Policy guidance on empowering, protecting and supporting children in the digital environment

Report

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Policy guidance on empowering, protecting and supporting children in the digital environment

Report

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Introduction

"New Information and Communication Technologies (ICT) affect children's enjoyment of a significant number of fundamental rights guaranteed by the UNCRC, the European Convention on Human Rights and the European Social Charter. According to recommendations issued by the UN Committee on the Rights of the Child, all children should be able to safely access ICTs and digital media, and be empowered to fully participate, express themselves, seek information and enjoy all the rights enshrined in the UNCRC and its Optional Protocols without discrimination of any kind."

"The digital world offers children boundless learning and connectivity opportunities as well as challenges of real concern which must be tackled by member States in an integrated manner and in line with the Council of Europe Internet Governance Strategy 2016-2019. The Council of Europe will provide guidance and support to member States in ensuring children's participation, protection and provision rights in the digital environment."

(p.20, Council of Europe Strategy on the Rights of the Child 2016-2021)

Context

As high-speed internet provision becomes increasingly affordable and accessible via a range of personal and mobile devices, the digital environment has never been easier to reach. Coupled with a dramatic fall in the average age at which children use the internet, it is evident that information and communications technologies (ICTs) are reshaping children's lives in many ways, resulting in new opportunities for and risks to their well-being and rights. Children, families, schools and communities are embracing digital technologies as part of the taken-for-granted infrastructure of everyday life. This offers opportunities for learning, play, health, communication and participation, but risks to children's safety, privacy, mental health and well-being are also emerging.[1]

The digital environment continues to evolve rapidly, led by a combination of global companies, new business models and niche innovators, and shaped by institutional policies and practices and the interests and behaviours of individual users. In terms of children's direct engagement with ICT as well as the institutional management of contents and services that affect the conditions of their lives, it is becoming hard to draw the line between offline and online.

Governments are actively promoting ICT access and investment so that businesses can innovate and compete in the global economy and society benefits from informational, civic, educational and other opportunities. Indeed, governmental and institutional responses to empowering, protecting and supporting children in an increasingly digital age are pivotal, with political leadership, regulation, robust law enforcement, ICT and e-safety within school curricula all having the potential to enhance the responsible and safe uptake of the digital environment.

Some organisations, networks and initiatives already address child rights within their work, collaborating with other stakeholders to empower and protect children. Notably, the UN Committee on the Rights of the Child called attention to children's rights in relation to digital media at its Day of General Discussion in

1. OECD 2012. Connected minds: technology and today's learners, Paris, OECD Publishing. OECD 2011. The protection of children online: risks faced by children online and policies to protect them. OECD Digital Economy Papers. Paris: OECD.

2014.[2] But current structures of governance and policy do not always recognise or address the implications for children's rights.[3] Moreover, a comprehensive analysis of the challenges and prospects for positive change has not yet been undertaken. This is the case even though the majority of children aged 0-17 years old across the Council of Europe's (CoE) 47 member States are already internet users, albeit often with notable digital divides within and across countries.[4]

Having prioritised the rights of the child in the digital environment in its new Strategy for the Rights of the Child, how should the CoE advance its agenda? The present report offers a coherent, child rights-focused and evidence-based approach to the opportunities and risks created by the digital environment. We draw on the social scientific, legal, policy and professional expertise of an internationally-reputed specialist team experienced in working together to generate effective outcomes in the field of children's well-being, rights, governance and the internet.[5]

Aims and objectives

It is timely to review the consequences of the digital environment for children's rights, as specified in the UN Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR) and key CoE Conventions and recommendations. Both research evidence and the experiences of stakeholders and child rights organisations suggest that children's lives are mediated by the digital environment in ways that influence how they can exercise their rights and how their rights may be enriched or infringed, supported or neglected.

In its Strategy on the Rights of the Child, the CoE explicitly recognises the digital environment both as a location where children spend time and seek to exercise their rights to learning, play, participation, and so forth, and as a medium through which children relate to their wider world. Specific questions arise regarding what may be called children's "digital rights" (such as the so-called right to be forgotten, or to consent to terms and conditions or privacy policies of online services or apps, or to digital literacy). But more importantly, almost every question one might ask about children's rights is now gaining a digital dimension, as noted in the CoE's strategy, for example in relation to the risk of violence against children, especially girls, or the rights of children with disabilities to participate or the opportunities for all children to learn.

Whether the digital environment is seen as a potential threat to or enabler for children's rights, it can no longer be ignored as a factor in children's well-being. But what do governments need to know, what good practices can they build upon, and what should be the priorities as they tackle these new challenges? Building on its existing framework of legal standards, policy guidance and associated tools and materials, the CoE, through the work of its Ad hoc Committee for the Rights of the Child (CAHENF), is now developing guidance for governments to underpin and promote children's rights to protection, participation and provision in the digital age.

To advance this effort, a background report for policy guidance on empowering, protecting and supporting children in the digital age was elaborated, which included:

- **A concise overview** of the different aspects of children's rights in the digital environment;
- **Case studies** from different CoE member States highlighting national strategies and policies on child rights and ICTs proven to be effective in addressing comprehensively children's rights in the digital environment at national level;
- **A gap analysis** and suggestions for key elements for a future guidance document for governments;

2. United Nations Committee on the Rights of the Child (2014), Report of the 2014 Day of General Discussion "Digital Media and Children's Rights". Retrieved at: http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf
3. Livingstone, S., Carr, J., and Byrne, J. (2015), One in Three: Internet Governance and Children's Rights. UNICEF: Office of Research – Innocenti Discussion Paper 2016-01. Retrieved from https://www.cigionline.org/publications/one-three-internet-governance-and-childrens-rights
4. Livingstone, S. (2014) EU Kids Online: Findings, methods, recommendations. LSE, London: EU Kids Online. Available at http://lsedesignunit.com/EUKidsOnline/; International Telecommunications Union (ITU). (2013). Measuring the Information Society 2013: Measuring the World's Digital Natives. Available at http://www.itu.int/en/ITU-D/Statistics/Documents/publications/mis2013/MIS2013_without_Annex_4.pdf
5. We have consulted a number of experts during the production of this report and wish to acknowledge them here: Magdalena Aguilar (Child Helpline International), Catherine Blaya (University of Nice), Jutta Croll (Zentrum für Kinderschutz im Internet), Efrat Daskal (Hebrew University of Jerusalem), Jos De Haan (Erasmus University of Rotterdam), Julian Sefton-Green (London School of Economics and Political Science), Galina Soldatova, Elisabeth Staksrud, Amanda Third (University of Western Sydney), Jenny Thomas (Child Rights International Network) and Sofie Vandoninck (University of Leuven).

