**Committee on the Rights of the Child**

**Draft General Comment on Children’s Rights in relation to the Digital Environment**

**Comments of the Government of the United Kingdom of Great Britain and Northern Ireland**

1. The Government of the United Kingdom is grateful to the Committee on the Rights of the Child for its work on drafting a General Comment on children’s rights in relation to the digital environment. We thank the Committee for the opportunity to provide comments on the present draft.
2. The UK considers that the Committee has, in some parts of the draft General Comment, exceeded the scope of the UN Convention on the Rights of the Child (CRC); and notes that some of the views expressed by the Committee in the draft do not coincide with the UK’s understanding of international law. In this response, we outline these concerns in more detail.

Terminology

1. The UK disagrees with the use of the term “child pornography” as seen in paragraph 7 as it risks conflating legal forms of pornography depicting consenting adults with the abuse of children. We advocate the use of the agreed language of the 2016 Luxembourg Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, and recommend that all references in the draft General Comment be replaced with “*child sexual abuse material*”.

General Principles

1. Heading III.A and paragraph 10 describe Article 2 CRC as providing a “right to non-discrimination”. We suggest that this phrase is replaced with “*respecting and ensuring rights without discrimination*”, to mirror more accurately the language of Article 2, and to make clear that, rather than being a standalone right, non-discrimination is a principle which applies to all the rights in the CRC.
2. Paragraph 10 asks States to “provide free access to children in safe dedicated public spaces”. For clarity, we suggest that this sentence is amended to read: “provide free access *to the digital environment* *for* children in safe dedicated public spaces *such as schools and libraries*”.
3. The UK agrees with the groups of children, set out in paragraph 12, who may require particular measures to prevent discrimination. We recommend that “*child survivors*” of sexual exploitation are included with “child victims”.
4. Heading III.C and paragraph 16 refer to a “right to life, survival and development”. As Article 6 CRC treats the right to life separately from survival and development, we suggest that the phrase should be replaced, in both places, with “*rights* to life *and to* survival and development”.
5. We welcome the acknowledgement in paragraph 16 that States should protect children from sexual exploitation and abuse in the digital environment. We suggest that this could be strengthened by expanding the term to read “*exploitation and abuse, including sexual exploitation and abuse*” to make clear that States should take measures to protect children from all types of exploitation and abuse.
6. We agree that direct social relationships play a crucial role in a child’s development and it is important that States recognise and support this where possible. Consequently, we recommend that the following text be added to the end of paragraph 17: “*States should also consider how to support parents and caregivers in modelling direct, responsive interactions*.”
7. The UK supports the notion in paragraph 19 that States should involve children in developing laws, policies, programs, services, and training. We suggest that the following sentence might be added after the first sentence: “*States should ensure that children who provide accounts of their adverse experiences for these purposes should be protected by anonymity.*”
8. Heading III.D and paragraph 18 refer to children’s right to be heard, found in Article 12 CRC. We note, however, that this right appears in Article 12(2) in relation to judicial and administrative proceedings affecting the child. Separately, Article 12(1) provides that States Parties shall assure children who are capable of forming their own views the right for those views to be expressed freely and given due weight. Accordingly, the phrase should be replaced with “*right to express views freely*” in the title, and with “right to be heard *in judicial and administrative proceedings* that affect them” in the body of the paragraph.

Evolving capacities

1. We recognise the importance of parents and caregivers having the skills to better navigate the digital environment, including being able to identify potential threats. We suggest paragraph 22 is amended to reflect this, so that the final sentence reads: “They should inform and support parents and caregivers in acquiring digital technology skills *and awareness of potential threats to children* to help them to assist children in relation to the digital environment”.

