



Social Media Platforms and General Data Protection Regulation Violation for Minor Users

Androniki A. Georgopoulou¹, Eftichia Tzika^{2*} and Spyros E. Polykalas³

¹ PhD Candidate, Ionian University, Department of Digital Media and Communication, Kefalonia, Greece

² MSC, Ionian University, Department of Digital Media and Communication, Kefalonia, Greece

³ Professor, Ionian University, Department of Digital Media and Communication, Kefalonia, Greece

Abstract

This article investigates the use of social media by minors in Europe, examining relevant legislation and conducting practical research. The study delves into the General Data Protection Regulation (GDPR), analyzing its approach to minors' data protection and the history of its adoption. Despite GDPR's intent to set an age limit for minors' data processing consent, the lack of consensus among member states led to an inconclusive solution, allowing varying age thresholds. The study further presents practical research conducted in Greece, involving attempts to create profiles on six major social media platforms at ages 12, 14, and 16. Findings reveal a lack of compliance with GDPR and national laws, with platforms often allowing underage users to create profiles without parental consent. Conclusions emphasize that since teenagers are a major marketing target, social media will continue this practice and the need for EU institutions to establish a uniform pan-European age limit for minors' data processing consent, prompting a vital dialogue for legal improvement.

Keywords: GDPR, Teenagers' social media campaigns, Digital Age of Consent, Minors' E-Privacy

1. Introduction

In a 2018 study, it was discovered that 93% of individuals aged 14-22 actively participate in social media, with the majority using it daily (Rideout V. & Fox S., 2018). According to a separate survey, overall screen usage among teens and tweens increased by 17% from 2019 to 2021. On average, daily screen time for tweens (ages 8 to 12) increased from four hours and 44 minutes to five hours and 33 minutes, and for teens (ages 13 to 18), it rose from seven hours and 22 minutes to eight hours and 39 minutes (The Common Sense Census, 2021). Another survey conducted from April 14 to May 4, 2022, highlighted that two-thirds of teens use TikTok, followed by approximately 62% for Instagram and 59% for Snapchat. Smaller percentages of teens reported using Twitter (23%), Twitch (20%), WhatsApp (17%), Reddit (14%), and Tumblr (5%). A substantial 77% of teens use YouTube daily, while 58% do the

same for TikTok. Around half of teens use Instagram (50%) or Snapchat (51%) at least once daily, and 19% report daily use of Facebook (Vogels E. & Gelles-Watnick R., 2023).

Nowadays, the use of internet and social media by minors is such a fact that has led the whole new generation globally to be named after it. Researchers, at the beginning of the previous decade, observed that the main characteristic distinguishing the new generation from millennials was the fact that they spent most of their time in front of a screen, so they nicknamed them iGen (Rue P., 2018). Also, the nickname “Generation Z”, comes from “zoomer” and that is because this generation knows how to “zoom” the internet (Mantooth K., 2021).

This means that for a marketing manager for brands that target teenagers, opting out of digital and social media marketing would constitute a significant missed opportunity for sales (Silvia S., 2019). Marketers progressively depend more on social and mobile ICT channels to market and promote their brands amid the youth (Duffet R. G., 2017).

However, the pervasive use of social media during developmental years raises red flags regarding the security of minors’ personal data. The risks of oversharing personal information loom large. Striving for online popularity often translates to prolonged online presence, sharing tons of personal information. Notably, limited control over personal information on social platforms exposes underage users to cyber threats, like stalking and identity theft. These threats extend to tangible consequences such as companies leveraging social media data in their hiring processes (Yadav G. P. & Rai J., 2017).

Thus, the European legislative framework regarding the protection of the personal data of minor internet users, contains restrictions. However, we all know as a fact that almost every European teenager has at least one social media profile and that marketers run huge campaigns for targeted advertisements to minors through social media.

With this research, we will examine the European legislation for the processing of minors’ personal data. Then we will conduct a practical research, so as to verify, in practice, whether and to what extent the relevant legislation is respected by the most popular social media platforms. Bearing in mind the above, we will draw conclusions about the reasons that lead to compliance or non-compliance of social media platforms with the existing legal framework and propose suggestions for improvement.

