

COPPA vs The Age Appropriate Design Code:

Online Child
Privacy in 2020



Carl Gottlieb



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Consulting Data Protection Officer



What am I NOT going to talk about

- Ethics of following rules/regulations/codes of conduct.
- Morality of doing the “right” thing.
- Why regulations/codes exist and the good of the children.
- Criticising others’ positions.
- Pretend that privacy is the number one priority for companies.



What am I am going to talk about

- What's going on with child privacy in the commercial online world - EEA, UK and US.
- Challenges and approaches of weaving these together.



A Question of Compliance

- An assumption of complete compliance.
- The real world and real problem of cherry picking.
- The complexity of putting the business first.
- The Privacy Policy is the weak spot.



Children's Online Privacy Protection Act (COPPA)

- Puts parents in control of <13 Personal Information collection from the child.
- Privacy notices, security, parental email notices, parental consent, rights of access, objection, revocation of consent, erasure, minimisation.
- Applies to:
 - “General Audience” services with actual knowledge of <13 US children usage.
 - “Child Directed” services.



COPPA Notice/Consent Requirements

Data Collection Activity	Prior Parental Email Notice / Consent Requirements
Authentication only / bare essential use / safety / security.	No notice or consent.
Authentication + password reminders.	No notice or consent, but email addresses must be prevented from being reused for other communications.
One-time request for response (e.g. enter a competition).	No notice or consent. Send one response by email then delete the email address.
Direct request for multiple responses (e.g. newsletter, service reminders).	Prior notice required. Prior consent not required. Email address can only be used for the requested purpose.
Further data collection with no 3 rd party data sharing.	Prior consent required. ("Email Plus" permitted.)
Any further data collection with data sharing.	Prior verified consent required. ("Email Plus" not permitted.)

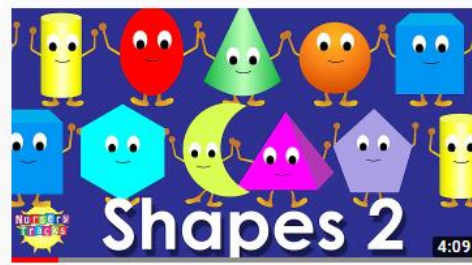


YouTube is **not** for
viewers under 13.





La casa di Topolino - Il ballettopolo - Music Video
 DisneyJuniorIT
 816K views • 4 years ago



The Name of the Shape Part 2
 NurseryTracks
 1.8M views • 4 years ago



Bingo y Rolly: Disney Junior Music Party - Compilado musical | Disney Junior...
 Disney Junior España
 11M views • 1 year ago



Tu amigo soy | Nivis, amigos de otro mundo
 Disney Junior LA
 1.4M views • 6 months ago



Mickey Mouse Clubhouse Super adventure
 AToyShop
 12K views • 1 month ago



Musses Klubbhus: Anden Kalle - Disney Junior Sverige
 Disney Junior Sverige
 146K views • 3 years ago



THE WHEELS ON THE BUS | Classic Nursery Rhymes | English Songs For...
 Nursery Rhymes TV
 3.5M views • 7 years ago



Diego Topa - Súper Topa (Official Lyric Video)
 Diego TOPA
 107K views • 1 month ago



Get Moving with Mickey Mouse Clubhouse | Official Disney Channel...
 Disney Channel Africa
 62K views • 2 years ago



More Animal Sounds
 NurseryTracks
 5.2M views • 4 years ago



Minnie Mouse | Minnie's Birthday! | Disney Junior UK
 DisneyJuniorUK
 27M views • 8 years ago



Lo que te Gusta Hacer | TOPA en Junior Express
 Disney Junior LA
 9.3M views • 3 years ago





Carl Gottlieb

21 subscribers

CUSTOMIZE CHANNEL

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DISCUSSION

ABOUT



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Nursery Rhymes TV
110K subscribers

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Disney Channel Africa
1.53M subscribers

SUBSCRIBED



Super Simple Songs - Kids Songs
20.9M subscribers

SUBSCRIBED



NurseryTracks
284K subscribers

SUBSCRIBED



What Google Said About YouTube

▶ YouTube: The new "Saturday Morning Cartoons"

▶ YouTube is unanimously voted as the favorite website of kids 2 – 12

▶ YouTube is today's leader in reaching children age 6 – 11 against top TV channels

▶ 93% of tweens visit YouTube to watch videos

▶ In fact, it's the #1 website regularly visited by kids

Source: FTC Complaint, Exhibits A, B & C, "Google Presentations to Mattel and Hasbro."
FTC and NY Attorney General v. Google and YouTube



Major Privacy Judgments Against Google

FTC and NY Attorney General v. Google and YouTube

\$170,000,000 judgment

Millions of Dollars

FTC and NY Attorney General
v. Google and YouTube

170

French Authority v. Google
2019 (Proposed)

57

FTC v. Google
2012

22.5

States v. Google
2013

7

Italian Authority v. Google
2014

1.4

Source: Federal Trade Commission | [FTC.gov](https://www.ftc.gov)



Two approaches to avoiding COPPA consent

- Users are not children: collect all the data.
- Users are children: bare minimum data collection.



< 2020



2020



Settings

General

Channel

Upload defaults

Permissions

Community

Basic info

Advanced settings

Branding

Audience

Simplify your workflow by selecting a channel setting. If you skip this question, you'll be required to identify each video on your channel that's made for kids. This setting will affect existing and future videos. Settings for individual videos will override the channel setting.

Do you want to set your channel as made for kids?

Regardless of your location, you're legally required to comply with the Children's Online Privacy Protection Act (COPPA) and/or other laws. You're required to tell us whether your videos are made for kids. [What's content made for kids?](#)

- Yes, set this channel as made for kids. I always upload content that's made for kids.
- No, set this channel as not made for kids. I never upload content that's made for kids.
- I want to review this setting for every video.

Google Ads account linking

[LINK ACCOUNT](#)

Link your YouTube channel to a Google Ads account to let the linked Google Ads account run ads based on interactions with your channel's videos and to access insights from your channel's videos. [Learn more](#)

CANCEL

SAVE



Thumbnail

Select or upload a picture that shows what's in your video. A good thumbnail stands out and draws viewers' attention. [Learn more](#)



Audience

Is this video made for kids?

