



**Never give up on a child. Ever.**

ISPCCC submission to the Department of Justice and Equality's consultation process on the statutory "age of digital consent" to be applied in Ireland in the case of information society services offered directly to children as required by the General Data Protection Regulation (GDPR).

December 2016



## 1. Summary

The ISPCC appreciates the opportunity to feed into the Department of Justice and Equality's consultation process on the statutory "age of digital consent" to be applied in Ireland in the case of information society services offered directly to children as required by the General Data Protection Regulation (GDPR). The ISPCC has based its submission on its experiences of working with children, this work being grounded in the principles of the UN Convention on the Rights of the Child (UNCRC).

In Childline in 2015 we answered almost 440,000 contacts from children and young people.

The ISPCC itself processes data from children through its online support service, Childline, and is opposed to any regulatory change that could block children from accessing support services directly without first achieving parental consent. It is our understanding that the Regulation does not impact on the current rights of children to access help and support from services such as Childline directly, without requiring parental consent, as services of this nature are excluded from the scope of the Regulation. It is important that this information is conveyed to the public, to young people and their parents in the dialogue around this issue. Children and young people looking to access these services need to know they can still continue to contact online services like Childline without worrying about their data being collected or processed in order to market commercially to them.

The ISPCC's proposals for the Department of Justice and Equality, are as follows:

- **Proposal One:** The ISPCC suggests in its consultation on this issue, the Department engages particularly with children and young people to ensure that their views are represented in the decision on introducing national legislation setting an age limit for digital services.
- **Proposal Two:** An awareness campaign will be needed to inform children and young people and their parents/carers/guardians of the subsequent Regulation.

- **Proposal Three:** The Government should encourage companies with a base in Ireland who may be processing data as per the Regulation to consult with children to create child-friendly ‘terms of use’ policies.
- **Proposal Four:** The ISPCC recommends that national legislation be introduced to set the age limit at 13 years for Ireland where services provided are commercial.
- **Proposal Five:** The ISPCC notes the **recommendations by Dr. Geoffrey Shannon on the right of children to be forgotten on the internet in the Ninth Report of the Special Rapporteur on Child Protection.** The ISPCC recommends that the Department consult on and consider carefully how this right will be achieved in the consultation on this issue.

Ultimately the ISPCC views the Regulation and Article 8 within as trying to balance a child’s right to participate with their right to protection.

## 2. Introduction

The ISPCC is pleased to make this submission to the Department of Justice and Equality’s consultation process on the statutory “age of digital consent” to be applied in Ireland in the case of information society services offered directly to children as required by the General Data Protection Regulation (GDPR). This submission has been addressed within the context of the ISPCC’s vision, mission and objective, as defined by its own strategic plan. In developing this submission the ISPCC has reviewed data from contacts to Childline, which answered almost 440,000 contacts from children and young people in 2015.

Our proposals are grounded in our experience, the data we gather and the principles of the UN Convention on the Rights of the Child.<sup>1</sup> The ISPCC’s Children’s Advisory Committee (CAC) were in a position to provide us with insight into thoughts on the issue also which we will make reference to throughout this document.

The ISPCC (Irish Society for the Prevention of Cruelty to Children) is the national child protection charity<sup>2</sup>. It provides a range of child-centred services including childhood support services, family support services and mentoring, all of which are focused on building resilience and coping skills. These services support children and young people and their families to develop their own skills and enable them to deal with challenges and situations in their lives, and to promote their well-being.

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<sup>1</sup> Full Text on the UNCRC <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>2</sup> Further information about the ISPCC’s services and financial statements can be found in the Annual Report 2015 <http://www.ispcc.ie/campaigns-lobbying/publications/-ispcc-annual-report-2015/14783>

The ISPCCC provides Childline, Ireland's only 24-hour listening service for children and young people. It is free, confidential and non-judgemental, providing support to children across Ireland.

Our research<sup>3</sup> in 2011 on children and the internet found that;

Almost a quarter (24%) of the older group (secondary school-age/youth) responded that they did not use privacy settings, while over one third (36%) of the younger group (primary school-age) indicated that they did not know how to keep their social network account private.

17% of the older group and 13% of the primary group said they have given their full name to someone online whom they had never met; with 10% of the older group admitting to also giving personal details such as an email address, mobile phone number or photo.

