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Submission on the CRC Draft General Comment No.25 “Children’s rights in relation to the digital environment”

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This document was prepared by *Adrian Lakrichi, Legal & Advocacy Counsel;*

With the assistance of *Federica Versea, Advocacy & Legal Intern;*

Under the direction of *Josie Thum, Advocacy Officer.*

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Context and acknowledgement

Humanium warmly welcomes the Draft General Comment No.25 on Children’s rights in relation to the digital environment (draft GC) and considers it to be an important step towards the recognition and fulfilment of children’s rights in the digital environment. The GC comes at an unprecedented and pivotal moment as the coronavirus pandemic has, and continues to, threaten child rights and heavily exacerbate children’s presence online as worldwide educational, leisure, social, political and professional activities undergo massive relocation to the virtual sphere. With millions of children out of school and many civil societies experiencing crackdowns on their peaceful online expression it is perhaps more urgent than ever before that the rights of all children in digital spaces be respected and fulfilled.

The vast and largely unregulated nature of the digital environment which continues to rapidly evolve with ongoing technological development poses crucially unanswered questions relative to child rights. Online violence and abuse of children continues to rise and represents a constant threat towards child protection and wellbeing, with discrimination and the proliferation of hate against racial, ethnic, gender, sexual and religious minorities[[1]](#footnote-2). It is clear that the responsibility of businesses in upholding child rights, particularly technology corporations dealing with internet services, e-commerce, digital streaming, artificial intelligence and social media, is paramount to ensuring such protection.

In spite of these risks, accessing technology has become essential for the lives of many children, as the draft GC acknowledges, and will play a central role in their future. The digital environment is a space which many children occupy daily and thus acts as an integral part of their lives. Although the draft GC addresses a ream of key issues, outstanding questions remain regarding rights to privacy, property and a healthy environment. The draft GC is likely to act as a key text in developing understandings and applications of the fundamental child rights enshrined in the Convention on the Rights of the Child (the Convention) relative to online activities and the virtual world.

We echo the call made by the draft GC on States to make ongoing updates to their legislations so as to ensure free, inclusive and equal access to digital technology as well as to enforce the protection and safeguarding of child users of technology. We caution, however, that such legislation must in no case curb or restrict children’s fundamental rights and freedoms. The draft GC makes clear that States must do more to effectively address serious ongoing threats and barriers to rights that children face when using digital technologies and that the Convention and the rights it contains must be interpreted and enforced according to its application in the digital environment.

Background of Humanium

Founded in Geneva in 2008, Humanium is a Swiss-based international child rights NGO dedicated to stopping violations of children’s rights around the world. The organisation strives for a concrete improvement in the basic rights of children everywhere. Humanium’s activities span four complementary approaches: raising awareness of children’s rights to more than five million people each year worldwide; legal assistance for victims of children’s rights violations; supporting local partners with fieldwork projects for children’s access to quality education and reduced child labour, and advocacy for the international recognition of children’s environmental rights.

Recommendations on the text of the draft GC No.25

1. **Protection**
2. **Violence against children**  (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39; OPSC; OPAC)

We believe that certain points regarding state legislation on the protection of children using the internet and may be introduced into the draft GC. The text could incorporate clearer language with relation to State policies towards mobile phone application use and minimum ages for the users, as well as on the role that fake application accounts play in those dangers, including dissemination of age-inappropriate content, cyberbullying and scams[[2]](#footnote-3). States should not wait for new smartphone applications and online platforms to be launched before instigating the rollout of legislation retrospectively, but rather, should adopt a proactive and preventive approach[[3]](#footnote-4). It is concerning that some platforms host both age-inappropriate adult content and content for children, putting children at heightened risk of harm and violence. The respect to freedom of industry must never be a barrier to the protection of children online. Fake digital accounts are, then, a concern relative to the presence of child digital users who are below the minimum age for a given platform, particularly on adult content hosting sites such as forums, blogs and streaming services where violent, explicit, degrading and dangerous material may be present. This is of particular concern regarding reported online promotion of self harm and suicidal behaviour[[4]](#footnote-5).

