ASA submission to ICO's call for evidence on use of age assurance

Submitted: 24 November 2021

Summary: Our submission in response to the Information Commissioner's Office's call for evidence on the use of age assurance mechanisms online.

Call for evidence on the use of age assurance

The Information Commissioner is calling for evidence on specific areas related to the use of age assurance. This is to support our work on the Children's code (formally known as the Age-appropriate design code).

Age-appropriate application is one of the 15 standards that make up the code. The standard requires information society services (ISS) to take a risk-based approach to recognising the age of their users. This is to ensure they can effectively apply the code's standards to child users. We have published an Opinion setting out the Commissioner's expectations for how ISS providers should use age assurance to conform with this standard, and wider data protection law.

We recognise that age assurance is a rapidly developing area and new approaches are continuing to emerge. We are launching this call for evidence to further develop and maintain our knowledge in this area.

This will strengthen our ability to effectively and fairly regulate the UK GDPR, the Data Protection Act 2018 and the code. It also helps us deliver on the Commissioner's commitment to develop industry standards in age assurance. These aim to assist children, parents and online services in identifying data protection-compliant services.

Please note that we are seeking evidence on specific areas related to age assurance in the context of the Children's code. We are not seeking evidence on uses of age assurance that are beyond this scope or that could not be adapted to support the aims of the code. If you wish to get in touch with us regarding age assurance beyond the scope of this call for evidence, please contact childrenscode@ico.org.uk.

The call for evidence will run for a period of eight weeks, from 14 October 2021 to 9 December 2021.

Please return your completed call for evidence to ageassurance@ico.org.uk. Alternatively you can complete the call for evidence through our Snap Survey, available through this link.

Privacy statement

For this call for evidence we may publish the responses received from organisations or a summary of the responses. We will not publish responses from individuals. If we do publish any responses, we will remove email addresses and telephone numbers from these responses, but apart from this we will publish them in full. Please be mindful not to share any information in your response which you would not be happy for us to make publicly available.

Should we receive an FOI request for your response we will always seek to consult with you for your views on the disclosure of this information before any decision is made.

For more information about what we do with personal data please see our privacy policy.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. You can read their Privacy Policy at www.snapsurveys.com/survey-software/privacy-policy-uk/.

Age Estimation

1. **Please submit any evidence related to the technical feasibility of existing or proposed age estimation approaches.**
   We are particularly interested in differences across sectors, service types and technologies.
   - The ASA is not in a position to comment on this topic at length. However, during the course of stakeholder engagement as part of our Mixed-Age Media Avatar Monitoring project (https://www.asa.org.uk/resource/asa-report-on-age-restricted-ads-appearing-in-online-mixed-age-media.html) an advertiser of age-restricted products explained they considered that GDPR restrictions meant it was not possible to accurately determine the age of substantial proportions of the online audience. This advertiser provided data from an ad tech company which showed less than 1% of potential ad recipients could be accurately confirmed as over 18. However, the advertiser's assertion was not consistent with the understanding of other ad industry bodies we spoke to, nor the ICO itself.
   - Whilst the ASA monitoring of Alcohol ads on social media (https://www.asa.org.uk/news/collaborating-with-online-platforms-to-lift-the-lid-on-alcohol-ad-targeting-in-social-media.html) did not evaluate the technical feasibility of existing age estimation approaches, it does reference a range of tools made available by the social media platforms that took part in the study, which support advertisers and their agencies to estimate the age of their target audience.

2. **Please submit any evidence of the effectiveness of existing age estimation approaches, including the precision, accuracy and confidence levels.**
   We are particularly interested in any differences across sectors, service types and technologies.

   - The ASA's monitoring projects conducted across 2020 and 2021 identified several instances of advertisers falling short in their efforts to minimise children's exposure to ads for age-restricted products. However, as these indicators were addressed as part of informal engagement with advertisers following our monitoring projects, it is difficult to establish whether they were a result of limitations in age estimation tools, or insufficient application of said tools.

