The Current State of Kids' and Teens' Privacy

Future of Privacy Forum

November 7, 2023

Chloe Altieri
Policy Counsel for Youth and Education at FPF

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Phyllis H. Marcus

Partner, Hunton Andrews Kurth LLP

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The Children's Privacy and Safety Landscape

Phyllis H. Marcus
Hunton Andrews Kurth LLP
(202) 955-1810
PMarcus@HuntonAK.com

November 7, 2023

Who Are the Actors?

Children's Privacy and Safety Oversight

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A highly fragmented set of laws, set by:

- U.S. States
- U.S. Federal Trade Commission
- U.S. Congress

State Design and Safety Codes

State Laws: A Complicated Landscape

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- As of early August, at least 35 states had considered legislation in2023 aimed at protecting children when they use the internet and social media
- Eleven states have already enacted such bills

State Laws: A Complicated Landscape

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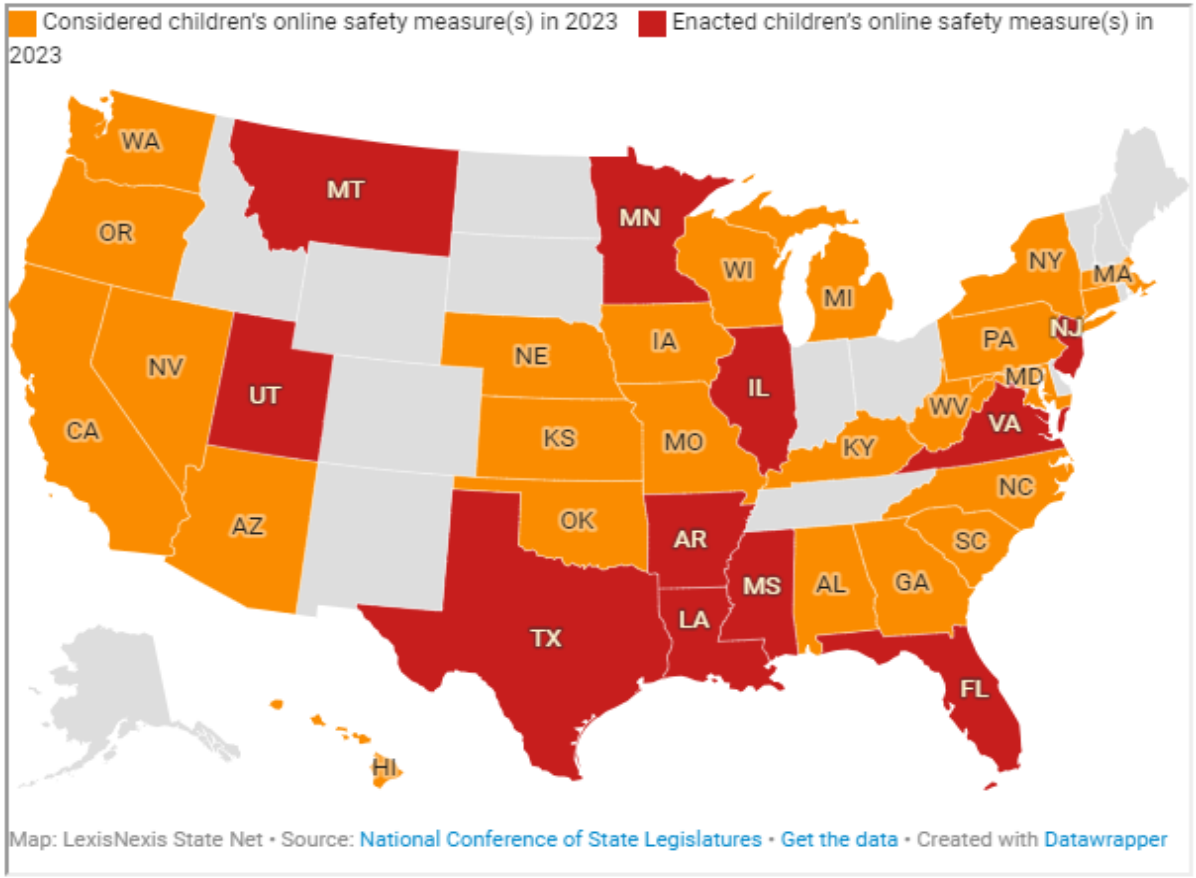

Platform Accountability Laws

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- Florida (SB 262)
  - Prohibits:
    - Processing children's PI if platform knows (or willfully disregards) that processing may result in substantial harm or privacy risk
    - Profiling a child unless appropriate safeguards and profiling is necessary/does not create risk
    - Collecting, sharing, selling PI unless compelling reason and doing so does not create risk
    - Geolocation restrictions
    - Dark patterns to encourage submission of PI
- Louisiana (HB 61)
  - Prohibits online services from allowing U18s to sign up for accounts without parental consent;
  - Allows parents to cancel the terms-of-service contracts their children signed for existing accounts;
  - Gives parents the ability to monitor their children's accounts;
  - Companies must prohibit adults from messaging minors with whom they aren't already connected;
  - Prohibits use of targeted advertising (other than based on age and location);
  - Restricts PI collection

Age Verification Laws

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- Arkansas SB 396
  - Requires minors to seek parental consent to open a social media account
  - Mandates that social media platforms verify account holder's age.
  - Being challenged in *NetChoice v. Griffin* (PI granted Aug. 31)
- Texas HB 1181
  - Requires any website that publishes "sexual material harmful to minors" to verify users' identities
  - Being challenged in *Free Speech Coalition v. Colmenero* (PI granted Aug. 31)
- Utah (SB 152)
  - Requires parental consent to minors' use of social media and requires age verification government-issued ID
- Other states: Mississippi (S 2346); Louisiana (H 77); Montana (S 544); Virginia (S 1515)