Digital servers should, then, consider implementing barriers between child and adult spaces where appropriate, in order to better protect children and to prevent contact between children with unknown adults online[[5]](#footnote-6). Although such a distinction should by no means be applied indiscriminately, children and adults should be hosted on different servers on gaming platforms in particular, in order to better safeguard children from online abuse and exploitation. The proper detection and monitoring of fake accounts in the interests of protection and safety should be the legislated responsibility of business enterprises.

Furthermore, digital business enterprises should have a specific duty of care to the child users that they host which incorporates safeguarding and protective measures against online violence. Businesses should invest in making the internet safer, particularly social media corporations and search engine providers. Because they already have the expertise, the power and tools to do so, they are at the heart of online management, regulation and safety[[6]](#footnote-7). States should thus promote, legislate and enforce the duty of businesses to adopt adequate safeguards for children who use digital technologies. We support increasing the responsibility of businesses in all aspects of the digital environment[[7]](#footnote-8).

Children must also be protected from consequences of the harmful misappropriation of their art, or content, online and the repercussions on their health of the use of their content against them. Through some applications and digital platforms such as *Tik Tok*, *YouTube* and other social media servers, a child can become famous quickly and this reputation increases pressure on children both because of their notoriety and because of issues related to their earnings and creative content. This presents a particular vulnerability factor for certain children in the digital environment that we recommend be made reference to in the draft GC.

We thus recommend the following language be incorporated into the current draft:

1. **Section VII Violence against children (83):** *“States must ensure through adequate mechanisms that business enterprises adopt measures to have effective means of identifying and regulating fake accounts in mobile applications for the improved protection of children. In the interests of protection, separate digital spaces should be provided for adults and children when using the same gaming platform, whilst respecting children’s privacy”*. Any added vocabulary relative to “*fake accounts*”, *“fake users”* and “*separate spaces between adult and child when using the same gaming platform*” would be welcomed. This may also be considered for addition to (56).
2. **Section VII (85)**: *“Prevention can be achieved by States through measures of age identification, with standards of age confirmation to ensure age respect”* can be added at the end of the paragraph. Any added vocabulary relative to “*age identification*” and “*age control*” would be welcomed in order to encourage the improvement of safeguards in online gaming and better ensure protection against harm and exploitation[[8]](#footnote-9). This may also be considered for addition to (56).
3. **Section VII (85): “**These may include cyberbullying, harassment, violence, and sharing of sexualized images of children (“sexting”), and the promotion of self-harming behaviours such as cutting, suicidal behaviour or eating disorders. *States should regulate content created by children, since children are particularly vulnerable technology users and their content should be protected against the non consensual use of their artwork and digital content creations, anywhere online. Children need protection of their person and of their creative work”*.
4. **Right to privacy (art. 16)**

The draft GC does much to address children’s right to privacy in the digital environment. Despite the efforts that resulted in the General Data Protection Regulation (GDPR) consultation between 2017 and 2018[[9]](#footnote-10), States must do more to ensure that the GDPR is properly applied to children and the children’s right to privacy online is fully respected[[10]](#footnote-11). The GDPR is not always precise enough and remains open to interpretation[[11]](#footnote-12). Public and private entities need to have a better implementation of article 8 of the GDPR[[12]](#footnote-13).

Children’s rights to access information (art. 13 and 17 of the CRC)[[13]](#footnote-14) state that all children shall have the “freedom to seek, receive and impart information and ideas of all kinds”. A child cannot consent to something they cannot understand or do not know exists. The text should refer to the idea that for children’s rights to be effectively applied to them within digital environment, children need to have a digital literacy and understand how this environment and its technologies work.

We believe that the draft GC text should include further detail when mentioning State responsibility to ensure children are educated about the digital environment. A child does not necessarily understand what it means to accept a cookie when joining a website or what impact this has upon their personal data, nor what a ‘cookie’ actually means. Parents cannot be the only ones responsible for the pedagogy of children's digital privacy and businesses and States must take part.

