**Submission to the United Nations Committee on the Convention on the Rights of the Child**

**Regarding Draft Special Comment No 25:**

**Children’s Rights in Relation to the Digital Environment**

Submitted by Valerie Steeves[[1]](#footnote-1) and Jane Bailey[[2]](#footnote-2) on behalf of The eQuality Project

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*Introduction*

The eQuality Project is a seven-year partnership of academic researchers, civil society groups, educators, policymakers and youth. It is co-led by Valerie Steeves and Jane Bailey and funded by the Social Sciences and Humanities Research Council of Canada. We use quantitative, qualitative and youth-participatory action research methods to explore young people’s experiences of the digital environment. Our analysis is child-rights centred and seeks to bring policymakers and young people together so young people can voice their concerns and participate in the policy making process.

*General Comments*

Technology continues to be a key site for child rights in Canada[[3]](#footnote-3) and our youth partners and research participants consistently call for strong rights-oriented responses to the issues they face online. We are accordingly pleased to see that the draft comment reflects that youth perspective and we applaud the Committee for its work in this regard. We also commend the draft’s recognition that the commercialization of children’s online spaces has a significant impact on child rights. Constraints around targeted marketing, neuromarketing and automated decision-making establish a strong baseline for interrogating commercial practices and ensuring that companies act in ways that advance child rights.

We would encourage the Committee to build on that baseline in the next iteration of the Comment, particularly with regards to the language used to address privacy rights and the role of corporations. Privacy plays a pivotal role because the commercial model that drives technology is built upon constant, seamless surveillance of children’s activities, and this surveillance significantly hampers children’s ability to enjoy a lived equality free from discrimination.

Based on what our research participants have told us, we have come to think of this as the “perfect storm”. The commercial architecture that shapes their networked interactions both incentivizes disclosure and calls upon them to judge each other based on the content they disclose. In this environment, young people who fail to replicate stereotypes tend to be judged harshly and attract negative attention.[[4]](#footnote-4) This deepens the impact of negative stereotypes in young people’s lives and sets them up for identity-based conflict. It also makes it difficult for young people – particularly those who are members of equality-seeking communities – to participate in and live life free of harassment – in the seamlessly integrated online/offline existence that decades of public policy have created for them.

The negative impact of this storm on children’s rights will likely be magnified with the introduction of artificial intelligence. Following from longstanding analyses[[5]](#footnote-5) of the discriminatory effects of the algorithmic sort in other spheres, early research has begun to explore the discriminatory outcomes that algorithms are introducing to school,[[6]](#footnote-6) play,[[7]](#footnote-7) and the Web.[[8]](#footnote-8)

Commercial and state actors tend to revert to data protection as a corrective as it enables them to innovate while claiming to respect privacy. We are concerned that the language of data protection is not resilient enough to protect against these kinds of harms. Data protection purports to provide children and their parents with some level of control over commercial practices so they can both attain the benefits of networked interaction and manage its risks. From this perspective, privacy rights and commercial innovation work in tandem: new technologies provide more efficient ways for children to thrive and education and industry codes are simply there to protect against over-commercialization.

However, we argue that the risks to children are not a side effect of the current commercial model but an essential element of the infrastructure itself. Shoshana Zuboff famously calls this model surveillance capitalism: “a new economic order that claims human experience as free raw material for hidden commercial practices of extraction, prediction, and sales … in which the production of goods and services is subordinated to a new global architecture of behavioral modification”.[[9]](#footnote-9) In this model, harms cannot be mitigated by consent-based mechanisms and consumer choice because the technological infrastructure itself is built to break down silos and open up children’s lives to commercial extraction. And with the introduction of machine learning AI (the processes of which are beyond human comprehension) the capacity to “consent” to such practices will be rendered meaningless.

Our concern is that if States stay within the frame of risk-benefit analysis and data protection, this will unintentionally legitimize the commercial practices that constrain both children’s privacy and their equality. Instead, we recommend language that will require States to interrogate commercial practices and prohibit profit-driven innovation that detracts from children’s rights.

The following recommendations take a first step in this direction.

*Recommendations*

With respect to each paragraph, the Committee should undertake an analysis that recognizes the disparately negative impacts on children from equality-seeking communities and seeks to mitigate them.

Para 3 – As noted in para 10-11, inequalities are not just exacerbated by disparities in *access* to technology. They are also exacerbated through technology (e.g. discriminatory sorting and profiling based on data collected from children’s online interactions, online hate and harassment that disproportionately affects children from equality-seeking communities). We suggest that it is important to recognize that in the introduction, so that it is clear that children’s equality in a digital environmental turns on more than just *access* to technology. In fact, in some instances, access to technology (especially in its current largely unregulated form) works to undermine their equality.

Para 16 – In addition to content-related threats to children’s well-being, it is also imperative to note corporate-related threats arising from platforms and apps that track, monitor and profile children for purposes of sorting them so that decisions can be made about them (e.g. what kind of content they will receive in response to a search request or what kind of advertising will be embedded into their environments).

Para 18-19 – Rather than “consulting” children, we would suggest that states centre children in their policymaking processes and that they ensure that children receive financial, informational and other resources designed to ensure their participation is fully supported and not diffused by the power and resources of the technology corporation lobby.

Para 22 – States should also provide children and those working with and for them with resources to understand how the corporate structuring and management of online environments works to shape their understandings of self, and their engagement and relationships with others. States should also provide children and those working with and for them with the tools and resources to intervene in policy processes to contest these corporate processes should they wish to do so.

Para 26 – Programming available to children and those working with and for them should also include access to information, resources about digital policy making processes and digital policy making forums in which they can become involved.

Para 28 – Such government bodies should include children as members with meaningful powers of decision-making and oversight, as well as appropriately recognizing the importance of their knowledge and expertise (e.g. through compensation).