## Our Vision

An Ireland where all children are safe, heard, and valued

## Our Mission

To make the protection of children everyone's priority

## Our Work

We listen, we support, we protect

3. ISPCCC Views and Proposals regarding the statutory “age of digital consent” to be applied in Ireland in the case of information society services offered directly to children as required by the General Data Protection Regulation (GDPR).

The GDPR identifies children as ‘vulnerable individuals’ and deserving of ‘specific protection’ regarding their personal data.<sup>4</sup> Given this identification in the Regulation, should the collecting and processing of children’s personal data be subject to GDPR at all?

Firstly, it is welcome that the Regulation will not affect online support services similar to the ISPCCC’s Childline service and Missing Children’s Hotline service and others providing

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<sup>3</sup> [http://www.ispcc.ie/file/4/12\\_0/NCC+report+-+Children+and+the+Internet.pdf](http://www.ispcc.ie/file/4/12_0/NCC+report+-+Children+and+the+Internet.pdf)

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> Recital (38); Recital (75)

information directly to children as outlined in Recital 38 of the Regulation stating that parental consent should not be necessary in these contexts.<sup>5</sup>

*“The internet is like a high street; companies and advertisers want to know what the busiest shop is. They don’t need to know exactly who you are, they just want to know how old you are, what you like and where you shop” – CAC member, aged 17.*

We now have a generation of children and young people who do not know what it is like to be without the World Wide Web, with the first page being opened over 27 years ago. Web 2.0, as it is dubbed, made the internet a lot more engaging for everyone and saw the birth and indeed rise of social networking and online activity in general. On the internet’s 25<sup>th</sup> ‘birthday’ its founder Sir Tim Berners-Lee said: *“If we want a Web that is truly for everyone, then everyone must play a role in shaping its next 25 years.”*<sup>6</sup> The ISPCC sees everyone, including children, having this role to play in shaping the internet for future generations of users.

Children and young people set up an online account for various reasons – social networking; streaming music; gaming; communication, etc. Rather than separate and distinct to their ‘offline’ world their online world is now an extension of it. All, in the main, without parental consent and/or minimal parental monitoring.

The ISPCC is concerned that the Regulation places responsibility on parents to verify their child’s age in order to access various internet functions – social media sites, Apps, etc. It is widely accepted that children lie about their age in order to access certain sites and perhaps an awareness of the risks this entails is needed also.

**Proposal One: The ISPCC suggests in its consultation on this issue, the Department of Justice and Equality engages particularly with children and young people to ensure that their views are represented in the decision on introducing national legislation setting an age limit for digital services.**

As children are also users and consumers of the internet it is important that their opinions are reflected in the national legislation. However, as far as the ISPCC understands no children were consulted in the drafting of the actual Regulation which is unfortunate. It would be essential for the Irish government to have the voice and opinions of children recognised in this national legislation. It is important to remember that there is a consultation unit within the Department of

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<sup>5</sup> Ibid.

<sup>6</sup> <http://www.independent.co.uk/life-style/gadgets-and-tech/news/25-years-of-the-world-wide-web-the-inventor-of-the-web-tim-berners-lee-explains-how-it-all-began-9185040.html>

Children and Youth Affairs where there is a full suite of guidance documents, etc. and perhaps they could be tasked with taking the lead on this. This should be used as part of the Department of Justice and Equality's overall consultation on the matter. In the development of this issue, the ISPCC is happy to play a role in getting the message out about any prospective consultation and even in facilitating discussions with young people to ascertain their views.

**Proposal Two: An awareness campaign will be needed to inform children and young people and their parents/carers/guardians of the subsequent Regulation.**

Users will need to be informed of the risks and consequences of sharing their data, the reasons for which it can be processed and the associated consequences. Children will need to be educated on how online marketing uses their data to target them commercially. There is a piece of work to be done on informing children of what their online digital footprint constitutes and subsequently leaves behind.

It is incredibly important to have parents/carers/guardians informed of the issues too as they will be tasked with monitoring these sites and deciding to provide the consent, or not, for same.

Many children view their parents' digital ability as minimal at most and this will need to be taken into account. Ongoing education and upskilling for parents will need to be resourced in order to support them to make informed choices on the consent sought by their child.

**Proposal Three: The government should encourage companies with a base in Ireland who may be processing data as per the Regulation to consult with children to create child-friendly 'terms of use' policies**

Our discussion with our CAC members revealed that children do not tend to read *Terms & Conditions* of sites they are accessing. All our members felt strongly that companies should have child-friendly versions of these. This is supported by the Regulation and the ISPCC sees the government being tasked with making sure companies are adhering to this.