- **An inventory** of relevant international, CoE and European Union legal standards, case law of the European Court of Human Rights, the most relevant and recent policy documents on the issue in general and its different aspects, and publications reflecting children's own views on the subject.

The UNCRC as a guiding framework

To ensure a comprehensive and multidisciplinary approach, taking into account the overarching framework of the UNCRC, key articles were examined for their specific relevance to the digital environment.[6] As we shall discuss, some articles are already addressed by existing human rights instruments or by governance practices in some member States. Others have received less attention or are now posing new challenges as the digital environment continues to evolve.

The framework of the UNCRC offers a systematic lens through which to organise and evaluate the case studies of existing effective practice in member States, informing the suggestions for future guidance for governments to be developed. It also structures our review of the existing legal standards and case law so as to identify significant gaps.

The advantages of an evidence-based approach are that the overview and development of the issues at stake is anchored in children's experiences, engages with and reflects children's own voices, is able to grasp the diversity of child rights issues across different countries and contexts, and can examine how rights-related challenges play out in practice. This is particularly important for the case studies included in this report.

Although it is not the purpose of the present report to detail the empirical evidence regarding children's uses of and opportunities and risks associated with of digital environments, we note that such research is growing, in a range of countries. Much of it is directly relevant to children's rights and it can be mined for insights regarding the likely benefits and harms that, in "the digital age," are now reconfiguring their rights. Such evidence is concentrated on European Union countries but also encompasses – often in more preliminary or scattered form – many or all of the Council of Europe member States. [7]

6. United Nations General Assembly (1989), Convention on the Rights of the Child. Retrieved from: http://www.ohchr.org/en/professionalinterest/pages/crc.aspx
7. Livingstone, S., L. Haddon, and E. Görzig, eds. 2012. Children, Risk and Safety Online: Research and Policy Challenges in Comparative Perspective. Bristol: Policy Press. Mascheroni, G., & Cuman, A. (2014). Net Children Go Mobile: Final Report. Milan: Educatt. Available at http://netchildrengomobile.eu/reports/ UNICEF 2012. Child safety online: Global challenges and strategies, Florence, UNICEF Innocenti Research Centre.

Overview: Children's rights and the digital environment

The first goal of this report is to provide a concise overview of the rights of the child in the digital environment. Our starting point is the UNCRC.[8] This recognises children as rights-holders and enumerates civil, cultural, economic, political and social rights for children. It has been widely endorsed and almost universally ratified around the world, including in all 47 member States of the CoE.[9]

In essence, the UNCRC is *the* international benchmark for children's rights and thus constitutes an appropriate backdrop against which to frame CoE policy on the empowerment, protection and support of children in the digital environment. Although written before the present contours and consequences of the digital environment could be imagined, the UNCRC is remarkably prescient in emphasising the importance of communication contexts as important means by which children can exercise their rights.

Definition of a 'child'

For the purpose of the UNCRC, a 'child' is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Article 1).[10] The age of majority may be described as the age at which a person normally becomes an adult in the eyes of the law. The CoE recommended, in 1972, that member States of the CoE lower the age of majority from 21 years to 18 years "provided that states may retain a higher age of capacity for the performance of certain limited and specified acts in fields where they believe that a higher degree of majority is required."[11] The usual age of majority in CoE member States, then, is 18 years.[12]

From the perspectives of law and policy, children are (for the most part) defined in terms of chronological age – and the age threshold selected varies depending on the purpose of the law or policy in question (for example, consent to sexual activity, consumption of alcohol and tobacco, army enlistment or leaving school). Often, those tasked with the responsibility of creating such laws and policies do not elaborate on the actual reasoning behind the selection of particular age thresholds for particular purposes and – in the absence of such hypotheses – choices can appear arbitrary. Laws and policies restricting children's access to certain types of media content (on the basis that it is harmful to children who have not attained a certain age) impact on children's exercise of their right to freedom of expression and, for this reason, the imposition of age limits should be justified and evidence-based.

In relation to media and digital environments, theories of child development have historically guided age-based restrictions on children's media access (in relation to advertising, or sexual and violent content, for instance). Such theories also informed the US law, COPPA (the Child Online Privacy and Protection Act) which today guides social media companies such as Facebook in setting the age of 13 as its minimum age for use.[13]

8. The United Nations Convention on the Rights of the Child was adopted on 20th November 1989 by the General Assembly of the United Nations. The Convention is the most universally accepted international Convention, having been ratified by 196 countries.
9. United Nations Treaty Collection, Convention on the Rights of the Child. Retrieved from: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en
10. Note that the drafters of the UNCRC, while eager to ensure that it would apply to as wide an age group as possible, also acknowledged the need for some degree of flexibility, particularly in relation to those countries in which the established age of majority is other than eighteen years. Detrick, S. (1999), A Commentary on the United Nations Convention on the Rights of the Child. The Netherlands: Kluwer Law International.
11. Council of Europe, Resolution (72) 29 on the lowering of the age of full legal capacity (Adopted by the Committee of Ministers on 19 September 1972 at the 213th meeting of the Ministers' Deputies). Retrieved at: http://www.coe.int/t/dghl/standardsetting/family/Resolutions_recommendations_cm_en.asp
12. Council of Europe, Recommendation CM/Rec (2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18 (Adopted by the Committee of Ministers on 28 March 2012 at the 1138th meeting of the Ministers' Deputies). Retrieved at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046c478
13. Montgomery, K. & Chester, J. (2015) 'Data Protection for Youth in the Digital Age: Developing a Rights-Based Global Framework' European Data Protection Law Review, 1(4), 277-291.

