**COMMENTS FROM THE GOVERNMENT OF THE PHILIPPINES**

**ON THE**

**COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)**

**DRAFT GENERAL COMMENT NO. 25**

**ON CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT**

1. **OVERVIEW**

The youth comprises a significant portion of the Philippines, with a third of its population accounting for children and young teenagers.[[1]](#footnote-1) As such, the State recognizes the youth as nation-building partners who must be nurtured and protected while being allowed to grow as the children that they are. This generation of “bright and tech-savvy young Filipinos is indubitably poised to be the navigators of the country in the hyper connected[[2]](#footnote-2) contemporary global landscape, and they must be informed, welcomed, and empowered to do so.

The Philippines views that the draft General Comment (GC) is consistent with the guiding principles of the UN Convention on the Rights of the Child, i.e., rights to non-discrimination, life, survival and development, participation, and the best interests of the child. It is also in consonance with the provisions in the Philippine Constitution that protect the children and bring their needs to the forefront.

The draft GC recognizes the merits, as well as the risks surrounding the integration of digital advancements in daily interactions, especially that of children who are only beginning to grasp the nuances of the real world. After all, technology shall always be double-edged; while it facilitates rapid dissemination of information and easier access to social and protection services, it also poses new challenges to the discharge of the State’s duties and adds layers of complexity to risks or pre-existing challenges and/or barriers which affect the protection and fulfillment of the rights of stakeholders.

The present condition where children are highly dependent on the internet for their education, among others, only bolsters the need for well-defined children’s rights in relation to the digital environment. The increased dependence on technology also leaves children vulnerable to cybercrimes and other perils. Thus, the children themselves must be also equipped with the know-how on how to protect themselves in the digital environment.

It is however, to be emphasized that each State differs in capacity and context which must be both considered in the implementation of the draft GC.

1. **SPECIFIC COMMENTS**
* **Section III. General Principles – A. The right to non-discrimination.** On requiring States to “take all necessary measures to lower the cost of connectivity, provide free access to children in safe; dedicated public spaces, and invest in policies and their community, to overcome inequalities and improve digital inclusion," this is already underway domestically through the “Free Internet Access Program in Public Places Act” and the “Free Wi-Fi for All Program” of the Department of Information and Communications Technology (DICT).
* **Section III. General Principles – C. The Right to life, survival and development.** It is underscored that parents, legal guardians, and caretakers should be consulted and involved in concerns relating to protecting children from risks and threats in the digital environment, as they are in a position to monitor children’s activities and impart lessons on privacy, caution, and online safety. However, a balance must be struck between respecting children’s right to privacy and performing their parental duties and responsibilities.
* **Section III. General Principles – D. The right to be heard.** On the use of digital technology in realizing children’s participation at local, national, and international levels, States may encourage designers and providers of digital technologies and services to consult children and apply appropriate safeguards in the development of their services in the absence of an enabling domestic law.
* **Section III. General Principles – G. Dissemination of information, awareness-raising and training.** The Philippines supports this provision. A policy guidance on the matter is appropriate.
* **Section III. General Principles – I. The business sector.** On the States’ obligation of ensuring that the business sector “meets its responsibilities for children’s rights in relation to the digital environment by taking all necessary measures including adoption of legislation and regulations, and the development, monitoring, and enforcement of policy”, the same is consistent with CRC GC No. 16 s. 2013 on State obligations regarding the impact of the business sector on children’s rights.

The Philippines also supports the paragraph obligating States to require businesses to prevent networks and businesses providing online services from being misused for purposes that threaten children's safety and well-being. It is undeniable that cooperation by businesses, as gateway to the online realm, is crucial in keeping the digital environment safe for children.

