**From: The Office of the Commissioner for Children’s Rights in Cyprus,**

[**www.childcom.org.cy**](http://www.childcom.org.cy)

**To: To be submitted to the United Nations Committee on the Rights of the Child, for**

**the drafting of a General Comment on the Children’s Rights in relation to the**

**Digital Environment**

**Date: 10 of May 2019**

**Subject: Position regarding Online Posting by Parents/Guardians of Information about their Children, and the Right of the Child to Internet Privacy**

1. **INTRODUCTION**
2. The present Position is submitted by the **Commissioner for Children’s Rights in Cyprus** (hereinafter the “Commissioner”). The Commissioner is an independent children’s rights institution which deals exclusively with the rights of the child and whose competencies and obligations are prescribed by the law. The mission of the Commissioner is to protect and promote the rights of the child. His/her role is to represent the children and their interest at all levels, to promote public awareness and sensitivity so that the society will be mobilized and to safeguard in practice children’s rights in the family, the school and the society in general, to identify and to promote the views of children where they themselves cannot be heard, to monitor and follow up the legislation relating to children and to submit proposals aiming at the harmonization of the legislation with the Convention of the United Nations on the Rights of the Child (hereinafter “the Convention”), to carry out public awareness campaigns, to appoint a representative of the child in judicial proceedings affecting him/her, and to represent children in procedures affecting them.
3. This Position addresses the issue of posting material concerning children (such as photographs/videos/information) online, (such as on webpages, social network media), by their parents/guardians and the right of the children to internet privacy. The subject is being examined in the light of the obligations deriving from the Convention, the Case Law of the United Nations Committee on Children’s Rights (hereinafter “the Committee”) with respect to the implementation of the right of the child to family and private life.
4. Within the context of exercising their parental role, parents also operate **as** **natural** **gatekeepers of the online identity of their children** byprotecting them from the harmful effects of the online conduct of either third parties or from the behaviour of the child itself[[1]](#footnote-1). However, at the same time, parents express themselves online, sharing information which concerns their personal/family life, including information concerning their children. Relevant is the term **“sharenting”**, which is used to describe the overuse of the internet, and in particular the [social media](https://en.wikipedia.org/wiki/Social_media), by parents in order to share content about their children’s life[[2]](#footnote-2).
5. Parents share online different kinds of information regarding their children, such as information concerning sleeping disorders, behavioural issues, mental and/or physical health problems and family moments. One cannot, under any circumstances, overlook the fact that in the majority of cases, parents act with good intentions and that parents try to utilize the positive benefits[[3]](#footnote-3)offered by the internet in this domain, such as the capability of raising awareness within the society about vulnerable groups of children. However, these positive benefits have to be carefully weighed so that all the rights of the child, whose information is being posted, are protected.
6. The online posting of material and information that concerns children, may result in negative **implications and/or in certain cases may expose the child to various risks.** Such risks include the following:
7. Information concerning the child may be used for the creation of a fake profile in the social media and this constitutes a form of “digital kidnapping”.
8. Gathering of information on the identity of children by persons with whom the child may be either familiar or unfamiliar and who use this information to follow up the child, approach it and gain its confidence[[4]](#footnote-4).
9. The information and the material which concerns children, posted online, is not in any way protected or safe, as it may be saved and reproduced in an uncontrollable manner and remain available on the internet forever.
10. The material, depending on its content, may become the subject of internet bullying, both by other children as well as by other parents or adults[[5]](#footnote-5).
11. The material may be used for child pornography, with or without processing.
12. **LEGAL FRAMEWORK**
13. **The Convention** defines the **Principle of the Best Interests of the Child** (Article 3), as one of the four core Principles which are of fundamental importance, and of paramount priority, and which has to operate as a guideline, within the context of the implementation of the other rights.In addition, the **Principle of Participation** (Article 12) is equally important, within the context of which, family constitutes one of the domains in which the right of participation has to be safeguarded.Such an approach to parenting which allows the children to freely express their views and to be taken seriously, at an early stage, prepares the child to exercise the right to be heard in the wider society, promotes individual development, enhances family relations, supports children’s socialization and plays a preventive role against all forms of domestic violence[[6]](#footnote-6).