General measures of implementation by States

1. Paragraph 23, as drafted, could suggest the existence of a new right regarding the digital environment. To avoid this ambiguity, the final sentence should be amended to read: “In the development of policies and practices that affect children’s rights *in*the digital environment, States should consult with children, their parents and caregivers.”
2. Since not all States parties to the CRC are parties to its Optional Protocols, paragraph 24 should read: “…compatible with the rights in the Convention and, *where applicable*, its Optional Protocols…”.
3. To make clear that online technologies can be used not only to perpetrate sexual abuse and exploitation online (e.g. live streaming, coercion, sharing of images) but also to facilitate, through grooming, contact sexual abuse and exploitation, the second sentence of paragraph 26 should be amended to read: “Such measures should protect children, including from online sexual abuse and exploitation, *as well as from technology-assisted child sexual abuse and exploitation,* and provide remedy and support for child victims…”.
4. While the UK agrees that states should ensure a joined-up approach to children’s rights across government activities, constitutional arrangements mean that it may not be possible to identify, as suggested by paragraph 28, a single government body to act as a coordinator. In the UK, for example, the devolved nature of government means that the responsibility for children’s rights in the digital environment sits with a number of different administrations and departments.
5. The UK supports and recognises the importance of data collection and research. Paragraph 31 should also refer to the need for children and young people to consent to the data collection and to be informed of how their data will be used. We suggest adding, at the end of the paragraph: “*States should also ensure that a clear distinction is made between the collection of personal data and anonymised* *aggregate data so that children and young people are able to consent and make informed decision about the data collected about them.*”
6. Given that the Paris Principles do not require National Human Rights Institutions (NHRIs) to handle or support individual complaints, not all NHRIs may be capable of acting as an ombudsman for complaints from children, or indeed from adults. The UK therefore suggests that the second half of the first sentence of paragraph 32 should be amended to read: “and, *where equipped to receive, investigate and address complaints, able to handle those submitted by* children and their representatives.”
7. The final sentence of paragraph 36 should mirror the language of the UN Guiding Principles on Business and Human Rights by providing that businesses should “better respect [children’s] rights in relation to the digital environment”. “Protect and remedy” should be deleted from this sentence. It is States which have the obligation to protect human rights and ensure access to effective remedy.
8. As currently drafted, paragraph 38 could be taken to imply that States are obliged to require businesses to conduct mandatory due diligence. However, the UN Guiding Principles do not prescribe that approach. We suggest that this sentence is amended to read: “States should *encourage* business enterprises to carry out and disclose to the public child-rights impact assessments…”.
9. Paragraph 48 should recognise that, in many democracies, there is a separation of powers between the executive and the judiciary, and therefore the executive is not able to mandate training for judges and lawyers. We suggest that it should be amended to read: “States should provide specialized training for law enforcement officials and prosecutors […] *Independent bodies regulating judges and lawyers should be invited to deliver training on the same issues.*”
10. In paragraph 49, we propose that “violated” should be replaced with “*abused*” in the first sentence and “violations” should be replaced with “*abuses*” in the final sentence, to reflect the terminology used in the UN Guiding Principles on Business and Human Rights. While we note that, in paragraph 49, the Committee asks States to “consider measures to allow for extra-territorial jurisdiction, when there is a reasonable link between the State and the conduct concerned”, the UK’s view is that there is no legal obligation for States to do so.