Companies need to be encouraged and supported to seek input from children when designing these. Again, the government's participation hub within the Department of Children and Youth Affairs could facilitate this.

**Proposal Four: The ISPCC recommends that national legislation be introduced to set the age limit at 13 years for Ireland where services provided are commercial.**

Our three key points are as follows;

1. The ISPCC disagrees in principle with the European Commission's inclusion in this directive of the introduction of an age at which parental consent should be sought for children to access digital services. There are several reasons for our position in this regards.

First, the UN Convention on the Rights of the Child does not place age limits on children's access to services. The age of a child does not necessarily reflect maturity and the setting of an arbitrary age limit to access these services is not appropriate. We are not aware of any comprehensive research that would support the setting of a requirement for parental consent at any particular age.

Second, requiring services to receive the consent of a parent in order for a child to access them is not a guarantee of protection from commercial exploitation.

Third, the requirement to obtain parental consent could inhibit the access of children to services that are beneficial to them.

2. Where services are beneficial to a child and are provided on a non-commercial basis there should be no requirement for parental consent at any age. The definition of 'preventive or counselling services offered directly to a child' as outlined in Recital 38 must be interpreted broadly so as to ensure the widest possible availability of such services to children without any barriers being placed on their access.
3. Where services provided are commercial, the setting of an age limit should be done at the youngest age – in this case the age 13 permitted under the directive.

The provisions of Recital 38 – that are currently freely available to children and helpful and supportive to them but which do not come under the headings of counselling in Recital 38 of the Directive – could be curtailed.

The UNCRC does not require parental consent to enable children to access services, and we are concerned that the principle is creeping in. Obviously we understand that the Irish government is adopting the Regulation but we are opposed to the principle of seeking parental consent to seek access to a service. We are aware of the proviso for services like our Childline service but we treat with caution the principle itself and how it is not conducive to children being able to freely participate online.

We know how children respond to age-related restrictions; they tend to lie about their age, and therefore they may seek to flout any regulations seeking parental consent- this could undermine children's trust in the services they need, and that's not helpful at all.

Nine in ten of all 15-16 year olds In Ireland have a profile on a social networking site. Notably, just under 40% of 11-12 year olds also have a social networking profile despite the age restriction of 13 for most social networking services. There is a steep rise from age 11-12 to age 13-14 where use of social networking more than doubles.<sup>7</sup>

How impressionable and/or safe will young people be with advertising specifically directed towards them?

Deciding on an age must be based on 'what works'- therefore the Department should commission research into the issue – a desk based exercise on what we know from age related restrictions, to inform its decision making. This is about balancing the rights of children to access services (Participation Rights), with protections from commercial exploitation (Protection Rights).

Our CAC members spoke about the prospective positives of having to get consent; it would facilitate communication between parent and child, keeps the child safe and provides an opportunity to discuss the app/internet use, etc.

The broadly used age of 13 is based on the US's *Children Online Privacy Protection Act (COPPA)* 1998. COPPA imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.<sup>8</sup>

A child's right to protection needs to be balanced with their rights to freedom of expression and their right to participate as per the UNCRC.<sup>9</sup> Will the default age of 16 years protect them any more than 13 years? Or will children just continue to lie about their age in order to access the sites they want to anyway?

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<sup>7</sup> O'Neill, B. & Dinh, T. (2014). *Net Children Go Mobile: initial findings from Ireland*. Dublin: Dublin Institute of Technology

<sup>8</sup> <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule>

<sup>9</sup> Full Text on the UNCRC <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>



eNASCO's<sup>10</sup> expert advisor John Carr OBE highlights his concerns that setting any age limit may be breaching Articles 12 and 13 of the UNCRC as nowhere in the Articles does it reference the need for an age limit or a need for parental consent.<sup>11</sup>

However, having the responsibility placed on the information service providers having to have age verification mechanisms in place is positive; provided they are robust and not easily navigable by children, of course.

A suggestion from Professor Sonia Livingstone asks, could it not be possible to set the age limit at 13, and then require organisations that hold data to ensure this data is not used for commercial exploitation, only for service enhancement?<sup>12</sup> That means that children aged 13-17 could still access services, but couldn't be targeted for commercial reasons. This would allow children access to services (vindicating their right to participate), but still ensure they are protected (recognising their right to protection).