Social Media Metering Laws

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- Utah (SB 152)
  - Prohibits minors from accessing social media platforms between 10:30 pm and 6:30 am

California Age-Appropriate Design Code (AB 2733)

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- Modeled on UK Code
- Covers CCPA-defined "businesses" providing online services, products, or features "likely to be accessed by children" under age 18
- **Would require:**
  - DPIA assessing use of children's data and risks of material detriment (exposure, exploitation, contacts, algorithmic harms, targeted advertising, incentive/engagement features, sensitive PII collection)
  - Age estimation of child users with "reasonable level of certainty appropriate to the risks" presented
  - Transparency, age-appropriate language
  - Configuring default privacy settings to high level of privacy
  - Signaling to child when parental monitoring occurs
  - Tools to exercise privacy rights
- **Would prohibit:**
  - Using kids' PI in ways that could be materially detrimental to physical health, mental health, or child's well-being
  - Collecting, selling, sharing, retaining kids' PI, or profiling a child by default unless can demonstrate "compelling" reason that doing so is in children's best interests
  - Collecting, selling, sharing precise geolocation information (and must provide an obvious sign to children)
  - Dark patterns encouraging provision of PI (nudge techniques)
- Being challenged in *NetChoice v. Bonta*
  - Preliminary injunction granted September 18, 2023 (fails on First Amendment grounds, applying intermediate scrutiny)
  - CA AG has filed an appeal

* At least 10 states have introduced bills modeled on California's – First Amendment-proof?

Federal Trade Commission

Federal Trade Commission: Getting in on the Action?

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- Stepped up COPPA Enforcement
  - Epic Games (Dec. 2022) ($275 mill. COPPA penalty)
  - Edmodo (May 2023) ($6 mill.)
  - Amazon Alexa (May 2023) ($25 mill.)
  - Microsoft Xbox (June 2023) ($20 mill.)
- Expanded general statutory authority
  - Epic Games (Dec. 2022) (dark patterns and billing practices)
- 2019 COPPA Rule Review
  - Proposed revised Rule forthcoming?
  - May have aspects of age-appropriate design codes

Federal Legislative Initiatives

Federal Legislative Initiatives

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At the federal level, the Senate Commerce Committee voted out two bipartisan bills to protect children's internet use in late July 2023:

- COPPA 2.0 (Sen. Markey, Sen. Cassidy)
  - Extends COPPA to kids under age 17
  - Defines personal information as that "reasonably linkable" to a child or teen
  - Expands knowledge to that "fairly implied on the basis of objective circumstances"
  - No requirement to age gate or collect any new PI to make this determination
  - Bans targeted advertising directed at minors

- Kids Online Safety Act (KOSA) (Sen. Blumenthal, Sen. Blackburn)
  - Aspects of CA AADC
  - Would require "covered platforms" to:
    - Act in the best interests of a user the platform "knows or reasonably should know is a minor" by taking reasonable measures to prevent and mitigate various harms
    - Limit who can communicate with minors and prevent others from viewing a minor's personal data
    - Limit features encouraging minors to stay online for an extended period of time
    - Offer the ability to opt out of algorithms and limit the types of content with which a minor can interact

HUNTON
ANDREWS KURTH

Phyllis H. Marcus

2200 Pennsylvania Avenue NW
Washington, DC 20037

(202) 955-1810
PMarcus@HuntonAK.com

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FUTURE OF PRIVACY FORUM

Pascale Raulin-Serrier

Senior Advisor in Digital Education and
Coordinator DEWG, French CNIL

CNIL.
COMMISSION NATIONALE
INFORMATIQUE & LIBERTÉS

PROTÉGER les données personnelles
ACCOMPAGNER l'innovation
PRÉSERVER les libertés individuelles

The current state of Kids' and Teens' Privacy Future of Privacy Forum

Webinar on Tuesday 7 November 2023

Pascale RAULIN-SERRIER, Senior Advisor, CNIL & Coordinator of the International Digital Education Working Group, GPA

Protecting children in the digital ecosystem a priority for our data protection authorities

