Strasbourg, 15 May 2019

**Comments submitted by the Children’s Rights Division of the Council of Europe**

**on the UN Committee on the Rights of the Child concept note for a General Comment on children’s rights in relation to the digital environment**

The Council of Europe extends its gratitude to the UN Committee on the Rights of the Child for the opportunity to submit comments on the concept note for a General Comment on children’s rights in relation to the digital environment. These comments reflect the views of the Secretariat of the Council of Europe and do not necessarily reflect the official position of its member states.

The Council of Europe work on children’s rights in relation to the digital environment is strongly grounded in the UN Convention on the Rights of the Child and its Optional Protocols. The standards developed by the Council of Europe provide further guidance to its member states, thus complementing the efforts at global level. The [Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment](https://www.coe.int/en/web/portal/-/council-of-europe-gives-recommendations-to-member-states-on-children-s-rights-in-the-digital-environment)[[1]](#footnote-1) (hereinafter “child rights digital Guidelines”), when read together with European conventions such as the [Convention for the Protection of individuals with regard to automatic processing of personal data](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf) (“Convention 108+”), the [Convention on Cybercrime](https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561) (“Budapest Convention”), the [Convention on Protection of children against sexual exploitation and sexual abuse](https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822)  (“Lanzarote Convention”), the [Convention on Preventing and combating violence against women and domestic violence](https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e) (“Istanbul Convention”) and (other) recommendations, resolutions and declarations of the Committee of Ministers and of the Parliamentary Assembly of the Council of Europe in this field, form a solid set of rules, standards, principles and information which can assist states in providing the necessary basis for looking after children’s best interests in the digital environment across the 47 member states of the Council of Europe. As the digital environment, with its opportunities and risks, is a global phenomenon, however, the Council of Europe tools and standards are readily applicable beyond the Pan-European region. It would therefore be relevant and useful to reference its standards as part of a General Comment for the effective protection and promotion of children’s rights in the digital environment. It should also be underlined that the Council of Europe forms the world-wide most mature human rights protection system and has long-standing engagement in internet governance and data protection issues. It has accordingly developed particular best practices and standards that could benefit other parts of the world and may be referred to as a “model”.

The following response is based predominantly on the comprehensive child rights digital Guidelines, although various other Council of Europe standards, tools and research are drawn upon.

# **I. KEY RIGHTS**

## **1. Access to information**

**Access to and use of the digital environment is important for the realisation of children’s rights and fundamental freedoms**, for their inclusion, education, participation and for maintaining family and social relationships. Attention should be paid, however, to various digital access “gaps” which exist between children, including on the basis of gender and for various vulnerable groups of children: in particular, children living in alternative care, children deprived of liberty or whose parents are deprived of liberty, children in the context of international migration, children in street situations and in rural communities and children with disabilities.

According to the child rights digital Guidelines, states should ensure that all children have adequate, affordable and secure access to devices, connectivity, services and content which is specifically intended for children; that access to the digital environment is provided in educational and other care settings for children; that specific measures are taken for children in vulnerable situations; that access is accompanied by appropriate education and literacy measures, including those which address gender stereotypes or social norms that could limit children’s access and use of technology, and which empower children to critically assess the information which they access; that terms and conditions associated with online access and services or content are accessible, fair, transparent, intelligible and formulated in clear, child-friendly language; and that states ensure a plurality of sources of high-quality information and educational digital content and services for children, while taking measures to ensure that access to and use of digital services and content is not unduly restricted by commercial interests or filters.

**2.Right to freedom of expression and information**

The **digital environment has considerable potential to support the realisation of children’s right to freedom of expression**, including to seek, receive and impart information and ideas of all kinds. Children should be empowered, by state measures and educational programmes, to hold and express their views and opinions through the media of their choice and irrespective of whether their views are received favourably by the state and others, while respecting the rights and dignity of others, including other children. Any restrictions on children’s right to freedom of expression and information should be in compliance with international and regional human rights conventions and standards, of which children should be made aware.

States should initiate and encourage the provision of diverse, high-quality online content and services; state-provided media should involve children in active forms of communication, while attention should be paid to children’s access to and presence and portrayal in online media.

## **3. Right to education**

**The right to education can be fostered by the digital environment**, with ICTs complementing formal and informal learning opportunities. That being so, states should actively invest in and promote the opportunities offered by the digital environment to realise children’s right to education and must ensure that vulnerable children who lack resources are not disadvantaged.

