



**CASTLEBRIDGE**  
Changing how people think about information

**Consultation Response:**  
**Fundamentals of Child-Oriented Approach to Data Processing**

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# 1. Introduction

Castlebridge has prepared this document based on our review of the draft version of the Fundamentals for a Child-Oriented Approach to Data Processing. In reviewing this document, we have also consulted with child participants in the first phase of this consultation to assess their reaction to the standards and measures proposed. We consider it essential that the 'voice of the child' be adequately represented in any consultation or response on this topic.

Overall, we welcome these guidelines as an invaluable contribution to the development of appropriate practices. However, we believe that the guidance should more explicitly reference examples of data processing activities that are not on-line to ensure Controllers or Processors are not tempted to think that this doesn't apply to them because they are not offering apps or information society services.

## 2. General Comments

This draft standard represents a significant contribution to the development of better approaches to safer processing of personal data relating to children. As it is not limited solely to the domain of online activities but, as with the legislation that underpins it, is broadly based and technology agnostic, the range of organisations and processing activities that will be caught within the scope of these Fundamentals is significant.

We also note that the Commission took extensive efforts to engage with the 'voice of the child' in the development of these standards. We would suggest that a version of the final standard be prepared that provides information on the Fundamentals in age-appropriate language so that children can educate themselves, or be educated by others, on the content and concepts in this valuable benchmark framework. Awareness of the fundamentals should form part of the syllabus for on-line safety in schools.

### **Artificial Intelligence**

We note, however, that there are three references to the use of artificial intelligence in relation to the processing of data relating to children. The first is in relation to the "know your audience" requirement. We would be concerned that this could be interpreted as a positive affirmation of the use of AI as a tool to profile children and their needs and interests.

It is important to recognise that artificial intelligence and machine learning tools that might be used to identify or derive attributes or aspects of a child based on how they use a service are only as valid as the source data used to train the models. AI is, in effect, a form of profiling based on analysis of historic patterns in training data against which an individual may be assessed to infer other information about the individual or predict behaviours.

In this regard, we believe greater emphasis is needed on ensuring appropriate caution when implementing AI based solutions in respect of data relating to children to ensure that potential immediate or more long term harms are avoided. This should include formal assessment of the suitability of AI to particular processing situations and also a very rigorous assessment of training data and models for inherent or acquired bias.

Ultimately, artificial intelligence is a technology that can reiterate and reinforce historic prejudices or errors in data. It is essential that its deployment in processes associated with children and their data is approached with appropriate caution and scepticism to prevent labelling of children, pigeon-holing, or restriction of access to services or functionality because of such biases.

## **The Fundamentals**

The fundamentals as set out are a robust restatement of fundamental data protection principles in the context of children's data and processes. However, the focus on online data processing in the principles belies their importance in respect of more traditional contexts in which children's data is processed.

Therefore, we would suggest that further examples be developed to illustrate the application of the principles in off-line contexts such as the operation of clubs or activities where children's data will be processed.

We also would suggest that while the examples given relate to services or activities that children might wish to engage in themselves, they do not address the scenarios that can arise where children may be *required* to submit data or create profiles in online systems such as on-line classroom or class management systems which have become widely adopted over the last year out of necessity. Many of the platforms we have looked at do not adequately meet many of the fundamental principles identified.

## **Non-discriminatory/non-exclusionary design**

While we welcome the explicit reference to non-exclusionary and non-discriminatory design as part of these Fundamentals, we would suggest that the practicalities of implementation need to be considered.

Castlebridge works with a number of organisations that develop services aimed at children. The design principle adopted by these organisations has been to develop to provide the maximum amount of functionality possible without requiring the processing of personal data or the use of any analytics processes. However, this still creates an exclusionary effect as children who do not register a profile are unable to perform certain functions. It would be more appropriate we believe to frame this requirement in the guidance as one that requires the “maximum fun for minimum data” and which requires Controllers and Processors to communicate clearly what the benefits are of registering to access additional services, all the time working within the bounds of the “Floor of Protection” principle and the best interests of the child.

Requiring Controllers or Processors to develop appropriate evidence of their assessments of benefit versus impact when developing bifurcated offerings for children which do have different features or functionality would be an appropriate control in this context.

## **Application to off-line processing (including paper)**

It is essential that these principles are understood as being applicable to both online and offline processing by *all* categories of Controller and Processor.

The text as currently drafted emphasises online activities and the use of apps. This is an important area of focus. However, the need to consider the rights and interests of the Child in all modes of data processing activity is essential and this must be made explicitly clear beyond any doubt in the final output from this process.

## **3. A Child’s Views**

In preparing our response to this draft we engaged the input of a child to help us understand how well the Fundamentals outlined addressed the concerns and views of a representative stakeholder. As this represents the input of a single child, it should be considered indicative and not statistically representative. However, as this child contributed feedback as a solo

contributor to the original consultation process, they expressed a strong desire to contribute to this review. The child who provided this feedback is in the 10-13 age bracket.

## **Complexity**

A need was identified to develop a version of this document for children so that they would understand what to *expect* of the design of services or processes that they interact with.