CNIL.
COMMISSION NATIONALE INFORMATIQUE & LIBERTÉS

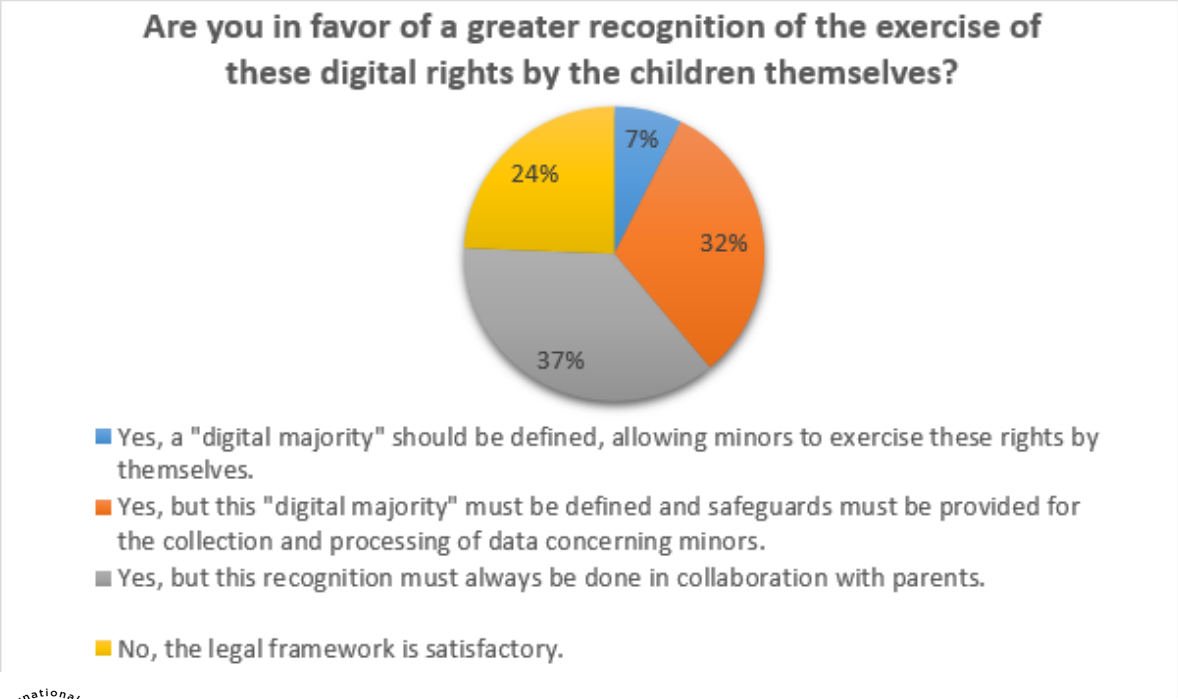
Mandate of European DPAs strengthened by the GDPR

Priority of the Global Privacy Assembly Strategic Plan

International cooperation strengthened by the Digital Education Working Group (DEWG)

INTERNATIONAL COOPERATION STRENGTHENED BY THE DIGITAL EDUCATION WORKING GROUP (DEWG)

Exploring attitudes towards using data rights at a panel of data protection authorities



Adoption of an international Resolution on Children's Digital Rights

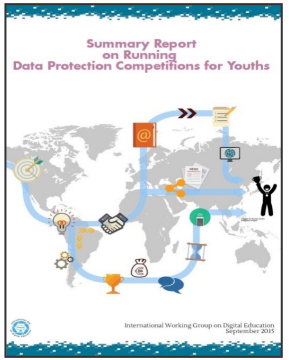
GPA
Global Privacy Assembly

43rd Closed Session of the Global Privacy Assembly
October 2021

Adopted Resolution on children's digital rights

Conduct international surveys

Informational good practices
Junior websites DPA
&
ENOC Network:
Ombudsmen websites

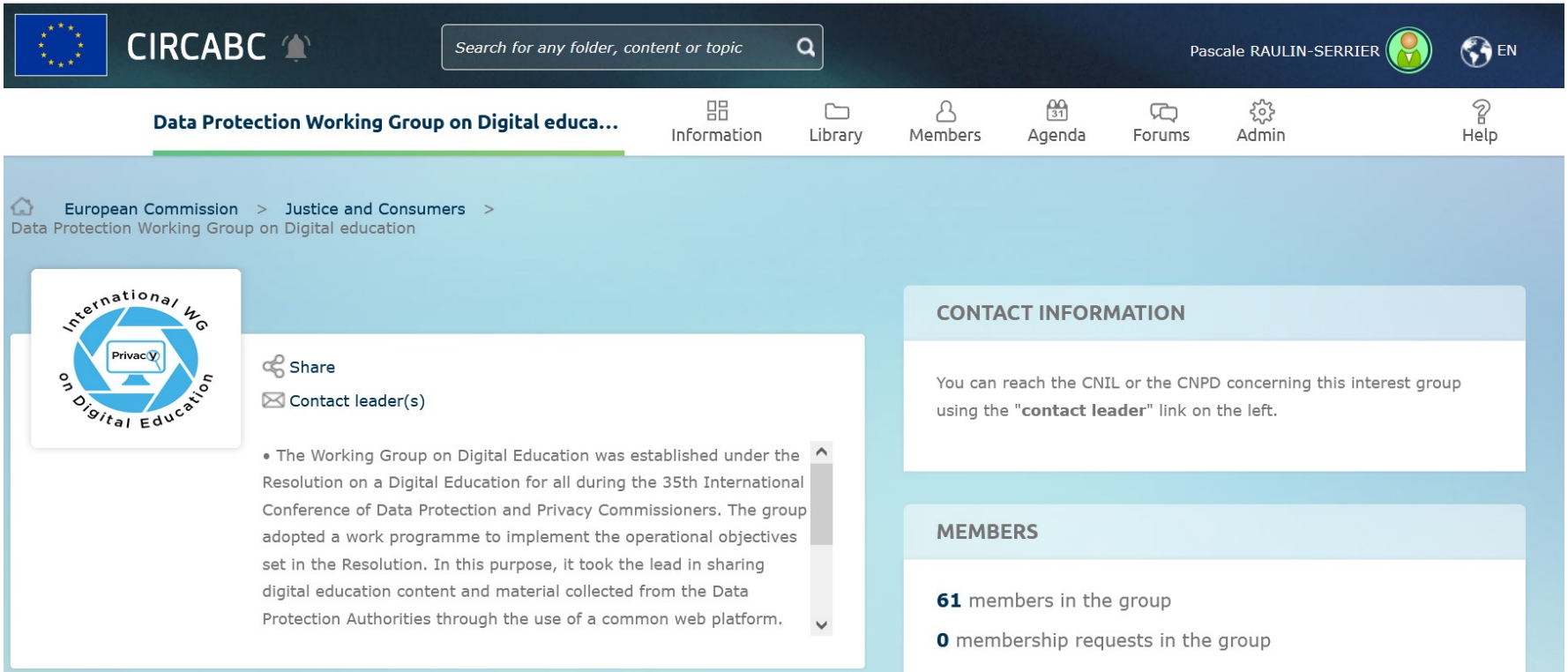


18.05.2022

As part of the implementation of the GPA Resolution on Children's Digital Rights adopted in October 2021, it is recommended to raise awareness and promote procedures accessible to young people and/or their parents that create trust in order to encourage them to:

- ***Understand and exercise their privacy rights via online service platforms; and***
- ***Refer to our data protection authorities directly in the process of complaints mechanisms or cooperation via mediation organisations, when platforms fail to respond to their requests or because the process for exercising their rights proves to be too complex and dissuasive.***

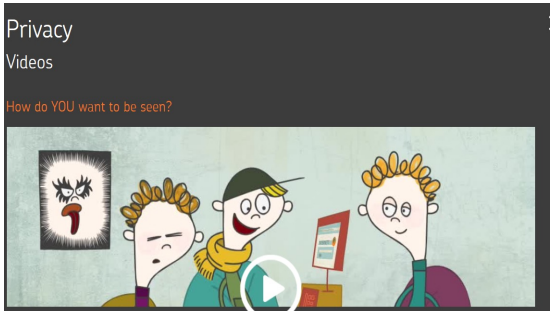
Pooling resources on an online library



Video from the CIL Burkina

Funmoods' Online Safety Kit - Little Red Riding Mood

Funmoods' Online Safety Kit - Little Red Riding Mood

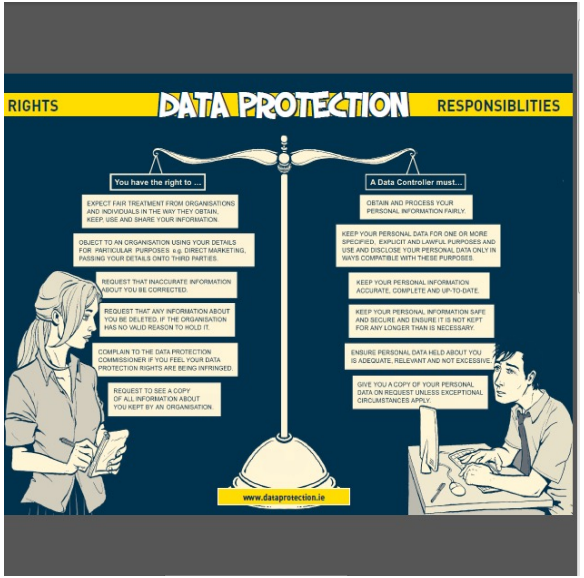


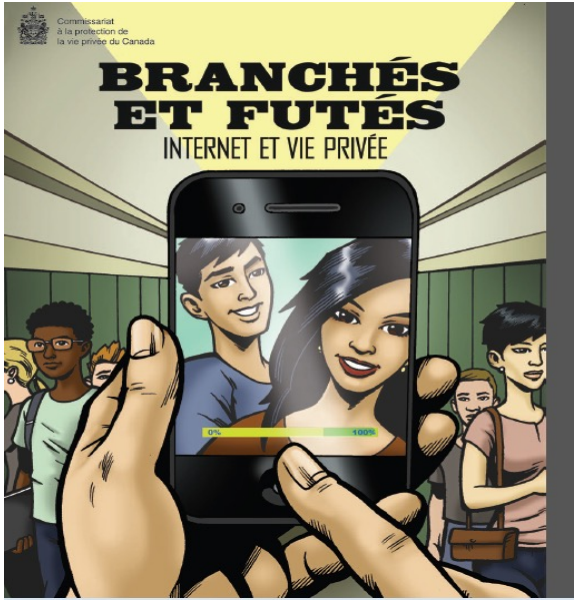
Video used by Gibraltar from publicly available resources

Video from Norway « *how do you want to be seen* ? »

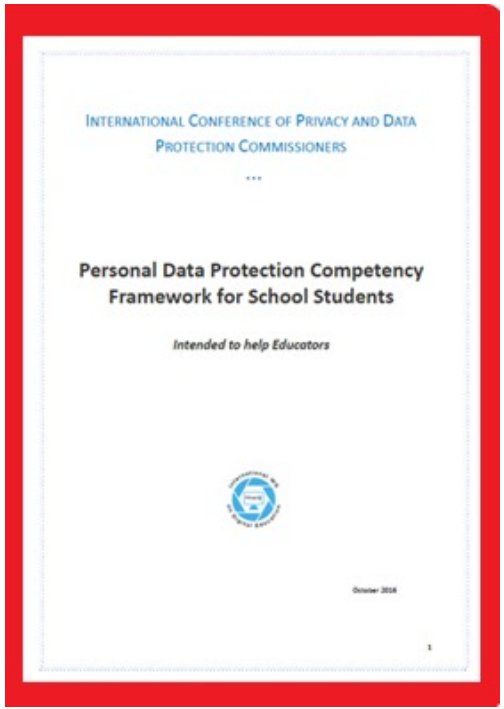
Irish manual « Sign Up, Login Opt Out : Protecting your Privacy & Controlling Your Data »