2. Minors’ Data Protection

2.1. The European Landscape for Minors’ Data Protection Before the General Data Protection Regulation

Based on a Eurobarometer poll conducted in 2011, it was found that 95% of Europeans held the belief that young children should receive specific safeguards against the gathering and exposure of their personal information in the cyber world. Furthermore, 96% were of the opinion that juveniles ought to be informed about the outcomes of gathering and revealing their personal data online (European Commission, 2011). Taking into consideration public concern and the provisions of Article 16 of the United Nations Convention on the Rights of the Child, which states that children’s rights to protection includes the protection of their privacy against arbitrary or unlawful interference and unlawful attacks on their honor and reputation, the European Union acknowledged the need to adjust its children’s protection legislation to today’s digital era’s needs. Furthermore, the EU’s Agenda for Children’s Rights (COM/2011/0060 final) acknowledges as one of its aims the attainment of an elevated standard of safeguarding for children within the digital realm, encompassing their personal information, all while fully

preserving their entitlement to internet access for the advancement of their social and cultural growth.

The adopted European Personal Data Legislation in 1995 (Directive 95/46/EC) contained absolutely no provision for the personal data of minors, for which the exact same provisions that applied to adults were applicable. There was no provision for the possible consent of their guardians for the processing of minors' personal data, nor an age limit on the basis of which such consent is permissible. The European Data Protection Supervisor proposed that to establish a more robust regulatory structure for safeguarding the privacy rights of children, it would be advisable to define an age threshold (COM(2010) 609 final). If a child falls below this threshold, any collection of information about the child should only occur when clear and explicit consent has been obtained. However, in the absence of a European provision regarding the age at which a minor is capable of giving his or her own consent for processing their personal data, member states adopted different approaches on that matter and, as a result, different age limits for parental consent (Macenaite & Kosta, 2017). Characteristically, European Data Protection experts stated that the question “at what age can children consent to have their personal data processed” was “the million-dollar question” (Buttarelli, 2009).

2.2. General Data Protection Regulation’s Article 8 and the History of its Adoption

The adopted in 2016 General Data Protection Regulation, widely known today as the GDPR, is characterized as a strict and uniform privacy law for the E.U. and its data subjects (Talley, 2019). The GDPR explicitly recognizes that children deserve specific protection of their personal data, and introduces additional rights and safeguards for children (Macenaite, 2017). It is the first European data protection legislation that distinguish the protection needs and parameters between adults and minors, in the field of their personal data (Macenaite & Kosta, 2017).

Surprisingly, during GDPR legislative process, article 8, which refers to personal data of children and issues related to their consent, provoked not serious debates or dialog, since focus was given in other provisions that had direct economic impact on business and the European single market (Macenaite, 2017).

The first unofficial version of the European Commission’s (EC) Proposal for the GDPR (version 56, 29/11/2011) stated that consent of a child, i.e. anyone who is under 18 years old, is only valid when given or authorized by the child’s parent or custodian. However, in the Proposal for the GDPR officially presented by the EC on 25 January 2012, the age limit at which the personal data of a child cannot be processed without parental consent was lowered to 13 years. This amendment took place just before publishing the Proposal (during the Commission inter-service consultation process) (Macenaite & Kosta, 2017).

Subsequently, during the European Parliaments’ discussion (COM(2012)0011 – C7-0025/2012), the only amendment that was concluded in European Parliaments legislative resolution, regarding article 8, was the suggestion to introduce a specific information obligation as it regards a child’s consent.

However, during the legislative process within the European Council (14902/15, 4 December 2015), there was an intense debate between the member states around the actual necessity to include any provisions on minors’ consent in the GDPR. At first, the Council retained the age threshold of 13 years for parental consent. However, a sudden alteration resulted in raising the age requirement for consent to 16 years. This modification sparked significant public backlash, particularly from advocates of children's rights, businesses, and young individuals on social media platforms.