**Proposal Five: The ISPCC notes the recommendations by the Special Rapporteur on Child Protection Dr. Geoffrey Shannon on the right of children to be forgotten on the internet in the Ninth Report of the Special Rapporteur on Child Protection. The ISPCC recommends that the Department as part of its consultation consult with Dr Shannon in his capacity as special rapporteur and consider carefully how this right will be achieved.**

The ISPCC concurs with the recommendations made by the special Rapporteur on Child Protection in his Ninth Report, as follows: *The relevance for children of the 'right to be forgotten' should be acknowledged, children should be educated about the matter, and it should be understood that the age at which an individual posts information online should be considered a very important factor in decisions about whether to remove an individual's personal information from sites.*

*It must be ensured that children's access to information is not unreasonably restricted by blanket filters blocking websites which offer education and support.*

*It is vital to take steps to combat cyber-bullying, including through education of parents. However the importance of dialogue and support for children, rather than simply prohibitions on Internet usage, should be part of this education.*

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<sup>10</sup> <http://www.enasco.eu/>

<sup>11</sup> <https://www.betterinternetforkids.eu/web/portal/news/detail?articleId=687465>

<sup>12</sup> <https://www.betterinternetforkids.eu/web/portal/news/detail?articleId=687352>

The ISPPC recommends that the Department consult with the Special Rapporteur on Child Protection on this important issue.

#### 4. Policy Context

*United Nations Convention on the Rights of the Child*<sup>13</sup>

Article 3 – The Best Interests of the Child

All actions concerning the child must be based on his or her best interests.

Article 5 – Parental Guidance and the Child’s Evolving Capacities as he or she Grows

The State has a duty to respect the rights and responsibilities of parents and the wider family or others involved in the upbringing of the child in a manner appropriate to the child’s evolving capacities.

Article 12 – The Child’s Opinion

The child has the right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child, in accordance with his or her age and maturity.

Article 13 – Freedom of Expression

The child has the right to obtain and make known information, and to express his or her own views, unless this would violate the rights of others.

Article 16 – Protection of Privacy

The child has the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.

*Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*<sup>14</sup>

Outcome 2: Achieving full potential in learning and development

Government Commitment 2.7:

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<sup>13</sup> Full Text on the UNCRC <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>14</sup> [http://dcya.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://dcya.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf)

Continue to develop, evolve and implement curricula in the education system and to support initiatives in out-of-school settings, to teach children knowledge and skills relating to information management, new technologies, coding and digital literacy.

## 5. Conclusion

Putting measures in place to promote child protection is important and welcome. It is also important for government to seek ways to address the issue of why children lie about their age online and having an honest conversation about the associated risks.

The issue of obtaining parental consent may depend on the parents own digital literacy and then the question needs to be asked what implications will this have for a child's right to participate fully online.

Finally, regarding the question of age of digital consent; would children be more inclined to ask a parent for consent at 13 or 16; which age would offer children the most protection? This is a key question which the ISPCCC believes needs to be explored and recommends that it is explored with the cohort the age limit in the Regulation will affect most: children and their parents/caregivers/guardians.

There are a lot of questions on Article 8 of the Regulation and the ISPCCC believes that an impact assessment is required – this has been noticeably absent in setting the parameters of the current age categories. Each age category will have implications for children's rights and their needs and these implications need to be fully explored.

As the national child protection charity, we understand the complexity of the child protection issues posed by children being exposed to unsuitable material on the internet. We understand the need for children to be protected from grooming, and we understand that their digital and data protection rights must be protected. The ISPCCC is deeply uncomfortable that there should be any sense by the legislature that we are protecting children by requiring children to seek parental consent for access to certain services.

We note that the directive is in the process of being implemented by Ireland, and if it is to be faithfully implemented, then we argue that the age limit imposed must be the youngest age possible.

All of the above is predicated on our understanding that the consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child, as outlined in Recital 38 of the GDPR preamble. We note that while this is in Recital 38 there has been some commentary and criticism that this is not sufficiently strong in

the text and we would urge that Irish legislation make this extremely clear, so that parents and children are aware that accessing services such as counselling online and Childline does not require parental consent.

We are available to discuss this at any point should that prove useful.

For further information, please contact the ISPCC: on [fjennings@ispcc.ie](mailto:fjennings@ispcc.ie)