Canadian graphic novel





Implementing the data protection Competency framework in national curricula



1. Personal data
2. Privacy, civil liberties and protection of personal data
3. Understanding the digital environment – technical aspects
4. Understanding the digital environment – economic aspects
5. Understanding personal data regulations and legislation
6. Understanding personal data regulation: Controlling the use of personal information
7. Managing my data : Learning to exercice my rights
8. Managing my data : Learning to protect myself online
9. The digital world: Becoming a digital Citizen

DEWG's Work Plan 2023-2024

Priority I : Strengthen engagement with schools and teachers

Priority II: Support parents in developing their digital education skills and promote positive digital parenting

Priority III: Monitor progress on the digital inclusion of children

Priority IV: Urge for transparency of online service platforms, including EdTech

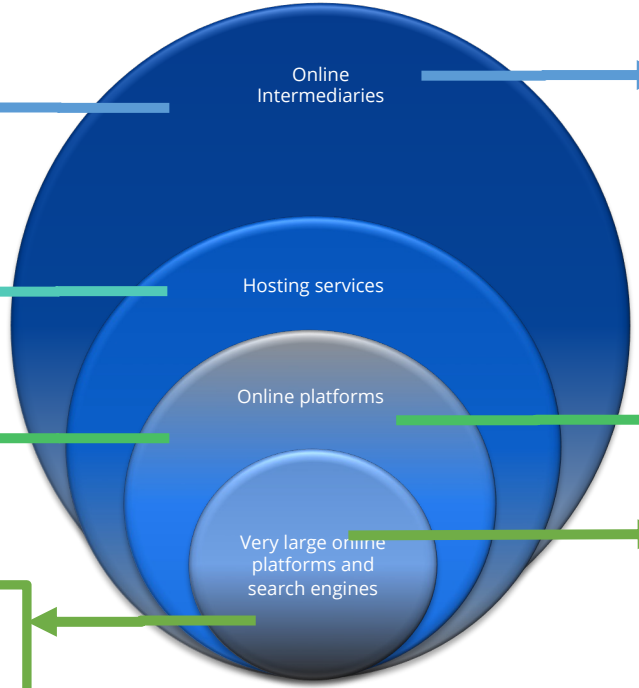
Priority V: Collaborate on Age Assurance issue

Priority VI: Explore AI systems in education regarding students' rights over their data

GDPR, Role of regulators

➥***Art 57(b) "Promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention"***

Digital Services Act (DSA): zoom in on protection of minors online



Internet access providers, domain name registries…

Cloud services, webhosting…

Social networks, online marketplaces, app stores, collaborative economy platforms, …

Online platforms and search engines (VLOP / VLOSE) with over 45 million users in the EU, designated by EC

Art. 14 – for those *primarily directed at minors*, explanation of their **terms and conditions easily understandable** to minors.

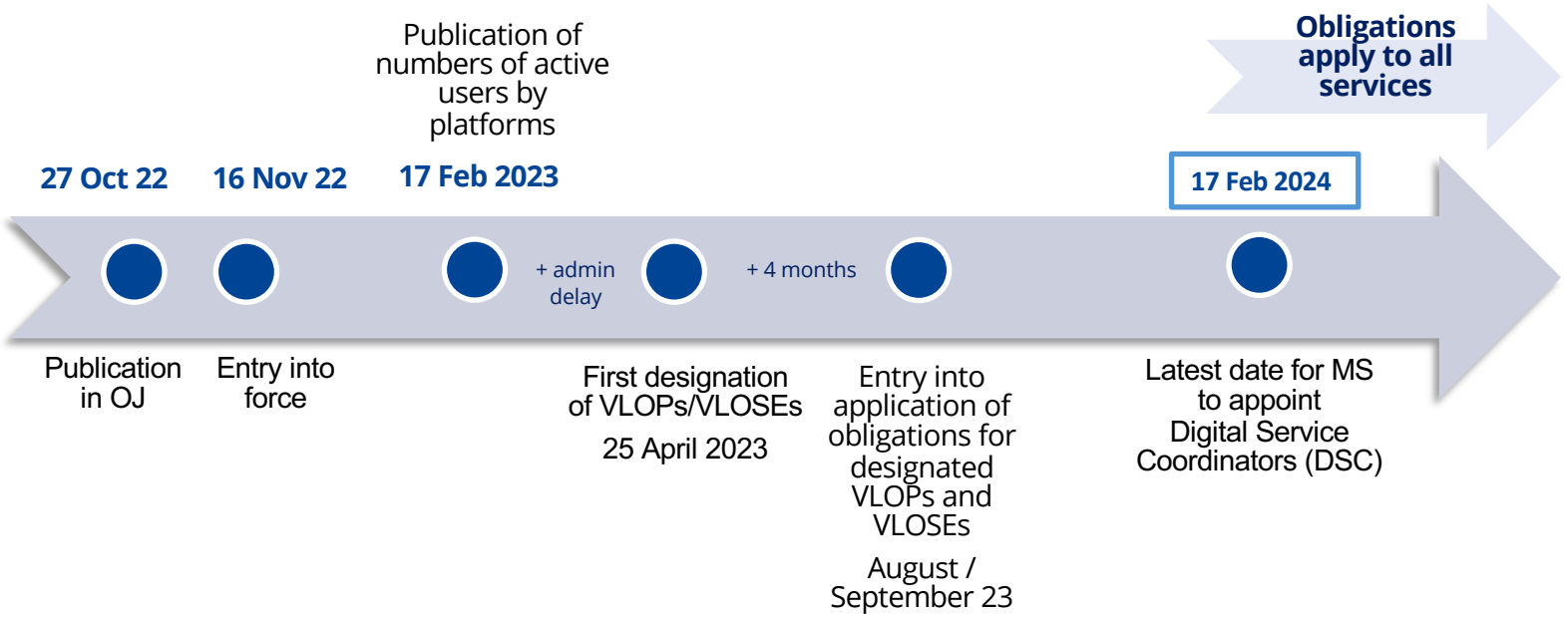
Art 28 – *all platforms accessible to minors*:
- Measures to ensure **privacy, safety and security** of minors in the service
  EC empowered to issue guidelines
- **Prohibition to serve targeted ads** based on personal data when they have reasonable assurance the user is a minor

