

Age Appropriate Design Codes

November 2022

UK & California

On 15 September 2022, the Governor of California signed the California [Age Appropriate Design Code Act](#) ("**California Code**") into law. Compliance is required from 1 July 2024.

It very closely mirrors the United Kingdom's [Age Appropriate Design Code](#) ("**UK Code**") which took effect in the UK in September 2020. There are also similarities to the [Irish Fundamentals](#). The aim of the Code is to protect children's privacy when using online services, products and features.

Who needs to comply?

Businesses which meet the financial or data collection thresholds of the California Privacy Rights Act (CPRA) and which provide an online service, product or feature "likely to be accessed" by children need to comply with the California Code.

The UK Code provides a non-exhaustive list of examples of when a service is "likely to be accessed" by children and a test of "more probable than not". The California Code on the other hand takes a more legalistic approach by reference to online services, products and features:

- directed to children as defined by the Children's Online Privacy Protection Act;
- which are determined, based on the use of competent and reliable evidence regarding audience composition, to be routinely accessed by a significant number of children;
- which are substantially similar or the same to the service, product or feature noted above;
- which contain advertisements marketed to children;
- that have design elements that are known to be of interest to children, including, but not limited to, games, cartoons, music, and celebrities who appeal to children; or
- which are determined to have children as a significant amount of their audience based on internal company research.

A child is a person under 18 years of age under both Codes.

Enforcement

The California Code allows the Attorney General to seek enforcement or a civil penalty of not more than **\$2,500** per affected child for each negligent violation or not more than **\$7,500** per affected child for each intentional violation. This is subject to a 90 day cure period.

In the UK, there is no separate enforcement regime built into the UK Code - any enforcement would be undertaken under the pre-existing regime under the UK's Data Protection Act 2018 and the UK GDPR.

Undertaking a DPIA

Businesses should undertake the necessary DPIAs. The Attorney General can request a list of all completed DPIAs within three business days, and copies of the DPIAs themselves within five business days. DPIAs should be completed by 1 July 2024 for any service, product and feature that was likely to be accessed by children before that date and will still be available after that date.



It is not necessary to undertake separate DPIAs under the California Code and UK Code. The California Code confirms that any DPIA conducted for the purposes of complying with any other law (e.g. the UK Code and GDPR) could also be used to comply with the California Code as long as it covers the necessary requirements.

Further guidance



The California Children's Data Protection Working Group has been created to provide recommendations to the legislature on best practices. The first such recommendations are to be published on or before 1 January 2024. In the meantime, businesses may wish to look at the more detailed UK Code which provides examples of acceptable and unacceptable practices.

Comparison between the codes



The table below sets out a high level comparison between the obligations under each of the standards under the UK Code and the corresponding requirements under the California Code.

UK Code 	California Code 	Comparison
1. Best interests of the child	1798.99.29	Both Codes place a positive obligation to consider the best interests of the child throughout the process of designing, developing and providing the service, product or feature. The California Code expressly states that this should be prioritised over any conflicting commercial interest.
2. Data protection impact assessments	1798.99.31(1)-(4)	<p>Both Codes contain an obligation to carry out a Data Protection Impact Assessment (DPIA).</p> <p>The California Code requires this to be reviewed every two years and references eight specific harms that should be evaluated including harmful content, contacts, conduct, advertising, algorithms, design features and sensitive personal information.</p> <p>The California Code is specific in that a timed plan should be created to mitigate or eliminate risks.</p>
3. Age appropriate application	1798.99.31(a)(5) and (b)(8)	<p>Both Codes are similar in that they allow a business to either apply protections appropriate to the estimated ages of child users or to apply the same high standard to all consumers.</p> <p>The California Code contains a specific requirement not to use any personal information collected to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age, which is consistent with the UK Code and the GDPR principal of storage limitation.</p>
4. Transparency	1798.99.31(a)(7)	<p>Both Codes require that any privacy information, terms of service, policies, and community standards are written in a manner suited to the age of children.</p> <p>The California Code does not go as far as the UK Code, which requires it to be presented in a way likely to appeal to children, for example by using diagrams, cartoons, graphics, video, audio or gamified content.</p>

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5. Detrimental use of data	1798.99.31(b)(1)	<p>The California Code prohibits a business from using personal information of any child in a way that the business knows, or has reason to know, is materially detrimental to the physical health, mental health, or well-being of a child.</p> <p>The UK Code goes further by also prohibiting the use of data which goes against industry codes of practice, other regulations or Government guidance.</p>
6. Policies and community standards	1798.99.31(a)(9)	Both Codes require businesses to enforce their own published terms, policies, and community standards.
7. Default settings	1798.99.31(a)(6)	The California Code requires that all default privacy settings are configured to offer a high level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children. This matches the requirement in the UK Code.
8. Data minimisation	1798.99.31(b)(3)	The UK Code requirement to collect and retain only the minimum amount of personal data is similarly reflected in the California Code, although the UK Code also requires that children be given separate choices over which elements of the service they wish to activate.
9. Data sharing	1798.99.31(b)(3)	The UK Code requirement to not disclose a child's data unless the business can demonstrate a compelling reason to do so, taking account of the best interests of the child, is similarly reflected in the California Code.
10. Geolocation	1798.99.31(b)(5)-(6)	<p>Both Codes are similar in that the collection, sale, or sharing of any precise geolocation information should be off by default unless the collection of that precise geolocation information is strictly necessary for the business to provide the service and then only for the limited time necessary.</p> <p>Both Codes also state that it should be obvious to the child that their location is being tracked.</p>
11. Parental controls	1798.99.31(a)(8)	Both Codes require that if any monitoring of the child's online activity or tracking of the child's location takes place by a parent or guardian then there should be an obvious signal to the child when the child is being monitored or tracked.
12. Profiling	1798.99.31(b)(2)	The California Code is similar to the UK Code. Profiling of children should be off by default unless there are appropriate safeguards in place, the profiling is necessary and there is a compelling reason that the profiling is in the best interests of the child.

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13. Nudge techniques	1798.99.31(b)(7)	<p>The Codes differ slightly in approach. The UK Code uses the term "nudge techniques", whereas the California Code calls them "dark patterns".</p> <p>Both Codes require that businesses should not use such patterns or nudges to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, or feature or to forego privacy protections.</p> <p>Whereas the California Code prohibits a business from taking any action that the business knows, or has reason to know, is materially detrimental to the child's physical health, mental health, or well-being, the UK Code suggests that businesses may wish to positively use nudge techniques to promote the child's health and wellbeing.</p>
14. Connected toys and devices	1798.99.30(b)(5)(C)	<p>Here there is a stark difference. The California Code specifically excludes "the delivery or use of a physical product" from its scope. The UK Code on the other hand requires connected toys or devices to conform to the UK Code.</p>
15. Online tools	1798.99.31(a)(10)	<p>The California Code contains a requirement to provide prominent, accessible, and responsive tools to help children, or if applicable, their parents or guardians, exercise their privacy rights and report concerns. This closely mirrors the UK Code.</p>

Speak to us to find out more



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