Incorporating children's digital rights into the UNCRC

Since the United Nations Convention on the Rights of the Child (**UNCRC**) was adopted in 1989, advances in digital technology have affected experiences of childhood throughout the world. However, the Convention itself has remained unchanged, with no specific mention of either the internet or digital technologies found anywhere in its 54 Articles.

Some may argue that this is no bad thing. The UNCRC, after all, was intended to set out the minimum acceptable standards all children should experience, regardless of what situation they find themselves in. The emergence of digital technologies shouldn't necessarily change this: it may be that the standards within the Convention are strong enough to apply to whatever new experiences a child or young person may now face.

It's not always clear, however, how a rights-based framework responds to the challenges presented by the digital world. There are several examples of cases where rights appear to conflict, and several others where it isn't obvious how they should apply. As a result, I'd welcome a general comment on rights and digital technology from the UN Committee on the Rights of the Child.

Interpreting rights in a digital age

When discussing digital technologies – and, specifically, the online world – the UN has tended to assert that **rights that people have offline must also be protected online**. In 2014, the UN Committee on the Rights of the Child convened a Day of Discussion around digital media and children's rights. This focused on three main areas: **participation, provision** and **protection**.

Participation

Currently, children tend not to be meaningfully involved in conversations about how their online experiences are governed. Article 12 suggests that they should be, and that they should have access to policymakers and practitioners as the internet evolves. Accordingly, it's essential that children and young people are meaningfully involved at all stages of the creation of a General Comment around digital media.

Provision

Complete digital provision can only be achieved if:

● all children have physical access to digital media,

● all children have financial access to digital media,

● all children have the skills to access digital media,

● all children can access services and information online that are accessible to them, and

● all children can be safe online, and be supported if they come to harm.

As such, it's unlikely that digital provision will be truly universal. Because of this, care must be taken to make sure that children who are not digitally provided for – that is, children who are **digitally excluded** – can have their rights realised through non-digital means.

Children as a marginalised user group

The majority of digitally excluded children live in the Global South, but exclusion and marginalisation occurs in countries in the Global North, too. Indeed, to an extent all children are marginalised users of the internet: while around one in three internet users are now under 18, discussions around internet users often assume that users are adults. Accordingly, internet governance tends to give little consideration to children's rights, and policies may impact child users in ways that aren't appreciated.

Assuming that users are adults has implications beyond governance, too. Content for public services online is increasingly co-produced with service users, yet co-production tends to take place with adults unless a service is explicitly designed for children. Recognising children as legitimate users of the internet and involving them in co-creation practices are both essential for their rights to be better realised online.

Marginalisation of specific groups

Where child users *are* considered as a user group, they tend to be so in a way that can exclude a number of actual children. Children with disabilities, for example, can be excluded by normative assumptions of childhood. As children are pictured to move through distinct developmental stages, those who fail to do so are often thought of as violating norms rather than rights holders in and of themselves. Narratives around disability and childhood can, in practice, limit, infantilise or patronise older children with disabilities.

Marginalisation of children through barriers to access

Some vulnerable groups may be digitally excluded through difficulties getting unrestricted access to the internet. For example, unaccompanied child refugees often see internet access as vital, as this can be the only means for them to get in

touch with their families. However, institutions often restrict access to the internet, and refugees tend not to be able to get mobile contracts— meaning their right to family contact is unable to be realised. Care-experienced users report their ability to access information online is compromised due to the restrictive filters on the computers they have access to.

Protection

A rights based approach to child protection online requires a degree of balance. Multiple and varied risks do exist in the digital world, but an overzealous approach to them can result in a child's rights to information and active participation being compromised to an unjustified degree. To find an appropriate balance, children must be meaningfully involved in digital governance, and in the creation of terms for digital platforms and services.

Advertising

Children often use online services that aren't – at least explicitly – targeted to them, which can make redress difficult if their rights are violated through service use. The 5Rights Framework argues that children and young people have the right to know who holds and profits from the information they share online, and to know if it's being copied, sold or traded. They should also be subject to terms and conditions that they can reasonably understand, and which they actually have capacity to consent to.

The EU General Data Protection Regulation (GDPR) will set the EU minimum age of consent to data processing at 16, and to make member states be unable to set the minimum age below 13.

Pornography

Easy access to pornography is a rights issue: reports have highlighted evidence that suggests:

● pornography young people access has become more physically and verbally aggressive, and

● repeated exposure to pornography may distort young people's views of acceptable behaviour in relationships.

However, preventing young people from accessing pornography provides particular challenges from a rights perspective. Internet content filters have been used as a way to prevent children accessing inappropriate sites, but their use is not without problems. The Child Rights International Network (CRIN) has suggested that web filters can block a disproportionate number of sites to the point that a child's Article 17 right to information and Article 24 right to information about their health may be compromised. For example, filters may block sites about sexual health or being LGBT, or sites that lay out what to do if a young person is a victim of sexting.