The ability to navigate and participate in an increasingly networked and digitalised world is of vital importance for the enjoyment of numerous other rights. Accordingly, **digital literacy and citizenship skills are gradually being considered as dimensions of the right of the child to education**.

**Digital literacy education should include technical or functional competences to use a wide range of online tools and resources, as well as skills related to content creation and the critical understanding of the digital environment, its opportunities and risks.**  **Digital citizenship, meanwhile, encompasses values, skills, attitudes, knowledge and critical understanding to harness the benefits and opportunities of the online world, while building resilience to its potential harms**. The [Digital Citizenship Education Project](http://www.coe.int/dce) has developed a set of 10 digital domains which underpin the overall concept of digital citizenship. The [*Digital Citizenship Education Handbook*](https://rm.coe.int/168093586f) provides a practical tool on these domains, aimed at helping educators to enhance digital citizenship in mainstream education. Digital literacy and citizenship education should be **included on the basic curriculum** from the earliest years. States should ensure the availability of sufficiently high-quality educational resources; physical devices; infrastructure; awareness-raising initiatives and programmes; user-friendly tools for children, parents or carers, etc. These may be developed in cooperation/consultation with other relevant stakeholders and children. For an example of one such tool, see the Council of Europe’s updated [*Internet Literacy Handbook*](https://rm.coe.int/internet-literacy-handbook/1680766c85). **Digital literacy should be promoted in all settings** where children use the internet. States should support children who lack the requisite skills or underuse digital technology due to vulnerability.

## **4. Participation, right to engage in play and right to assembly and association**

States [should](https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a) take measures to ensure that children are able **to participate effectively in public-policy and political debates at all levels** and to support the development of **online civic and social platforms** to facilitate their participation and enjoyment of the right to assembly and association; and ensure that **good practice** for child participation and available tools for assessment are built upon. Where children participate in the creation or production of content or tools, states should ensure that measures are in place to protect their intellectual property rights (*see further “particular questions (taking into account children’s views and experiences)”).*

**For children exercising their right to peaceful assembly and association in the digital environment, states** [**should**](https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a) **take measures to protect them from monitoring and surveillance**, whether carried out by state authorities directly, or in collaboration with private sector entities. Where such measures interfere with the exercise by children of their rights, these should be subject to conditions and safeguards against abuse, in line with international and regional human rights conventions and standards.

The [Recommendation CM/Rec(2017)8 on Big Data for culture, literacy and democracy](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680750d68) stresses that everyone should be able to choose to remain inscrutable in the digital age, and so avoid predictions made by algorithmic decision-making about their cultural attributes, preferences and behaviours.

[**Digitisation must be accompanied by enlightened cultural policies**](https://www.coe.int/en/web/culture-and-heritage/culture-and-digitisation)**, if opportunities for access and participation, individual and collective creativity are to be fully used.** Good practices by stakeholders at all levels should be exchanged and built upon, including through [regional platforms](https://www.coe.int/en/web/culture-and-heritage/culture-and-digitisation). *Per* [Recommendation CM/Rec(2016)2 on the Internet of citizens](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c20f4), states should support the modernisation of cultural institutions; the empowerment of citizens as consumers and creators, and the fostering of multi-literacy skills education for access to, creation and management of digital culture. States should provide a range of incentives, investment opportunities, standards and technical guidance for the production and distribution of digital content and services of, *inter alia*, social, civic, artistic, cultural, educational and recreational benefit to all children. These should be appropriate for children’s evolving capacities and with particular attention paid to the needs of children in vulnerable situations.

## **5. Protection of privacy, data and identity**

**States must respect, protect and fulfil children’s right to privacy and data protection.** They should ensure that those who process personal data, parents or carers and educators, as well as children themselves, are made aware of children’s right to privacy and data protection, and ensure that children are made aware of how to exercise these rights, bearing in mind their age and maturity (see further the [Council of Europe Guide to Human Rights for Internet Users](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5b31)). Child-friendly and age-appropriate information about privacy tools, settings and remedies, as well as data processing, should be made available to children (see the [Explanatory Report](https://rm.coe.int/cets-223-explanatory-report-to-the-protocol-amending-the-convention-fo/16808ac91a) to Convention 108+).

**States must take measures to ensure that children’s personal data is processed fairly, lawfully, accurately, securely, for a specific purpose and with** free, explicit, informed and unambiguous **consent** of the child and/or their parents, carers or legal representative, or in accordance with another legitimate basis laid down in law. In determining an age at which children are considered capable of consenting to the processing of personal data, states must take into account the best interests and evolving capacities of children. States should also ensure that children and/or their parents, carers or legal representatives have the right to withdraw consent, access their data and have it rectified or erased. The likely impact of data processing on the rights of the child should be assessed and states should ensure that the processing of categories of sensitive data is only allowed where appropriate safeguards are enshrined in law. The principles of data minimisation and the best interests of the child should be respected (see also Article 15 Convention 108+).

