

**Internet Safety Sub-Group of Galway Children and Young People's Services Committee and  
Roscommon Children and Young People's Services Committee**

**Submission to the Department of Justice and Equality**

In response to

**Consultation Paper: Data Protection Safeguards for Children  
(‘Digital Age of Consent’)**

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## Who We Are

### Children and Young People's Services Committees

Children and Young People's Services Committees (CYPSC) are a key structure identified by Government to plan and co-ordinate services for children and young people in every county in Ireland. The overall purpose is to improve outcomes for children and young people through local and national interagency working.

CYPSC are county-level committees that bring together the main statutory, community and voluntary providers of services to children and young people. They provide a forum for joint planning and co-ordination of activity to ensure that children, young people and their families receive improved and accessible services. Their role is to enhance interagency co-operation and to realise the national outcomes set out in *Better Outcomes, Brighter Futures: the national policy framework for children and young people 2014 – 2020* (Centre for Effective Services, 2017).

For more information on CYPSC, please visit [www.cypsc.ie](http://www.cypsc.ie).

### Internet Safety Sub-Group of Galway Children and Young People's Services Committee and Roscommon Children and Young Peoples Services Committee

In 2015, Galway CYPSC and Roscommon CYPSC undertook a comprehensive programme of consultation with children and young people across both counties. This consultation identified the issue of internet safety for children and young people as a priority concern and a joint Sub-Group of both CYPSCs was established.

The Sub-Group aims to achieve a coordinated approach among statutory and community / voluntary service providers to issues regarding internet safety and cyber-bullying in Galway and Roscommon.

Membership of the subgroup is as follows:

Alanna O'Beirne / Sharon Doherty	Workforce Development: Tusla, Child and Family Agency
Deirdre Rafferty	Family Support Services: Tusla, Child and Family Agency
Noelle Reynolds	Family Support Services: Tusla, Child and Family Agency
Gerry Prior	Foróige
Andrew Chapple	Youth Advocacy Programme Ireland
Brenda Kneafsey	EPIC, Empowering People in Care
Nivard Whelan	Vita House Family Centre

Supported by:

Marie Gibbons	CYPSC, Tusla, Child and Family Agency
Caroline Duignan	CYPSC, Tusla, Child and Family Agency
Morgan Mee	CYPSC, Tusla, Child and Family Agency

## Introduction

Members of the Internet Safety Sub-Group of Galway Children and Young People's Services Committee and Roscommon Children and Young Peoples Services Committee value online activity as an exceptional resource for the educational advancement and social development of children.

While arbitrary age limits are, by nature, blunt instruments that fail to recognise the individuality of children, the Internet Safety Sub-Group welcomes the introduction of a digital age of consent. In the absence of such a regulating mechanism, digital service providers have tended to provide an age-generic approach to their services. Livingstone, Carr and Byrne highlight the dangers of this approach as 'children have specific needs and rights that are not met by governance regimes designed for *everyone*' (2016, p7).

The measure of discretion afforded to the Irish government to determine what Ireland's digital age of consent shall be, requires consideration of a range of arguments relating to the sometimes conflicting nature of children's rights and the associated responsibility of parents and guardians, the capacity of children of different ages to provide informed consent and the potential for unintended, negative, consequences arising from the implementation and enforcement of a digital age of consent.

Each of these considerations is addressed below in advance of the Internet Safety Sub-Group's recommendation in relation to the Ireland's digital age of consent being presented.

## Overview of Context: Being Online as Part of Growing Up

Ireland was one of seven countries that participated in a two year research project funded under the European Commission's Safer Internet Programme to establish the nature and extent of internet usage among children. The results of this research were presented in the report entitled *Net Children Go Mobile: Full Findings from Ireland* (O'Neill and Dinh, 2015).

