

General Data Protection Regulation

December 2016

Introduction

Barnardos welcomes the opportunity to submit its views to the Department of Justice and Equality consultation on the digital age of consent.

Barnardos' mission is to challenge and support families, communities, society and government to make Ireland the best place in the world to be a child, focusing specifically on children and young people whose well-being is under threat. Barnardos works directly with the children and families who need us most, providing services and support in 40 centres around the country. We also campaign for the rights of all children in Ireland, and provide training and knowledge resources to childcare professionals.

Recital 38 of the Regulation recognises that children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. The EU Kids Online survey found that in Ireland 35% of children aged 9-12 year olds and 82% of 13-16 year olds have a profile on social networking services (SNS).¹

Barnardos recognises children can benefit from engaging in online environments and we acknowledge that they also face challenges in navigating these environments safely. Barnardos collaborated in the publication *Get with it! Understanding and identifying cyberbullying to help protect your children*.²

¹ Livingstone, Sonia and Ólafsson, Kjartan and Staksrud, Elisabeth (2011) Social networking, age and privacy. EU Kids Online, London, UK.

² This publication was a joint initiative by the Office for Internet Safety, the National Centre for Technology in Education, O2 and Barnardos.

Children's consent in relation to information society services

Article 8 of the EU General Data Protection Regulation concerns the conditions applicable to a child's consent in relation to information society services.

Age of consent

The Regulation will make the processing of the personal data of a child lawful where the child is at least 16 years old. There is provision for Member States to lower the age of consent to 13 years. Children aged between the ages of 13 and 16 have different levels of maturity and understanding. The setting of a specific age limit does not recognise that every child develops at a different pace.³ Children's rights to be heard in matters affecting them and to access appropriate information are enshrined in the United National Convention on the Rights of the Child.⁴ It is, therefore, important the rights, views and wishes of children and young people are heard. This is a decision that needs to be made very carefully and with the maximum public debate possible,

Currently there is no age restriction when giving consent to processing personal data. For many SNS membership is only open to those aged at least 13 years old. In the US the Children's Online Privacy Protection Act requires that children under 13 must have parental or guardian consent for the collection or use of any personal information.

Recommendation 1: Barnardos urges the Department of Justice and Equality to consult children, young people and parents on the issue of age of consent.

Recommendation 2: If the State is going to set the age limit at 16 it must include provision for those children currently under the age of 16 who are already signed up to SNS and additional regulation and guidance for companies regarding these children.

Parental Consent

The Regulation makes parental consent the main mechanism for protection of children and young people when signing up to digital services. Barbovschi et al., note that the "wider use of mobile devices has made young people's internet use a much more

³ Lina Jasmontaite and Paul De Hert The EU, children under 13 years, and parental consent: a human rights analysis of a new, age-based bright-line for the protection of children on the Internet; International Data Privacy Law 2014: ipu029v1-ipu029.

⁴ United Nations, (1992) *Convention on the Rights of the Child*

private experience with less direct parental supervision. Therefore, parents, more than ever, need to communicate with children about their online experiences.”⁵

Livingstone et al. note that children and their parents, “generally do not understand the data collected from them or otherwise held concerning them, whether directly or indirectly (as ‘big data’), nor is provision made specifically to inform them or to provide redress.”⁶ Barnardos recognises that parents and carers are the most important people in a child’s world; however parents may not have the relevant information to weigh up the risks and benefits of providing consent.

Recommendation 3: While recognising the importance of parental consent, Barnardos suggests provision for awareness raising and information for parents so they can better understand protecting their child’s data.

Managing consent

The Regulation requires that the data controllers make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology. Yet it is unclear what reasonable efforts data controllers will be required to make to verify consent. Studies have shown that children are circumventing age and consent protections to access sites and that parents are aware of this.^{7, 8} Children may not have an understanding of what they are consenting to when they sign up to digital services.

The Regulation recognises the children merit specific protection with regard to their personal data. Awareness-raising and education with regard to privacy and data protection for children and parents will be key. Livingstone et al. advise that “education should pay particular attention to the child’s self-management of online content and

⁵ Barbovschi, M. et al. (2014). Policy recommendations. Net Children Go Mobile. Retrieved from http://www.netchildrengomobile.eu/wp-content/uploads/2013/07/D5.1_PolicyRecommendationsReport.pdf

⁶ Livingstone, S., Carr, J. and Byrne, J. (2016). One in Three: Internet Governance and Children’s Rights. Innocenti Discussion Paper No.2016-01, UNICEF Office of Research, Florence.

⁷ Livingstone, Sonia and Ólafsson, Kjartan and Staksrud, Elisabeth (2011) Social networking, age and privacy. EU Kids Online, London, UK.

⁸ BOYD, danah et al. Why parents help their children lie to Facebook about age: Unintended consequences of the ‘Children’s Online Privacy Protection Act’. First Monday, [S.I.], oct. 2011. ISSN 13960466. Available at: <<http://firstmonday.org/ojs/index.php/fm/article/view/3850/3075>>. Date accessed: 02 Nov. 2016. doi:10.5210/fm.v16i11.3850.

behaviour, enabling young people to become more critically aware of the benefits and risks associated with posting content online.”⁹

Regardless of the age limit selected the priority should be that children and parents are aware of how personal data will be processed by digital services, this places an obligation on Data Controllers. Recital 58 of the Regulation notes that any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand. This along with awareness-raising and education should enable children and parents to be aware of how personal data and content will be used and assist them to make informed decisions when signing up to digital services.

Recommendation 4: Provide easily accessible information and guidance for children and young people on protecting their data in a format and language which is age appropriate, recognising different age groups will require different forms and levels of communication.

⁹ Livingstone, S., Haddon, L., Görzig, A., and Ólafsson, K. (2011). Risks and safety on the internet: The perspective of European children. Full Findings. LSE, London: EU Kids Online.