The draft GC should, therefore, make specific mention of the connection between children’s right to education and their right to privacy in the context of the digital environment. The responsibility to educate and inform children about privacy as digital users and of their digital information, should make the use of personal data more understandable and transparent. A child should, for example, understand that by accepting cookies he accepts his data to be used by the application or website, since many children (and adults) do not understand how their personal data is collected, saved and sold which in turn threaten’s their right to privacy.

We thus recommend the addition of the following language or similar:

1. **Section VI Civil rights and freedoms, subsection E (69):** *“States should ensure that digital literacy as part of the curricula includes key vocabulary relevant to privacy in the digital environment. States must ensure that personal data use is more understandable and transparent for children so that consent they give online relative to their personal data and privacy is informed rather than uninformed.”* This may also be considered for addition to (113).
2. **Best interest of the child (art 3.)**

We recommend that the draft GC reference State responsibility to make provisions for the protection of children’s online content and property in the digital environment; children’s digital property including intellectual property, financial property, personal data and more. This is in accordance with the article 3 ‘best interest’ principle as well as the wellbeing of the child.

States have different approaches regarding the age a child can decide certain things with autonomy. This highlights that content management and ownership can vary between ages across countries[[14]](#footnote-15). Since digital activities on smart and other devices can begin in early childhood, the question of content rights are a concern. Applications and websites are often used without parental supervision or knowledge, but national rights of artists apply to children’s creative content, which may be reused, misappropriated, stolen or exploited by others to the detriment of children’s health and wellbeing. Children are particularly vulnerable digital users and content creators and States should legislate for their protection.

1. **Section** **III B** **Best interest of the child (14)**: *“States and businesses should implement measures regarding property of child content in the digital environment. Businesses should participate in the development of protection towards child content and copyright whilst States should develop regulatory approaches to encourage and enforce the respect of children’s property rights through proportionate technical and procedural measures”.*
2. Any added vocabulary relative to “*content creation”,* “*intellectual property”* and *“property rights”* would be welcomed.
3. **Health**
4. **Basic health and welfare (art. 24)**

We particularly urge for the inclusion of references to the connection between children’s activities in the digital environment and their natural environment in the context of article 24. Here, the Convention asserts that “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: […] to combat disease and malnutrition […] taking into consideration the dangers and risks of environmental pollution” whilst article 29 asserts that States must direct children’s education towards “the development of respect for the natural environment.”

It is a fact today that the use of the digital environment has a major impact on the natural environment of our planet and States have a duty not only to protect children from the dangers and risks that environmental damage and degradation poses to their health, but also to implement measures so that children may be informed of and educated on these risks according to their rights[[15]](#footnote-16). This is also in line with the Sustainable Development Goals (SDGs) 3, 4 and 12 and should be incorporated into the draft GC text.

Indeed, the meaning of “pollution” itself has now broadened in scope to include excessive and uninterrupted technological activity such as light and noise pollution which also pose direct risks to children’s health[[16]](#footnote-17). The draft GC should, therefore, incorporate a mention of children’s right to health and to be educated relative to climate change and the degradation of the natural environment, as well as corresponding State responsibilities. Indeed, on 7 October 2020 the Human Rights Council adopted the Resolution, *Rights of the child: realizing the rights of the child through a healthy environment* which makes reference to these same rights[[17]](#footnote-18).

We thus recommend the addition of the following language or similar:

1. **Subsection** **X** **Basic Health and Welfare**: the inclusion of any language which references “*child environmental rights”, “natural environment”, “climate crisis”, “environmental degradation”.*
2. **Subsection** **X (101):** *“States should ensure free and equal access to information for children so that they can make informed decisions about their online activities. States must ensure that children’s education informs them of the impact that digital technologies and their use have on the natural environment”.*
3. **Subsection** **X (104)**: *“The lack of access to technology can contribute to an unhealthy environment for children if they are deprived of access to basic information and prevented from interacting socially”.*

Humanium thanks the Committee for its efforts in the production of this draft GC and for its consideration of the above outlined recommendations.

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