* **Section III. General Principles – J. Commercial advertising and marketing.** On access to information, it is noted that online platforms, such as Facebook, primarily generate revenues from promoting/advertising user-generated content, which may be sponsored by private individuals, small businesses, or even bigger enterprises.[[3]](#footnote-3) Content is subjected to automated filtering, but most of it is still deliberated by outsourced moderators, which adds another layer of personal bias to that of the platform management’s guidelines.[[4]](#footnote-4) States may set guidelines and regulations to discourage prioritization of content with deeply commercial or political motivation, but in doing so, may also face allegations of censorship from critics and resistance from the business sector. In the Philippine context, consideration must also be given to the fact that the country is rife with terrorism in the unique form of local communist armed groups, which navigate the cyber political landscape with ease and are just capable of taking advantage of the digital platforms provided by enterprises to target the Filipino youth.
* **Section III. General Principles – K. Remedies.** A review and possible amendment of existing domestic laws providing appropriate reparation to child victims may be required. Further, as the State is limited to remedies that are stipulated in existing domestic laws, inter-State cooperation to implement extra-territorial measures may be considered to address violations of business enterprises with global operations.

With the rapid development of technology and the continuous expansion of its role in the lives of children, there is a need to constantly build the knowledge and capability of criminal justice players, such as investigators, prosecutors, and judges, among others.

* **Section IV. Evolving capacities**. Harmonious with Section IV of the draft GC, the Philippines recognizes the progressive nature of children’s aptitude in navigating through the online realm. It is suggested that the awareness of parents and guardians will also be considered when coming up with the guidelines on how they can support their children and ward in navigating through the online realm. In this regard, the Philippines supports the recommendation requiring the development of policies and strategies geared towards guiding parents and guardians to this effect.
* **Section V. General measures of implementation by States – C. Coordination**. The Philippines agrees with the recommendation to identify a specific government body mandated to coordinate policies related to children's rights in the digital environment. In the Philippines, the same is already being fulfilled by the Council for the Welfare of Children (CWC) that is mandated to coordinate the implementation and enforcement of all laws; formulate, monitor and evaluate policies, programs and measures for children.

In addition, a number of inter-agency committee have also been established by the Philippine Government that are mandated to formulate comprehensive and integrated plans and programs to prevent and suppress any form of violence against children, including the Inter-Agency Council Against Child Pornography (IACACP); Inter-Agency Council on Violence against Women and their Children (IACVAWC); and the Philippine Internet Crimes Against Children Center (PICACC), which provides a platform for cooperation among local and international law enforcement agencies.

* **Section VI. Civil rights and freedoms – E. Right to privacy**. The Philippines finds it imperative that the rights that children have in the physical world are likewise granted to them online. For this reason, Paragraph VI of the draft GC25 is highly commendable. Of particular interest is the Right to Privacy, as the Philippine legislation on the matter, Republic Act No. 10173 or the Data Privacy Act of 2012, has provided for general data privacy principles in the processing of personal information, subject to adherence to the principles of transparency, legitimate purpose and proportionality.
* **Section VII. Violence against children.** On item no. 87, while it is possible to enact a law that shall require business enterprises to prohibit all forms of violence, including cyber-bullying, cyber-grooming, sexual exploitation and abuse on their platforms, execution may be challenging as the State shall also need to require active surveillance and constant content moderation of all user activities across all possible online services and platforms that allow user-generated submissions/content. There is again a question of the exercise of extra-territorial jurisdiction and implementation of related measures, which may either facilitate or hinder State action against guilty foreign/global enterprises.
* **Section IX. Children with disabilities.** With respect to items no. 98 and 99, consideration must be given to the fact that schools vary in capacities. This makes the acquisition and provision of assistive technology challenging, and even more so with the scourge of the COVID-19 pandemic.
* **Section XI. Education, leisure and cultural activities – A. The right to education**. Paragraphs highlighting measures that can be taken by the State in times of global health crises or pandemics can be included, similar to what has been done in the CESR General Comment No. 25 (2020) on science and economic, social and cultural rights and the CMW General Comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention. Specific recommendations may be raised on the right to education considering the adoption of digitized education schemes due to COVID-19.
* **Section XII. Special protection measures – A. Protection from economic, sexual and other forms of exploitation.** On items no. 122 and 123, i.e. enactment of legislation to protect children from fraud and identity theft in the digital environment, this is an important step/measure in respecting, protecting, and fulfilling the rights of children in the digital environment. However, the duty to amend existing pieces of legislation to make them congruent with the needs and demands of the times, especially when it comes to upholding human rights of children and to craft new ones is subject to the legislative priorities of the States concerned.
* **Section XIII. International and regional cooperation**. The Philippines concurs that a well-functioning international and regional cooperation, including through exchange of expertise and good practices, is vital to ensure the protection and fulfillment of the children’s rights in relation to the digital environment.
1. **PROPOSED SPECIFIC LANGUAGE AMENDMENTS**
* ***2. The right to non-discrimination***

11. xxx Children may be unaware of other forms of discrimination, including those that may result from the deployment of **AUTOMATED PROCESSING FOR PROFILING AND** automated decision-making based on protected, biased, partial or unfairly **OR UNLAWFULLY** obtained information.