In the end, the solution that was given from the Committee of Permanent Representatives, on 9 December 2015 (15039/15, 15 December 2015), on the context of the final GDPR draft, was the following: the age of consent was set at 16 years, but allowed Member States to set a lower age, which could not go below 13 years. The abovementioned solution was finally adopted, within the provisions of GDPR's article 8.

Even before the begging of implementation of the GDPR provisions, which took place in 2018, scientists sounded the alarm that this lack of harmonization could water down the level of protection which was initially awarded (Kress & Nagel, 2017). Others find that this hesitation in setting an age limit for consent, is contradictory to GDPR's strict and uniform data protection framework and, practically, that the matter of age of consent, even after the GDPR's transformation in general, essentially remains at the same place it was prior (Talley, 2019).

The absence of a standardized age of consent also presents considerable difficulties for cross-border companies or those offering international services within the European Union (Livingston, 2018). In the Article 29 Working Party's Guidelines on Consent for the GDPR, it is mentioned that a controller is obligated to consider the demographics of the audience they are targeting with their services and should be knowledgeable about the varying national regulations related to the age of consent.

The Working Party has encouraged the Member States to work toward a harmonized solution regarding the lack of age of consent conformity amongst the Member States. Today, the age limits that the member states have chosen with their implemented laws, are the following:

- i) Croatia, Germany, Lithuania, Luxembourg, Malta, the Netherlands, Romania, Slovakia, Hungary - 16 years
- ii) Greece, Czech Republic, Slovenia, France – 15 years
- iii) Austria, Bulgaria, Cyprus, Lithuania – 14 years
- iv) Belgium, Spain, Sweden, England, Denmark, Estonia, Latvia, Finland, Poland, Portugal -13 years (Persano, 2020).

3. The Practice of the Most Popular Social Media Platforms

In this research, we attempted to create profiles on six distinct social media platforms, each with ages declared as 12, 14, and 16 years old. The objective was to practically determine whether and to what extent the prominent social media platforms adhere to the GDPR and the respective implementing laws of member states concerning age limits for consent. It is noted that this research took place in Greece, where the GDPR's implementing law (Law 4624/2019, article 21) adopts as age limit of consent the age of 15. The attempts for the creation of the profiles took place from a Greek IP address. This means that social media platforms, in order to comply with the GDPR and the relevant implementing Greek law, should only permit an older than 15-year-old child to give his or her own consent for his or her data to be processed. Greek law obliges social media to require parental consent when a 12 or a 14-year-old child tries to create a profile.

In the next chapters, there is a brief presentation of each social media platform, where we tried to create profiles as minors, of ages 12, 14, and 16, followed by an explanation with the results of each of our attempts. There are also noted the related to age limits “terms of use” of each of the presented platforms.

3.1. Facebook

Facebook is a worldwide platform, the second most popular Web 2.0 social media platform after Google. Owned by the "Meta" company, it is estimated to be used daily by over one billion users. Facebook users can communicate with each other after becoming "online friends", upon request by one party and corresponding acceptance by the other. Users can also create pages that are addressed to closed or open circle groups, as well as to corporate and personal groups, for various purposes such as product promotion, event invitations, information exchange, and personal messaging. Users can post videos, texts, and video links to their profiles. Additionally, they can fill in their profile status with any detail regarding their personal life and share their current location, tagging themselves and others in their profiles. Interaction between users takes place through expressions of likes, sharing posts, and commenting under posts (Nadkarni & Hofmann, 2012).

When attempting to create a Facebook profile from a Greek IP address, declaring the year of birth as 2010, i.e., as a 12-year-old, after clicking the "Sign in" link, a message appears stating that enrollment cannot be completed. Then, by changing the year of birth to 2008 (14-year-old user) and 2006 (16-year-old user), it is observed that after the first step of registration, the user is asked if they already have a Facebook account. By selecting the option to create a new account, the next screen prompts to specify the code for email confirmation. Upon entering the code and accepting the use of cookies by Facebook, the creation of a profile becomes a reality, displaying the home page

In Facebook's terms of service, it is declared that "*We try to make Facebook broadly available to everyone, but you cannot use Facebook if: You are under 13 years old. [...].*" Moreover, in Meta's privacy policy it is referred that "*For people under the age of majority (under 18, in most applicable countries) who have a limited ability to enter into an enforceable contract only, where we may be unable to process your information on the grounds of contractual necessity*". It is also worth saying that Meta's privacy policy, in general, takes into consideration the GDPR provisions, for its European users. Characteristically, it is referred in Meta's privacy policy that: "*You have the following rights under GDPR and other relevant data protection laws: access and correct information, withdraw consent, port your information, download your information, erase information, object, make a complain*".

