

Submission to the Committee on the Rights of the Child in relation to the invitation for comments to the Draft General Comment on. 25 on Children's rights in relation to the digital environment

November 2020

This submission has been authored by the **A 11 - Initiative for Economic and Social Rights**

Esteemed Members of the Committee on the Rights of the Child,

We write in response to the call for submissions on the Draft General Comment on. 25 on Children's rights in relation to the digital environment. We would like to use this opportunity to express our gratitude to the Committee for opening this process of consultations with interested parties, firmly believing that the participation of various stakeholders, including children themselves, is and will be necessary for the protection of children's rights in this context.

The A 11 - Initiative for Economic and Social rights is a human rights NGO based in Serbia. Although its primary focus is on the access to economic and social rights of particularly vulnerable groups, this contribution will strive to give constructive feedback in relation to the right to privacy of children in the digital environment, emphasizing the various dangers posed to children thereby and therefore on the resulting considerations incumbent upon States parties to the CRC to make. Additionally, the report will aim to give constructive commentary in relation to the importance of equal access to the digital environment and the potentially devastating impact of various natural disasters warranting states of emergency, with a particular view to the emergent lessons of the COVID-19 pandemic.

Introduction

The number of children using internet is ever at an increase, and likewise children of an increasingly young age are using it at greater frequency with each passing year.¹ Additionally, "an increasing number of

¹ The Statistics for the United States between 1997 and 2015 confirm this trend among the youngest of children: Child Trends, *Home Computer Access and Internet Use*, available at <<https://www.childtrends.org/indicators/home-computer-access>> accessed 9 November 2020; while in Serbia, the data suggests that 81% of children ages 8 to 9 have access to the internet at home, while at least 65% of them spend more than one hour online daily - see: UNICEF, *istraživanje o nivou svesti o potencijalnim internet rizicima i zloupotrebama među roditeljima dece uzrasta 8 do*



corporations today already gather much more personal data than most governments ever can or will.”² Considering these and other factors, and the duty of States parties to the CRC to respect on the one hand and protect on the other, as well as fulfill all rights of all children — or in the context of ‘The Three P’ interpretative model, provide for their enjoyment, protect their enjoyment, and ensure children’s participation in all decisions affecting them — likewise applicable in relation to their right to privacy in the context of the digital environment, they must take measures urgently. The draft general comment very clearly sets this agenda in paragraphs 69 to 79. Since the Committee dedicated ample attention to this issue, the comments that will be provided in relation to the right to privacy are few, but hopefully they will be compelling and useful in the Committee’s further deliberation.

Data processing (paras. 72-78)

Certain international regulations such as the GDPR have dealt with the issues of the age of maturity required for children to give consent for the use of their data on their own volition.³ However, it is important to stress that all and any regulation relating to children providing permission for the processing of their personal data must be done in a manner that is not arbitrary; i.e. it has to be adequately informed by relevant research and consultations with experts. An age limit for when the child can give informed consent for the processing of his or her data must be therefore reasonable and justifiable, and must not infringe upon a child’s other rights, such as the right to the freedom of expression enshrined in article 13 and arbitrarily limit their *freedom to seek, receive and impart information and ideas of all kinds*.⁴ This requires that service providers and parties that process personal data ensure accountable age verification mechanisms. Also, any age limit needs to take into account the best interest of the child, it has to have been made with the participation of children and consideration of their views on this matter as it concerns them, made with a view to the protection and fostering of their development, and such that it is not discriminatory of any particular group of children.

¹ 17 godina (Eng. Research on the level of consciousness concerning potential risks of the internet and abuse among parents of children ages 8 to 17) available at <<https://drive.google.com/file/d/0B4WVugCwd1buWDlvQkJyaEwxWkU/view>> accessed 9 November 2020.

² Statement of the Special Rapporteur on the right to privacy, 9 March 2016, available at <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21248&LangID=E> accessed 9 November 2020.

³ Art. 8 (1) of the GDPR states: “Where point (a) of [Article 6](#)(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child. Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.”

⁴ CRC art. 13(1).