Regardless of your location, you're legally required to comply with the Children's Online Privacy Protection Act (COPPA) and/or other laws. You're required to tell us whether your videos are made for kids. [What's content made for kids?](#)

- Yes, it's made for kids
- No, it's not made for kids



YouTube “Made for Kids” Disabled Features

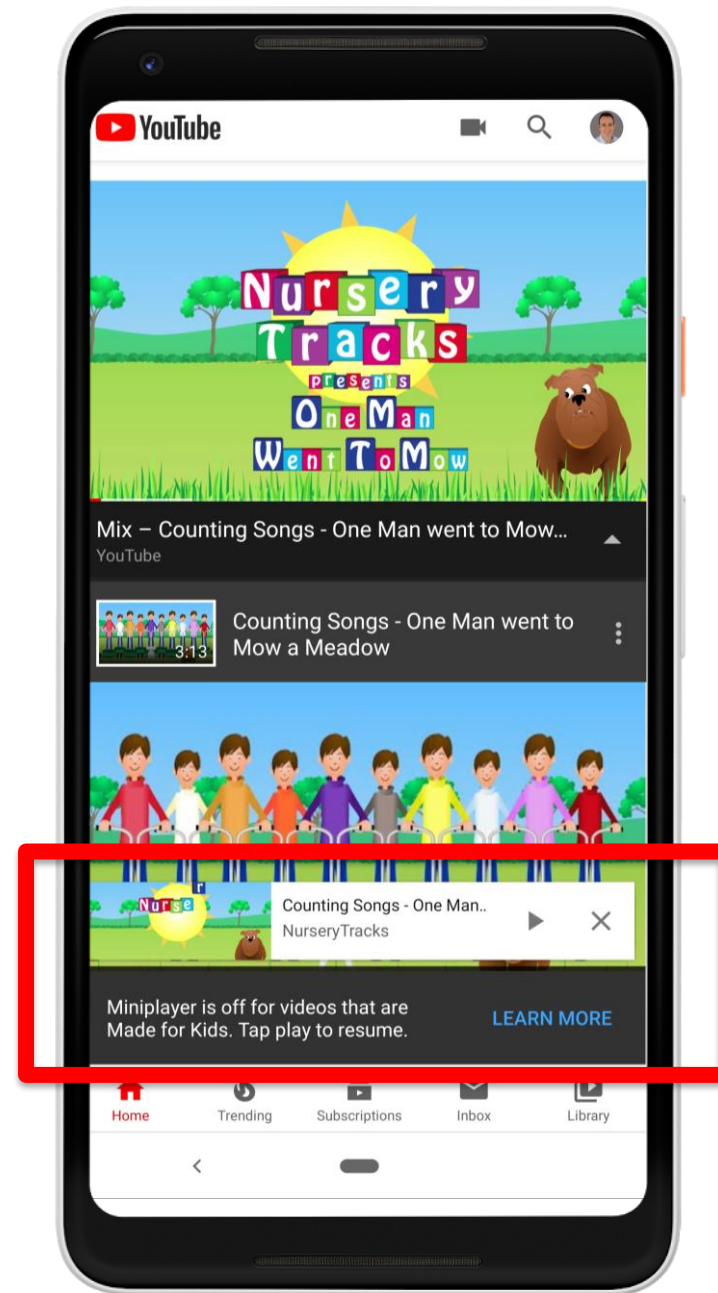
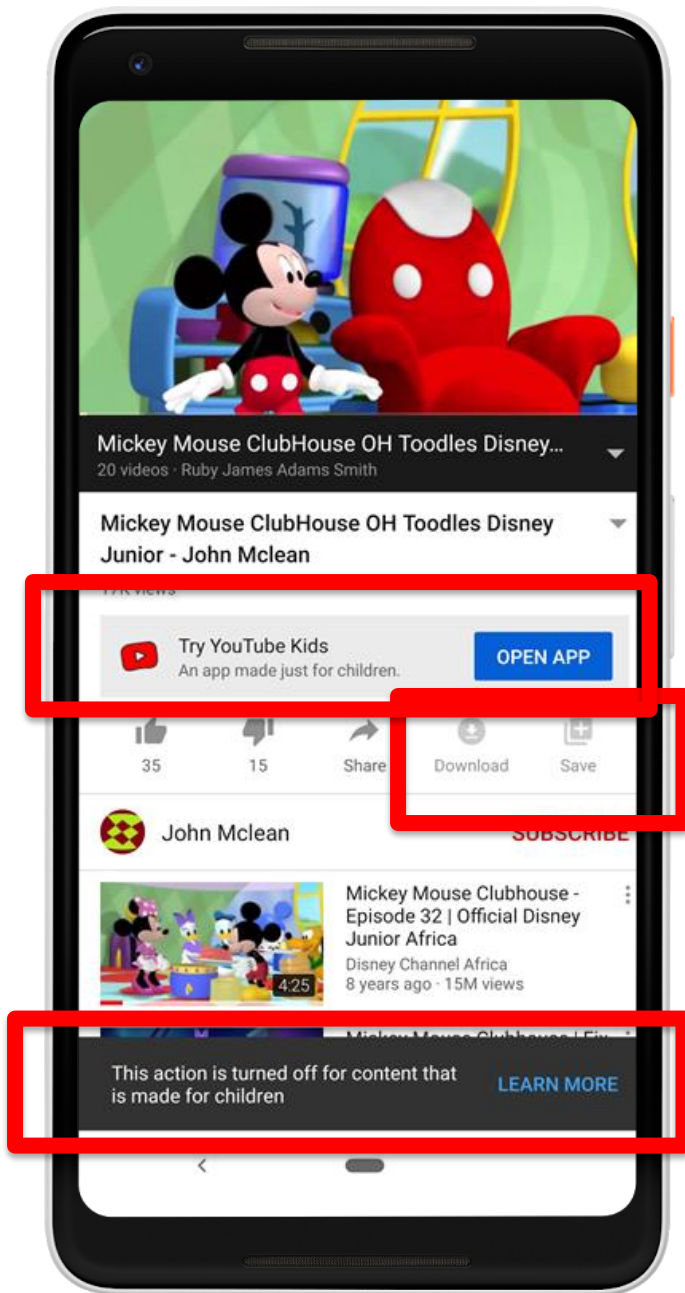
Video Level:

- Autoplay on home
- Cards or end screens
- Channel branding watermark
- Channel Memberships
- Comments
- Donate button
- Likes and dislikes on YouTube Music
- Live chat or live chat donations
- Merchandise and ticketing
- Notification bell
- Personalized advertising
- Playback in the Miniplayer
- Super Chat or Super Stickers
- Save to playlist and Save to watch later

Channel Level:

- Channel Memberships
- Notification bell
- Posts
- Stories







THE COPPA LAW | Draw My Life

Draw The Life TikTak • 69K views • 2 months ago

#drawmylife #coppa #youtube In the previous weeks many TikTakers have asked us about the COPPA law, and the new measures ...