However, our experiment showed that, although Facebook, takes into consideration the GDPR's provisions, does not apply the implementing Greek law, since it permits for 14 year old children to have their data processed, without parental consent, despite the Greek GDPR's implementing law provisions. It is worth saying that Facebook took for granted the declared age of the user, which means that even a 12 year old child would be able to create a profile, simply by declaring a false year of birth.

3.2. Instagram

Instagram, also owned by the "Meta" company following an acquisition, is currently utilized by approximately 400 million users worldwide. Users on Instagram can have personal profiles, choosing between private, public, or even corporate settings, and can add a profile picture, CV, and link to an external website. The platform's philosophy revolves around counting the number of followers each user has, allowing users to follow others regardless of personal acquaintance (Athanasiaides et al., 2015). The Instagram application enables users to share photos and videos, either live or from their mobile phones, applying filters and various editing tools available within the application. Additionally, Instagram allows users to share the same photo or video on other platforms such as Facebook, Twitter, and Tumblr by adding a description, tagging people, and specifying the location (Alhabash & Ma). Interaction on

Instagram primarily occurs through exchanging likes (hearts) on photos or adding comments under posts.

Continuing the research with the creation of three different profiles, for the first profile aged 12 (2010), the initial registration prompts the user to provide a phone number or email. Once entered, a confirmation code is sent, followed by creating a username, password, and profile name. However, upon attempting to fill in the date of birth and agree to the terms of use, a message appears indicating that profile creation is not possible, thus preventing the creation of a profile for a 12-year-old user. Moving on to the next two profiles aged 14 years (2008) and 16 years old (2006), the registration process remains the same, with the creation of profiles being accepted without any warning messages or requests for parental consent for the 14-year-old users, despite the provisions of Greek Law. Furthermore, there are no additional measures taken by the platform to confirm the real age of the user.

In Instagram's terms of use, it is declared that: *"We want our Service to be as open and inclusive as possible, but we also want it to be safe, secure, and in accordance with the law. So, we need you to commit to a few restrictions in order to be part of the Instagram community. You must be at least 13 years old."* Moreover, since Instagram belongs to Meta Services, herein it is applied also the Meta's Privacy Policy, as it is referred above.

3.3. Twitter

Twitter, a microblogging platform, allows users to share and read messages using 140 characters, known as tweets. Tweets can include text, videos, links, photos, and web pages linking to other sites. Users can follow others and view their posts without requiring mutual acceptance. Interaction occurs through replies to tweets, comments, automatic tweet notifications to followers, and favoriting tweets. Real-time chatting is facilitated through mentions, replies, and hashtags (#), enabling users to search for tweets related to specific topics (O'Reilly et al., 2011).

Continuing with the research on the creation of three different profiles, for the first profile aged 12 (2010), the user is initially prompted to provide their name, email, and date of birth. Subsequently, the user selects preferences for receiving application-related emails and displaying their activity to others. After completing these steps, when re-entering the date of birth, a message indicates that registration cannot be completed. However, proceeding with the creation of the next two profiles aged 14 years old (2008) and 16 years old (2006), upon completing the aforementioned steps and entering the dates of birth, accounts are successfully created. Following username selection, users must create a password and verify their email address and phone number. Notably, at ages 14 and 16, profile creation is allowed without any warning messages or requests for parental consent, contrary to Greek Law provisions. Additionally, there are no safeguards to confirm the user's real age other than their self-reported information

In twitter's terms of services, we read that *"You may use the Services only if you agree to form a binding contract with us and are not a person barred from receiving services under the laws of the applicable jurisdiction. In any case, you must be at least 13 years old, or in the case of Periscope 16 years old, to use the Services"*.