These standards should apply to **connected or smart devices**,[[2]](#footnote-2) while the **profiling of children** should usually be prohibited, except when it is in the best interest of the child or in the overriding public interest to do so, where appropriate safeguards have been provided for by law.[[3]](#footnote-3) On the other hand**, anonymity, pseudonymity or the use of encryption technologies** by children should *not* be prohibited, in law or practice. In all cases, children shall not be subjected to arbitrary or unlawful interference with their privacy in the digital environment.

## **6. Right to protection and safety**

The risk of violence against children remains present in every setting, including the digital environment. The child rights digital Guidelines identify several areas of risks for children related to the digital environment (contact risks, content risks, conduct risks and health risks) and include a series of recommendations for states and business enterprises to prevent and address such risks.

**Council of Europe standards offer valuable benchmarks, guidance and tools to states in tackling violence in the digital environment.** The Lanzarote, Istanbul and Budapest conventions provide benchmarks on substantive criminal laws that protect children from abuse and violence, including in the online environment. These conventions are open to accession by non-member states of the Council of Europe.

A **precautionary approach** should be taken to protect children against risks of harm, bearing in mind the speed at which new technologies can emerge. A **series of protective and awareness-raising measures** should be undertaken by states, which take into consideration the **best interests and evolving capacities of the child** and **do** **not unduly restrict the exercise of other rights.** These include: adoption of specific measures and policies to protect infants from premature exposure to the digital environment due to limited benefits with respect to their particular physical, psychological, social and stimulation needs; state requirements of the use of effective age verification systems; ensuring that businesses do not engage in unfair commercial practice towards children; requiring that digital advertising and marketing towards children is clearly distinguishable to them as such; requiring that all relevant stakeholders limit the processing of children’s personal data for commercial purposes; co-operation with stakeholders to develop awareness-raising programmes for children; and sharing of good practices on ways to address risks in the digital environment. **Specific measures should be taken with regard to child sexual abuse material**,[[4]](#footnote-4) to ensure that policing is victim-focused; that states constantly monitor whether and how child sexual abuse materials are hosted within their jurisdiction; and that states engage with business enterprises on the matter *(see further, “particular questions (businesses)”)*.

# **II. PARTICULAR QUESTIONS ASKED BY THE DRAFTERS OF THE GENERAL COMMENT**

## **1. How can children’s views and experiences be expressed and taken into account when formulating policies and practices which affect their access to, and use of, digital technologies?**

As children must be empowered to express informed views about the issues and rights at stake, **digital citizenship education, digital literacy and human rights education is vital.** The Council of Europe has developed numerous tools which can be used to deliver educational content to children on these topics (*see above*). States and other relevant stakeholders should provide children with information on their rights, including their participation rights, in a way that they can understand, and which is appropriate to their maturity and circumstances. Children should be informed of mechanisms and services, which should provide them with adequate support, and of procedures for complaints, remedies or redress, should their rights be violated. Such information should be made available to their parents or carers.

**States and other relevant stakeholders should actively engage children to participate meaningfully** in devising, implementing and evaluating legislation, policies, mechanisms, practices, technologies and resources that aim to respect, protect and fulfil the rights of the child in the digital environment. [*The Child Participation Assessment Tool*](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806482d9) provides **10 specific and measurable indicators** for measuring the national progress in implementing the [Recommendation CM/Rec(2012)2 on participation of children and young people under the age of 18](https://rm.coe.int/168046c478), and which recognises Article 12 UNCRC. These indicators are split into **three cross-cutting groups of protecting the right to participate, promoting awareness and creating spaces for participation**, and can be applied to policy and decision-making on matters which affect children’s access to and use of digital technologies (see also the [*Implementation Guide*](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806482da)). **The Council of Europe consulted children in the development of their child rights digital Guidelines. Its** [**methodology**](https://rm.coe.int/it-s-our-world-children-s-views-on-how-to-protect-their-rights-in-the-/1680765dff) **may be used as guidance** for taking children’s view into account when formulating measures in this area.

