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**5RIGHTS
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The California Age Appropriate Design Code

Summary

California State Assembly members Buffy Wicks (D) and Jordan Cunningham (R) have introduced the **California Age Appropriate Design Code Bill** to offer privacy and safety to Californian children online.

With this Bill, California has the chance to lead the way in making the digital world safe for American children. Data protection for children radically changes the way digital companies engage with children and offers them privacy and safety by design.

The Bill is practicable and realistic, drawing as it does on the UK's Age Appropriate Design Code (AADC).

This short note sets out the rationale behind the UK's AADC and how it has been adapted to align the California AADC with the California Privacy Protection Act (CPPA).

Data protection makes children safer

Data-driven services are designed to gather and share data in ways that impact on the safety and wellbeing of children. Common features nudge children into risky behaviors, expose them to predators, recommend harmful material, and encourage compulsive behavior. These features are routinely built into a system designed by adults for use by adults, leaving millions of children struggling to cope online.

Data protection regulation impacts the design features that are optimised to gather data and which put children at risk. Data protection is increasingly understood as a key tool in creating a digital environment that is safer by design.

What is the UK Age Appropriate Design Code (AADC)?

The AADC is a UK statutory code for digital services processing children's data to ensure the highest protections for children's safety and privacy. It offers a comprehensive set of rules for the protection of children's data and is already being implemented by tech companies and enforced for children in the UK.¹ At its core are four principles:

- **A child is a person under 18**, in line with the UN Convention on the Rights of the Child.²
- **Children must be protected wherever they are online.** Services in scope are those 'likely to be accessed' by children – where the presence of a child on that service is 'more probable than not' or could be 'reasonably expected'.
- Products and services in scope of the Code must consider the privacy and protection of children, **by design and default.**

¹ Information Commissioner's Office (ICO) in the UK - [The UK Age Appropriate Design Code](#)

² Office of the UN High Commissioner for Human Rights - [Convention on the Rights of the Child](#)

- That in the event of a conflict of interest between service and child, the **child's best interest** must be paramount.

The AADC comprises 15 standards that apply to all digital products and services, including connected toys and devices, that are likely to be accessed by children.³ The standards provide privacy and safety for children by:

- Restricting data collection, sharing, and profiling, and the use of data in a way that is detrimental to the child;
- Requiring high privacy settings by default and switching off geolocation, and prohibiting the use of nudge techniques to encourage children to weaken their privacy protections;
- Mandating the primacy of the child's best interests, requiring a risk-based approach to children according to their age;
- Demanding transparency and age-appropriate terms, policies, and tools for data protection, including around parental controls, and that these terms are upheld.

The Code is the responsibility of the UK data regulator, the Information Commissioner's Office (ICO), which has powers under the Data Protection Act 2018 to enforce compliance. The enforcement regime includes fines of 4% of global turnover or £17.5m, whichever is greater.⁴

How was the Code created?

Crossbench Peer in the UK's House of Lords, Baroness Beeban Kidron (Chair of 5Rights Foundation), introduced an amendment to the Data Protection Bill that required the ICO to prepare a code of practice setting out standards of age-appropriate design for digital services likely to be accessed by children. The amendment received political support from all parties. In accepting the view of Parliament on the AADC, the UK government also agreed to the four underlying principles and the full scope of the 15 standards.

The code forms clause 123 of UK Data Protection Act 2018 and was hailed by UK lawmakers as "ground-breaking" and responsible for "ushering in a new era of tech responsibility".

After public consultation, the ICO issued the Code in August 2020 and, after a year of transition to allow companies to comply, it became UK law on 2nd September 2021.⁵

What has the AADC already achieved?

Since the Code passed into law, a wide range of services have made hundreds of changes to their privacy settings, including some of the biggest companies in the world. Some notable examples:⁶

- Google have made SafeSearch the default browsing mode for all under 18s.

³ Information Commissioner's Office (ICO) in the UK - [The Code Standards](#)

⁴ Information Commissioner's Office (ICO) in the UK - [Enforcement of this code](#)

⁵ Information Commissioner's Office (ICO) in the UK - [About this Code](#)

⁶ 5Rights Foundation - [Raft of tech changes to protect children as new rules come into force](#)

- YouTube have turned off autoplay for under 18s and break and bedtime reminders are turned on by default.
- TikTok and Instagram have disabled direct messages between children and adults they do not follow.
- The Google Play Store now prevents under 18s from viewing and downloading apps rated as adult-only.
- TikTok do not push notifications after 9pm to children aged 13-15 and after 10pm to 16-17 year olds.

In addition to hundreds of changes to privacy settings, many companies have also introduced new 'wellbeing' and timeout mechanisms to give children a break from intrusive and addictive services.

While there is still a great deal to do, these changes have caught the eye of policymakers internationally, who are now replicating some or all of the AADC elsewhere, including in the European Union (both at the bloc level and in Member States including the Netherlands and Ireland)⁷ and in Australia.

How is the California Code different?

The California Age Appropriate Design Code has been adapted to reflect existing California law.

The AADC is enforced via legal action and defined penalties; the enforcement mechanism for the California Code is the Attorney General under the Unfair Competition Law.

The bill also calls for the establishment of the California Children's Data Protection Taskforce to evaluate best practices and to provide support to businesses, with an emphasis on small and medium businesses.

Why would the California Code be a game changer?