But little review or updating of age-based guidance has since occurred, and the evidence base informing current decisions is largely unclear or out of date.[14]

While defining 'the child' on the basis of chronological age is by no means ideal, alternatives such as the "best interests" principle (Article 3) or the assessment of children's capacity based on their "age and maturity" (Article 12) are no less problematic (see section B2). However, it is important to recognise that chronology is but one approach to defining children and childhood and it should be informed by other approaches such as those rooted in developmental and scientific theory. This will require the adoption of a multi-disciplinary, multi-collaborative approach to law- and policy-making.

General principles and 'the 3 P's'

The four guiding principles of the UNCRC are key considerations at every stage of the policymaking process - formulation, implementation and review. These principles are:

(1) Article 2 (**Non-Discrimination**);

(2) Article 3 (**Best Interests of the Child**);

(3) Article 6 (**Right to Life, Survival and Development**);

(4) Article 12 (**Right to be Heard**).

Of these, articles 2 and 12 in particular are discussed in detail below. As regards Article 3, while the notion that children's 'best interests' should be placed at the centre of decision-making processes is important, this is nonetheless a "vague provision which gives enormous discretion to the decision-maker to impose his/her own judgment as to what the child's welfare demands in a particular case" (Kilkelly, 2010).[15]

All 54 articles of the UNCRC are commonly and usefully divided into three distinct categories – rights of provision, protection and participation – as also highlighted in the CoEStrategy on the Rights of the Child 2016-2021.

Arguably, *all* of the rights in the UNCRC are, in the first instance, rights of provision in that State parties to the Convention (and, in some cases, parents and other adults) must first *provide* the conditions that allow for the realisation of the rights contained therein. Beyond this, it is noteworthy that while provision and protection reflect the traditional view of children as dependent beings, reliant on others (namely, parents and the State) to provide for and protect them, the emphasis on participation embodies an important shift in approach to children and childhood.[16]

Legal and policy discourse in the area of children and digital media predominantly focuses on protection, albeit with a growing awareness of the tension between 'protection' and 'participation. Less is said regarding 'provision' (e.g. of high-quality online content for children) other than in the important domain of education.[17]

These categories, and the relations among them, provide structure within which to reflect and assess the extent to which existing CoE and related (e.g. European Union, national level) instruments, policies and practices facilitate children's rights in all contexts, including in the digital environment.

The CoE *Guide to Human Rights for Internet Users*[18] suggests further categories, which we will adapt in structuring the discussion that follows. First, we list the key articles of the UNCRC that are particularly perti-

14. This has been notably problematic in the recent case of the EU's General Data Protection Regulation, which restricts the processing of children's personal data by providers of online information services without parental permission under the age of 16 (unless member States decide to reduce this to 13 years old by 2018). eNACSO (2016), When Free Isn't: Business, Children and the Internet. European NGO Alliance for Child Safety Online (eNACSO). Retrieved at: http://www.enacso.eu/wp-content/uploads/2015/12/free-isnt.pdf.
15. Kilkelly, U. (2010), Kilkelly on 'Best Interests' and the Proposed Constitutional Amendment. Retrieved from: http://www.humanrights.ie/index.php/2010/02/26/kilkelly-on-best-interests-and-the-proposed-constitutional-amendment/
16. Holzscheiter, H. 2010. Children's Rights in International Politics: The Transformative Power of Discourse. Basingstoke: Palgrave Macmillan.
17. Lievens, E. "Children's rights and media: imperfect but inspirational", in Brems, E., Vandenhole, W. & Desmet, E. (Eds.), Children's Rights in the Global Human Rights Landscape: Isolation, Inspiration, Integration? Oxford: Routledge (forthcoming).
18. Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users (Adopted by the Committee of Ministers on 16 April 2014 at the 1197th meeting of the Ministers' Deputies). Retrieved at: https://www.coe.int/en/web/internet-users-rights/guide. The Guide includes a section entitled 'Children and Young People', although it is also clearly stated that children have all the rights also discussed elsewhere in the Guide (in relation to human rights in general). In the section on children and young people, express reference is made to the right to freely express their views, to be heard, and to have access to information. In the context of access to information on safe use of the Internet, the Guide refers specifically to educators, teachers, parents and guardians.

nent to children in the digital environment (see Table 1). We classify these according to the 3 P's, noting some overlap in classification (articles in *italics*) and recognising some scope for interpretation in determining which articles are of greatest relevance to the digital environment.

Table 1: The UNCRC articles most relevant in the digital environment

Provision	Protection	Participation
Article 4: State responsibilities for implementation of rights	Article 16: Right to privacy	Article 13: Freedom of expression
Article 5: Parental guidance	*Article 17e:* *Protection from injurious material*	Article 14: Freedom of thought, conscience and religion
Article 8: Preservation of identity	Article 19: Protection from all forms of violence	Article 15: Freedom of association
Article 17a-d: *Provision of information and material of social and cultural benefit by mass media, children's books and linguistic needs of minorities*	Article 32: Child labour / economic exploitation	*Article 17 intro*: *Access to media*
Article 18: Parental responsibilities; state assistance	Article 34: Sexual exploitation	*Article 23 para. 1:* *Children with disabilities: participation in community*
Article 23 para. 2 and 3: *Children with disabilities: special care and assistance*	Article 35: Abduction, sale and trafficking	*Article 31 para. 1:* *Leisure, play and culture: participation in cultural life and arts*
Article 28: Right to education	Article 36: Other forms of exploitation	
Article 29: Goals of education	Article 37: Torture or other cruel, inhuman or degrading treatment or punishment	
Article 30: Children of minorities/indigenous groups		
Article 31 para. 2: *Leisure, play and culture: appropriate and equal opportunities for cultural, artistic, recreational and leisure activity*		
Article 39: Rehabilitation of child victims		

Access and non-discrimination

"Children around the world increasingly think of access to digital media as a fundamental right." (Third et al., 2015: 8).[19]

19. Third, A. et al. (2014), Children's Rights in the Digital Age: A Download from Children around the World. Melbourne: Young and Well Cooperative Research Centre.

