and maintaining consumer confidence in our businesses, products and services.

Our member companies are keen to maintain the industry and international best-practice of 13 as the age at which a teenager can engage in social media and online activity in a responsible way¹.

Raising the age of consent from 13 to 16 will have far-reaching consequences:

- It is an obstacle in the educational development of teenagers.
- It creates a barrier between teenagers and vital support and health information services.
- It ignores the decades of industry best practices around offering online services to teenagers aged 13 and older.
- It prevents teenagers from expressing their right to free speech and from engaging in online discussions.
- It motivates tech-savvy teenagers to lie about their age.

For these reasons the American Chamber of Commerce recommends that the age limit should remain as it currently stands, at 13.

Introduction

The key priority for the American Chamber of Commerce is that Ireland remains a global location of choice for US foreign direct investment (FDI) into Europe, and by doing so we retain and attract further investment and jobs. Today, over 140,000 people are directly employed in over 700 US firms in Ireland, accounting for over 74% of all IDA supported employment. This investment remains instrumental in helping to create and develop a world class labour force; critical in dispersing technology and innovative capabilities across the economy; and key in expanding the global reach of indigenous firms.

¹ ICT Coalition 'Briefing Note: Age of Consent in the General Data Protection Regulation'
[http://www.ictcoalition.eu/gallery/96/Briefing-Note-Age-of-Consent-in-the-General-Data-Protection-Regulation\[3\].pdf](http://www.ictcoalition.eu/gallery/96/Briefing-Note-Age-of-Consent-in-the-General-Data-Protection-Regulation[3].pdf)

The Chamber is committed to a strong data protection framework and believe it is essential to gaining and maintaining consumer confidence in our businesses, products and services.

Fundamental to such a framework is the right to privacy. Balancing that right is the need to ensure a business environment in which innovation is facilitated. Regulation should seek opportunities to provide industry the required flexibility to continue to create innovative solutions to challenges facing business and consumers while at the same time ensuring that users can exercise meaningful control over their own personal data.

Ireland is a leading player on the world stage of digital innovation and the Chamber encourages Government as it develops policies which reflect the country's modern environment and inclusive society. It is therefore important that our approach to online access reflects this image of Ireland. The current debate surrounding the age limit under which teenagers require parental consent to sign up to digital services that collect/process personal data - Article 8 GDPR - is very important, not just for our member companies, but for the youth sector here in Ireland and across Europe.

The internet is intrinsic to our daily lives, which means people experience innumerable online transactions everyday involving their personal data. This is how the internet functions. The use of data is not inherently harmful - it is simply essential for all digital services. Teenagers generally have a better understanding of what happens online – including how services can only operate with their data – than adults². Because this basic service functionality is clear, teenagers should be able to access their favorite services without unnecessary barriers.

In a digital world that is ever-evolving, it is necessary that our policies surrounding access to online data are well-informed with detailed consideration of research and the input of key stakeholders. The American Chamber of Commerce therefore welcomes the Department of Justice & Equality's call for submissions to the consultation on the digital age of consent. We have engaged extensively with our member companies to best reflect the concerns and views of industry.

Role of social media in teenagers' lives

Access to information is vital for teenagers as they seek to learn more about the world around them. Online platforms facilitate this thirst for knowledge and understanding:

² Janice Richardson (Expert to the International Telecommunications Union (ITU); the Council of Europe and former Coordinator of European Safer Internet Network), 'Letter of Concern to the Draft General Data Protection Regulation' – Open Letter to MEPS <http://www.antibullyingpro.com/blog/2015/12/11/letter-expressing-concern-to-the-draft-general-data-protection-regulation-13to16>

- Health Information – Teenagers are at a stage when they are grappling with confusing health concerns and body issues. They can seek out accurate and appropriately packaged advice online leading to positive behaviour like eating healthy, asking questions, ways to seek advice and taking exercise.
- Access to education – Social media platforms and tools are now used in schools with increasing regularity. Whether it's for sharing information between peers, sharing information and stories between schools, or discovering new teaching methods, widening access to knowledge and expertise, social media has become a crucial tool in education.
- Civic and political understanding – Teenagers use the internet to obtain news about current events and politics online so that they can better participate in political discourse and become active citizens.
- Critical online support access – Almost all major support services have a presence on social media platforms. These can provide a lifeline for teenagers who need help, advice or assistance.

Social media platforms also encourage the development of vital skills in this tech era:

- Developing personal skills and building relationships – Online platforms enable teenagers to communicate with their friends, to manage existing relationships and to develop new ones.
- Demonstrating their privacy savviness – Research shows that teenagers are more aware of what information they should share online than adults³. They understand that digital rights come with real responsibilities, including understanding the consequences of their actions, accountability and self-control.