Furthermore, in regard to data processing, States parties must ensure that all services or parties that process any personal data pertaining to a child provide clear information on what data is being collected and how it is being processed, using *language that is clear and understandable* to individuals of different ages and educational status, enabling informed consent. Access to this data should also be made available upon request. Additionally, State parties should also ensure that when providers of online services use legitimate interest as a legal basis for processing a child's personal data, they do so restrictively and only under conditions and in instances provided for by law.

State parties should ensure that processing of special categories of personal data of children, such as health or biometric data, is subject to special requirements i.e. guarantees of data safety. Additionally, States parties should ensure that children or their guardians are fully informed of their right to be “forgotten”, i.e. the right to request their data be erased, as well as their right to withdraw their consent for data processing and to seek that their data be rectified. Also, States should establish mechanisms to provide protection and compel those services processing data to provide such options, and ensure *access to effective remedy*. The process of accessing remedies should be transparent, and should be such as to provide children and/or their guardians/caregivers with all information necessary to protect the right to privacy, as well as avenues to seek further redress or review decisions.⁵ Although the right to be forgotten cannot be unreservedly guaranteed, as the GDPR for example expressly provides for, any such reservation in the context of children must particularly give consideration of the specific needs of children, take into account their best interest, and be in line with the provisions, aims and objectives of the Convention.

States parties should also provide additional support and introduce additional safeguards in order to protect children belonging to more vulnerable categories. States parties must ensure that these safeguards prevent any and all abuse of power, misuse of monopoly positions, and the placement of conditionalities upon the realization of a rights through excessive data processing. These considerations are particularly made with a view to the public sector, but are pertinent to the private as well.

Finally, States parties should require any and all service providers or parties that process children's personal data to integrate child rights considerations in all their policies.

⁵ The provisions on remedies of the draft general comment (paras. 44-50) are extensive and inclusive.



Education on privacy protection in the digital environment (paras. 69-79)

States parties to the CRC should provide for the education of parents, caregivers and teachers on the dangers and benefits of the digital environment for children, with particular view to children's rights to privacy, as well as education and freedom of expression in the same context. States should also ensure that children are provided adequate training on the potential harms of participation in the digital environment to their right to privacy and other rights and freedoms, and how to protect themselves from involuntary intrusion or any forms of exploitation resulting from the use of their personal data. Additionally, all of the aforementioned groups should also be provided with education on the concept of digital footprint, in order to inform them of the potential long-term consequences of certain forms of behavior in the digital environment.

According to the Serbian Law on Personal Data Protection, only the Commissioner for Information of Public Importance and the Protection of Personal Data is entrusted with raising public awareness of risks, rules, protection measures and rights related to data processing, particularly in relation to children's data processing.⁶ However, *States parties should engage a variety of sectors* dealing with the education and protection of children, employing a multidisciplinary approach, in order to ensure better knowledge among children of the plurality of issues that their right to privacy in the digital environment engages, the scope of the personal information that is being gathered, and on how they can protect themselves and *seek* better protection of their right to privacy.

Children in the criminal justice system and privacy (paras. 69-79)

The CRC maintains that every child alleged as, accused of, or recognized as having infringed the penal law also retains the right to privacy, in all stages of the process.⁷ The 'The Beijing Rules' reiterate this, stating that "The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling" as well as that "In principle, no information that may lead to the identification of a juvenile offender shall be published;"⁸ which is similarly stated in the ECOSOC Resolution 2004/27.⁹ This also has to be true in the context of the digital environment, i.e. any

⁶ "Official Gazette of the RS", No. 87/2018, article 78(2)

⁷ CRC, article 40(2)(vii)

⁸ UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, 29 November 1985, Rules 8.1 and 8.2, UN Doc A/RES/40/33, available at <<https://www.refworld.org/docid/3b00f2203c.html>> accessed 10 November 2020.

⁹ Section F



data related to a child offender, as well as victims or witnesses in the justice process must be protected so as to prevent any detrimental effects of the circumstances on their further development, or in the case of offenders, prevent their further stigmatization as well. This is of particular importance in the context of the plurality of services that process personal data.

Likewise, the right to privacy of child offenders should be protected in relation to communication with family members and defense counsel as well.¹⁰ States should ensure that this requirement also extends to all communication implemented via digital media, and that there is no unwarranted intrusion in this regard.

