#### **May 15, 2019**

Kei te rangatira, tēnā koe - Dear Sir/Madam,

*Re: Consultation on a General Comment on children’s rights in relation to the digital environment*

**About this submission**

This submission is made on behalf of Netsafe, New Zealand. Netsafe is a self-governing independent non-profit organisation. Netsafe’s sole purpose is to enable all New Zealand internet users, including children, to confidently access digital opportunities and prevent online harm. It achieves this through the provision of a combination of education, response and advocacy services. This is complemented by Netsafe’s statutory role under the Harmful Digital Communications Act 2015[[1]](#footnote-2) (the HDC Act) providing 'Approved Agency' functions. Further, Netsafe has been funded by the New Zealand Ministry of Education[[2]](#footnote-3) since 2004 to provide online safety and security services to schools and their wider communities.

While Netsafe primarily brings a ‘risk and safety’ perspective to this submission, it is important to note that it has long promoted a rights-based approach in its work, positioning online safety as prerequisite for children’s access to online opportunities. This is reflected, for example, in Netsafe’s early adoption and continued development of ‘digital citizenship’ concepts (Netsafe, 2018c) and their promotion in school settings.

**New Zealand children’s experiences of the digital environment**

Netsafe established a research programme in November 2016 to generate evidence that informs internet safety policy and practice as part of its broader role as the Approved Agency. Subsequently, Netsafe has released several reports about New Zealand teenagers’ experiences of digital technology and environments (Netsafe, 2017, 2018f, 2018d, 2018e, 2018a, 2019), and with partners on topics of shared interest (Ministry for Women, 2017; Office of the eSafety Commissioner, 2017, 2018). These reports include an overview of the body New Zealand research about experiences of online challenges and risks among children.

Netsafe’s research has found that young New Zealanders experience digital environments in both positive and negative ways. On one hand they are using digital technologies to communicate, learn, socialise, play, and engage in other activities (Netsafe, 2018f). Overall, New Zealand teens regard themselves as confident technology users, and nearly 80% of them agree that there are a lot of things on the internet that are good for people their age (Netsafe, 2018d). On the other hand, nearly 2 in 10 of them report experiencing an unwanted digital communication that had a negative impact on their daily activities in the previous year (Netsafe, 2018f). Further, not all young New Zealanders have the same experiences of risk and harm, with differences between genders, ethnicities and those with a long-term disability (Netsafe, 2017, 2018f, 2019).

**Developing a General Comment on the rights of the child in digital context**

*Netsafe agrees with the Committee on the Rights of the Child’s proposal to develop a General Comment on children’s rights in relation to the digital environment.*

Netsafe notes that General Comments have been developed to address and clarify a range of issues related to the United Nations Convention on the Rights of the Child (UNCRC) (OHCHR, n.d.) and that compelling arguments have been made for the development of explicit consideration of rights in the digital environment (e.g., Livingstone & Third, 2017). Informed by its practice and research-based knowledge, Netsafe agrees with the assertion made in the Committee’s Concept Note that digital technologies are rapidly reshaping children’s opportunities and risks. The complex interplay of digital and traditional technologies’ affordances has implications for children’s rights, creating the need for a General Comment to guide, focus and inform policy.

*Netsafe believes a General Comment on children’s rights in relation to the digital environment would provide both an imperative and a mechanism for issues related to the interpretation of the UNCRC to be given due consideration across all relevant domestic policy areas.*

Netsafe’s research on New Zealand teenagers’ digital experiences suggests there is limited evidence of children and parents direct involvement in the policy-making process in an area that clearly directly affects their interests (Netsafe, 2018b). At the same time, Netsafe’s research has revealed the importance that young people place on being listened to, and to being involved in discussions about their use of digital technology (Ministry for Women, 2017; Netsafe, 2018e, 2018d). Netsafe believes the inclusion of ngā taiohi – youth and their family and whānau in the policy process is critical to developing effective policy. In New Zealand there is evidence of government agencies seeking the input from youth into their work, with the Children’s Commissioner (n.d.) providing advice on effective practice. However, Netsafe supports Livingstone & Third’s (2017) argument that children’s rights in digital environments are often viewed from an implicitly adult perspective. The development of a General Comment has the potential to address this issue, and to encourage the authentic participation of ngā taiohi – youth and their family and whānau in policy processes.

However, Netsafe thinks that a General Comment could have a more fundamental role to play; that is, by providing an imperative for governments to explicitly address the role of digital technology with respect to children’s rights across all relevant policy areas. A recent Netsafe (2018b) study comparing New Zealand’s child internet safety policy with Australia and the UK found that governments’ focus on child internet safety policy varies in intensity over time with, for example, significant changes in policy direction correlating with a change in government. Netsafe also found that policy scope was relatively narrow with a focus on child sexual abuse material and ‘cyber bullying’. Further, Netsafe’s operational experience suggests that unless the impact of digital technology is the policy focus the topic’s inclusion in policy processes is typically left to chance and, therefore, often overlooked.