14. The Convention recognizes the rights and responsibilities of parents/guardians, to provide to the child the appropriate direction and guidance, but underlines that this is to enable the child to exercise his or her rights and requires that direction and guidance are undertaken in a manner consistent with the evolving capacities of the child[[7]](#footnote-7). In order to support the development of parenting styles respecting the child’s right to be heard, the Committee recommends that States Parties promote parent education programmes, that should address the mutual respect between parents and children, the involvement of children in decision-making, the implication of giving due weight to the views of all family members, the understanding, promotion and respect for the evolving capacities of the children and ways of dealing with conflicting views within the family[[8]](#footnote-8). In addition, it points out that the mass media must play an important role in communicating to parents that their children’s participation is of high value for the children themselves, their families and society[[9]](#footnote-9).
15. The provisions and the key Principles of the Convention, are based on the very meaning of **the evolving capacities of the child** (Article 5), which concern the process of development, maturing and learning, through which the child gradually develops abilities, acquires knowledge/skills, forms views, builds his awareness about the world, including the understanding of human rights and how these are implemented. The meaning of evolving capacities, underlines the strong inter-dependence between the progressive autonomy of the child towards an independent adulthood and full respect of its rights on the basis of an evolving balancing between the rights for protection and the rights for participation. The dependence of the child on adults for protection, according to the opportunities and participation skills it has, is progressively limited, thus the child’s participation in the matters concerning it, has to be consistent and adapted according to the stage of its evolving capacities.
16. Under Article 16 of the Convention, no child s**hall be subjected to arbitrary or unlawful interference with his/her privacy**, family, home or correspondence, neither to unlawful attacks on his/her honour and reputation. Furthermore the child has the right to the protection of the law against such interferences or attacks (Article 16). The right to privacy must apply to all children without discrimination and must be protected at all times, both by the services and institutions, as well as within the family, of the child, itself. Inevitably, the implementation of the right of children to privacy within the family varies and is affected by different factors, such as the structure of the family, its living conditions and its financial situation. Article 5 plays, a decisive role in the how the right to privacy is interpreted and implemented, within the context of how the parents exercise their duties. As stated above, the parents/guardians have to provide guidance to the child while the child is exercising its rights, in a manner which is consistent to its evolving capacities[[10]](#footnote-10).
17. Furthermore, the Convention acknowledges that **the primary responsibility for the development and upbringing of the child rests with the parents, whose basic concern should be the interests of the child** [Article 18(1)]. It provides that States Parties shall take all the appropriate legislative, administrative, social and educational measures to protect the child from **all forms of physical or mental violence, injury or abuse** [Article 19(1)], as well as the obligation of the States Parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare(Article 36).
18. EU legislation and policies with respect to the protection of personal data derive from the provisions of both the **European Convention on Human Rights** (ECHR), (Article 8) and of the **Charter of Fundamental Rights of the EU** (Articles 7 & 8). The **General Data Protection Regulation of the EU** **(hereinafter GDPR)[[11]](#footnote-11)** contains relevant provisions which concern children. It recognises in principle that children require **specific protection** and any processing of personal data should be regulated by the **Data protection** **Principles.** In particular, the **Principle of the lawfulness of processing** ensures that processing is lawful, provided that the **interests or the fundamental rights and freedoms,** in particular where the data subject is a **child, are taken into account** (Article 6). Furthermore, the GDPR provides for the **right to rectification of the data** (Article 16) and the **right to erasure (“right to be forgotten”)** (Article 17) that concerns the child. In particular, the right to erasure of data, may be interpreted that it recognises that as time passes, the value of the disclosure is minimized and must make way for the competing privacy interests of the child, and that the children have an evolving capacity to provide consent[[12]](#footnote-12).
19. The Cypriot national legislation recognizes that parental responsibility for a minor child is the duty and right of the parents, but states that any decisions regarding the care of the child taken either by their parents/guardians, or by the court, should also take into account the views of the child, depending on his/her age, degree of maturity and development. Furthermore, national legislation recognises that children, depending on their age, may be held responsible for their actions or may decide themselves on a number of issues concerning them.
20. **THE VIEWS OF THE YOUNG ADVISORS TEAM OF THE COMMISSIONER FOR CHILDREN’S RIGHTS IN CYPRUS**
21. On 29 March 2018, a **meeting was held with the Commissioner and the Young Advisors Team (YAT) of the Commissioner for Children’s Rights in Cyprus,** whose views, regarding the posting of their information/personal data, online, by third parties, were heard and recorded.The following issues emerged as a result of the meeting:

The key factors affecting children’s feelings and the ways in which they react to such online postings are, whether the posting was carried out with their consent or not, and whether the content of the posting insults or offends the child.

They stated that often parents post photos of their children without their consent, and they further said that parents have a different perception than their own regarding the aesthetic quality of a photograph and therefore, they often do not agree with the postings made by their parents.

The members of the YAT consider it very important that, before any third person – including their parents– posts material that concerns the children themselves, their consent should be requested and to ensure that the content of the material does not offend their dignity. Otherwise, such postings cause insecurity to the children, and they force them into a process of processing the way of thinking of other persons. They expressed the opinion that both children and adults ought to be informed on the responsible use of the internet, and at the same time, they argued that control tools and mechanisms regarding issues of personal data have to be established which must be user-friendly, especially for children.

**COMMENTS AND RECOMMENDATIONS OF THE COMMISSIONER**

1. European and national legislation do **not lay down an expressed independent right, nor do they have in place a special legislative regulation, with respect to the protection of the right of the child to privacy within the family, and more specifically, protection from “sharenting”.**
2. The **provisions of the Convention on the Rights of the Child provide, however, a framework for the interpretation of the relations between the child and its parents and the relations between the child and the family with the state.** In particular, they recognise, that the family is the natural environment for the growth and development of a child, and the national legislation regulates the above relation by recognizing that the parents bear the responsibility and they have the right, for the minor’s care. At the same time, however, both the Convention and the Cypriot legislation define that **the parental direction and guidance is not unlimited, that the rights and obligations of the parents result from their responsibility to act in favour of the best interests of the child, and therefore, any decision that concerns them should be “appropriate”, consistent with the evolving capacities of the child and in accordance with its other rights, as analysed in the Articles of the Convention[[13]](#footnote-13).** In the cases where the exercise of the parental role is not in favour of the best interests of the child, the national legislation provides for the right of the Court to deprive one or both parents of their parental responsibility. In addition, the Convention and the relevant Case Law recognise that **the child should be granted the right to express its view on matters that concern it,** and consequently they recognise that according **to their age, the level of maturity and its evolving capacities, the child should be granted the right to self-determination and autonomy, and the right to make their own decisions, independently of their parents[[14]](#footnote-14).** In addition, and especially as far as **“sharenting”** is concerned, the “right to be forgotten” General Data Protection Regulation (GDPR) of the EU is also relevant, which may be a promising and available legal solution to remedy the harm that might have been caused by the parent’s online disclosure of the child’s personal information[[15]](#footnote-15).
3. **The views of the children themselves on the matter are of particular importance.** The views of the children of the Commissioner’s YAT in Cyprus, as they are set out above, are in conformity with the findings of research which studied the views of groups of children. In particular, research shows that 1 out of 10 children ask their parents to delete their pictures[[16]](#footnote-16) whereas 13% felt embarrassed about something which has been shared by their parents. Moreover, it is found that the children find the content of their parents’ postings embarrassing and that they feel disappointed with their parents when they post data online without their consent. The children’s need to control their online image is undermined by the parents’ practice of sharing information about their children online. This practice raises more concerns for older children and further, that a discrepancy exists between the extent to which children and parents find it problematic.[[17]](#footnote-17)
4. **In view of the above, it appears that parents, ought to exercise their right to free online expression in a child-centred manner and thus act at the same time as guardians for their children’s online privacy.** **In particular, when taking a decision to post photographs/videos/information of their children, parents ought to evaluate the purpose of their posting, the possible impact of the posting on their children, to take into account issues regarding their protection from harm, issues regarding their children’s welfare and dignity and to provide to their children, according to their age and maturity, the opportunity to express their own opinions for the said posting and to create their own digital footprint.**
5. In order to help parents in their efforts regarding the above, it is important that they are **educated** on **best practices for protection** from the inherent hazards and ethical restrictions entailed in online postings of material that concerns their children. This is important so that when they share their life stories online, they are protecting at the same time their children’s privacy. Such practices are: parents to familiarise themselves with the privacy policies of the sites with which they share material of their children, to give their child “veto power” over online disclosures, and they should consider not posting pictures that show their children in any state of undress[[18]](#footnote-18).