- The Avatar monitoring project (https://www.asa.org.uk/news/calling-on-advertisers-to-make-better-use-of-online-targeting-tools-to-minimise-children-s-exposure-to-age-restricted-ads.html) sought to identify whether dummy profiles representing children in non-logged-in online environments were served age-restricted ads in different patterns to dummy profiles representing adults. The monitoring data found several instances of age-restricted ads served to Avatars with child profiles, despite advertisers indicating they had set their campaigns to target over-18s only, with some setting the minimum age at a higher level e.g. 25+. These instances were found for display ads on websites and YouTube videos. YouTube ads are served primarily through the Google Ad Network, but the website ads were delivered by a range of providers with significant variation in the mechanisms used by each advertiser, sometimes even within a single campaign. This would seem to indicate limitations in the application or effectiveness of inferred age categorisation in these sectors of the online advertising market.
- Of the Gambling operators found to have served ads to profiles representing children, most were smaller brands. This may indicate that larger Gambling brands, with access to a greater range of expertise and, potentially, significant first-party data on existing customers, are able to use such tools in concert with standard age estimation tools to perform more accurate age-based targeting.
- Several Gambling operators contacted as part of the Avatar monitoring project also indicated their campaigns used retargeting mechanisms, intended to serve ads to known past customers and users with profiles similar to known customers. However, ads from campaigns which used retargeting tools were served to Avatars with no browsing history linked to gambling (and one with no browsing history at all). Several of these profiles were explicitly intended to represent under-18s. It was not clear whether the retargeting approaches included an additional age-estimation filter to minimise exposure to under-18s, but the systems did seem to be serving ads to users who did not represent the intended demographics.
- Data from the quarterly CCTV monitoring reports (https://www.asa.org.uk/news/protecting-children-online-our-q1-2021-monitoring-results.html) identified instances of ads for age-restricted products – primarily HFSS foods and soft drinks – inappropriately served alongside online media appealing to children. These ads were all served to a dummy online profile with no indicative age data. However, when the project team contacted the brands responsible for these ads, many indicated they had placed age-based restrictions on their campaigns which should have prevented these ads being served to users with an unknown age profile. The fact such ads were served to a dummy user with no browsing history whatsoever, and hence no data for indicative age profiling, again could indicate limitations in the effectiveness or application of such tools.

- CAP's guidance on Age-Restricted Ads Online – updated in January 2021 (https://www.asa.org.uk/resource/children-age-restricted-ads-online.html) – outlines the expectation that advertisers use a range of tools to minimise the exposure of children to age-restricted ads, rather than relying solely on age-estimation/user self-declaration.

3. **Please submit any evidence of approaches to age estimation that can ensure fairness, without discrimination or algorithmic bias.**
   - N/A

4. **What do you consider to be the most appropriate and accurate measures, including real-world measures to assess the effectiveness of age estimation approaches?**
   More info: Real-world metrics measure in-situ effectiveness when used on a live service – for example how many user accounts were identified as underage compared to how many of these were incorrectly identified as underage.
   - N/A

5. **Please submit any evidence of specific data minimisation practices being applied to age estimation techniques.**
   - N/A

Emerging approaches to age assurance

6. **Please submit evidence of any novel and emerging approaches to age assurance.**
   - The ASA is aware of novel approaches proposed by some emerging companies to address age assurance, but is not in a position to assess their efficacy or scale-ability. One such approach involves users providing authorised age verification information in order to receive a digital "token" which can be attached to their browser in order to permit access to adult-only content. The presence of a browser-level token could also allow advertisers to identify verified over-18 users for ad targeting, but we understand this is not the current intent of the system and it would need to be adapted to address the issue of under-18 users on shared devices, such as a family's desktop computer.

7. **Please list details of any opportunities to develop systemic age assurance approaches. For example, device level or cross-application approaches.**
   - N/A

8. **Please detail any research you are aware of related to attitudes to age assurance amongst children and their parents or carers.**
    - N/A

9. **How can the ICO support emerging approaches to age assurance that are built using data protection by design and default?**
    - This is not an issue which the ASA is likely to be involved in directly. However, from engagement with industry stakeholders we established some have concerns that rigorous age assurance approaches risk breaching GDPR, particular with regard to processing children's data, even in the context of protecting them from harmful content. The ICO could engage with age assurance technology providers and associated bodies in the online advertising sector to provide resources and advice specific to these areas.