Article 2 UNCRC (Right to Non-Discrimination)

Article 2 is one of the four guiding principles of the UNCRC and, as such, should be a key consideration in the formulation, implementation and review of policies directed at the empowerment, support and protection of children in the digital environment. In the context of non-discrimination, at first sight, there appear to be (at least) two important considerations for policymakers:

(1) Equality of access to the digital environment;

(2) Importance of educating children about their right not to be discriminated against.

There is a third consideration: not only should children be informed of their right not to be discriminated against but also about their responsibility not to be discriminatory in their interactions with others in the digital environment. The CoE Strategy for the Rights of the Child, for instance, contains a section on hate speech and racism, but this is yet to be linked firmly to the digital environment.

Freedom of expression and information

Article 13 UNCRC (Right to Freedom of Expression)

Article 13 ascribes to the child the right to "seek, receive and impart information and ideas of all kinds" through any medium. The child's exercise of the right to freedom of expression is limited by Article 5 UNCRC which requires State parties to "respect the responsibilities, rights and duties of parents" (and, where appropriate, those of the wider family and community) to direct and guide children in the exercise of the rights contained in the Convention "in a manner consistent with the evolving capacities of the child"[20] and it is also to be construed in line with Article 3 UNCRC, which embodies the 'best interests' principle.

The child's right to impart information to others is of particular importance in the context of the digital environment as children are no longer mere receptacles of content but are also creators and distributors of such content. It is important that law/policymakers acknowledge children's dual role of consumer and creator by ensuring that laws/policies account for the fact that the exercise of the right to freedom of expression carries certain duties and responsibilities. In light of this dual role, children must be made aware of the potential negative impact of their expressive activities (e.g., racist, hateful and threatening expressions) in the digital environment as well as of the benefits for personal, social and civic relationships.

The right to freedom of expression contained in Article 13 UNCRC is closely related to the right to be heard (Article 12 UNCRC) and the right of access to media (Article 17 UNCRC). The expressions of children must be afforded due weight and consideration, and children must be provided with appropriate channels through which to enunciate such expressions – otherwise, children's exercise of their right to freedom of expression is impeded. Problematically, however, the empowerment, protection and support of children in the digital environment sometimes involves state/school/parent-sanctioned restrictions (even prohibitions) on children's use of/access to certain types of expression (e.g., sexual expression, violent expression).

Article 17 UNCRC (Right to Information)

Article 17 recognises "the important function performed by the mass media" and encourages State parties to "ensure that the child has access to information and material from a diversity of national and international sources." State parties are also expected to encourage the mass media to broadcast information and material of social and cultural benefit to children and the formulation of guidelines to shield children from "information and material injurious to their well-being", bearing in mind both the child's right to freedom of expression and the responsibilities of parents in relation to the upbringing of their children.

Article 17 UNCRC, then, not only refers to the responsibility of the State but also to the responsibility of the media, as well as the responsibilities of parents.[21] Article 17 UNCRC is broad and, as a result, perhaps a little vague, referring for example, to "the important function performed by the mass media" but offers no

20. Lopatka, A. (1996) "Appropriate Direction and Guidance in the Exercise by a Child of the Rights to Freedom of Expression, Thought, Conscience and Religion" in Verhellen, E. (Ed.), Monitoring Children's Rights. The Netherlands: Kluwer International Law, at 288. See also Articles 3 and 5 of the Convention on the Rights of the Child.
21. Lievens, E. "Children's rights and media: imperfect but inspirational", in Brems, E., Vandenhole, W. & Desmet, E. (Eds.), Children's Rights in the Global Human Rights Landscape: Isolation, Inspiration, Integration? Oxford: Routledge (forthcoming).

elaboration.[22] It also refers to some subjective concepts such as "spiritual and moral well-being" and "material injurious" to children's well-being, which are left open to the interpretation of State parties.[23]

While occasionally (mis)conceived as referring only to 'mass media' in the sense of 'traditional' or 'legacy' media, the CoE is clear in defining mass media as referring to the digital environment conceived broadly, including:

> "'traditional" broadcast media such as television, radio, movies, CDs or DVDs, as well as the print media, and also our information superhighway, the Internet along with services such as the World Wide Web, communicated via the Internet.'[24]

The right to information embodied in Article 17 is particularly important in the context of the digital environment. The internet is an information gateway, offering users access to a wealth of information on an infinite number of topics. This poses a series of challenges:

- one challenge is to establish an equilibrium between children's right to access information (i.e., participation), on the one hand, and the legitimate interest in safeguarding children from accessing potentially harmful material (i.e., protection), on the other;
- another challenge concerns provision – children must be provided with age-appropriate (and linguistically-appropriate) information on all proceedings, legislation, regulations and policies affecting their rights;[25]
- a third challenge concerns children's right to information that may run counter to the norms of their parents or wider society – consider children's need for and right to information about sexual identity, sexual health or sexual expression.[26]