Consequences of restricting 13-16 year old's ability to consent to data processing

Our member companies have stressed that raising the age of consent to 16 is a step in the wrong direction and it will create a number of negative consequences for teenagers, their parents, and companies alike. This shift in policy will create a fearful approach to social media, instead of one based on education. Stopping 13-16 year olds from being able to consent to the processing of their own personal data would prevent them from using critical, everyday internet services.

³ Janice Richardson (Expert to the International Telecommunications Union (ITU); the Council of Europe and former Coordinator of European Safer Internet Network), 'Letter of Concern to the Draft General Data Protection Regulation' – Open Letter to MEPS <http://www.antibullyingpro.com/blog/2015/12/11/letter-expressing-concern-to-the-draft-general-data-protection-regulation-13to16>

The GDPR requires parental consent before teenagers over the set age can access internet services that process their personal data. Because the definitions of “processing” and “personal data” are so broad, they capture everything teenagers do online, from shopping for a holiday gift for their parents and researching a school project to emailing friends or accessing critical support services, like LGBTQ or suicide prevention groups.

Restricting 13-16 year old's ability to consent to data processing:

- Ignores international best practice – Setting the age at which parental consent is required at 16 ignores industry best practices around offering online services to teenagers aged 13 and older.⁴ Age 13 is the current practice internationally, which is the result of a reasoned, thoughtful process. The transition that starts around age 13 reflects developmental needs. Raising the age of consent higher than 13 ignores this precedent.
- Encourages teenagers to lie about their age – Janice Richardson, expert to the International Telecommunications Union (ITU); the Council of Europe and former Coordinator of European Safer Internet network, has stated in an open letter to MEPs⁵ that setting the consent age at 16 will encourage teenagers to lie. Teenagers aged 13 and above have long accessed online services; a sudden change to this threshold will likely result in many teenagers between the ages of 13 and 16 lying about their ages in order to continue accessing online services-- rather than asking their parents for consent. This development would make it far more difficult for online services to offer teenagers age-appropriate guidance and tools to ensure a safe and privacy-protective experience online. Responsible service providers are committed to helping young people use their services safely. This is better for their users and is also a matter of reputation. But companies can't offer the right safety education if they don't know who is on their service.
- Impact on education – The additional level of bureaucracy in requiring parental permission could undermine the ability of schools using social media to teach digital skills. Raising the age of consent would put European students at a disadvantage with their international counterparts, e.g. the USA and Australia.
- Inhibits development – Blocking access to online services could deprive teenagers from developing critical skills of self-expression and relationship management in the online environment.

⁴ ICT Coalition ‘*Briefing Note: Age of Consent in the General Data Protection Regulation*’

[http://www.ictcoalition.eu/gallery/96/Briefing-Note-Age-of-Consent-in-the-General-Data-Protection-Regulation\[3\].pdf](http://www.ictcoalition.eu/gallery/96/Briefing-Note-Age-of-Consent-in-the-General-Data-Protection-Regulation[3].pdf)

⁵ <http://www.antibullyingpro.com/blog/2015/12/11/letter-expressing-concern-to-the-draft-general-data-protection-regulation-13to16>

- Prevents exercise of rights – Depriving youth from access to social media could prevent them from enabling their rights to freedom of speech and information in this digital age as well as their ability to participate in civic engagement. These are fundamental rights, as expressed in articles 12, 13 and 14 of the United Nations Convention on the Rights of the Child (UNCRC) and the recent Council of Europe publication⁶, which both underline the importance of children having the right to have their voice heard in a decision that impacts on their future such as age requirements for parental consent.
- Creates an unsupportive environment – Putting in place a higher age threshold builds a wall between teenagers and the support they sometimes need, whether it relates to problems in the home or the need for confidential LGBTQ or suicide support, for example.
- Prevents an understanding of privacy issues – It would be difficult to practically teach digital literacy so that minors are able to critically deal with the opportunities and risk of social media use.

Concluding Remarks

The internet is intrinsic in our daily lives. The policies that surround our interactions online should reflect the important role of the internet. In an age where we are keen to inform internet users of the importance of being responsible online, a shift in policy surrounding the age at which we can access online information would be a step in the wrong direction.

Youth organisations now take on an educational approach to social media; they no longer view it as something which should be kept away from teenagers and they see that the most constructive approach is to educate teenagers on how to make their online experience pleasant, positive and safe.⁷ This generation should be encouraged to utilise online resources when they are facing a problem.

Given the prevalence of the internet in modern society, teenagers 13 and older have long used online services to access important information about current events, conduct research for their schoolwork, and express themselves on issues of social, political and cultural importance without being required to seek their parents' consent. Our member companies are keen for 13-16 year olds to continue to utilise those capabilities and express those rights.

The American Chamber of Commerce welcomes the opportunity to input into the Department of Justice & Equality's consultation on this important issue.

⁶ <http://www.coe.int/en/web/internet-users-rights/children-and-young-people>

⁷ Approach adopted by SpunOut.ie - Ireland's youth information website provides information to around 80,000 active readers each month.