While many of the world's biggest companies have made changes supporting children globally in response to the UK's AADC, the UK's ICO is the only regulator who can enforce compliance.

At the time of the CPRA ballot initiative, 8 in 10 Californians said they wanted to see stronger action against violations of children's privacy.⁸ Introducing the California AADC as part of the CPPA regime will give them the democratic outcome they voted for.

As California goes, so goes the Nation. There is vocal and visible cross-party support at the Federal level for urgent protections online – led by Senator Markey and supported by the Senate Commerce Subcommittee on Consumer Protection, Product Safety, and Data Security Chaired by Senator Blumenthal and ranking member Senator Blackburn. However, as yet, Washington has not found a route to bring these urgently needed protections into law. Setting out the parameters in California may serve to resolve this impasse.

⁷ Data Protection Commission, Ireland – [Fundamentals for a child-oriented approach to data processing](#)

⁸ Californians for Consumer Privacy - [ICYMI: Summary of Key Findings from California Privacy Survey](#)

Successive Attorneys General have spoken out in favour of bringing in enforceable data protection for children. In the absence of general data protection regulation, the California Code could show the way for State-led protections for children.

The largest and most influential companies are largely based in California. A California Code could be a precursor to a global settlement on data protection for children.

Commentary in the US on the AADC:

Letter from members of the US Congress

In September 2021, Senator Edward J. Markey and Representatives Kathy Castor and Lori Trahan wrote to the CEOs of Amazon, Facebook, Google, Snapchat, TikTok, and Twitter, urging them to extend privacy protections required under the UK AADC to children and teens in the United States.

*"[C]hildren and teens encounter constant threats to their privacy online. It is imperative that Congress acts with urgency to enact a strong privacy law for children and teens in the 21st century. As we work towards that goal, we urge [companies] to extend to American children and teens any privacy enhancements that [they] implement to comply with the AADC."*⁹

Testimony to the US Senate

In her testimony to the United States Senate hearing on "Protecting Kids Online: Children's Privacy and Manipulative Marketing", Baroness Kidron shared:

"The impact of this one small legislative effort is becoming apparent as companies have to redesign their services to better protect minors, including disabling features that allow direct messaging of children by unknown adults, providing clearer terms of service, putting age assurance schemes in place, offering tailored services for children of different ages, and making default settings that automatically offer a high bar of safety and data privacy for children's profiles.

*The full impact of the Children's Code remains to be seen, but in a recent conversation with one of the major platforms, I was told that all their product teams now have to consider the Code's 15 provisions, including its overarching requirement to process children's data in "the best interests of children."*¹⁰

Tech companies

Michael Beckerman, **TikTok's** Head of Public Policy for the Americas, told the US Senate Subcommittee on Consumer Protection, Product Safety and Data Security on 26th October 2021:

"We have voluntarily implemented much of the Age-Appropriate Design Code here in the United States. I agree that companies can do more... and that is the approach we are trying to take, to do more and go above and beyond and to be a place where

⁹ Senator Markey - [Senator Markey, Reps. Castor And Trahan Press Major Tech Companies To Extend Online Protections Required Under A New U.K. Statutory Code To Children And Teens In The United States](#)

¹⁰ [Testimony of Beeban Kidron - Hearing on Protecting Kids Online: Children's Privacy and Manipulative Marketing to the United States Senate Subcommittee on Consumer Protection, Product Safety and Data Security, 18th May 2021](#)

we are putting wellness of teenagers and safety of teenagers ahead of other platforms... We strongly and enthusiastically support that kind of child safety law.”¹¹

At the same hearing, Jennifer Stout, Vice President of Global Public Policy at **Snap**, said:

“We of course complied with the Code as it's come into force this year and I mentioned we are looking actively at that Code to see how we can apply it to outside the UK market and apply it to many of our other markets.”¹²

A **Meta** spokesperson told the UK Sunday Times in January:

“We’re working to implement the standards within the Age Appropriate Design Code, in consultation with the ICO. This is a continuous effort on our part, which takes into account developing technologies, guidance and understanding around the digital environment and how young people interact with it. We’re committed to meeting the obligations under the code, and to providing young people with age-appropriate experiences.”¹³

US Media

- [POLITICO – Did the UK just figure out how to keep kids safe online?](#), written by Chief Technology Correspondent Mark Scott
- [The New York Times – Why Apps Suddenly Want to Protect Kids](#), written by Shira Ovide, discussing the impact of the Code on the US internet
- [The New York Times - What’s One of the Most Dangerous Toys for Kids? The Internet.](#), video by Adam Westbrook, Lucy Kind and Jonah M. Kessel, calling for the Code to be introduced in the US
- [Bloomberg - The British Baroness Who’s Taming Big Tech](#), profile written by Columnist Parmy Olson

Further information:

- [The UK Age Appropriate Design Code](#)
- [The California Age Appropriate Design Code Bill](#)
- [What traditional toys would look like if they had all the features of the digital world](#)
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¹¹ Testimony of Michael Beckerman - Hearing on Protecting Kids Online: Snapchat, TikTok, and YouTube to the United States Senate Subcommittee on Consumer Protection, Product Safety and Data Security, 26th October 2021

¹² Testimony of Jennifer Stout - Hearing on Protecting Kids Online: Snapchat, TikTok, and YouTube to the United States Senate Subcommittee on Consumer Protection, Product Safety and Data Security, 26th October 2021

¹³ Sunday Times – [My journey into the metaverse – already a home for sex predators](#)