## **2. How can discrimination (originating offline or online) be effectively addressed, to ensure all children have their rights realised in a digital world?**

**Targeted measures may be required for children in vulnerable situations**, recognising that the digital environment has the potential both to increase children’s vulnerability and to empower, protect and support them. **Digital citizenship and human rights education is vital for tackling discriminatory attitudes, intolerance and extremism originating either offline or online** (*see further, above*). **Gender-based discrimination** must be tackled in all settings. The Istanbul convention contains several provisions which aim to change attitudes and gender roles and teach children to lead healthy relationships, both online and offline. Several studies have been carried out[[5]](#footnote-5) and [Recommendation CM/Rec(2019)1 on preventing and combating sexism](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168093b26a) has been adopted, which detail effective ways of accomplishing this. The [Protocol on Xenophobia and Racism](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189) extends the Budapest Convention’s scope, including its substantive, procedural and international cooperation provisions, to cover offences of racist or xenophobic propaganda. Useful educational resources and social media tools have been developed under the [No Hate Speech campaign](https://www.coe.int/en/web/no-hate-campaign)  to support measures to tackle **hate speech, including that which occurs online** (see its [social media tools](https://www.coe.int/en/web/no-hate-campaign/online-and-social-media-tools) and [publications](https://www.coe.int/en/web/no-hate-campaign/publications-education)).

## **3. How should the General Comment treat the role of parents and other caregivers?**

In accordance with the relevant international standards, **it is states which have the primary obligation to respect, protect and fulfil the rights of every child within their jurisdictions.** To do so, they must engage all relevant stakeholders, including the parents, legal guardian or other caregivers of children, to effectively implement these obligations. It should be noted that the child rights digital Guidelines recommend the adoption of specific measures and policies to protect infants from premature exposure to the digital environment. **Parents and other caregivers should also be supported and empowered by the state, and with the support of other relevant players,** to be become digitally literate and informed about children’s rights in the digital environment, how they can exercise these, how they are limited, and on how to make use of appropriate remedies, as well as how they can empower children to avail themselves of the opportunities and risks in the digital environment. This may be provided through informational resources, tools, settings, programmes and awareness-raising for parents and other caregivers.

## **4. How should the practices of businesses operating in the digital environment support the realisation of children's rights?**

According to the child rights digital Guidelines and [Recommendation CM/Rec(2016)3 on human rights and business](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c1ad4), **each state should apply such measures as may be necessary to require that business enterprises meet their responsibility to respect the rights of the child in all their operations** within the state’s jurisdiction and, as appropriate, in all their operations abroad when domiciled in its jurisdiction. **States should also encourage and support by other relevant means business enterprises in understanding and respecting the rights of the child**.

States should require business enterprises to: **undertake due diligence** in order to identify, prevent and mitigate their impact on the rights of the child in the digital environment; **perform regular child-rights risk assessments** in relation to digital technologies, products, services and policies and demonstrate that they are taking reasonable and proportionate measures to manage such risks; **develop, apply and regularly review child-oriented industry policies, standards and codes of conduct**; and take reasonable, proportionate and effective measures to ensure that their terms and conditions of services are enforced. Protecting children from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing and business involves ensuring that business enterprises do not engage in unfair commercial practices towards children and limit the processing of children’s personal data for commercial purposes.

States should promote and provide incentives to business enterprisesto implement **safety by design, privacy by design and privacy by default** as guiding principles for products and services addressed to or used by children and **take appropriate steps to ensure that children have an effective remedy against businesses,** including: implementing policies and measures to encourage business enterprises to establish their own remedial and grievance mechanisms; encouraging businesses to provide accessible information on how to pursue complaints and redress; requiring that businesses make available easily accessible ways to report any material or activity of potential concern and that reports are received and dealt with efficiently and within reasonable time scales. Specific standards and recommendations are provided for with regard to, e.g., **the roles and responsibilities of** [**internet intermediaries**](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44)**,** [**internet service providers**](https://www.coe.int/en/web/portal/guidelines-for-providers)**,** [**games providers and publishers**](https://www.coe.int/en/web/portal/guidelines-for-providers) and [**the media**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13).

**Business enterprises play a crucial role in preventing and tackling cyberviolence.** The Istanbul and Lanzarote conventions place an obligation on state parties to encourage the private sector, including the ICT sector, to participate in the elaboration and implementation of policies to prevent violence and to implement self-regulation or co-regulation. States should encourage businesses (and other stakeholders) to develop and implement policies that address cyberbullying, harassment and incitement to hatred and violence (see the Budapest Convention). For child sexual abuse and sexual exploitation, states should engage with business enterprises to support the identification of perpetrators and collection of evidence for criminal proceedings; require businesses to take reasonable, proportionate and effective measures to ensure that their networks or online services are not misused for criminal or unlawful purposes; ensure that hash lists are applied; and that business enterprises and stakeholders are required to promptly take all necessary steps to secure the availability of metadata concerning any child sexual exploitation and abuse material found on local servers, make them available to law-enforcement authorities and remove these materials.