Article 17 is highly significant in relation to the digital environment as the right of access to information is a prerequisite for the realisation of many of the other rights contained in the UNCRC. Yet significantly, Detrick (1999) observes that provisions equivalent to Article 17 "cannot be found in the major universal and regional general conventions on human rights"[27] – in this sense, they appear to be distinctively associated with children's rights as they grow to their full potential.[28]

Association, assembly and participation

Article 12 UNCRC (Right to be Heard)

Article 12 is one of the four guiding principles of the UNCRC and, as such, should be a key consideration in the formulation, implementation, and review of policies directed at the empowerment, support and protection of children in the digital environment. This ascribes to children the right to be heard in all matters affecting them, to participate in all decision-making processes having a bearing on their lives and to exert influence over such decisions in accordance with their age and maturity. It places an obligation on State parties to the UNCRC to involve children in all matters affecting them. Article 12 is considered an integral part of the implementation of the other articles of the Convention (e.g., Articles 13 and 17) and applies to all children capable of forming views and not merely those capable of expressing views.[29]

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22. Much has, however, been written about the interpretation of this Article. See Wheatley Sacino, S. (2011), A Commentary on the United Nations Convention on the Rights of the Child - Article 17: Access to a Diversity of Mass Media Sources. The Netherlands: Brill | Nijhoff.
23. Like all other Articles in the Convention, Article 17 is to be interpreted in light of the four guiding principles. In addition, there is a specific reference (in Article 17 itself) to Articles 13 (Freedom of Expression), 18 (Parental Responsibility; State Assistance) and 29 (Goals of Education) therefore, it is also to be interpreted in light of these Articles.
24. Council of Europe, Compass: Manual for Human Rights Education with Young People – Media. Retrieved at: http://www.coe.int/en/web/compass/media
25. In respect of Article 17 UNCRC, the Committee on the Rights of the Child (2009) has stated that "Children need access to information in formats appropriate to their age and capacities on all issues of concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures." See United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard. Retrieved at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf, at para. 82.
26. This is far from straightforward, although see Gillespie, A. A. (2013). Adolescents, sexting and human rights. Human Rights Law Review, ngt032.
27. Detrick, S. (1999), A Commentary on the United Nations Convention on the Rights of the Child. The Netherlands: Kluwer Law International, at 284.
28. La Rue, F. 2014. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/69/335. New York: United Nations General Assembly. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf
29. Van Bueren, G. (1998) The International Law on the Rights of the Child. The Netherlands: Kluwer Law International, at 139.

The formulation, implementation and review of policy directed at empowering, protecting and supporting children in the digital environment is undoubtedly a matter 'affecting the child'. According to the Committee on the Rights of the Child:

> "The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation […] The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives."[30]

The digital environment now constitutes one such 'relevant context' and therefore children and young people should be meaningfully involved in the decision-making processes leading to the creation of policy directed at their empowerment, protection and support in the digital environment.

While children are variously represented in policymaking (by NGOs, Children's Ombudsmen, etc.) they are not generally involved in an active and meaningful way in the actual policymaking process.[31] However, the UN Committee on the Rights of the Child recently recommended that States should promote:

> "the exchange and sharing of ideas, information, experiences and good practices, including through the creation of platforms, with all stakeholders, especially children, at the national, regional and international level".[32]

The Committee also asked States to ensure that "children are consulted in order to take into account their views and experiences in developing laws, policies, and programmes" and are "actively engaged in the design and implementation of initiatives aimed at fostering safe use of digital media and ICTs". Businesses that provide content or services to children should consult them and incorporate their interests into their strategies as part of their Corporate Social Responsibility.[33] At present, scattered examples exist of how this can be done in relation to digital environments, with some promising models emerging.

Article 15 UNCRC (Right to Freedom of Association)

While Article 15 requires that "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly," the CoE's Guide to Human Rights for Internet Users explains how these rights apply – in fact to all users – in digital environments:

1. "You have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies whether or not they are formally recognised by public authorities. You should also be able to use the Internet to exercise your right to form and join trade unions;
2. "You have the right to protest peacefully online. However, you should be aware that, if your online protest leads to blockages, the disruption of services and/or damage to the property of others, you may face legal consequences;
3. "You have the freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny of decision making processes, including the right to sign petitions and to participate in policy-making relating to how the Internet is governed."

It is unknown whether these rights are respected for child users in particular by those providing or regulating social, civic and political spaces online.[34] Some impose age restrictions to exclude children below a certain age (consider Facebook's current minimum age of 13, for example). Most do not provide child-friendly

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30. United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard. Retrieved at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf, at para. 12.
31. Lievens, E. "Children's rights and media: imperfect but inspirational", in Brems, E., Vandenhole, W. & Desmet, E. (Eds.), Children's Rights in the Global Human Rights Landscape: Isolation, Inspiration, Integration? Oxford: Routledge (forthcoming). See also Livingstone, S., Carr, J., and Byrne, J. (2015), One in Three: Internet Governance and Children's Rights. UNICEF: Office of Research – Innocenti Discussion Paper 2016-01. Retrieved at https://www.cigionline.org/publications/one-three-internet-governance-and-childrens-rights
32. Ibid.
33. Ibid. See also UNICEF, Save the Children and United Nations Global Compact (2012), Children's Rights and Business Principles. Retrieved at: http://www.unicef.org/csr/12.htm
34. Daly, A. (2016), A Commentary on the United Nations Convention on the Rights of the Child – Article 15: The Right to Freedom of Association and to Freedom of Peaceful Assembly. The Netherlands: Brill | Nijhoff, at 101. Daly refers to Article 15 CRC as "potentially remarkably broad, spanning children's family relationships, to rights concerning school attendance, to rights in public spaces." Yet, there has been relatively little commentary (jurisprudential and otherwise) on the child's right to freedom of association and assembly, rendering Article 15 CRC "a distinctly underappreciated provision". Daly further points out that children's rights as individual rights-holders – as opposed to children's rights as part of wider parental and/or familial rights – is often ignored and Article 15 provides "an avenue through which children's freedom rights can be brought to the fore".

or comprehensible 'terms and conditions' or other 'rules of engagement'. It is also not clear that children are recognised as minors in relation to practices of monitoring, data tracking or possible legal consequences of participation on political (especially politically-contentious) sites and services.