10. **Please submit any evidence of how the feasibility and efficacy of age estimation approaches may improve over the next five years.**

    - N/A

Economic considerations

11. **The ICO has a regulatory duty to consider economic impacts. Please submit any evidence relating to the costs, benefits and availability of age assurance approaches.**
    We are interested in the economic impacts both for the organisations developing age assurance approaches and those implementing them.
    Please give details including the cost per user estimate of employing age assurance systems, organisational context, nature of online service and sector to which the impacts apply.
    - Although this is not an area where the ASA is able to offer detailed economic indicators, through our engagement with the ad industry we have become aware of potential impacts of broader changes in online ad targeting – primarily the proposed phasing-out of third-party cookies on Google Chrome and enhanced privacy settings by default offered by other providers, such as Apple.
    - Such changes could lead to a move towards walled-garden/first-party-data focused approach for age assurance. This could concentrate age-restricted advertising in the hands of large platforms and effective targeting in the hands of large operators/advertisers i.e. larger gambling, alcohol, and food brands.

- Established media e.g. news websites which require users to log-in, may gain a competitive advantage over other editorial sites by offering a safer environment for targeting high-value customers with reliable age data – often confirmed to some degree within their subscription model through self-declaration/credit card verification.
- Cost-effective reliable age-targeting mechanisms on the open market could benefit smaller and emerging advertisers in ensuring they can build their brands responsibly, and could also make a wider spectrum of media available to larger operators.

12. Please submit any evidence of how the economic impacts of age assurance approaches may change over the next five years.
- N/A

Data protection risks

13. Please submit any evidence of any data protection risks associated with the development and application of age assurance approaches.
This can include issues around bias rates, access and inclusion.
- The ASA is not currently aware of any wider issues in age assurance beyond those outlined in the ICO Opinion on the matter – algorithm bias, limits to inclusion in using official IDs, credit cards etc.

14. Please submit any evidence of ways to minimise any data protection risks associated with age assurance.
For example, this could include the use of privacy-enhancing technologies.
- N/A

15. Please list any particular areas where the application of data protection law (the UK GDPR and the DPA 2018) to age assurance needs clarifying.
- Based on our engagement with advertisers of age-restricted products, specific guidance from the ICO on the use of data for age assurance in advertising would be beneficial.
- Such guidance could clarify the extent to which age data obtained from cookies or other means can be used for age assurance without consent.
- Guidance could also cover the extent to which legitimate interest can be used as a legal basis for processing children's data for the purpose of minimising their exposure to online ads for unsuitable products (alcohol, gambling etc.) or those containing potentially harmful or distressing content.

Areas for further ICO engagement

16. **Please list any additional ICO support that you feel would be beneficial in ensuring organisations conform with the Children's code age-appropriate application standard.**
    - As the statutory regulator in this area, the ICO is best placed to outline cross-sector requirements or standards of practice for age assurance providers. Similar to the examples given in sections 9 and 15, best practice guidance for safe ad targeting and the use of age assurance would be beneficial to a range of ad industry stakeholders.
    - This could take the form of tiered guidance, outlining best practice for advertisers with access to first-party data; the nature of the potential harm (unsuitable product or inappropriate content); and potentially some advice on specific platforms/ad networks.

17. **Please list any initiatives to develop age assurance industry standards and innovation that the ICO could beneficially support.**
    - N/A

Other

18. **As outlined in our privacy statement, we may publish the responses received from organisations or a summary of the responses. We will not publish responses from individuals.**

Bearing this in mind, are you answering this call for evidence:

On behalf of an organisation – Advertising Standards Authority

As a professional

As an individual

Other

The ICO is planning to hold further engagements, such as roundtables, as part of this call for evidence.

19. **Would you like to participate in future roundtables?**
    - The ASA would definitely be interested in participating in future roundtables. Although we may not be a source of primary intelligence, the discussions and outcomes of roundtables will impact large aspects of our work online, and potentially in targeted broadcast/on demand sectors as well. We would also welcome any intelligence the ICO can provide to support improved guidance on age assurance etc.