## **5. How can states better realise their obligations to children's rights in relation to the digital environment?**

The fundamental principles of the **best interests of the child**, the **evolving capacities of the child**, the **right to non-discrimination, the right of the child to be heard,** and the **duty to engage with stakeholders (particularly business enterprises)** should guide all state action in the area.

**A number of measures should be taken with regard to national legal frameworks which relate to children in the digital environment.** A comprehensive legal framework should provide for preventive and protective measures in relation to the digital environment; laws and policies related to the digital environment should be assessed, at their drafting stage, with regard to the impact that their implementation may have upon children’s rights; states should ensure that their legal frameworks encompass the full range of unlawful acts which can be committed in the digital environment, where possible formulated in a way which leaves room for the emergence of new technologies; peer-to-peer online violence or abuse should, as far as possible, be dealt with through suitable and adequate preventive and restorative approaches, while preventing the criminalisation of children; states should set up legal frameworks that apply to the processing of personal data of children, and effective mechanisms to handle complaints by or on behalf of children should be established; clear and predictable legal and regulatory environments should be created to help businesses and other stakeholders meet their responsibilities to respect children’s rights in the field; and states should ensure that appropriate remedies, including compensation from perpetrators, can be sought. In particular, [a mapping exercise](https://rm.coe.int/t-cy-2017-10-cbg-study-provisional/16808c4914) on cyber-crime suggests that national protective measures often focus on criminalisation of acts related to child sexual abuse and sexual exploitation, while dedicating relatively little focus to other forms of cyber-violence. The child rights digital Guidelines further provide **elements which should be present in a comprehensive strategic national approach to children’s rights in the digital environment**, as well as specific guidelines on sectoral policies, institutional aspects, mechanisms and services and investment, resources and training.

It is vital that states **fulfil a child’s right to an effective remedy** when their human rights and fundamental freedoms have been infringed in the digital environment, including against business enterprises (*see* *above*). This entails the provision of available, known, accessible, affordable and child-friendly avenues through which children, their parents, carers or legal representatives, may submit complaints and seek remedies. States should ensure, *inter alia*, that children are provided with age-appropriate information, and that access to courts, judicial review and other procedures are aligned with [child-friendly justice principles](https://rm.coe.int/16804b2cf3).

**Co-operation and co-ordination at national level** should be pursued. All relevant stakeholders, including national, regional and local law-enforcement and other authorities, educational and social-service agencies, independent human rights authorities, data-protection authorities, professionals working for and with children, civil society, including youth-led organisations, business enterprises, industry associations, researchers, families and children, should all be informed and engaged in ways which are tailored to their roles and functions.

**States should also engage in international co-operation and co-ordination.** States should be encouraged to ratify and implement relevant international instruments; co-operate with each other by applying relevant international and regional instruments and arrangements; support regional and international capacity-building efforts to improve policy and operational measures, including the sharing of good practices and tools; co-operate with a view to promoting standardisation of content classification and advisory labels; expedite action to ensure that their law-enforcement agencies can connect to the INTERPOL database that deals with child sexual abuse material; and strengthen co-operation with relevant intergovernmental bodies, transnational networks and other international organisations.

1. Available in Azerbaijani, Bulgarian, Croatian, English, French, German, Greek, Italian, Lithuanian, Portuguese, Serbian, Slovak, Spanish, Turkish, Ukrainian: <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808b79f7> [↑](#footnote-ref-1)
2. See further [T-PD(2019)01 Guidelines on Artificial Intelligence and Data Protection](https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8). [↑](#footnote-ref-2)
3. See further [Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling](https://wcd.coe.int/ViewDoc.jsp?id=1710949&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) [↑](#footnote-ref-3)
4. See further the [Lanzarote Convention](https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822); [the Lanzarote Committee Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICTs)](https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f); Article 9 Budapest Convention. [↑](#footnote-ref-4)
5. [*Preventing violence against women: Article 12 of the Istanbul Convention*](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f0)(2014, Council of Europe Publishing); [*Raising awareness of violence against women: Article 13 of the Istanbul Convention*](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f1)(2014, Council of Europe Publishing) [↑](#footnote-ref-5)