CC



YOUTUBE IS SAVED! (COPPA GOOD NEWS) | YouTube FTC COPPA Update

KreekCraft ✓ 345K views • 2 months ago

YOUTUBE IS SAVED! (COPPA GOOD NEWS) | YouTube FTC COPPA Update ❤️ MAKE SURE TO SUBSCRIBE: [https://www.youtube.com/user ...](https://www.youtube.com/user...)



COPPA in a Nutshell

CircleToonsHD ✓ 1.2M views • 2 months ago

NEW LIMITED EDITION MERCH. TWO WEEKS ONLY. Hats ▶ <https://shop.makeship.com/products/circle-hat> Black Shirt ...



Why COPPA and the FTC Are Doomed to Failure

Video Game Story Time • 428K views • 2 months ago

Well, you asked for it, so we delivered: a video on the Financial Trading Commission (FTC) and the Children's Online Privacy ...

CC



75%



The California Consumer Privacy Act

- “Minors” - opt-in vs opt-out of “sale” of PI
 - <13 - parental consent required
 - 13-15 - affirmative consent by the consumer
 - 16+ - opt-out by the consumer
- Based on “actual knowledge” of age, like COPPA.
- “A business that willfully disregards the consumer’s age shall be deemed to have had actual knowledge of the consumer’s age”
- CCPA parental consent is in addition to COPPA consent requirements. Similar consent requirements, but no “Email Plus”.
- Remember - COPPA is child collected data only. CCPA is all child data selling.





Changing US Landscape

- California Privacy Rights Act (CPRA)
 - Extends the CCPA
 - Triple fines for improper sale <16 children.



Changing US Landscape

- California Privacy Rights Act (CPRA)
 - Extends the CCPA
 - Triple fines for improper sale <16 children.
- COPPA 2.0 (Senate)
 - Bans personalised ads <13
 - CCPA like individual consent for collection and right to erasure for 13-15
- PROTECT Kids act (House) - extends COPPA to <16
- Overall shift towards <16, rather than <13.

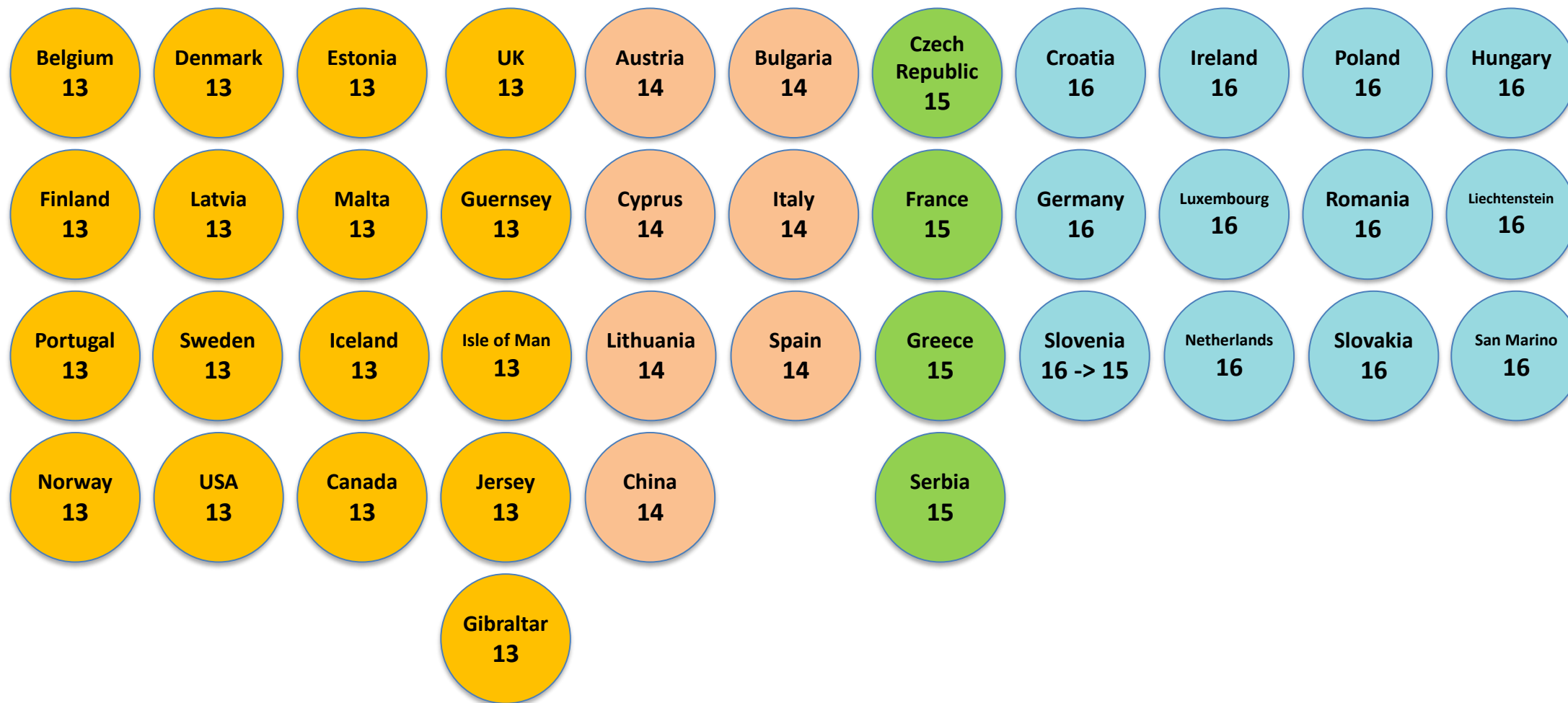


China

- Regulation on Network Protection of Children's Personal Information (Oct 1st 2019)
- Prior parental consent for processing <14



Child Online Consent Ages



Age appropriate design:

a code of practice
for online services



Conform to the Code to Comply with the GDPR/DPA/PECR

- Statutory Code of Practice for an ISS likely to be access by a child.
- Putting the best interests of the child first. “Protect children within the Internet, not from it.”
- Carrot and stick - helps you comply but beats you if you don't (Section 127 of the DPA).
- If you don't comply with the code you'll struggle to show compliance with the GDPR/DPA/PECR.