Daly (2016: 101[35]) states that "children need their rights to associate with friends in public to be vindicated through Article 15 CRC because, to a greater degree than adults, they often have nowhere else to go." This statement is arguably as applicable to the digital environment as it is to the offline environment. In other words, children need their rights to associate and assemble with friends (and others, online as offline), including the right to protest peacefully, whatever cultural norms about the 'place' of children may dictate. This is particularly applicable, perhaps, to certain groups of children (e.g., LGBT children, refugee and migrant children) who are too easily side-lined in their needs and rights, including their right to be heard.

Privacy and data protection

Article 16 UNCRC (Right to Privacy)

The wording of Article 16 UNCRC is similar to, and arguably builds upon, that contained in Article 12 of the 1948 United Nations Universal Declaration of Human Rights (UNDHR). Article 16 provides that children have a right to protection from interference with their privacy, family, home and correspondence, and from libel or slander. This right is enforceable against State signatories to the Convention and thus it is essential that policymakers remain respectful of the child's right to privacy when developing strategies and approaches directed at the empowerment, support and protection of children in the digital environment.

The right to privacy is also an important participatory right, particularly in the case of older children, insofar as it is part and parcel of individual autonomy, a necessary precondition of participation. The participatory function of the right to privacy is not something that is often alluded to in legal and policy documents. In the digital environment, especially, privacy is often reduced to data protection. But while data protection is certainly closely related to one's privacy, privacy itself is a much broader and more complex concept.

Conceptually, the child's right to privacy is often difficult to reconcile with the legitimate parental, societal and governmental interest in protecting children from harm, particularly when it comes to children's participation in the digital environment. The legitimate objective of shielding children from the potential risks associated with certain online activities must be balanced against ensuring that the child's right to privacy (and other rights such as the right to freedom of expression and association) is not disregarded.

Children generally consider themselves as possessing a right to privacy when it comes to their digital life, and they employ a range of everyday tactics to protect their online privacy most notably from parents and teachers (rather than, say, from State or commercial intrusion).[36] Nonetheless, Article 16 UNCRC offers children no protection against interference/intrusion by overzealous or intrusive parents, so it is important that policymakers encourage parents (and others with responsibility for children) to do their utmost to be respectful of this right. On the other hand, the EU's Fundamental Rights Agency's 'Handbook on European law relating to the rights of the child' observes that: [37]

> "Under international law, the right to data protection is part of the child's right to privacy contained in Article 16 of the CRC. This article provides that a child shall not be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. This right must be respected by everybody, including the child's legal representative."

Not only does this last sentence bear particular implications for parents and carers, but it has significance for businesses, in ensuring children's right to privacy in the digital environment. The Committee on the Rights of the Child's General Comment on State obligations regarding the impact of the business sector on children's rights (2013) points out that:

> "The Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and

35. Ibid.
36. See, for example, Ofcom (2008), Social Networking: A Quantitative and Qualitative Research Report into Attitudes, Behaviours and Use. UK: Office of Communication (Ofcom). Retrieved at: http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/02_04_08_ofcom.pdf, at 53.
37. European Union Agency for Fundamental Rights and Council of Europe (2015), Handbook on European law relating to the rights of the child. Luxembourg: Publications Office of the European Union. Retrieved at: http://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf, at 193.

business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so."

The CoE Committee of Ministers' Recommendation on human rights and business (2016) observes that:

"Member States should require that business enterprises respect the rights of children when operating within their territorial jurisdiction and, as appropriate, throughout their operations abroad when domiciled in their jurisdiction".

It is presently far from clear whether or how these responsibilities are being met or, even, how businesses can be held to account in relation to these responsibilities.[38]

While UNICEF, working with the ITU, has begun to scope the requirements and tools needed here (also in relation to other child rights),[39] there has been little or no assessment of whether and how children's rights to privacy are protected in digital environments.

Education and Literacy

"You have the right to education, including access to knowledge. This means:

1. "You should have online access to education and to cultural, scientific, scholarly and other content in official languages. Conditions might apply to such access in order to remunerate rights' holders for their work. You should also be able to freely access publicly funded research and cultural works in the public domain on the Internet, where available;
2. "As part of Internet and media literacy you should have access to digital education and knowledge in order to exercise your rights and freedoms on the Internet. This includes skills to understand, use, and work with a broad range of Internet tools. This should enable you to critically analyse the accuracy and trustworthiness of content, applications and services that you access or wish to access."

(Council of Europe *Guide to Human Rights for Internet Users*)

According to the UNCRC, children have both a right to education (Article 28 UNCRC) and a right of access to "information and material of social and cultural benefit" to them (Article 17(a) UNCRC) and "from a diversity of cultural, national and international sources" (Article 17(b) UNCRC). Further, Article 29 UNCRC stipulates that one of the goals of education is: "(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations".

Two overlapping domains of policy and practice are relevant here. The first concerns the provision of (all) educational curricular, databases, library and informational resources and so forth, now that the digital environment can provide knowledge readily accessible and searchable to all with internet access.

The second concerns the competence and literacies required to make the optimal use of such educational and information resources, building on the long history of teaching print and other literacies. The right to education in relation to the digital environment thus encompasses both a broad and a specific significance.

The CoE Guide quoted above acknowledges both of these meanings in stressing the role of education and literacy in relation to the exercise of rights and freedoms on the internet, for it is only through access to digital education and knowledge that internet users – including, indeed especially, children - are empowered to understand and exercise their rights and freedoms online.