It is concluded that, although twitter's policy, takes into consideration the fact that in some territories there may be a differentiation in the digital age of consent, it does not comply with the Greek GDPR's implementing law on that matter.

3.4. Snapchat

Snapchat, ranked as the third most popular app globally after Facebook and Instagram, boasts over 100 million users worldwide, with a significant portion being teenagers. The app, exclusively available on smartphones, enables users to exchange photos and videos, distinguishing itself by the ephemeral nature of shared content, which disappears once viewed. Users can communicate through chat, applying filters and effects to photos and videos with a limited viewing time of up to 10 seconds. They can also choose the audience for their posts, whether public or private.

In our research, attempting to create a profile for a 12-year-old, the initial query prompts the user to allow access to phone contacts. However, upon entering the date of birth as 2010, a message appears stating that the user does not meet the criteria for Snapchat, thus preventing profile creation. Subsequently, creating profiles for users aged 14 (2008) and 16 (2006) proceeded smoothly without any warning messages, indicating that the app does not verify the age declared by the user, potentially allowing younger children to create profiles simply by falsifying their birth year.

In Snapchat's privacy policy it is stated that: *“Our services are not intended for — and we don't direct them to — anyone under 13. And that's why we do not knowingly collect personal information from anyone under 13. In addition, we may limit how we collect, use, and store some of the information of users under 18. In some cases, this means we will be unable to provide certain functionality to these users.”*. Thus, it is specifically noted that the deterrent factor for not allowing underage children to create a profile, is the fact that they do not collect or process their data. However, while age of consent seems to matter for Snapchat, it does not take into consideration the territorial distinctions within the European area, since it allows to a 14 year old child to create a profile in Greece, despite the provisions of the national law.\

3.5. Tinder

Tinder, an online dating application boasting over 30 billion matches to date, operates through a simple swiping mechanism. Users register by providing their phone number or connecting via Facebook, then swipe right to express interest or left to reject potential matches. When two users swipe right on each other, indicating mutual interest, they can chat online and potentially meet in person (Tyson et al., 2016).

In our research, attempting to create a profile for a 12-year-old, the initial steps involve connecting via Google and providing a phone number, followed by agreeing to the app's rules. However, upon entering the date of birth as 2010, an error message appears, preventing profile creation. Similarly, attempting to create profiles for users aged 14 (2008) and 16 (2006) resulted in the same outcome, indicating that Tinder does not allow profiles for users under the age of consent, despite any potential falsification of birth year.

In tinder's privacy policy, we read that *“No Children Allowed-Our services are restricted to individuals who are 18 years of age or older. We do not permit individuals under the age of 18 on our platform. If you suspect that a member is under the age of 18, please use the reporting mechanism available on the service”*.

So far, tinder is the only social media platform that doesn't allow to any minor to have a profile. However, this option seems not to be related so much with the GDPR's provisions, since even a profile of a 16 years old user is not allowed to be created, but with the company's policy for its services to be exclusively for adults. The platforms takes no other measures to make sure that the declared by the user age is his/her real age, at that stage of the enrollment, but it encourages its users to report any other user, when there is a suspicion that s/he is underage.

3.6. TikTok

TikTok, a popular social media platform known for its short and humorous videos, particularly appeals to teenagers and younger demographics. During the pandemic, it gained significant traction, with users creating content ranging from personal opinions to advertising products. While TikTok does not facilitate direct interpersonal communication through private messages, the comments section beneath posts fosters interaction and engagement among users, amplifying the platform's influence on social networking dynamics. With over 1 billion users, the majority being under 25 (Cervi, 2021), TikTok holds substantial sway in youth culture.

In our research, attempting to create a TikTok profile for a 12-year-old, the initial steps involve choosing to connect via phone or email, followed by providing the respective details. However, upon entering the date of birth as 2010 (12 years old), an error message appears, preventing profile creation. Conversely, attempting to create profiles for users aged 14 (2008) and 16 (2006) resulted in successful profile creation, indicating that TikTok restricts profile creation for users under the age of consent.