*“Kids need to be able to understand what good things look like and know how to figure out if something is following the rules or not. This is written for adults. The principles say that it companies should be kid-friendly in the words they use, so the DPC should try to do the same”.*

This raises an interesting point about the use of these principles to support education and awareness for children about what good child-oriented design looks like as part of CSPE curricula in both primary and secondary schools.

We showed the child commentator materials prepared by the Data Protection Commission in 2005<sup>1</sup> for inclusion in the Junior Certificate CSPE curriculum and they were broadly of the view that something similar should be considered again, but it needed to include younger age groups.

## **Exclusion and Limitation of Functionality**

Our subject matter expert on ‘being a kid’ was particularly vocal on the subject of apps restricting access or providing reduced functionality to children who do not provided personal data.

*Apps should not make you unable to download or use them properly because of your age or because you don’t want to give them information about you. They need to make sure you can do most things.*

This echoes our view that organisations should consider the design of their applications or services to ensure that children can engage as fully as possible with the product or service.

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<sup>1</sup> See

<https://web.archive.org/web/20111016204536/http://www.dataprotection.ie/viewdoc.asp?m=t&fn=/documents/teens/CSPE.htm>

## Advertising to Children

The topic of advertising to children was one which was particularly strongly commented on. In particular the question of processing data for the purposes of profiling and analytics the feedback received was very firm.

There was very strong support for the Data Protection Commission position that organisations should refrain from profiling children, particularly for the purposes of advertising.

*Advertising to children should not be shown, and that's just it. Online providers should not take steps to know the person using their software as this is private information about us.*

Discussion with our child expert did result in recognition that the provision of notifications, or other information provision, through apps or other interventions may require processing of data in an analytics process and result in messaging that would be delivered in the same way as advertising.

In this contexts, the feedback was that the requirement in the guidance that the best interests of the child must be considered was seen as important. However, concern was raised that adults don't always understand the best interests of children and might not properly consider what children want or need in respect of particular processing activities.

There was a strong view that when considering the interests of children, through methods such as Data Protection Impact Assessments or Legitimate Interest Balancing Tests, it was essential that children be consulted in some way and are treated as stakeholders in processing equivalent to adults.

*Let children have their say always. An adult has this so why cannot a kid, kids are important too*

## Age Verification and AI

Particularly insightful comments from our childhood subject matter expert related to the implementation of age verification technologies and minimum age thresholds, and also the use of Artificial Intelligence.

### Age Verification and Minimum Age Thresholds

*There is not a way of checking how old a kid is without another problem occurring.*

This simple statement encapsulates a key issue with any approach to age verification that will need to be addressed in the design and implementation of such systems.

As a result, there was strong support for the Fundamental of the “Floor of Protection” as set out by the Commission. This was recognised as a principle which, in effect, could the need for age verification for many services.

The guidance on minimum age thresholds in this context is also welcomed.

*My friends use apps all the time that are supposed to be for older kids. A threshold is like a sign on the door. If you can walk past it without anyone checking it doesn't protect anyone, and if you can't do checks properly why not just make things safer for everyone?*

### **Artificial Intelligence**

Concern was expressed about the use of artificial intelligence as part of “knowing your audience”. This was associate with the surreptitious gathering of data about child users of products or services.

This aligns with our concerns about the use of AI in this context, or in respect of children’s data in general, based on the potential risks of algorithmic bias, ‘filter bubble’ effects, or simply flawed data used in the training of models. The use of AI in respect of children’s data also raises significant ethical issues.

### **Parental Dashboards**

Concern was raised about the concept of parental dashboards. This concern stemmed from the need to ensure that these dashboards are appropriately secured to ensure that unauthorised parties could not access them.

## **Children’s Rights and data processing in other contexts**

Our expert on being a child also raised some important points in relation to the application of the UN Committee Rights of the Child and the Child-Oriented Approach to Data Processing to the processing of data relating to children in other contexts.

The clear message was that the code needs to be much more explicit in its application to processing of data relating to children in more traditional contexts such as the interaction of children with state services, clubs, and other activities.



*Kids don't just live on-line and in games. The forms I am given to fill out for drama or sports clubs need to think about these things as well instead of talking to the adults all the time. I'm lucky, most of mine do. But other kids might not be that lucky.*

## Child-Oriented Design and the State

It was particularly disturbing as a parent however to listen to the opinions expressed by our child expert in respect of the processing of data relating to children by the State, particularly special category data.

***“Does this apply to things like what happened with the information about autistic children<sup>2</sup>?”***

This comment arose particularly in respect of a discussion of the UN Committee on the Rights of the Child’s recommendations on the considerations for assessing the best interests of a child.

It cannot be understated that, even for a child who is not directly effected by poor standards of data processing or data protection compliance in Public Sector organisations, the disconnect between what they see as the ‘rules’ that are being defined for how adults should act and how adults then proceed to act is both distressing to the child and challenging for a parent to explain.

It is essential that this code on Child-Oriented Approaches to Data Processing is not seen or presented solely as a reference standard for online data processing but as a benchmark standard for the processing of personal data relating to children in *all contexts*, particularly where a child is in position of vulnerability for reasons other than simply their age.

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<sup>2</sup> This refers to the undisclosed compilation of dossiers by the Department of Health on autistic children whose families had initiated legal action against the Department and others. We note that, at the time of writing, this is the subject of a section 110 inquiry by the Data Protection Commission.