

# Fairness by design: addressing children's expectations through children's best interests

by Ayça Atabey

How can children's expectations be addressed through embedding 'fairness' and children's best interests when designing value-sensitive and child-rights respecting digital technologies? What role does data protection law play in this?

The Digital Futures Commission (DFC) advocates for children's best interests in the design of the digital world, in which data and their fair usage are of paramount importance to empower and protect children in their interaction with digital technologies. When exploring how innovators can design for children's rights, and process children's data 'fairly', we refer to the Age Appropriate Design Code (the Code) – the first of its kind in the world to take into account the UN Convention on the Rights of the child–(UNCRC). As explicitly stated in the Code, following the Code helps online services “process children's data fairly” – in compliance with the fairness principle, which is a “must” in UK GDPR.

## **Fairness and best interests of the child**

- The Code is underpinned by the fairness principle set out in Article 5(1)(a) of the UK GDPR, stating personal data shall be “*processed lawfully, fairly and in a transparent manner in relation to the data subject (lawfulness, fairness, transparency)*”
- Fairness lies at the heart of all 15 standards of the Code, particularly the best interests.
- To comply with the best interests of the child standard, innovators need to consider questions about balancing competing rights and interests in children's interaction with digital technologies.

How do designers manage this balancing exercise, reflect it in the design of technologies, and ensure children's best interests are prioritized when processing children's data? Finding answers to these questions isn't an easy task. As Sonia Livingstone notes

*“The best interests principle has a complex and at-times contested history, so applying it to data protection is demanding”. Here we ask, are there existing rules that can help organisations do this?”*

Fairness is an overarching concept that bolsters other principles like transparency, balancing rights and interests, promoting children's control and agency over their data, and equal treatment of children. To comply with the law, organizations need to consider children's needs and understand their expectations to process children's data fairly and embed the “fairness principle” into the design of technologies. However, given complexities about the meaning of 'fairness', especially in relation to artificial intelligence (AI), this is a challenging task.

At the DFC, we focus significantly on child-rights respecting design. We look beyond data protection laws and adopt a universal child-rights based approach in our aim to help innovators comply with existing rules, including 'fairness' in the UK GDPR. For example, Livingstone and Pothong suggest:

*“where the processing of AI applications or development is concerned, the decisions made with AI should be explained and CRIA should be mandated in order to satisfy the fairness principle”.*



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### ***Fairness as an enabler for transparency and individual rights***

Children have individual rights under UK data protection law. As the ICO notes

*“children have the same rights as adults over their personal data. These include the rights to access their personal data; request rectification; object to processing and have their personal data erased”.*

Exercising data subject rights is linked to “transparency” which closely intersects with the fairness principle. This is also related to organisations’ obligation to communicate information clearly, in an accessible and child-friendly way, and to consider the diverse needs of children.

In deciding what information should be given to children, the ICO notes:

*“In order for processing to be fair, there is the same need for transparency, as this gives an individual control and choice”.*

Aligned with ICO’s approach to fair processing, we can say that transparency and fairness play critical roles in ensuring children can exercise their rights. This is because exercising rights is possible when children know about their rights. This also helps organizations meet their obligations to facilitate the exercise of individuals’ rights.

- ***Designing for “fairness” and understanding children’s expectations*** Data protection by design requires embedding privacy and data protection principles (including the fairness principle) into the design of data processing and business practices.
- The fairness principle and “data protection by design” in UK GDPR have critical roles in designing a fair and inclusive digital world that children deserve, where their expectations are considered. As the ICO notes, fairness is also about handling individuals’ data “**in ways they would reasonably expect**”.

‘Fairness’ is crucial to our work, not only because it lies at the heart of the Code, but also because it is a flexible and overarching concept that enables addressing children’s needs, and expectations while promoting best interests when designing value-sensitive and child-rights respecting digital technologies.

To process data fairly, it is necessary to consider how it affects children and their interests more generally. This includes taking into account the fact that **different groups of children can have different expectations and needs**. Adopting this inclusive approach will help organizations comply with the law and promote accessibility and inclusiveness in the design processes – crucial to building a fair digital world where all children can benefit from digital technologies equally.

### ***Listening to what children say***

Understanding the expectations of children and ensuring children's data is processed fairly has become more relevant in today's world, where children face risks in their interaction with technologies. Compliance with the UK GDPR and the Code already requires understanding and addressing children's needs. **A pre-requisite for this is listening to children first.** Despite this need, the design of the digital world currently doesn't seem to reflect the needs or views of children.

Listening to children's voices lies at the heart of DFC's work in demanding better for children and technology and developing guidance to inspire innovators to embed children's rights into the design of technologies when contributing to a fair digital world that children deserve. Already existing rules, such as the 'fairness principle' provide an opportunity to understand children's expectations and needs when designing value-sensitive and child-rights respecting digital technologies.

This blog is part of the Guidance for Innovators series. You can view all our blogs here.

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