1. Steinberg, S.B., *Sharenting: Children's Privacy in the Age of Social Media* (March 8, 2016). 66 Emory Law Journal. 839 (2017); University of Florida Levin College of Law Research Paper No. 16-41. Available at SSRN: <https://ssrn.com/abstract=2711442> [↑](#footnote-ref-1)
2. https://en.wikipedia.org/wiki/Sharenting. [↑](#footnote-ref-2)
3. Steinberg, S.B., Sharenting: Children's Privacy in the Age of Social Media (March 8, 2016). 66 Emory Law Journal. 839 (2017); University of Florida Levin College of Law Research Paper No. 16-41. Available at SSRN: <https://ssrn.com/abstract=2711442>; Amina Wagner, Α. & Gasche, L. A. Sharenting: Making Decisions about Other’s Privacy on Social Networking Sites. Multikonferenz Wirtschaftsinformatik 2018, March 06-09. Lüneburg, Germany. [↑](#footnote-ref-3)
4. See footnote 1. [↑](#footnote-ref-4)
5. See footnote 1. [↑](#footnote-ref-5)
6. Committee on the Rights of the Child, General Comment Nο.12 (2009), The right of the child to be heard, CRC/C/GC/12, par. 90. [↑](#footnote-ref-6)
7. See footnote 6, par.91. [↑](#footnote-ref-7)
8. See footnote 6, par. 93-94. [↑](#footnote-ref-8)
9. See footnote 6, par. 96. [↑](#footnote-ref-9)
10. Hodgkin, R. & Newell, P. (2007). *Implementation Handbook for the Convention on the Rights of the Child*, (3rd ed). New York: UNICEF. [↑](#footnote-ref-10)
11. EU Regulation 2016/679 of the European Council, of the 27th of April 2016, on the protection of natural persons with regard to the processing of personal data and the free movement of such data and repealing Directive 95/46/EC. [↑](#footnote-ref-11)
12. See footnote 1. [↑](#footnote-ref-12)
13. Hodgkin, R. & Newell, P. (2007). *Implementation Handbook for the Convention on the Rights of the Child*, (3rd ed). New York: UNICEF, p.79. [↑](#footnote-ref-13)
14. De Felice, D. “The Right to Security of Online Childhood”, *International Journal of Children’s Rights*, 25(2017), 573-598 [↑](#footnote-ref-14)
15. See footnote 1 [↑](#footnote-ref-15)
16. Quoted in Amina Wagner, Α. & Gasche, L. A. *Sharenting: Making Decisions about Other’s Privacy on Social Networking Sites*. Multikonferenz Wirtschaftsinformatik 2018, March 06-09. Lüneburg, Germany. [↑](#footnote-ref-16)
17. Hiniker, A., Schoenebeck, S.Y. & Kientz, J.A. (2016). *Not at the Dinner Table: Parents’ and Children’s Perspectives on Family Technology Rules*, CSCW '16, February 27-March 02, 2016, San Francisco, CA, USA. [↑](#footnote-ref-17)
18. See footnote 1. [↑](#footnote-ref-18)