Applicability of the Code

- “Relevant information society services (ISS) which are likely to be accessed by children”
- ISS - “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of services.”

Likely out of scope:

- Some public authority services (no remuneration)
- Law enforcement purposes (not GDPR)
- Brochureware website, online booking for in-person service (not provided “at a distance”)
- Traditional Voice telephony service (not “delivered by electronic means”)
- Radio/TV broadcasters (not requested by individual) [Excludes on-demand services]
- Preventative or counselling service (DPA 2018 S123 scopes it out)



Territorial Reach

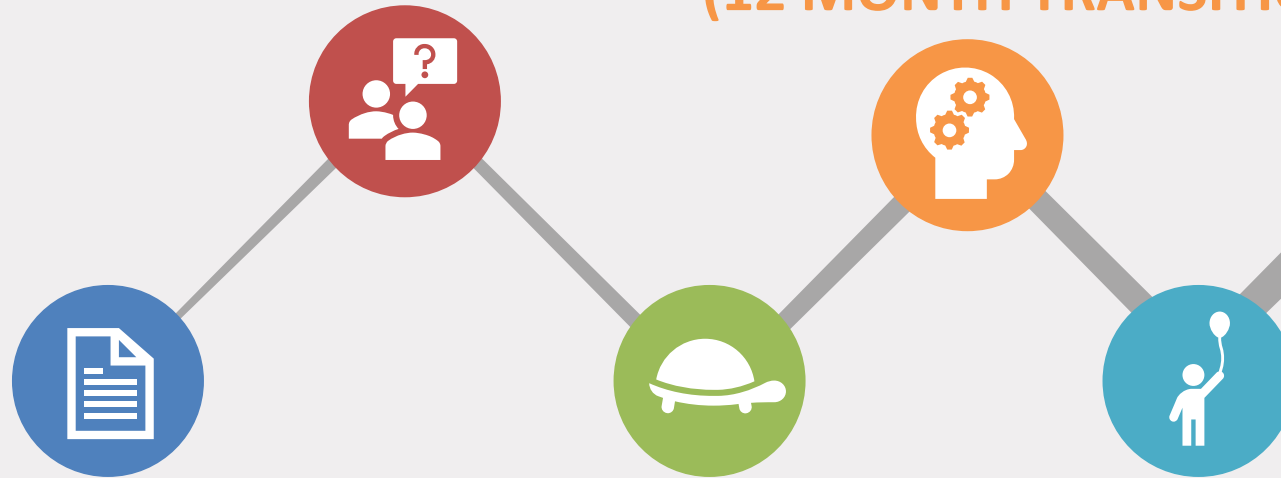
- Processing of UK child data by:
 - UK establishments
 - Non-EEA establishments targeting UK children.
 - EEA establishments after the Brexit Transition.



Timeline of the Age Appropriate Design Code

LAI D BEFORE PARLIAMENT
(40 SITTING DAYS)

IN FORCE
(12 MONTH TRANSITION)