Protection from exploitation

There are a number of Articles of the UNCRC of relevance – Article 19 (Protection from all forms of violence); Article 32 (Child labour/economic exploitation); Article 33 (Drug abuse); Article 34 (Sexual exploitation); Article 35 (Abduction, sale and trafficking); and Article 36 (Other forms of exploitation). Also note, in relation to

38. As the UNCRC General Comment No. 16 also points out, "The Committee acknowledges that voluntary actions of corporate responsibility by business enterprises, such as social investments, advocacy and public policy engagement, voluntary codes of conduct, philanthropy and other collective actions, can advance children's rights. States should encourage such voluntary actions and initiatives as a means to create a business culture which respects and supports children's rights. However, it should be emphasized that such voluntary actions and initiatives are not a substitute for State action and regulation of business in line with obligations under the Convention and its protocols or for businesses to comply with their responsibilities to respect children's rights". See United Nations Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. Retrieved at: http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc, at para. 9.
39. See http://www.unicef.org/csr/ and http://www.unicef.org/csr/toolsforcompanies.htm and http://www.unicef.org/csr/files/COP_Guidelines_English.pdf

sexual exploitation, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

In the context of the media, the UN General Assembly's Resolution on 'A World Fit for Children' makes reference to the importance of "mass media information campaigns" in the prevention and discouragement of alcohol, tobacco and drug use, as well as to the role of the mass media in campaigns against sexual exploitation and trafficking of children (UN General Assembly 2002). The General Assembly (2002) clearly posits the view that the mass media have a pivotal role to play in terms of educating and informing the general public about risk issues:

> "The mass media and their organizations have a key role to play in raising awareness about the situation of children and the challenges facing them. They should also play a more active role in informing children, parents, families and the general public about initiatives that protect and promote the rights of children, and should also contribute to educational programmes for children. In this regard, the media should be attentive to their influence on children."

Article 34 UNCRC (Sexual Exploitation)

Article 34 CRC requires States Parties to "take all appropriate national, bilateral and multilateral measures to prevent" the sexual exploitation and abuse of children, including "the exploitative use of children in pornographic performances and materials." It has been acknowledged, for instance by the CoE Lanzarote Committee, that children are increasingly using information and communication technologies to communicate and form relationships, which may, in some cases, bring them into contact with sexual offenders as the internet increases the opportunities to groom children for sexual purposes. [40]

When it comes to the prevention of sexual exploitation of children and young people, the focus is predominantly on 'provision' and 'protection' – i.e., the State must *provide* for the *protection* of children and young people by adopting or strengthening, implementing and disseminating "laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol" (see Article 9(1) of the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography). However, the Optional Protocol also provides (in Article 9(2)), that:

> "States Parties shall promote awareness in the public at large, including children, *through information by all appropriate means*, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the *participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level*." [*Emphasis added*]

There is arguably a need for greater 'participation' by children and young people in the policymaking process in this area. The child's right to information (enshrined in Article 17 CRC) includes a right of access to appropriate information on sexual matters (sexual health, sexual offences, etc.). This is particularly true in the case of older children.

In 2015, the Special Rapporteur on the sale of children, child prostitution and child pornography issued a report containing a thematic study on the issue of information and communication technologies and the sale and sexual exploitation of children, and including a section entitled "Empowering Children" in which the provision of information and the opportunity to participate (actively and meaningfully) are recognised as important within an overall focus on protection.

Effective remedies and review

The Third Optional Protocol to the UNCRC (which became effective in April 2014) to provide a communications [or complaints] mechanism to complement the reporting procedure under the Convention represents a

40. The Convention on the Protection of Children against Sexual Exploitation and Abuse (2007) is generally known as the 'Lanzarote Convention' (and is subject to systematic monitoring by the 'Lanzarote Committee'). Also relevant here are the CoE's Convention on Cybercrime (2001) and Recommendation on the protection of children against sexual exploitation (2001).

significant step forward in the promotion and protection of children's rights.[41] The absence of such a mechanism from the UNCRC was arguably a manifest flaw when one considers that other international human rights instruments (e.g., ICCPR, CEDAW, and CRPD) have in place optional protocols allowing the responsible committees, under certain circumstances, to consider individual complaints.[42]

Those tasked with the responsibility of drafting, implementing and reviewing policies directed at the empowerment, support and protection of children in the digital environment should bear in mind the need for the inclusion of some type of complaints mechanism (this is particularly the case where the policy in question impedes the exercise of children's rights in some way).

Article 44 UNCRC places an obligation on State parties to undertake and submit periodic reports to the Child Committee. Specifically, State parties are requested to furnish the Child Committee with information "on the measures they have adopted which give effect to the rights" enshrined in the Convention and "on the progress made on the enjoyment of those rights." State parties are obliged to submit the first such report within two years of ratifying the UNCRC, and every five years thereafter. This Article highlights the importance of periodic review and oversight and is thus easily transferable to the digital environment.

41. At the time of the drafting of the UNCRC, the need to allow children to bring individual complaints before the Child Committee was considered but subsequently rejected both by countries and by the vast majority of non-governmental organisations (NGOs) on the basis that "such a procedure would inject contention into a treaty which had been negotiated by consensus" and "could possibly harm development work in developing states." See Van Bueren, G. (2009), Children's Rights Moving Forward: Overcoming Cynicism and Children's Rights (Keynote address). Retrieved at: http://www.crin.org/docs/Geraldine_vb.doc. However, with the introduction of the Third Optional Protocol almost 30 years after the Convention came into force, any such reservation has been firmly confined to the realms of history.
42. See Office of the United Nations High Commissioner for Human Rights, Human Rights Bodies – Complaints Procedures. Retrieved at: http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx. The respective committees are: (1) the Human Rights Committee, (2) the Committee on the Elimination of Discrimination against Women and (3) Committee on the Rights of Persons with Disabilities.