Civil rights and freedoms

1. Heading VI.A and paragraph 51 refer to a “right to access information”. As in Article 17 ICCPR, Article 13 CRC in fact provides children, in the context of freedom of expression, with the “freedom to seek, receive and impart information and ideas”. This language remains current, most recently in HRC Resolution 44/12 on freedom of expression. Similarly, Article 17 provides for a right to access information and material from a diversity of sources: it does not provide a right to access specific information. Accordingly, this phrase should be replaced with “*freedom to seek and receive information*” in both places where it occurs.
2. Information provided to children online should be quality and age appropriate, the same as would be expected offline. To ensure this is addressed in the General Comment, we suggest amending the first sentence of paragraph 54 so that it reads: “States should ensure that children are informed about and can easily find diverse *age appropriate* and good quality information online *as they can offline*, including content independent of commercial or political interests.”
3. Industry guidelines are one way of addressing the problem of exploitative information, misinformation and disinformation. The second sentence of paragraph 55 should be amended to read: “States should *encourage* businesses and other providers of digital content to develop and implement guidelines…”.
4. Paragraph 56 provides that “the right to object to surveillance” should be provided by states, where possible. For the avoidance of doubt, we do not consider that such a right forms part of international human rights law.
5. Paragraph 61 states that “Children should not be prosecuted for expressing their opinions in the digital environment”. This should be caveated with the addition, at the end of the sentence, of “…unless those opinions violate legal rules relating to incitement to hatred and violence and the child has attained the age of criminal majority in the relevant jurisdiction”.
6. Paragraph 63 sets out that automated systems should not be used to impact or influence children’s behaviour or emotions. However, automated systems can include useful complex algorithms on social media and online entertainment platforms to recommend user content. We suggest that this sentence is reworded to read: “States shall ensure *greater transparency around* automated systems *that may* impact or influence children’s behaviour or emotions.”
7. Paragraph 67 should reflect the fact that some activities which children might conduct while digitally participating in assemblies should indeed result in being punished. We suggest amending the first sentence so that it reads: “States should ensure that children’s participation in associations or assemblies in the digital environment does not *in and of itself* result in negative consequences to those children, such as exclusion from a school, deprivation of a scholarship or police profiling.”
8. The third sentence of paragraph 72 needs to make clear that, although end-to-end encryption can produce benefits for child safety, it also creates significant risks. End-to-end encryption severely undermines a company’s own ability to identify and respond to violations of their terms of service; and it precludes the ability of law enforcement agencies to access content lawfully in limited circumstances where it is necessary and proportionate to investigate serious crimes. Therefore, a better example of privacy-by-design with strong safeguards would be “*geolocation or public profiles off by default for child accounts*”. If the Committee wishes to retain the reference to encryption then “end to end” should be replaced by “*strong*”, because strong encryption achieves the same cyber security benefits while avoiding the risks to child safety from end-to-end encryption. We also propose adding the following to the end of this sentence: “*provided these measures do not significantly impact children’s rights to protection from violence set out elsewhere in this document*”. This is because end-to-end encryption, when introduced on platforms with limited safety mitigations in place, has been estimated to result in 12 million images of child sexual exploitation and abuse going undetected.
9. The second sentence of paragraph 77 should be amended as follows: “Technologies that monitor online activities for safety purposes, *if not implemented carefully,* may prevent a child accessing a helpline or searching for sensitive information”, otherwise this sentence could be seen as discouraging safety processes that rely on some use of data. For example, it is important that a victim searching for help is not confronted with images of child abuse or offender forums. The use of safety technologies should be encouraged in a targeted way that blocks the most serious risks and illegality but does not inhibit a child’s ability to access information and support.
10. Paragraphs 80 and 81 discuss the right in Article 8 CRC of a child to preserve their identity, so the heading of this section should read: “Birth registration and right to *preserve* identity”. The UK considers that the General Comment should also reflect the fact that children may be persecuted by a state or by others because of the child’s identity – this could relate to a child’s ethnicity; linguistic identity; sex; sexual orientation; transgender status; religion or belief; disability; or any other aspect of a child’s identity. The increased digitisation of services may increase the means by which a child may be persecuted as more information about a person may be recorded and shared. Accordingly, we propose the addition of the following sentence: “*States parties must protect children from persecution, by digital or other means, arising from any aspect of a child’s identity*.”

Violence against children

1. Paragraph 88 could be strengthened by adding the sentence: “*States should also provide children and young people with access to education and guidance to help them recognise harmful content and behaviours online and what to do in response.*”

Family environment and alternative care

1. So that it covers children in formal care as well as the scenarios already listed, we propose that the first sentence of paragraph 94 is amended to read: “States should ensure that children separated from their families *or requiring or receiving state support*, such as children in alternative care, migrant or refugee children, or children in street situations, have access to digital technologies including for the purpose of maintaining family relationships, when appropriate”.

Education, leisure and cultural activities

1. Paragraph 110 sets out States’ responsibilities to ensure schools have sufficient resource to provide parents with guidance on online home schooling and learning environments. This should also include guidance on protecting against the risks that come with using digital technologies. The UK would suggest adding “*including on how to protect from the risk of cyber-attack, such as ransomware, on personal devices”* to the end of the final sentence of the paragraph.
2. Paragraph 112 of the draft refers to the need for States to develop standards and guidance for educational technologies which “…ensure that uses of these technologies enhance children’s rights and do not expose children to violence, discrimination, misuse of their personal data, commercial exploitation or other infringements of their rights…”. As it is not possible for guidance to “ensure” outcomes, we suggest amending this sentence to read “…*make clear* that uses of these technologies *should* enhance…”.
3. The second, third, and fourth sentences of paragraph 113 could be strengthened by including reference to respectful behaviours, relationships, and sex education. We suggest that they should read: “This curricula should include the *knowledge and* skills to handle *safely* a wide range of digital tools and resources and those related to content, creation, collaboration, participation and civic engagement. 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; *online safety including respectful behaviours online and the relevant legal provisions as part of relationships/sex education;* knowledge about human rights, including the rights of the child and of others in the digital environment, and available forms of support and remedy. 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 abuse, especially for girls*, and coping strategies to reduce harm and build children’s resilience.”
4. Heading XI.B and paragraph 115 refer to a “right to culture, leisure and play”. We suggest this phrase is replaced with “right to *rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts*” in both places where it occurs to more accurately mirror Article 31 of the CRC.

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