Para 29 – Governments should also mobilize such resources to prevent and condemn corporate practices that undermine children’s equality through practices such as monitoring, surveillance and profiling.

Para 34 – This training should specifically include the education sector given the rising use of education technology.

Para 35 – States should fund NGO participation in these events in order to address the degree to which the technology corporate lobby currently dominates these areas.

Para 37 – States should also ensure that the solutions they device to protect children from these harms do not detract from their ability to participate fully in networked communication. In particular, solutions must respect children’s rights to privacy, access to information, culture and play.

Para 38 – Violations in the last sentence should expressly include commercial uses of children’s information that violate their rights to privacy, access to information, culture and play.

Para 42 – States should also prohibit artificial intelligence applications that either intentionally or unintentionally discriminate against children based on their actual or inferred characteristics.

Para 43 – Prior to engaging with consent-based models, states should consider imposing a moratorium on technology corporation collection and use of children’s data (especially in sectors such as education).

Para 45 – Such mechanisms should also include State-funded agencies designed to assist children in dealing with technology corporations (especially in relation to requests for removal of violent and abusive content).

Para 54 – Automated search mechanisms can also come at the cost of children’s equality as the result of profiling based on discriminatory stereotypes about members of marginalized communities.

Para 57 – Such controls must also take into account children’s right to equality.

Para 62 – States should also ensure that automated decision making is not used to profile and discriminate against children from equality-seeking communities.

Para 67 – States should also ensure that involvement of children in associations or assemblies in the digital environment is not used for purposes of corporate profiling.

Para 69 – Privacy is also vital to children’s equality insofar as their data can be used to profile and make decisions about them based on discriminatory stereotypes and/or disproportionately be directed at and impact children from equality-seeking communities. Although data protection is a necessary first step to respond to threats that arise from data collection, data protection is insufficient on its own and must be contextualized with human rights protections that actively promote children’s best interests as rights-holders.

Para 70 – Digital practices such as automated data processing, etc. can also be used in ways that violate children’s equality rights.

Para 72, 74 – States should ensure that consent-based systems cannot be used to imply consent to or to justify discriminatory profiling reflected in or emanating from corporate data collection practices.

Para 76 – States should implement no-go zones for digital surveillance of children, including in the educational context.

Para 77 – Such monitoring must also respect children’s right to equality, recognizing the disproportionate impact that such surveillance can have on children from equality-seeking communities.

Para 78 – Such practices may also be important to children’s equality (e.g. in the exploration of issues of sexual and gender identity).

Para 80 – Collection and use of birth registration data must be subject to strict controls, and stringent security standards.

Para 85 – It is also important to recognize that the *consensual* exchange of sexual images can play an important role in teen sexual activity and exploration and should not be criminalized.

Para 87 – States should also require corporations to be open and transparent in the way that they deal with harmful behaviours in order to ensure both that children understand the standards and procedures applied and that corporate decision making in this regard is compliant with internationally protected human rights such as privacy, equality and freedom of expression.

Para 88 – Such reporting systems should also deliver prompt results and be sufficiently transparent to allow for public scrutiny of the decisions being made.

Para 89 – Parents, caregivers and others working with and for children are also entitled to information about the rights-based impacts of technology corporation practices including those relating to data collection and profiling.

Para 92 – States should also take into account children’s rights to equality (e.g. in relation to sexual or gender identity information which they may not wish to disclose to family members).

Para 96-100 – States should ensure that technologies intended to benefit children with disabilities do not disproportionately expose them to monitoring and profiling.

Para 102 – Access to such information and services can be vital to children’s equality rights.

Para 107-114 – Children also highlight the ways in which education technologies serve to undermine their rights to privacy, equality, and access to information. In this way, ensuring equitable access to such technologies must also be tempered with clear restrictions on school and corporate collection and use of related data. Children should not be trained to accept and try to ameliorate such violations of their rights. Rather States should act to prohibit such violations before they happen by, among other things, enacting no-go zones for corporate collection and use of children’s data through use of education technology, and by providing children with necessary resources to participate in digital policymaking.

Para 121 – Such exploitation can also include the data collection and use practices of technology corporations.

Para 123 – States should also impose limits on technology corporations’ collection and use of children’s data.

Para 124 – This is likely to be especially important for children from equality-seeking communities that are often disproportionately criminalized.

Para 127 – States should take measures to ensure that corporate participants are not permitted to dominate cooperative processes by, among other things, actively seeking out and funding participation by children and those working with and for them.

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3. Although the bulk of our research is conducted in Canada, we have partners working in Finland, Hong Kong and the United States. [↑](#footnote-ref-3)
4. Bailey, J. and Steeves, V., *eGirls, eCitizens*, University of Ottawa Press, 2015. [↑](#footnote-ref-4)
5. Gandy, O., *The Panoptic Sort: a political economy of personal information*, Westview, 1993. [↑](#footnote-ref-5)
6. O’Neil, C., *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*, Crown Books, 2016; Regan, P. and Steeves, V., Education, Privacy and Big Data Algorithms: Taking the Persons Out of Personalized Learning, *First Monday 24*(11), 2019; Regan, P. and Bailey, J., Big Data, Privacy and Education Applications, *Education and Law Journal* 28, 2020. [↑](#footnote-ref-6)
7. Steeves, V., A Dialogic Analysis of Barbie’s Conversations with Children, *Big Data & Society, 7*(1),2020 [↑](#footnote-ref-7)
8. Noble, S., *Algorithms of Oppression: How Search Engines Reinforce Racism*, NYU Press, 2018. [↑](#footnote-ref-8)
9. Zuboff, S., *The Age of Surveillance Capitalism*, Profile Books, 2019, Preface. [↑](#footnote-ref-9)