No additional processing of personal data

Art 34 and 35 - Risk management regime for *VLOPs/VLOSEs*
- Identification of **systemic risks**, including **negative impact** on **rights of the child**, and **protection of minors online**
- Implementation of **mitigation measures**, targeted to the risk (such as parental control, **age verification**, etc.)

Subject to independent audits
COM primary enforcer

When will the new rules apply?

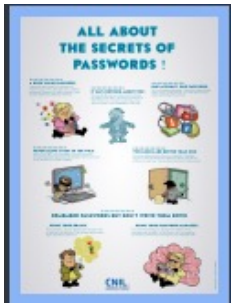


CNIL.

DIGITAL EDUCATION : NATIONAL MATTER

Who is affected? Who are our targets?

- General Public
- Youth, parents and teachers
- Data controllers and processors



> NEED HELP?

Are you looking for information or wish to submit a request online?

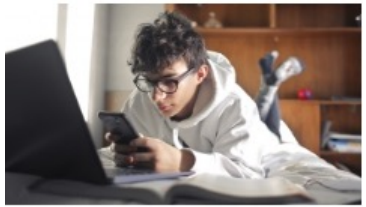
Discover the "Besoin d'aide" (Need help) tool on cnil.fr (in French only)

DIGITAL HEALTH AND EDTECH: THE CNIL PUBLISHES THE RESULTS OF ITS FIRST "SANDBOXES"

28 July 2023

The children, parents and teachers
Challenges to digital use, the risks involved

- The mass collection of information about their preferences, identity or lifestyle, highly coveted data
- Digital should not lock children into a system of predisposition or reinforce inequalities or digital devide
- Less aware and more exposed to risks online & inadequately supervised digital practices
- Risk of large-scale surveillance of children

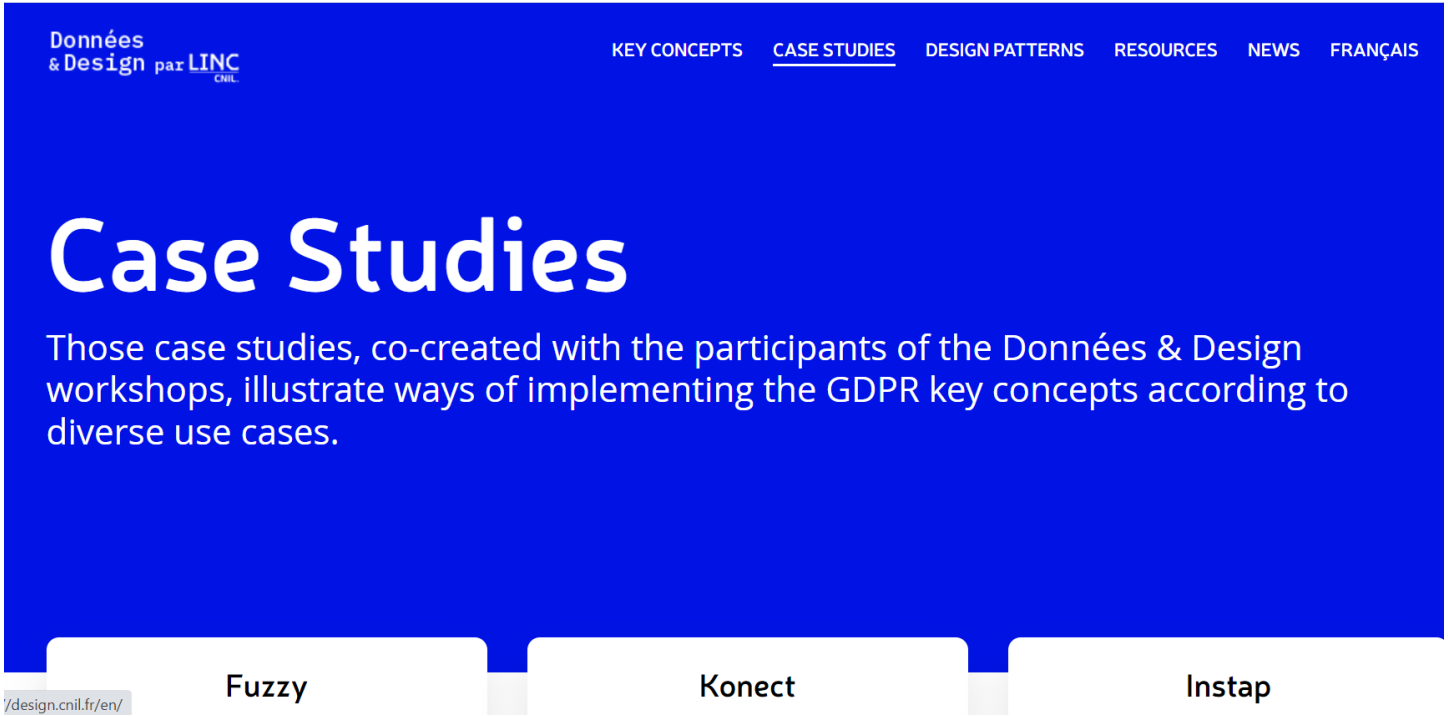


CNIL published 8 recommendations to enhance the protection of children online in 2021