This report highlights the centrality of online activity to the lives of children. Selected data include:

- In Ireland, the average age at which children start using the internet is 9 years of age (though 11-12 year olds report going online at an earlier age).
- The average age at which children start to use smartphones is 12 years old.
- Among children of all ages, the most popular online activities relate to accessing online entertainment (listening to music and watching video clips online).
- The next most popular use of the internet among children is visiting social networking sites. This activity is especially popular among teenagers who report it to be their most popular online activity (along with listening to music).
- 90% of all Irish 15-16 year olds have a profile on a social networking site.
- Despite an age restriction of 13 years being in place on most social networking sites, almost 40% of 11-12 year olds have a social networking profile.

## Considerations of the Internet Safety Sub-Group

### Balancing the Conflicting Rights of Children

Just as in the physical world, the rights of children often seem to conflict with each other in online environments. Online environments where children are likely to encounter material of a sexual nature or material relating to identity-politics typically give rise to concern about the need to prioritise the protection of children. However, the increasing monetisation of users' personal data raises further concerns about the potential exploitation of children visiting more mainstream online environments.

Ireland signed the Convention on the Rights of the Child in 1990 and ratified it, without reservation, in 1992. The Convention acknowledges that children have the right to be protected from abuse or exploitation and to have their privacy protected. However, realising these rights, through monitoring and regulating online behaviour, can compromise other rights conferred in the Convention: the right to participation, to express their opinions and that their lives not be subject to excessive interference.

Given the limitations of any hard and fast rule to determine how a child's right to privacy or to participation could be weighed against their right to be protected from harm, 'provisions that allow for case-by-case consideration according to the specific context is...especially desirable' (Livingstone, Carr and Byrne, 2016, p.25).

Against this backdrop, Article 5 of the Convention on the Rights of the Child holds a particular relevancy: 'parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'.

#### ***The Internet Safety Sub-Group concludes that:***

- All approaches to balancing the conflicting rights of children will have limitations.
- Parents and guardians are best placed to determine a child's evolving capacity and to give case-by-case consideration of each specific context.
- Children who have not yet reached the digital consent threshold will not be prohibited from accessing online services (including those providing educational and social opportunities). Rather, these services will be available with the consent of a parent or guardian.
- The involvement of parents and guardians is maintained so long as a child is below the age of consent threshold. Therefore, prolonging the involvement of parents and guardians is facilitated by establishing a higher age of consent threshold.
- In deciding on whether, or not, to provide consent, parents and guardians will meet challenges associated with listening to children, to understanding their points of view and to being open to reflect upon their own opinions and positions in light of what their children are saying.
- The responsibility for parents and guardians that will follow the introduction of a digital age of consent may act to raise awareness of the need to protect children while online.

## **The Capacity of Children to Provide Informed Consent**

The on-going process of monetising personal data has led to the creation of multi-trillion dollar industry. Estimates published in the *Wall Street Journal* value the personal data controlled by companies in the USA at more than \$8 trillion (Monga, 2016). To illustrate the monetary value placed on personal data controlled by social networking sites, Monga presents the case of Facebook: 'The stock market values the social-networking company at nearly \$320 billion. As of Dec. 31 [2015], its assets minus liabilities totalled \$44.2 billion. The difference between the two could serve as a proxy for the value of Facebook's vast troves of user data, the algorithms it creates to mine that data and its brand.'

While it is not possible to place an absolute value on the personal data of internet service users, it is clear that giving personal data in exchange for an internet service is equitable to providing an asset in exchange for a service. In Ireland, as a general rule, a person cannot enter a legally binding contract until they are 18 years old.<sup>1</sup> Presumably, the lack of public debate seeking to amend this situation reflects a degree of satisfaction with how the status quo interprets the capacity of children to understand the character of a contractual relationship.

Moreover, many children clearly lack awareness of more potentially more immediate and more serious risks and harms to which they are exposed online. O'Neill and Dinh (2015) inform us that:

- In Ireland, the proportion of young people with a public social network site profile has risen from 12% to 16% between 2011 and 2016.
- The proportion that keeps its profile completely private has fallen fall from 63% in 2011 to 59% in 2015.
- 40% of Irish children do not know how to use a report button.
- 60% of Irish children do not know how to block spam.
- 66% of younger children do not know how to block unwanted contacts.
- Younger children are usually not fully aware of commercial risks.
- While younger children are sensitive to in - app purchases, they are less concerned about the misuse of personal data for customisation and marketing.