The Age Appropriate Design Code

Give Children More Privacy by Design



The Age Appropriate Design Code

Give **Children** More Privacy by Design



The Age Appropriate Design Code

Give **Children** More **Privacy by Design**

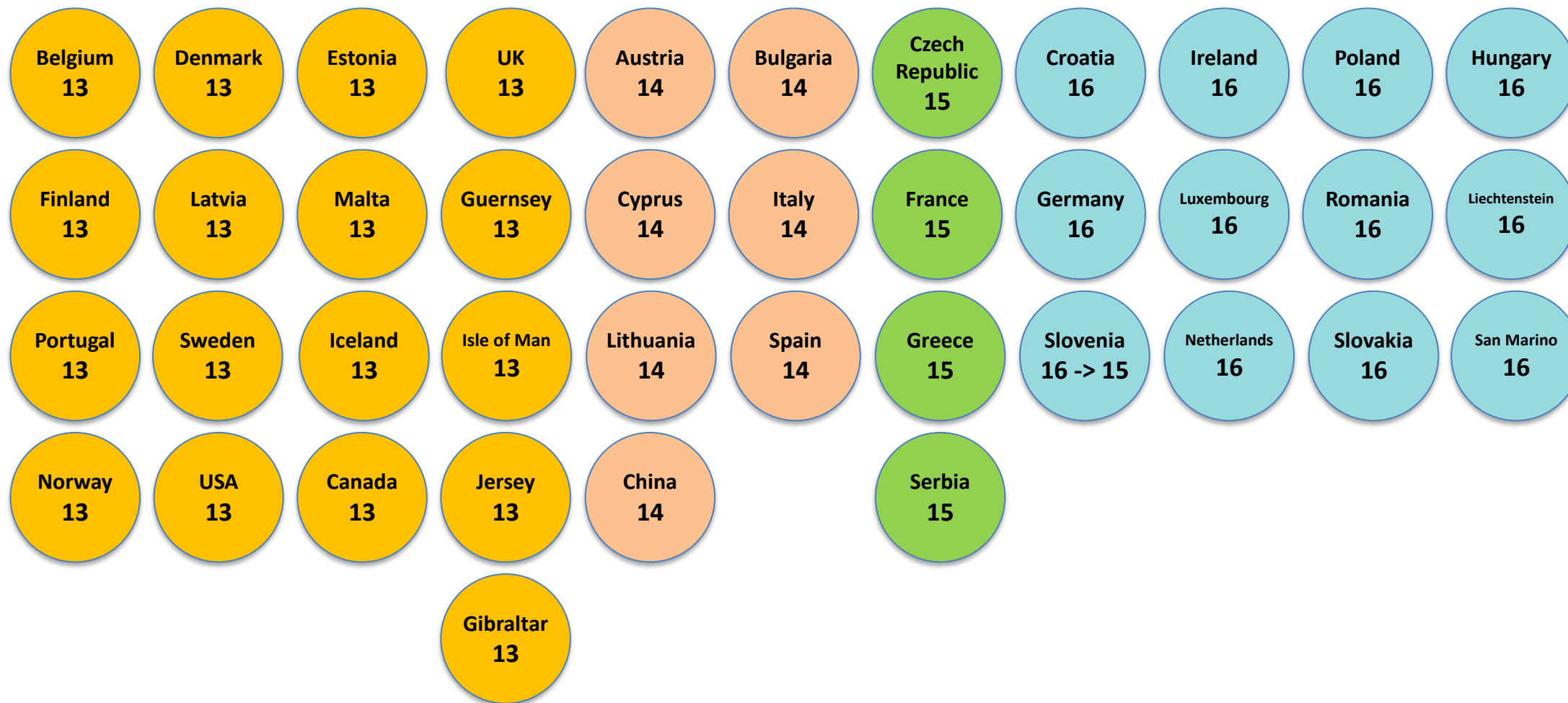


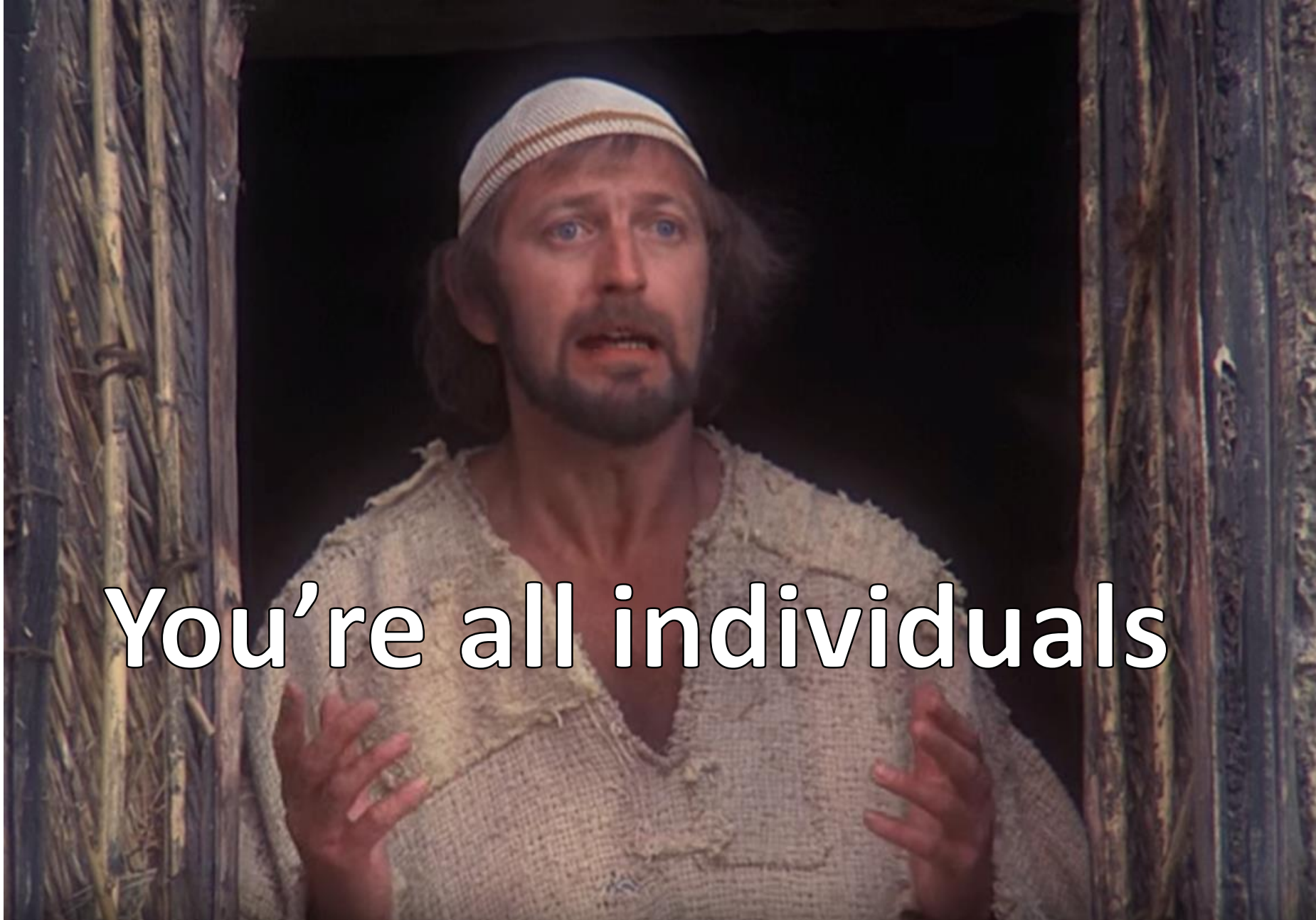
Contents of the Code

1. Best interest of the child
2. Data protection impact assessments
3. Age appropriate application
4. Transparency
5. Detrimental use of data
6. Policies and community standards
7. Default settings
8. Data minimisation
9. Data sharing
10. Geolocation
11. Parental controls
12. Profiling
13. Nudge Techniques
14. Connected toys and devices
15. Online tools



Child Online Consent Ages





You're all individuals



Age Appropriateness

- Transparency and Fairness
- Risk and requirement for parental involvement.
- How “high privacy” by default?
- Confidence of a child’s age.



Child Friendly Communication

- Just-in time notices.
- Age appropriate.
- User defined choice of language.
- Deter anti-privacy behaviour.



Default Settings

- High Privacy by Default - robust minimisation.
- Similar to cookie rules, only the bare essential.
- Consider the spirit of the Code to help the child.
- Non-permanent setting changes.
- Multi-user device profiles.