**Comments:** The Philippines recommends adding profiling as this may likewise result in discrimination. It is also suggested to add “unlawfully” obtained information which may be used as basis for profiling and/or automated decision-making.

* ***Data collection***

31. Data collection and research are vital as a means of mapping and understanding the implications of the digital environment for children’s rights, and for evaluating the production of robust, comprehensive data that is adequately sourced. Such data and research, including research conducted with and children, should inform regulation, policy and practice and should be in the public domains. **IN CASES WHERE CHILDREN’S PERSONAL DATA ARE INVOLVED, STATES SHOULD ENSURE THAT THE DATA PRIVACY RIGHTS OF CHILDREN ARE UPHELD IN THE COURSE OF MAKING SUCH DATA AND RESEARCH PUBLIC AVAILABLE.**

**Comments:** The Philippines recommends adding the statement on ensuring the protection of children’s data privacy in cases where their personal data is processed for purposes of data collection and research since the provision implies a mandatory disclosure of the data and research without any limitations.

* ***The business sector***

37. States should require businesses to prevent their networks or online services from being misused for purposes that threaten children’s safety and well-being **AND VIOLATE THEIR PRIVACY AND SECURITY,** and to provide parents, caregivers and children with timely safety advice and prompt and effective remedy.

**Comments:** It is recommended that the element of privacy and security be added as the violation of data privacy in cases businesses are not able to secure their networks and online services is a real threat and risk which may not be entirely captured by the phrase “safety and well-being” alone.

* ***Commercial advertising and marketing***

42. States should prohibit by law **THE PROFILING OR** the targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics. Neuromarketing of child-directed products, applications and services should also be prohibited.

43. Where parental consent is required to process children’s personal data, States should require that efforts are made to verify that consent is informed, meaningful and given by the actual parent, **LEGAL GUARDIAN,** or caregiver of the child.

**Comments:** It is recommended that the word “profiling” be included as used in the field of data privacy and protection so that this provision may encompass activities considered as profiling children for commercial for purposes.

It is also recommended that the term “legal guardians” be added as recognized by data protection laws and which is also consistent with the language used in the Convention on the Rights of the Child (CRC). The same addition should also be carried out throughout the entire Comment where applicable, i.e. par. 50, 58, 69, 70, 72, 73, 74, 76, 77, 90-95, 110, 111, 122, and 129.

* ***Privacy***

70. xxx Digital practices such as automated data processing, **PROFILING**, behavioural targeting, mandatory identity verification, and mass surveillance are becoming routine. Xxx

**Comments:** It is recommended that “profiling” be added to emphasize that it is one of the sources of data privacy violation.

72. xxx States, should encourage the adoption of privacy-by-design, such as end to end encryption, in **PRODUCTS AND** services that impact on children… States should ensure that consent to process a child’s data is informed, **SPECIFIC** and freely given by the child or, depending on the child’s age and maturity **AND STATE LAWS**, by the parent or caregiver, and obtained prior to the processing.

**Comments:** It is recommended that “products” be added as technologies may impact children as well. This is also in keeping in line with the provisions in paragraph 123.

It is recommended that the term “specific” be included to signify that the consent must be given for a particular purpose and not a blanket consent given to the personal information controller or processor.

It is likewise recommended that “state laws” be added as data protection laws from different States may require consent from the parents or legal guardian in case the child is a minor, as in the case of the Philippines’ Data Privacy Act of 2012.