Equal and effective access to the digital environment - the COVID-19 context (pertinent to paras. 10-12 and particularly 107-114)

The COVID-19 global pandemic has had multifarious effects on the enjoyment of human rights around the world. It was likewise important in relation to access to education of children throughout the majority of States parties to the CRC.

The UNESCO survey on National education responses to COVID-19, which included 61 countries from Europe and North America, Sub-Saharan Africa, Arab States, Asia and Pacific, and Latin America and the Caribbean (21 high income countries, 21 upper-middle income, 14 lower-middle income, and 5 low income) indicates that the majority of the participating countries introduced distance learning via the internet, television or radio.¹¹ Out of those 61 countries, 87 percent expressed concern about unequal access among students to these media.¹² UNESCO also points out that the 826 million students who have been impacted by lockdowns do not have access to a computer, while 706 million do not have access to internet at home.¹³ A European Commission policy brief,¹⁴ which looked at 21 countries of the European Union,¹⁵ notes that

¹⁰ Rule 60 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. states that "Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, *contact and unrestricted communication with the family and the defence counsel*" [italics added by author], 14 December 1990, UN doc A/RES/45/113, accessed 10 November 2020.

¹¹ UNESCO, 'National education responses to COVID-19: summary report of UNESCO's online survey' (April 2020) Doc ED/PLS/EDP/2020/03 <<https://unesdoc.unesco.org/ark:/48223/pf0000373322>> accessed 11 September 2020, 4. For a list of countries that participated in the survey, see page 15.

¹² *ibid.*, 5.

¹³ UNESCO, 'Startling digital divides in distance learning emerge' (21 April 2020) <<https://en.unesco.org/news/startling-digital-divides-distance-learning-emerge>> accessed 16 September 2020.

¹⁴ Zsuzsa Blaskó and Sylke V. Schnepf, 'Educational inequalities in Europe and physical school closures during COVID-19 - Fairness Policy Brief Series: 04/2020' (European Commission (EC) 19 June 2020) <https://ec.europa.eu/jrc/sites/jrcsh/files/fairness_pb2020_wave04_covid_education_jrc_i1_19jun2020.pdf> accessed 12 September 2020.

¹⁵ Those being: Italy, Belgium, Lithuania, the Netherlands, Germany, Bulgaria, Estonia, Latvia, Malta, Finland, Slovakia, Hungary, Czech Republic, Austria, Poland, Portugal, France, Spain, Sweden, Ireland and Denmark.



children of lower socio-economic background¹⁶ are less likely to have internet access at home. It outlines in all these countries accumulatively, “more than one fifth of children lack at least two of [these] resources.”¹⁷ Furthermore, it highlights that “the accumulation of different disadvantages is associated with lower educational achievement.”¹⁸

Regardless of the income of a country, the use of Internet and television for distance learning has been substantial.¹⁹ However, there are vast numbers of students that have limited or no access to those media. For example, “in OECD countries, 1 in 20 students, and almost 1 in 10 of those attending disadvantaged schools, lack an internet connection at home [while] [t]he latter share rises to 1 in 4 in Chile, 1 in 2 in Turkey and almost 3 in 4 in Mexico.”²⁰ Furthermore, the divide between residents of rural and urban areas in regard to television ownership in countries that introduced distance learning is vast — “in 40 out of the 88 countries with data, television ownership rates among urban households were more than double that of rural households.”²¹

However, this speaks very little of equal access to learning of children with disability, who are “at higher risk of exclusion in such circumstances,” as are previously marginalized children.²² In regard to the latter group, and as an example, the Government of the Republic of Serbia introduced measures starting 17 March 2020 whereby all students would attend lessons via television and the internet.²³ According to OSCE data there are 381 substandard Roma households in Serbia, accounting for 1413 individuals, which do not have access to electricity,²⁴ while according to a UNHCR report, only two thirds of internally displaced Roma households

¹⁶ The study defines “socio-economic background [...] by parental education, differentiating between children with higher educated parents (where at least one parent has completed higher education) and children with lower educated parents (neither parent completed higher education). In the following, children with higher educated parents are referred to as advantaged and children with lower educated parents as disadvantaged.” 1.

¹⁷ Zsuzsa Blaskó and Sylke V. Schnepf (n 15) 2-4.