Click Here to Rate My Presentation!



something else



Privacy Controls “Online Tools”

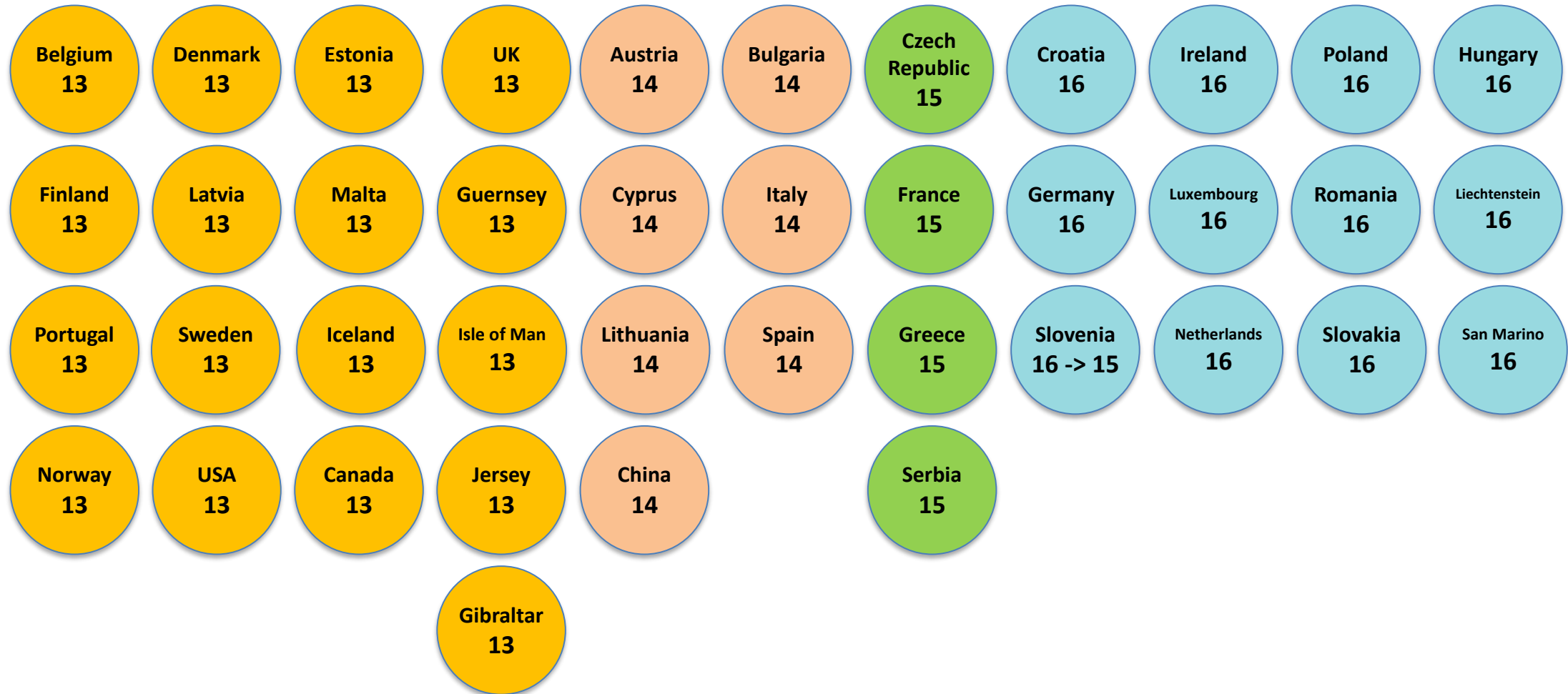
- Help the child exercise their privacy rights.
- Provide mechanisms for urgent cases.
- Keep the child informed.



Global Complexities



What defines a child? Age of digital “consent”?



Example Age Stages (ICO)

- 0 - 5: pre-literate and early literacy
- 6 - 9: core primary school years
- 10-12: transition years
- 13-15: early teens
- 16-17: approaching adulthood



What defines a child?

- What do we call them?
 - Child, kid, “data subject under the required age of consent for an ISS depending on your location”?
- What age can a child be?
 - Is it based on consent or contract rules?
 - Is it under 13, 16, 18?
 - Is it anyone in full time education?
- Where is the child?
 - Registration location, selected location, current location, home location?
 - Should age definition change when the user moves location?
 - How precise do we need to be?
- Keep it simple!



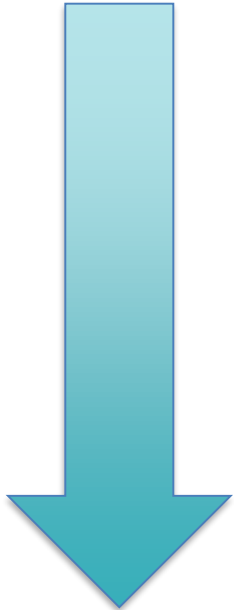
Am I targeting children?

- Is the registered user the actual user? Not for YouTube.
- Am I likely to attract/appeal to children?
- What is the business trying to achieve?
- Test your assumptions, consult and document.
- Check for common mistakes, e.g. Google Play Store “Designed for Families”.



Progression to Age Gating

Easy for ISS & user.
Hard to comply.



Painful for ISS & user.
Easier to comply.

But is the user the actual user?

Extent of Age Knowledge and Verification	Example
No age knowledge.	
Passive estimation of age knowledge.	Determine age from user behaviour and feature use.
Reuse of existing age knowledge.	Already know an existing user's date of birth.
Confirmation of permitted age.	"Are you over 13?" Yes / No
User self-selection of age.	"How old are you?"
User self-selection of date of birth.	"When were you born?"
Self-selection + hard wall parental "email plus" consent.	"Thanks for registering, we've sent your parent an email to approve your registration."
Self-selection + hard wall parental verified consent.	"Thanks for registering, we've sent your parent an email to approve your registration. We'll need proof they are an adult."