73. xxx States should further ensure the right of children, **THEIR PARENTS, LEGAL GUARDIANS OR CAREGIVER AS APPROPRIATE,** to withdraw their consent and object to personal data processing, ~~at least~~ **FOR DIRECT MARKETING AND** in cases where the data controller does not demonstrate legitimate, overriding grounds for the processing.

**Comments:** It is recommended that the right of the parents, legal guardian and caregiver to exercise the child’s right to withdraw consent. It is further recommended considering the inclusion of absolute rights to object to processing for direct marketing purposes as provided in the EU General Data Protection Regulation and in the Philippines’ Data Privacy Act of 2012.

76.xxx Any surveillance of children together with any associated automated processing of personal data, shall respect the child’s rights to privacy and shall not be conducted routinely, indiscriminately, or without the child’s knowledge, or in the case of very young children their parent or caregiver, and where possible, the rights to object to such surveillance **SHALL BE AVAILABLE.**

**PRIOR TO THE CONDUCT OF SUCH SURVEILLANCE AND THE ASSOCIATED AUTOMATED PROCESSING OF PERSONAL DATA, CONSIDERATION SHALL BE MADE ON WHETHER THERE ARE LESS PRIVACY INTRUSIVE MEANS AVAILABLE TO FULFILL THE PURPOSE SOUGHT TO BE ACHIEVED.**

**Comments:** It is recommended that the above sentence be added to ensure that personal data processing involving surveillance is still consistent with the principles of transparency, legitimate purpose, and proportionality, with due consideration to data privacy rights.

* ***The right to education (arts. 28, 29)***

113. xxx It should include the critical understanding needed to find trusted sources of information and to identify misinformation and other forms of biased or false content; sexual reproductive health issues relevant to the digital environment; knowledge about human rights, including the rights of the child and of others in the digital environment, and available forms of support and remedy. **IT SHOULD INCLUDE THE CONCEPTS OF DATA PRIVACY AND PROTECTION SO THAT THEY MAY LEARN TO PROTECT THEIR OWN PERSONAL DATA AND RESPECT OTHERS’ PERSONAL DATA AS WELL.** Also, it should promote awareness of the risks of children’s exposure to potentially harmful content, contact and conduct, including cyberbullying and other forms of violence, and coping strategies to reduce harm and build children’s resilience.

**Comments:** It is recommended that concepts of data privacy and protection in basic education be included in order for children at an early age to be equipped to protect their own personal data and respect others’ personal data as well. While it is already included as a right of the child, including a statement to that effect is recommended so that the significance of learning data privacy at an early age is emphasized.

* ***The right to culture, leisure and play***

119. xxx By introducing or using **~~data protection,~~** **PRIVACY-BY-DESIGN,** safety-by-design and other regulatory measures, States should ensure that businesses do not target children using these or other techniques designed to prioritize commercial interests over those of the child.

**Comments:** It is recommended that “data protection” be replaced by “privacy-by-design” as the term encompasses both data privacy and security and emphasizes that it must be adopted in the entire process.

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1. United Nations Population Fund. (2019). World Population Dashboard of the Philippines – Overview. Retrieved from [https://www.unfpa.org/data/world-population/PH on 22 October 2020](https://www.unfpa.org/data/world-population/PH%20on%2022%20October%202020). [↑](#footnote-ref-1)
2. Refers to the integration of web/information services in the use of several means of communication such as, but not limited to, social media, instant messaging and e-mails. [↑](#footnote-ref-2)
3. O’Connell, B. (2018, October 23). *How Does Facebook Make Money? Six Primary Revenue Streams.* Retrieved from [https://www.thestreet.com/technology/how-does-facebook-make-money-14754098 on 27 October 2020](https://www.thestreet.com/technology/how-does-facebook-make-money-14754098%20on%2027%20October%202020). [↑](#footnote-ref-3)
4. Liptak, A. (2017, May 21). *Leaked moderation guidelines reveal how Facebook approaches handling graphic content.* Retrieved from [https://www.theverge.com/2017/5/21/15672242/facebook-files-moderation-guidelines-graphic-content-online](https://www.theverge.com/2017/5/21/15672242/facebook-files-moderation-guidelines-graphic-content-online%20) on 27 October 2020. [↑](#footnote-ref-4)