Meanwhile, many researchers have expressed doubt that filtering will ever be sufficient to completely prevent young people from accessing pornography. CRIN

stresses that filters should be individually tailored to capacity and to age group, and should be transparent. It's not clear who would regulate this, though, or how such a measure could work in practice. It's also complicated further by the differential vulnerability of children upon exposure to damaging content.

A further tension arises when it comes to establishing whether a young person is accessing pornography, as – unless they are caught doing so – this is likely to involve accessing their internet history. This may well be considered a violation of the right to privacy, as there are lots of sites a young person may reasonably want to access without an adult's knowledge— such as those containing information about mental health.

Ultimately, where pornography is concerned there may always be a fundamental conflict between young people's right to be protected and their rights to information and privacy. Given this, it's vital that any statement around it in the general comment is drafted in consultation with young people, in accordance with their right for their opinions to be heard.

The right to be forgotten

Currently, it's very difficult for someone to remove information they created from the web, even if that information was created when they were under 18. One of the rights set out in the 5Rights Framework is that children and young people should have the right to easily remove any data and content they've created.

There is some progress in this direction. The General Data Protection Regulation (GDPR) – which will come into effect across the EU in 2018 – will give individuals the right to demand deletion of their personal data in a number of circumstances. Significantly, it states that if someone:

● gave consent for their data to be processed when they were a child, and

● weren't aware of the risks in doing so,

then they have the right to request their data to be deleted, regardless of if they are still a child when that request is made.

A general comment could draw attention to issues around a child's evolving capacities in relation to consent to data processing, and clearly state the minimum standards for organisations to comply with so that a child's rights remain respected.

Digital rights and the role of parents

Parents can find it hard to balance protecting their child and making sure rights are realised, especially as rights discussions aren't always accessible. They don't tend to think in terms of rights, but are aware of these tensions.

CRIN has recommended well-informed parental engagement with children as the most effective means of protection. However, there's a lack of available resources for parents and children to draw on. Advice they're given:

● usually focuses predominantly on risk,

● often lacks an evidential basis, and

● tends to assume parents and children don't have disabilities.

As a result of this, parents often don't know what's healthy for their children to be doing online. In some areas, such as digital literacy, the experts don't know either: a large evaluation across the EU found several different and contradictory things around young people achieving digital skills. While evidence suggests parental oversight has some effect, what effect it has seems very varied. More information is needed around what the best ways for parents to support child digital literacy actually are, but we also need more research to inform this.

It's been recommended that the creation of strategies telling parents how to communicate risks to 0-8 year olds should be created and promoted, and that there should be better development and promotion of information around the benefits of engagement with digital technology for parents in general.

Even if these steps are taken, however, a gulf between adult and child knowledge may still exist, and there are likely to be times where children are able to bypass a parent's protective measures.

Digital rights for children without parents

Currently, internet provision for children without parents can be significantly more restrictive than for the majority of children with parents, as institutions often:

● restrict access to the internet,

● monitor the sites children visit, and

● use restrictive filters to limit sites children can visit.

The effect of delegating responsibility to parents, then, can discriminate against children for whom the state is in a parental role. Because of this, guidance for parents should include clear advice around what institutions should do to meet minimum UNCRC standards for the children in their care. It's also vital that children with institutional experience feed into discussions about how protection rights are balanced with their other rights in the UNCRC, and a general comment should specifically address the barriers that they may face.

Recommendations

Based on the considerations above, my recommendations for the UNCRC general comment around digital technologies are as follows:

● Children and young people should be involved with producing the general comment in accordance with Article 12 of the UNCRC from the earliest possible stage.

● The general comment should consider internet access in the broadest sense, and use a definition of access that recognises physical, financial, cultural and skill-related barriers. It should make it clear that a child that has access to the internet is not necessarily a child that has access to the online services they need.

● While every child should be able to access and effectively use the internet, it is unlikely that every child will exercise this option. Because of this, the general comment must stress that children should never be forced to rely on online provision to realise their rights.

● The importance of child involvement in internet governance should be highlighted, as should the importance of including children in concepts of the internet user.

● The need for inclusive ideas of who child users are should be stressed. Children should not be assumed to be able-bodied, or to display no variance in terms of capacity or ability.

● The general comment should call for greater transparency around who holds and profits from data provided by children. It should also call for organisations to provide age-appropriate information around what happens to data that children give them.

● The general comment should address keeping children safe from access to pornography in a way that takes their rights to privacy and information into account. The opinions of children and young people should be included. Opinions of children and young people should feed into this, including the opinions of those in state care.

● The general comment should address when a child should be considered to have capacity to consent to data processing, and state what standards organisations should put in place so that their data processing accords with the UNCRC.

● The general comment should stress the urgent need for resources for parents around child rights online, and for parental resources around communicating online risks to 0-8 year olds. It should say there is a need for further research to inform these resources.

● The general comment should recognise that children in institutional care may face greater barriers to access than their peers, and that a different balance between protection, access to information and privacy may be in effect for them. As such, it should highlight the need for a consistent rights-based approach for all children, and the need for guidance for institutions around what this means in practice.

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