COPPA Parental Consent

Acceptable methods include having the parent:

- sign a consent form and send it back to you via fax, mail, or electronic scan;
- use a credit card, debit card, or other online payment system that provides notification of each separate transaction to the account holder;
- call a toll-free number staffed by trained personnel;
- connect to trained personnel via a video conference;
- provide a copy of a form of government issued ID that you check against a database, as long as you delete the identification from your records when you finish the verification process;
- answer a series of knowledge-based challenge questions that would be difficult for someone other than the parent to answer; or
- verify a picture of a driver's license or other photo ID submitted by the parent and then comparing that photo to a second photo submitted by the parent, using facial recognition technology.
- Use "Email Plus"



SONY

SONY

Create Account

Unable to create an account. You do not meet the requirements.

Country/Region
United Kingdom

Language
English

Date of Birth
12 3 2019

[What's This For?](#)

You need the correct date of birth to reset a lost password. Make sure the information you entered is accurate.

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Create Account

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Country/Region
United Kingdom ▼

Language
English

Date of Birth
5 ▼ 4 ▼ 2010 ▼

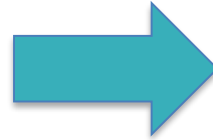
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Create Account



To continue creating your account, select [Next] and ask your parent or guardian to sign in.

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SONY

Create Account

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Country/Region

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Date of Birth

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SONY

Residential Address

● ● ● ● ● ● ● ●

City

State/Province

Postcode

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Awful Basis for Processing

EEA & UK

Consent

Contract

Legitimate Interests

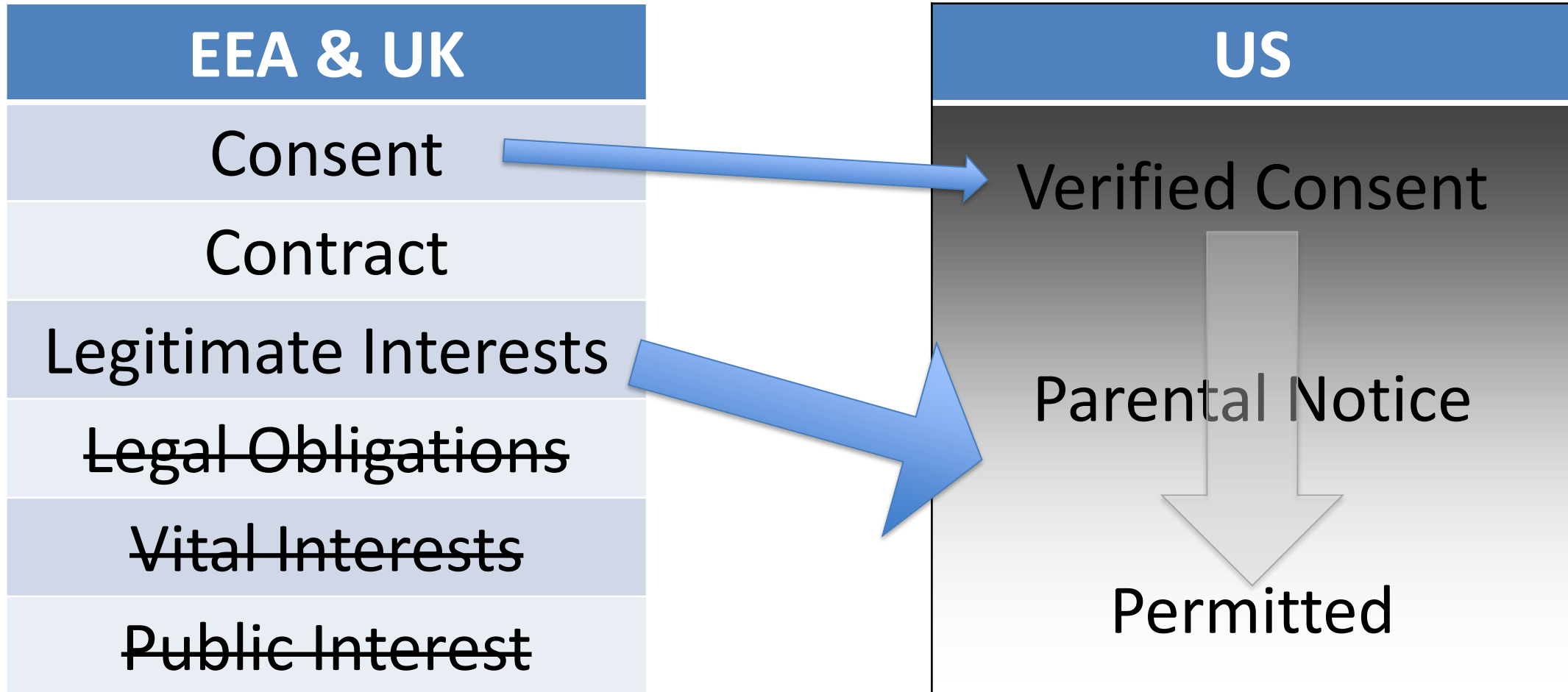
~~Legal Obligations~~

~~Vital Interests~~

~~Public Interest~~



Awful Basis for Processing



Awful Basis for Processing

- **Consent** has different meanings and different degrees. Sometimes you need “consent”.
- **Contract** validity is highly variable, per country and per person. Strict usage in the EU for certain activities.
- **Legitimate Interests** has the high burden of justification and providing the “best interests of the child.”



The need for (Parental) Consent

- COPPA collection for reuse/sharing.
- CCPA data “selling”. CPRA data “sharing”.
- ePrivacy Directive aspects - end user storage / cookies.
- Behavioural Ads (High risk)



GDPR Consent vs ePrivacy Consent

- The GDPR has a minimum age for consent as a lawful basis (for an ISS) for processing personal data - Article 8.
- The ePD reuses the GDPR's consent definition (“freely given, specific, informed and unambiguous indication”, but not the ISS age minimum.
- This creates a narrow exemption where a child can provide ePrivacy consent to an ISS where no personal data is processed.



ISS ePrivacy Involves Personal Data

- Forget ePrivacy Consent, your business will want to process personal data.
- So how do you get consent for this?



The Bad Consent Problem

1. I don't know the age of my actual user.
2. I want to serve them behavioural ads/tracking.
3. I need their consent, so I serve them a cookie banner.
4. The user agrees and I start tracking them.
5. But if the user is an <13/16 child, do I actually have consent? Am I unlawfully processing/sharing their data?
6. What about tracking pixels in emails I send to children?