In Tik Tok's terms of use it is mentioned that *"You may only use the Platform if you are 13 years of age or older. We monitor usage by minors and will terminate your account if we reasonably suspect that you are a minor or that you are allowing a minor to use your account. You can appeal our decision to terminate your account if you believe we have made a mistake regarding your age. In Brief: You must be 13 years of age or older to use our Platform"*. We also read that *"In order to provide in users under 18 a proper for their age experience, some functions are not available"*. In Tik Tok's terms of use we can find also the "Guardian's Guide", where it is referred that *"Tik tok has a 12+ rating in the App Store and is listed as "Parental Guidance Recommended" in the Google Play Store. If you don't want your teen to download Tik Tok, these ratings mean you can prevent them from doing so using the parental controls available via these stores or platforms"*.

This implies that Tik Tok does not ask for parental consent during the creation of an underage user's profile. However, the option is available for guardians who use parental controls on their children's devices, enabling them to prevent the download of this application. Moreover, TikTok declares that has a mechanism to detect an underage user and preserves the right to determine any account, for which there are suspicions that it is used by a user younger than 13 years old.

4. Conclusions

Since the beginning of the previous decade, social media has become an inescapable facet of European minors' daily lives, and social media campaigns have become essential for teenage brands. The issue of their insufficient maturity in managing personal data, coupled with the necessity of parental guidance in this domain, has garnered attention from European institutions and the general public alike. This concern echoes the findings of Livingstone et al. (2018), who highlighted the risks associated with minors' data privacy online. However, concrete regulation of parental consent for processing the personal data of minors took shape in 2018 with the initiation of the GDPR's implementation.

When it comes to determining an age threshold at which a child can independently provide consent for their personal data processing without parental involvement, it is clear that member states have not reached a unanimous standpoint. The GDPR aimed to address this matter, yet the age threshold underwent consistent changes during the legislative process within EU institutions. This lack of substantial prior discussion, as noted by Kolek (2019), led to the

adoption of a middle-ground solution. Ultimately, the responsibility of setting the age limit was delegated to individual member states.

In our perspective, the absence of rigorous deliberation during the formulation of the concerned article accounts for the hesitant nature of the provision. This provision fails to establish a unified age limit across Europe. The adoption of the GDPR without a definitive resolution on this specific matter represents a missed opportunity for the EU to implement a comprehensive set of rights and responsibilities concerning the processing of minors' personal data, aligning with concerns raised by Schou and Farkas (2020).

The absence of a single, standardized European age limit resulted in divergent regulations across member states. Our practical research indicates that social media platforms, despite legal requirements, have been unwilling to adhere to the age limits stipulated by Greek national law. Instead, they have uniformly embraced the lowest common age limit of 13 years throughout the Greek territory, thereby disregarding the content of the national law. Their motive is strong, since teenage social media campaigns are important for their cash flows, as similarly observed by van der Hof (2017).

In light of this, it is evident that without resolute action from EU institutions, social media platforms will persist in flouting national legislations and allowing the profiling and data processing of thirteen and fourteen-year-old Europeans across all member states, without obtaining parental consent. The purpose of this article is to initiate a meaningful discussion within European institutions. The goal is to modify Article 8 of the GDPR to establish a uniform, pan-European age limit for minors' data processing consent. This would eliminate member states' discretion and oblige platforms to adhere to a common standard.

Other findings of our practical research reveal that, despite the aforementioned matter, most platforms do not have any mechanism to prevent the creation of minors' profiles when they declare false ages. This is not only a legislative matter, but also a matter of technical evolution. Since today's technology seems not to be able to create such a mechanism that detects a liar at the moment when they try to create a profile, institutional initiatives must be taken to force all social media platforms to encourage their users to report profiles for which there are suspicions that are used by minors. This aligns with the recommendations of Staksrud and Livingstone (2009), who advocate for improved technological solutions to enhance online safety for minors.

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