¹⁸ *ibid.*

¹⁹ Thomas Dreesen, Spogmai Akseer, Matt Brossard, Pragma Dewan, Juan-Pablo Giraldo, Akito Kamei, Suguru Mizunoya and Javier Santiago Ortiz, ‘Promising practices for equitable remote learning: Emerging lessons from COVID-19 education responses in 127 countries’ (UNICEF, Innocenti Research Brief 2020), 3 <<https://www.unicef-irc.org/publications/pdf/IRB%202020-10%20CL.pdf>> accessed 12 September 2020. Out of the 127 countries that were analyzed in the study *supra*, 124 introduced some form of learning requiring access to the internet or devices that enable access to digital platforms, while 93 introduced television programs to aid students in education - Annex 1. See also Global Education Monitoring Report 2020: Inclusion and education: All means all (infra) Figure 2.5, 59

²⁰ UNESCO, ‘Global Education Monitoring Report 2020: Inclusion and education: All means all’ (Paris, UNESCO, 2020) <https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p:usmarcdef_0000373718&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_7f053edb-de47-40f5-8f69-5f500df1e977%3F_%3D373718eng.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000373718/PDF/373718eng.pdf#p76> accessed 12 September 2020, 59; the report delves further into statistics regarding access to media on page 60.

²¹ Thomas Dreesen et al (n 20), 3.

²² Global Education Monitoring Report 2020 (n 21), 60.

²³ Republic of Serbia - Ministry of Education, Science and Technological Development, ‘Realization of educational activities via distance learning for elementary and high school students’ (16 March 2020) No. 601-00-9/2020-01, available in Serbian <<http://www.mpn.gov.rs/wp-content/uploads/2020/03/Nastava-na-daljiju-u-vanrednom-stanju.pdf>> accessed 12 September 2020.

²⁴ Dr Aleksandar Đorđević, ‘Podstandardna romska naselja u Srbiji: Pregled podataka iz Geografskog Informacionog Sistema za 2016. godinu’ (OSCE 2017) <<https://www.osce.org/sr/mission-to-serbia/309401>> accessed 12 September 2020, 20. Report available only in Serbian language.



have access to electricity as opposed to 99,9 percent of the general population.²⁵ From a more global perspective, a report prepared by UNICEF also that “[o]n average, in the 28 countries with data,²⁶ only 65 per cent of households from the poorest quintile have electricity, compared to 98 per cent of households from the wealthiest quintile.”²⁷ Such data outlines the inherent inequality of the distance learning measures introduced throughout the world.

Considering the above introduced data, it is clear that the question of access to the digital environment is relevant to the enjoyment of various rights of the child, particularly the right to education. States parties to the CRC need to ensure that any targeted measures in situations of natural disasters and states of emergency requiring the use of internet and digital media for the realization of rights of children are implemented in a non-discriminator manner, i.e. that they are effectively non-discriminatory, and mindful of the requirement to provide equal access of all children to services relevant to their protection and development.

Conclusion

We consider the above-included topics to be of some concern to the enjoyment of children’s rights in the context of the digital environment. We attempted to keep it as brief as possible, which was facilitated by the sheer scope of the protection considerations and mechanisms already introduced by this general comment. We submit this document for your further consideration, and leave ourselves at your disposal for any additional questions.

In Belgrade,

15 November 2020

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²⁵ Richard Allen, ‘Podrška za IRL u Srbiji: Konsolidovani izveštaj i programska strategija’ (UNHCR, April 2016), 73 <http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_SER-02-IZMENE-01-11-2016.pdf> accessed 12 September 2020. Report available only in Serbian language.

²⁶ Thomas Dreesen et al (n 20), 4; They refer to the following countries: Bangladesh, Belize, Côte d’Ivoire, El Salvador, The Gambia, Georgia, Guinea-Bissau, Guyana, Iraq, Kazakhstan, Kiribati, Kyrgyzstan, Lao PDR, Lesotho, Mauritania, Mexico, Mongolia, Montenegro, Palestine, Panama, Paraguay, Serbia, Sudan, Suriname, Thailand, Tunisia, Turkmenistan and Viet Nam.

²⁷ *ibid.*