- Regulate the capacity of children to act online
- Strengthen the information and rights of children by design
- Encourage children and youth to exercise their rights
- Support for parents in the digital education of their children
- Provide specific safeguards to protect the interests of the child

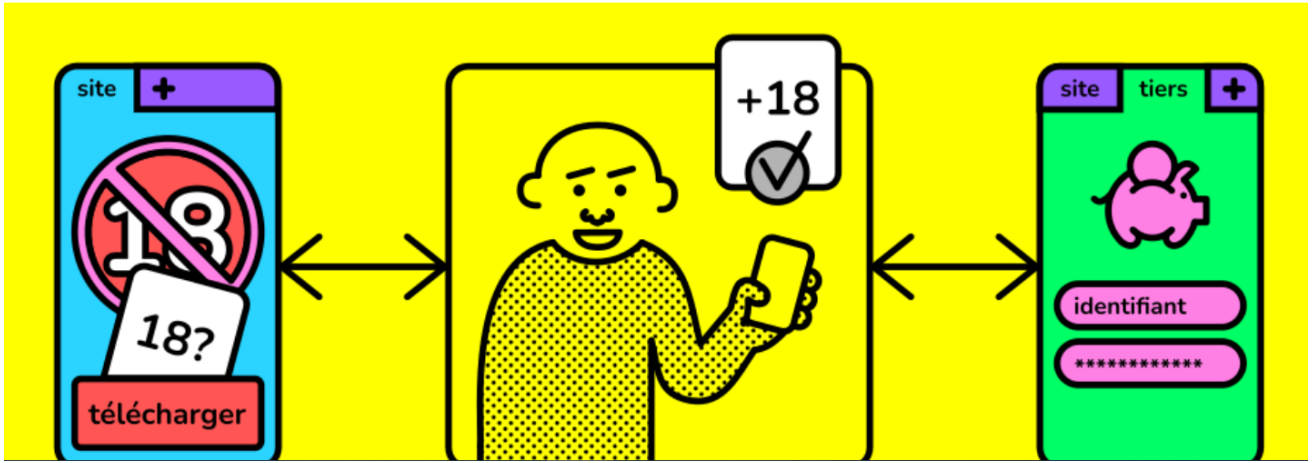
with the aim of providing practical advice and on cnil.fr appropriate for all audiences (young people, parent and professionals)

Workshops for co-constructing ethical interfaces



Demonstration of a privacy-preserving age verification process

Is it possible to prove that one is over the age of legal majority without sharing one's age or identity? The LINC, Olivier Blazy, Ecole Polytechnique professor and cryptography researcher, and the Pôle d'Expertise de la Régulation Numérique (PEReN – Digital platform expertise for the public) developed a possible implementation of an age-verification system that allows accessing restricted websites without sharing other personally identifiable data.

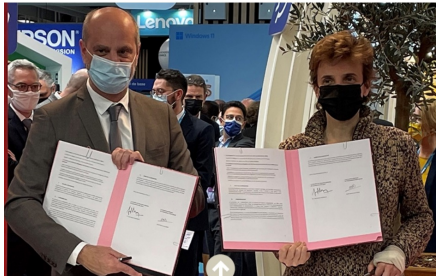


https://linc.cnil.fr/demonstration-privacy-preserving-age-verification-process

PROMOTING DIGITAL EDUCATION & CHILDREN'S RIGHTS

Digital education, a strategic priority

- Partnership with the French Ministry of Education
- Scaling up to a multi-stakeholder approach
- Training of trainers in Digital Education
- Producing a wide range of resources for young people



Collective of stakeholders for Digital education

A highly diverse Collective of stakeholders facilitated by CNIL from 2013

Some 70 non-profit organisations from the world of education and research, parent-teacher association, consumer associations, public media…

Concrete joint accomplishments and key actions: the Educnum Awards, an escape game on key issues, educational resources, position papers…

Education and training

https://www.cnil.fr/fr/enfants-et-ados

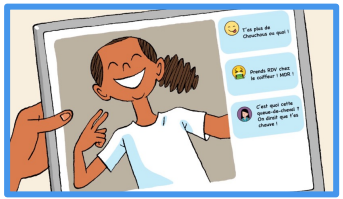
- Educate all audience to keep control of dat
- Equip teachers with more qualified skills

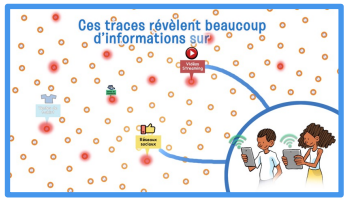
Kit du citoyen numérique

L'éducation à la citoyenneté numérique

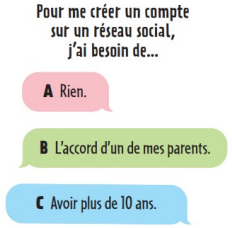
Campaign “All together for a safe internet”