### ***The Internet Safety Sub-Group concludes that:***

- The fact that children spend time online does not necessarily translate into an awareness of risk or an ability to react appropriately to risk.
- Children are not considered to have the capacity to enter into a legally binding contract (exceptions noted) in the physical, non-virtual, world. There is no reason to believe children are better equipped to understand similar relationships as they present in an online environment.

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<sup>1</sup> There are exceptions to this where a person has been married or where a contract is considered to be for necessities (such as food, clothing, accommodation or education) or to be a beneficial contract of service in the child's best interests (typically comprising contracts for apprenticeships or contracts with agents or managers). These contracts of service are only enforceable if they are to the advantage of, and in your best interests of, the child.



## **Challenges Relating to Implementing and Enforcing a Digital Age of Consent and the Risk of Unintended Outcomes**

Implementing and enforcing a digital age of consent will prove challenging. As noted in the Report of the Internet Content Governance Advisory Group (2014, p.54), 'the difficulties of implementing an effective age-verification scheme are substantial'.

Typically, current age-verification mechanisms rely heavily on self-declaration and trust. Despite a minimum age requirement of 13 years being common to most of the larger social networking sites, 40% of Irish 11-12 year olds have a profile on one of these sites (O'Neill and Dinh 2015). While the Advisory Group points to the achievement of more successful age-verification within by the online gambling industry, it seems clear that systems that rely on self-declaration and trust are inadequate.

It has been pointed out that, in the absence of effective age-verification systems, introducing a digital age of consent of 16 years may simply lead to greater numbers of children accessing social network sites under false pretences while simultaneously offsetting the responsibility of service providers to maintain a child-friendly environment as, officially, the only users under 16 years of age will be there with their parents' or guardians' consent.

It may also be the case social networking sites and other online environments may choose to avoid the challenges posed by complying with the General Data Protection Regulation by restricting their service to those who have reached the digital age of consent and, in so doing, lessen the likelihood of even basic protections for children being provided.

These concerns are serious. However, they will apply in equal measure, as long as age-verification systems remain weak, irrespective of the digital age of consent being 13, 14, 15 or 16 years of age.

### ***The Internet Safety Sub-Group concludes that:***

- Under-age use of social networking sites, and other online environments, is a real and serious concern.
- The weakness of current age-verification systems and practice enables under-age use of these services.
- Setting the digital age at 13, 14, 15 or 16 years old will not address the issue of under-age use. Stricter age-verification systems are required to do this.
- The logic underpinning the argument that, in the absence of an effective age-verification system, a lower digital age of consent leads to a safer online environment overlooks the factors that motivated the development of the General Data Protection Regulation in the first instance, i.e. that children under a certain age simply do not have the capacity to give informed consent relating to the use of their personal data.
- If implemented correctly, the introduction of a digital age of consent will provide children with more protection while online.

## **Recommendations of the Internet Safety Sub-Group**

The Internet Safety Sub-Group of Galway Children and Young People's Services Committee and Roscommon Children and Young Peoples Services Committee comprises practitioners who work with children, young people and their families. The Sub-Group has an informed understanding and appreciation of the capacity of children and young people. All too frequently, we see the consequences of children and young peoples' inability to recognise online risks and to act appropriately.

It is the view of the Sub-Group that:

1. A digital age of consent, set at whatever age, will only be effective if it forms part of an overarching internet safety strategy that seeks to harness the capacity of all stakeholders (children, parents, schools, child/youth work practitioners, information and communications technology industry and experts) to safeguard children online. Elements of this strategy would have to focus on awareness raising, education, industry regulation and the technological advancements required to tackle technical issues such as age-verification.
2. The statutory age of consent threshold to be applied in Ireland should be 16 years old.

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