With a mixed audience, is a partly “bad” consent the only answer?



No consent for non-personalised ads

- Non-personalised ads still need consent under the ePD. Nobody talks about this.
- COPPA has an exemption for this data sharing.

Google:

- *“Although non-personalized ads don’t use cookies or mobile ad identifiers for ad targeting, they do still use cookies or mobile ad identifiers for frequency capping, aggregated ad reporting, and to combat fraud and abuse. Therefore, you must obtain consent to use cookies or mobile ad identifiers for those purposes where legally required, per the ePrivacy Directive in certain EEA countries.”*



ePrivacy Trends

- New ePrivacy guidance is emerging from each regulator, converging on strict standards for consent. Still patchy enforcement.
- Nudges and fairness are getting attention. A/B testers will need to watch out. CCPA includes opt-out reminders. The Code pushes for non-permanent settings.
- The ePrivacy Regulation might include:
 - Legitimate Interests for some end user device processing, but not for “children”.
 - Allowance for “cookie-or-pay walls”.



Start with the obvious

- Strict compliance with the ePD would be a good start.
- Be sincere - you know when you're pushing the boundaries and taking risks.



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10% off your next purchase.

Yes, Get My Coupon

NO Thanks

I'm a coupon





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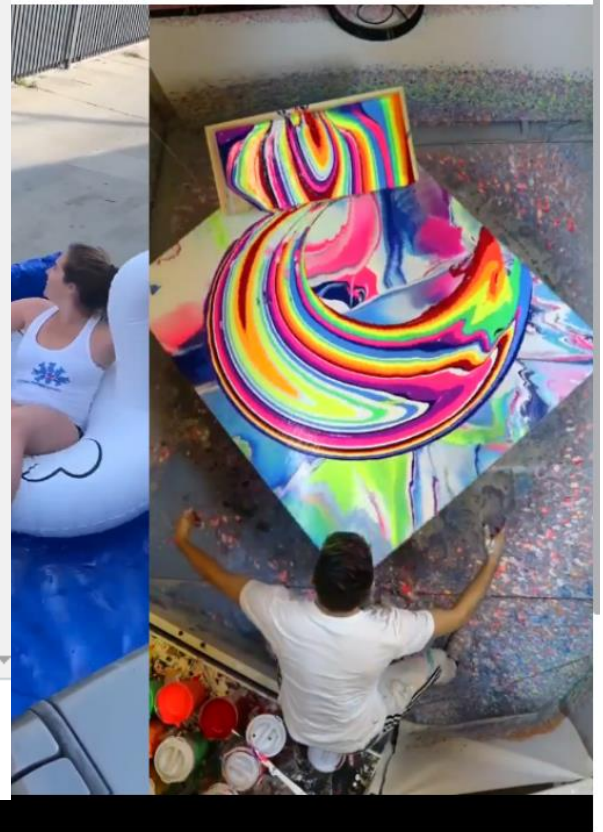
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Children

The privacy of users under the age of 13 (“Younger Users”) is important to us. We provide a separate experience for Younger Users in the United States on the Children’s Platform, in which we collect only limited information. For more information on our United States data collection practices for Younger Users, please visit the [Privacy Policy for Younger Users](#).

The Platform otherwise is not directed at children under the age of 13. If we become aware that personal information has been collected on the Platform from a person under the age of 13 we will delete this information and terminate the person’s account. If you believe that we have collected information from a child under the age of 13 on the Platform, please contact us at privacy@tiktok.com.



What information do we collect from Younger Users?

When a Younger User registers for TikTok, we collect only limited information, including username, password, and birthday.

We may also collect certain information automatically from the user's device, including internet or other network activity information such as device ID, IP address, web browser type and version, country-level location, as well as certain app activity data, such as video watches, time in the app, and general usage data.



How do we use the information we collect?

We use the information we collect to provide and support our services. For example, we use username and password to authenticate Younger Users. We may use the information that is collected automatically to provide personalized content; serve contextual advertising; perform analytics and troubleshoot; protect the security or integrity of the user and our service; and ensure legal or regulatory compliance.

Younger Users cannot publicly share personal information, including videos or profile information.



Two approaches to avoiding COPPA consent

- Users are not children: collect all the data.
- Users are children: bare minimum data collection.



< 2020



2020



Shocking new 'skull breaker challenge' trend on TikTok is leaving children seriously injured as doctors warn that it could be fatal

- New dangerous 'Skull Breaker Challenge' has led to serious injuries to some children and
- The 'skull breaker challenge' started with children hitting themselves with a third unsuspecting
- As the three participants jump straight into the water, inwards to knock the person in the middle
- The practice has reportedly landed on the list of dangerous trends
- Parents are taking to social media to warn of their injured children

TIKTOK SHOCK We showed six mums what kids are REALLY watching on TikTok – and they're horrified by the porn and puppy slapping

Alison Maloney
26 Feb 2020, 7:00



TikTok star comes 'close to dying' after getting trapped under frozen lake

Jason Clark, a TikTok star with over 415,000 followers, attempted to swim under the ice on a frozen lake in Utah, but struggled to find his way out

SHARE

COMMENTS



He came close to dying after getting trapped (Image: TikTok)



Assessing the real risk

- Bad press -> reputational damage - unlikely
- Regulatory enforcement - possible
- B2B sales friction - very likely
- Personal liability - very likely

- Make it personal



Practical Takeaways for Global Child Privacy

- **Assume Global Convergence**
 - Minimum bar per territory is a nightmare. Think ahead to future expansion plans.
 - Countries are rapidly converging on GDPR level FIPPs and age standards.
 - Focus on simplicity and consistency - GDPR and COPPA.
- **Align to the Business**
 - Privacy by Design needs true exec buy-in.
 - Try to shift them from quantity to quality, especially in Marketing.
 - Test and go where the money is.
- **Avoid Consent**
 - Extreme minimisation
 - Rely on bad consent for ePrivacy.
- **Take a Phased Approach**
 - Do the obvious first - just following ePrivacy rules would be a good start.
 - Chunk the implementation of practices, policies and support processes.
 - Plan for the end game - don't trap yourself.



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Consulting Data Protection Officer

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