*Netsafe believes that the structure of a General Comment should reflect the importance of the two aspects discussed above. Further, the structure and content of the General Comment should enable it to be used as an instrument to activate and engage government on related policy and practice issues.*

**Attack on Christchurch Mosques**

*The recent attack on Christchurch Mosques provided an exceptional case of how online events can rapidly escalate in such a way that impacts on children’s rights, and the necessity for cross-sector cooperation both at national and international levels. Netsafe believes a General Comment for children’s rights in relation to the digital environment could provide a mechanism for issues related to the interpretation of the UNCRC to be given due consideration internationally.*

On 15 March 2019, 51 people were killed and over 49 others injured, some seriously, when an individual attacked the Al-Noor Mosque and the Linwood Islamic Centre in Christchurch while worshippers were at prayer. An individual has been charged with offences in relation to the attack and awaits trial (Ardern, 2019b; NZ Government, 2019). A 74-page text file called the "The Great Replacement" reportedly written by the individual, and a 16 minutes and 55 seconds recording of the livestream of the attack began to rapidly spread online. This prompted an intense period of cooperation between the New Zealand government and its agencies, Netsafe, ISPs and social media providers to remove and/or block access to copies of this content. Facebook reported removing 1.5 million and blocking the upload of 1.2 million copies of the livestream video in the first 24 hours (Facebook Newsroom, 2019), while YouTube reported an unprecedented level of upload activity for the video over the same period (Dwoskin & Timberg, 2019). Netsafe received many reports related to children intentionally or inadvertently viewing video from the livestream. This included students under lockdown in Christchurch schools during 15 March seeing the video as they sought to understand unfolding events. The Great Replacement and livestream video content of the attack were subsequently classified as objectionable by the (Office of Film and Literature Classification, 2019b, 2019a) providing clarity about their status under New Zealand law. Netsafe continues to receive, review and resolve reports about this content being hosted online.

*The extreme forms of religious and ethnic discrimination exemplified by the recent attack has highlighted a range of challenges that government cannot solve on its own. Netsafe believes a General Comment should reflect the necessity of cross-sector cooperation and collective action in promoting children’s rights in the digital environment.*

As the initial response to the attack on the Christchurch Mosques has de-escalated public attention has turned to issues related to the use of social media to organise and promote terrorism and violent extremism, with the attack providing a focusing event for potential international policy cooperation e.g., through the ‘Christchurch Call’ summit (Ministry of Foreign Affairs and Trade, 2019) and the commitment from the United Nations Secretary-General, António Guterres (2019) to mobilize the UN system to fight hate speech. From its position as an NGO, Netsafe has long argued that cross-sector cooperation is required, stating simply that these are shared problems that require shared solutions. Netsafe’s recent experience of responding to the attack on Christchurch Mosques has strengthened this viewpoint. However, Netsafe (2018b) notes that even before the attack there were increasing calls internationally for increasing legislative obligations from industry, with regulation of children’s access to pornography providing a New Zealand example (Boswell, 2018; Davison, 2018). Since the attack on Christchurch mosques there has been an increase in the debate in New Zealand about the role of regulation of social media and other online platforms. This has highlighted a range of challenges characteristic of a ‘wicked’ policy problem, such as the lack of an agreed understanding and definition of online hate speech (Alba, 2017; Spoonley, 2018). However, regardless of the regulatory environment that emerges, cross-sector cooperation and collective action is a necessary requirement if policy measures are to be successful. For example, see the Christchurch Call to action (Ministry of Foreign Affairs and Trade, 2019) and statements made at the summit by New Zealand’s Prime Minister (Ardern, 2019c, 2019a).

**New Zealand’s Harmful Digital Communications Act 2015**

New Zealand’s Harmful Digital Communications Act (HDC Act) provides an example of legislation relevant to children’s rights in relation to the digital environment. The Law Commission’s (2012) review of the adequacy of the regulation of both new and traditional media laid the groundwork for development of the HDC Act. The rights of New Zealand children were a major theme of the review, as was the importance of “empowering users through education about the use of digital technology and the rights and responsibilities that accompany this” (p. 12).

The purpose of the HDC Act is to deter, prevent, and mitigate harm caused to individuals by digital communications; and provide victims of harmful digital communications with a quick and efficient means of redress (s. 3). However, it also recognises that online abuse and harassment is not something that can be improved through regulation and enforcement alone. In addition to the new tools it created for the Police and the courts, Netsafe was appointed as the Approved Agency. The role of the Approved Agency under the Act is to assist all New Zealand internet users in dealing with harm and distress caused through any form of digital communication. To achieve this, Netsafe has statutory functions to provide online safety advice and education to the public, and to collaborate with government agencies and service providers (see Ministry of Justice, 2017).

The HDC Act is based on ten communication principles (s. 6) drawn from New Zealand law (Ministry of Justice, 2014) that together define a broad scope for the types of problematic digital communication. These address rights-based issues directedly relevant to the Articles of the UNCRC with varying levels of specificity, including rights to privacy and protection from violence, harassment and other forms of abuse. For example, Principle 10 of the HDC Act specifically reflects the prohibited grounds of discrimination in the New Zealand Human Rights Act 1993[[3]](#footnote-4):-

"Principle 10 ­–­ A digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability” (s. 6.1)

It is also important to note that the implementation of the HDC Act is situated within – and has a role in addressing ­­– a context of general concern about the levels of bullying and family violence in New Zealand society (e.g., Law Commission, 2012; Little, 2019; NZ Family Violence Clearinghouse, 2017; OECD, 2017; UNESC-CESCR, 2017). This is reflected in the data for criminal prosecutions of adults under the HDC Act, the majority of which relate to image-based sexual abuse perpetrated by men on women (Chumko, 2019; Lawrence, 2018).

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1. <http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html> [↑](#footnote-ref-2)
2. <https://www.education.govt.nz/> [↑](#footnote-ref-3)
3. <http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html> [↑](#footnote-ref-4)