



Submission to the National Data Forum regarding the age of consent in the General Data Protection Regulations for the use of information society services

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ICT Ireland and the Irish Software Association (ISA) - soon to become Technology Ireland - are the technology sector associations of Ibec. Representing over 200 members, we advocate on behalf of Ireland's indigenous and foreign direct investment (FDI) technology companies to Government and policy makers. We welcome the opportunity to deliver this submission to the Government's National Data Forum.

Summary of ICT Ireland and the ISA position

Article 8 of the European General Data Protection Regulation (GDPR) restricts companies that offer information society services directly to children from processing the personal data of children under the age of 16, unless consent is received from the child's parent or custodian. Each Member State has the authority to reduce this age to 13. As set out in the GDPR, the definitions of *processing* and *personal data* are extremely broad, capturing nearly all online activities.

ICT Ireland and the ISA argue that the age of consent for the use of information society services should be set at 13 in Ireland. This is a position that is supported by both industry and numerous established experts working for the safety and wellbeing of children online.¹

Of primary concern in setting the age of consent at 16 rather than 13, is the negative impact on teenagers. Without providing additional protection - and possibly less - setting the age of consent at

¹ Janice Richardson, ITU and the Council of Europe, former coordinator of European Safer Internet network, Luxembourg.

16 may deprive teenagers of essential social and educational opportunities. 16 as an age of consent is contrary to well-established research on child development.²

Creating fear

Social media and use of the internet is a vital part of everyday life. Social media platforms are not a fad and are not new. Creating an excessively high age of consent for services used by tens-of-thousands of teenagers suggests that teenagers should be fearful of online services, and that such services could be dangerous.

Rather, the focus should be on educating teenagers on digital literacy, i.e. how to make teenagers' online experience pleasant, positive, valuable and safe. Increasingly, this is the approach taken by organisations in the youth work space, such as the National Youth Council of Ireland. These organisations accept that social media and internet services have now become indispensable to most young people - indeed, they have never been without them. The emphasis should be on ensuring that teenagers know how to make such services work for them.

Crucial life skills are nurtured through information society services. Limiting use by creating barriers, such as a high age of consent, will produce negative outcomes for teenagers. We should, instead, focus on empowering teenagers through education. This is the approach favoured by youth organisations working through online mediums, such as *SpunOut* and *ReachOut*.

Curbing education

Given the prevalence and great reliance on social media and online services, these tools are now positively integrated into how teenagers – both independently and guided by teachers - understand current events, conduct research for schoolwork and participate in the education process itself. Many of the contemporary events and developments in society that are studied by teenagers have a connection to the internet. An age of consent of anything above 13 will only curb the use of the internet in these positive ways.

At a time when students must be as skilled with using information society services as previous generations were skilled with using a telephone, we must be striving to reach a point where we encourage the use of technology rather than dampen it. Should the age of consent be set at 16, we would only be putting Irish teenagers at a disadvantage to their global peers.

In addition, significant policy work has been undertaken at a national level (for example, the ICT Skills Action Plan), along with numerous initiatives, to bolster Ireland's world class standing as a top location for science, technology, engineering and maths (STEM) talent. Setting the age of consent for

² Dr David Finkelhor, sociology professor and director of the Family Research Laboratory at the University of New Hampshire, has argued that information system services have actually improved many aspects of teenage safety and behaviour.

the use of information society services at 16 will not only put Irish teenagers at a disadvantage, but will also harm Ireland's ability to develop strong STEM talent. Such a move would contradict our serious efforts to enhance Ireland's reputation as a global location of talented, highly skilled and digitally fluent individuals.

Incentive to lie

Teenagers are tech savvy. Today's thirteen-year-old teens are older than each of the major social media services they use. They know no other reality other than one which is characterised by the prevalence of online services and they are generally more proficient in their use of these services than older generations.

Increasing the age of consent for information society services will serve to encourage young people to lie in order to access services they will inevitably use. This will create an unhealthy relationship with online services and possibly generate conflict within the family structure. Teenagers have used information society services over many years for positive, beneficial means. Seeking consent every time an app or website is used will only create frustration and diminish the decades of industry best practice in providing safe and valuable online services to teenagers.

Access to vital support services

Almost all major support services have an online presence – a communication channel which teenagers will go to before they pick up a phone book. An age of consent of 16 runs the real risk of keeping young people away from services that they need. Rather, we should be empowering teenagers to use these support services that often require discretion and confidentiality.

Major youth work organisations from Ireland, Northern Ireland, Austria, Denmark and Finland cooperated on a series of reports entitled Screenagers. Among the conclusions in these reports was a strong urging for the integration of more, not less, online services in the work of youth organisations with those they serve. This was predicated on an acknowledgement that, in Northern Ireland for instance, 75% of young people said "...they couldn't live without the internet". It seems counter-intuitive to raise the age of consent on information society services when the groups that work most frequently with young people are seeking to embrace such services with renewed enthusiasm.

Clarity in the debate

It is important to demystify and bring clarity to the debate on the age of consent for the processing of personal data when online and social media services are used. For the majority of cases, what does the processing of data actually mean? It is by-and-large an innocuous system. Crucially, it is important to counter the assumption that the processing of personal data is somehow harmful.

The definitions of both personal data and data processing, as promulgated under the GDPR are very broad. Under the GDPR, if a data subject can be identified using a variety of datasets, each piece of

data which can be related back to this individual through a combination exercise could potentially be deemed *personal data*. The GDPR's broad definition of personal data means that almost any data which results from the activity of a person online (e.g. using an application on a smartphone or using a computer to access the internet) will likely fall within the regulated concept of personal data. With regard to the *processing* of personal data, the GDPR captures the following array of activities:

- Browsing the internet;
- Provision of online services, whether those services require registration or not (for example: to play games, use educational services, watch videos or listen to music);
- Communicating with friends and family (using email, messaging services, social networks, video calling services, photo-sharing applications);
- Using mobile applications (for example: games, drawing programs, current affairs, video apps);
- Security and fraud prevention interactions.

The practical point here is that almost anything which individuals – including teenagers – do online could involve the processing of personal data. The internet is intrinsic to our daily lives and many of our online activities involve processing personal data. This is simply how the internet functions.

The GDPR has set forth important protections that companies must employ in order to collect, process and store personal data, such as notice, consent, and correction/deletion rights. Internet users of all ages will benefit from these protections. A law which restricts the ability of teenagers to validly consent to the processing of their personal data online could adversely impact teenagers' ability to use the internet.

Dangers of inadequate consultation

The original version of the Article 8 text proposed by the European Commission and the amended European Parliament text set the age of consent for the use information society services at 13. Without consultation of any significance, the age of consent was changed to 16. There has been widespread opposition to this decision since.

Concern remains as to how the decision on the final appropriate age of consent was arrived at and the level of research used to make the amended determination. The inadequate consultation at supranational level on an issue of this importance is wrong.

Conclusion

Setting the age of consent at 16 creates a barrier between teenagers and vital support services, inhibits a teenager's capacity to develop skills and relationships, creates fear, restricts access to communication and educational tools and, generates unhealthy conflict. Lowering the age of consent will do the opposite. ICT Ireland and the ISA urge that the age of consent for the use of information society services be set at 13 years.