**Response to Consultation on the General Comment on Children’s Rights in the Digital Environment**

**Susie Alegre[[1]](#footnote-1)**

This document is submitted in response to the Committee on the Rights of the Child’s consultation on the draft General Comment on Children’s Rights in the Digital Environment. The draft is generally comprehensive and a timely and valuable contribution to the developing understanding of human rights in the digital context. As requested, it is brief and focused on comments on specific paragraphs in the General Comment and is broken down by relevant paragraph.

I would be happy to clarify or expand on any of the suggestions and comments below if needed.

**Notes on Specific Paragraphs**

**Paragraph 18**

This paragraph could be strengthened to reflect the risk that some forms of data collection and analysis might have impacts beyond privacy to include other rights related to a child’s opinions and mental state. I suggest the following: *“…While States are encouraged to utilise the digital environment to consult with children on relevant legislative and policy developments, they should ensure that children’s participation does not result in undue monitoring or data collection that violates their right to privacy* ***or their rights to freedom of thought and opinion.”***

**Paragraph 21**

This paragraph could also take account of the way information is delivered in the digital sphere and its potential to manipulate thoughts and opinions. I would suggest the following addition. *“…States should require digital providers to offer or make available services to children appropriate for their evolving capacities.* ***Steps should be taken to ensure that the forms of delivery and curation of content are not manipulative in nature.”***

**Paragraph 31**

Some data collection and research in this field can be problematic in itself. For example research that seeks to infer future criminality from biometric or other data. I would suggest adding the following sentence ***“All such data collection and research must be carried out in a manner which complies with relevant ethical standards and which does not, in itself, pose risks to children’s rights.”***

**Paragraph 42**

This is a welcome provision. It may be strengthened by adding the words “emotional state” or similar at the end of the sentence so that it is clear that it covers both characteristics and changeable states to prohibit, for example, targeting at times of low mood. “*States should prohibit by law the targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics* ***or of their actual or inferred emotional state.***

**Paragraph 43**

I would suggest the insertion of the word “free” to indicate that consent must be given freely and parents must have a choice not to consent. *“Where parental consent is required to process children’s personal data, States should require that efforts are made to verify that consent is* ***free*** *informed, meaningful and given by the actual parent or caregiver of the child.”*

**Paragraph 60**

Consider adding the specification that restrictions should be non-discriminatory as filters may, for example, be used to restrict access disproportionately for children from particular groups or on the basis of gender or sexual orientation. *“Any restrictions on children’s right to freedom of expression in the digital environment, such as filters and other barriers including safety measures, shall be provided by law, necessary, proportionate* ***and non-discriminatory”.***

**Paragraph 62**

I would suggest strengthening this paragraph with the addition of a sentence on the prohibition on penalising children for their opinions. *“Given the existence of commercial and political motivations to promote particular worldviews in the digital environment, States should ensure that uses of automated decision-making do not supplant, manipulate or interfere with children’s ability to form and express their opinions in the digital environment.* ***This should include a prohibition on penalising or stigmatising children for their opinions, whether real or inferred.”***

**Paragraph 64**

This could be expanded to include the potential for inferences about a child’s mental states to be used to stigmatise, exploit, or penalise them in real time or in the future. This is slightly different to the point about religion and belief in the following paragraph. I would recommend the following amendment: *“The Committee encourages States to introduce or update data protection regulation and design standards that identify, define and prohibit practices which manipulate or interfere with the child’s right to freedom of thought and beliefs, for example by emotional profiling, in the digital environment.* ***States should also prohibit the use of data profiling to identify children’s thoughts and mental states in ways which may stigmatise or penalise them or for commercial exploitation.”***

**Paragraph 75**

I would recommend including a further reference to other rights in terms of regulation as there is a risk that data protection and privacy can become siloed compliance issues without broader consideration of human rights impacts:*“Privacy and data protection legislation and measures should not arbitrarily limit children’s other rights, for example their right to freedom of expression or protection rights. States should ensure that data protection legislation respects children’s privacy and personal data in relation to digital environments. Through continual technological innovation, the scope of the digital environment is expanding to include settings and objects, such as clothes and toys that traditionally were not digital. The more environments where children spend time become ‘connected’ (through the use of embedded sensors that are connected to automated systems), the more important it is that States ensure that organizations, devices and services that constitute such environments are subject to robust data protection and other privacy* ***and broader human rights*** *regulations and standards. This includes public settings such as streets, schools, libraries, sports and entertainment venues, business premises including shops and cinemas, and the home or other settings where children live.*

**Paragraph 76**

I would suggest the following addition to reflect the mental impact of surveillance, particularly when it is designed to monitor a child’s emotional or mental states: *“The digital surveillance of children may result in the constant scrutiny of children while online or offline, for example in educational and care settings. Any surveillance of children together with any associated automated processing of personal data,* ***in particular where inferences are made about a child’s emotional or mental state,*** *shall respect the child’s right 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 right to object to such surveillance.”*

**Paragraph 102**

The 2019 Report by Privacy International “Your Mental Health for Sale”[[2]](#footnote-2) reveals the extent to which mental health websites are sharing users’ personal data for targeted advertising and other purposes. There is no indication that this is restricted to adult users. This should be expressly prohibited in relation to children and I suggest the following addition to this paragraph: “*Children report[[3]](#footnote-3) that they value searching online for information and support relating to health and well-being, and about physical, mental or sexual and reproductive health, including as regards puberty, sexuality and conception. Adolescents especially want access to free, confidential, age-appropriate and non-discriminatory mental health and sexual and reproductive health services online.[[4]](#footnote-4) States should ensure that children have safe, secure and confidential access to trustworthy health information and services, including psychological counselling services. [[5]](#footnote-5) These services relating to the digital environment should be provided by professionals or those with appropriate training, and regulated oversight mechanisms should be in place.* ***These services should be prohibited from sharing the personal data of children who use the services for commercial purposes or financial gain.***

**Paragraph 122**

I would consider strengthening this section to highlight the risks of economic exploitation of children’s personal data, for example through the sale of personal data in real-time-bidding. *“…Robust age verification systems should be used to prevent children accessing products and services that are illegal for them to own or use. Such systems should be consistent with data protection and safeguarding requirements.* ***States should also explore regulatory systems that prevent children’s personal data being exploited for economic or other reasons.”***

**Paragraphs 125-6**

I would consider an additional paragraph in this section to cover the risks to children of automated processing of their data and of their families’ data in situations of migration.

**Susie Alegre**

**12 November 2020**

1. International human rights lawyer, barrister and associate at Doughty Street Chambers, Research Fellow University of Roehampton, Adjunct Assistant Professor Trinity College Dublin. [www.susiealegre.com](http://www.susiealegre.com) [↑](#footnote-ref-1)
2. <https://www.privacyinternational.org/campaigns/your-mental-health-sale> [↑](#footnote-ref-2)
3. Children’s consultation. [↑](#footnote-ref-3)
4. CRC/C/GC/20, para. 59. [↑](#footnote-ref-4)
5. CRC/C/GC/20, paras. 47, 59. [↑](#footnote-ref-5)