4 video for children from 8-10





A card game



Leaflets for teachers and parents

Self-assessment of knowledge

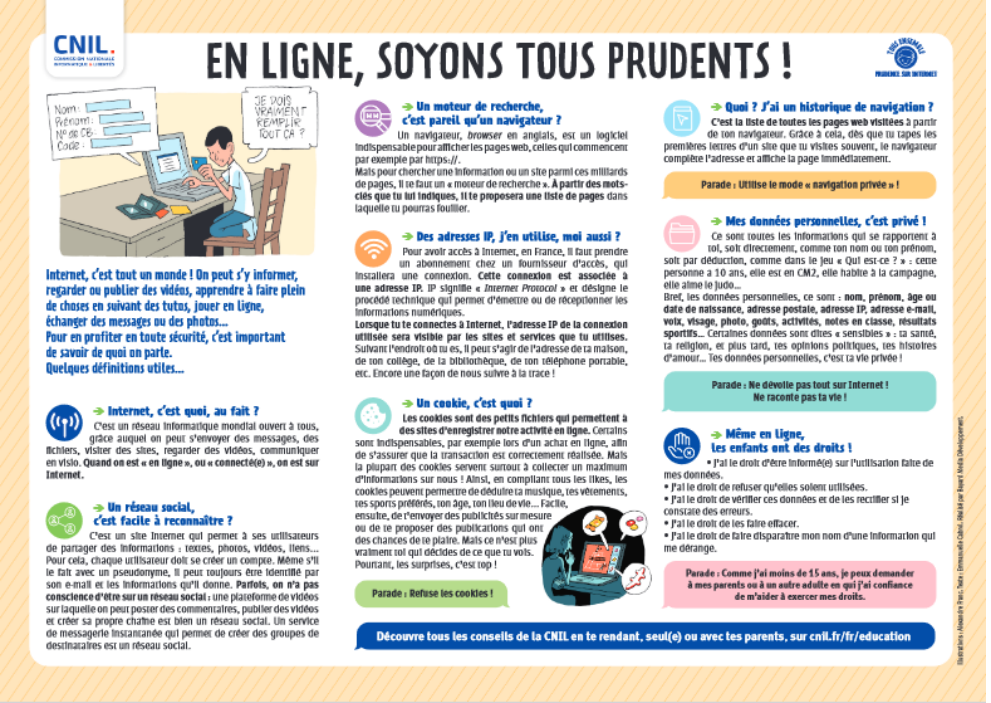
Quiz

- Positioning test to find out where you stand with regard to your uses... and your knowledge of the protection of your personal data
  - Well done, you've got the right reflexes
  - Not bad, but you can still improve
  - You still have some way to go

Poster for the classroom

Poster

- Glossary
  - What is the Internet anyway?
  - Is a social network easy to recognise?
  - Is a search engine the same as a browser?
  - Do I use IP addresses too?
  - What is a cookie?
  - What is it? Do I have a browsing history?
  - My personal data is private!
  - Even online, children have rights!



Playing to use your knowledge

- The Incollables® fan & interactive quiz with 3 levels of expertise

!”

https://www.cnil.fr/en/discover-incollables-2020-quiz-privacy-challenge-each-other-and-showing-your-knowledge-data

Thank you for your attention.

pserrier@cnil.fr

FUTURE OF PRIVACY FORUM

Michael Murray

Head of Regulatory Policy,
UK Information Comissioner's Office

Protecting children's data online

ico.
Information Commissioner's Office

children's code

ico.org.uk

The children's code shows how to design data protection into online services so they're appropriate for children

Code applies to *"relevant **information society services** which are **likely to be accessed by children**"* – aged under 18, in the UK.

It is a code of practice setting out **15 interlinked standards** of age-appropriate design for online services which process children's personal data.

The code is grounded in the provisions of the **United Nations Convention on the Rights of the Child (UNRC),** and creates an **open, transparent and safer place** for children to play, explore and learn online.

The standards in the code are **rooted in existing data protection laws**, introduced by the Data Protection Act (2018).

ico. children's code

The code has 15 standards

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

ico. children's code

ICO has been taking a wide-ranging approach to supervising the code

- Supervision activity – engagement & evidence gathering with 60+ companies, 6 ongoing investigations
- Voluntary auditing 10 organisations
- Age assurance project, inc international standards
- Engagement with co-regulators and government
- Policy development

How is industry responding?

Children's code evaluation 2023 feedback from business:

- 87% feel that the code has improved data protection for children
- 72% understand the theory within the code
- 74% of business understand what conformance requires
- 27% made changes in 2022 to support conformance.
- 46% self-identifying as fully conformant in late 2022

Levelling off of awareness and changes in late 2022 / early 2023

Learning from supervision

- 80% of companies identified as either good or some improvement needed, 20% significant issues identified
- A lack of commitment to transparency.
- Challenges of how children can exercise their data privacy rights.
- Inadequate or non-existent age assurance or verification.
- Ongoing use of behavioural profiling linked to marketing, detrimental use of data and data sharing.
- Privacy information not in child friendly language.
- Nudge techniques to encourage lower protections.
- Insufficient risk assessments and DPIAs.

But companies are changing their approach

- visible behaviour change from companies - targeted and personalised ads blocked for children and children's accounts set to private by default plus location history turned off by default.

- Google turned off adds to under 18s and TikTok turned profiles for under 18s private by default; Snap, Instagram and Epic Games making improvements to parental controls; and Meta, Sony and Lego have started using age assurance systems to improve identification of under-aged accounts and to improve age appropriateness of content.

ICO resources available

ICO AADC materials: https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/
ICO GDPR resources: https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/

Best interests of the child self-assessment | ICO

Age Assurance for the Children's Code (ico.org.uk)

'Likely to be accessed' by children – FAQs, list of factors and case studies. | ICO

Children's Code Self-Assessment Risk Tool | ICO

designing-data-transparency-for-children.pdf (ico.org.uk)

designing-data-transparency-for-children.pdf (ico.org.uk)