Case studies of effective practice

Methodology

This section presents a series of carefully chosen case studies with a view to providing a representative range of CoE members. These have been produced by the following methodology:

- for country-based case studies, which constitute the majority, we have reviewed in brief the socio-economic, cultural and technological infrastructure, to identify particular pressures, priorities and "digital maturity";
- we have then identified the key national strategies and policies relevant to child rights and ICTs, highlighting particular strengths, examining the evidence – where available - by which their effectiveness can be established, and considering their potential for other countries;
- to ground our evidence-based approach, we have consulted with experts, including the EU Kids Online network of researchers across several of the CoE's 47 member States;[43]
- intersecting with the country cases, we also highlight selected good practice in multi-stakeholder collaborations that operate cross-nationally. This is important since the internet knows few borders, so key challenges may best be met through international cooperation.

In selecting illustrative case studies for the present report, there were many others we could not manage to include, and they would repay future examination. In terms of country cases, one example would be the Dutch national week on media literacy, focused on digital rights for children.[44] Another could be the work of the Armenian TUMO Centre for Creative Technologies, which provides a range of organised learning experiences that develop creative uses of digital technologies to thousands of 12-18 year olds.[45]

Case study highlights

The case studies in Annex 1 present the case studies from different CoE member States highlighting national strategies and policies on child rights and ICTs proven to be effective in addressing comprehensively children's rights in the digital environment at national level. In Tables 2 and 3 we highlight particular elements of these case studies that appear to offer good practice examples.

- Country case studies include France, Germany, Ireland, Norway, the Russian Federation and the UK. In addition to those included here, examples for Belgium, Italy, Montenegro, Poland and Turkey, have also been examined.
- Cross-cutting case studies included are: Child Helpline International, the Girls in ICT Initiative, Ireland's National Policy Framework for Children and Young People 2014-20 and the UK Council for Child Internet Safety.

Many of the instances of effective practice identified are not explicitly framed in terms of child rights, even though they do work to advance rights, by focusing on children's protection, provision or participation in relation to digital environments. From the examples chosen, Norway appears to stand out as having a much deeper commitment to a child rights and digital resilience in relation to ICTs that predates the efforts of many of countries reviewed. Thus it is a matter of interpretation to decide to include or refer to them in this report. Our approach has been to ask whether an initiative can be seen to contribute to children's rights in digital environments, whether or not it is framed in these terms by its instigators.

43. Funded by the European Commission's Better Internet for Kids programme from 2006-14, this network coordinates research in 33 countries. See www.eukidsonline.net
44. This was organised in 2014 by the Dutch platform for media literacy, Mediawijzer.net. Mediawijzer.net is the Dutch network of organization to promote media literacy. Its foundation in 2008 was initiated by the Ministry of Education, Culture and Science and the Ministry of Youth and Family. The network involves more than 1100 organizations, companies and independent professionals (including arts and culture organizations, libraries, IT-businesses, media coaches and media producers) who initiate projects for media literacy enhancement aiming at schools, parents/educators and youth itself. Since 2010 its media literacy week has reached millions of children and families in the Netherlands. More information is available on request.
45. This includes courses in animation, web design, film-making and game development but also in graphics, music, 3-D modelling, robotics and photography. TUMO has been mainly funded by diaspora Armenians for several years, and the state is proud of it although unable to fund it. Having begun in Yerevan, TUMO is now opening satellite centres in other parts of the country. See http://tumo.org/

CoE member States take many different approaches to empowering, protecting and supporting children in the digital environment. Some States excel in their coordination of child rights issues across government and stakeholders. Others have developed effective cross-departmental or multi-stakeholder approaches to child protection in relation to digital environments.[46] While in some countries, such as for example the UK, Germany or France, there are strong NGO organisations, in others there are fewer, or they lack the funds or independence to bring about a balanced multi-stakeholder policy dialogue.

Many States have proven examples of good practice in particular areas, and these can offer wider lessons for other countries. For the most part, however, governments are more reactive than proactive regarding the role and impact of digital technology in the lives of children and young people, with few overarching national policy frameworks or plans in place for children and young people that address, protect or enhance their digital lives.

Table 2: Instances of good practice: country case studies

Country case studies
France Both teachers and students of all ages are required to pass the National Certificate of ICT Standards or B2i. The B2i covers five topics and expects students to adopt a critical and responsible attitude towards ICT's. B2i is aimed at children and C2i2e for teachers. This is a combination of initial training and in service training. From September 2016, teachers are required to take three compulsory training per year, plus additional voluntary distance learning through M@gistere (training for school management and inspectors).
Germany Germany has a longstanding commitment to online content and new media that promote learning, fun and creativity. This is best reflected with FragFINN, a well-established web site that provides a comprehensive range of expert-curated, age appropriate web sites for children up to the age of twelve. FragFINN ranked on place 6 among the 10 favourite websites of all children aged 6 to 12 with 8% naming the site as their favourite in an open question.
Ireland Ireland has good track record in providing guidance, protection and support in an increasingly digital environment. The National Centre for Technology in Education plays a pivotal role. Its Webwise internet safety project focuses on raising awareness of online safety issues and practice among students, their parents and teachers. Launched by Minister for Education & Science in February 2006, Webwise provides information and tools including streamed videos, interactive online resources, and advice sheets.
Norway Generally, national government strategies include rights-based considerations for children. This progressive approach is also reflected in Norway's approach to ICT's in schools. The Norwegian Center for ICT in Education promotes digital literacy, including in kindergarten. As far back as 2006, through its Knowledge Promotion (Norwegian National Curriculum) Reform, Norway became the first European country to link digital skills with subject-related goals in its national curriculum.
Russia In 2015-2016, the Federal Service for Supervision of Communications, Information, Technology and Mass Media (Roskomnadzor) ran a series of projects on personal data protection aimed at explaining the rules of using, publishing, keeping and managing personal data online. The "Protect your personal data" project focused on teaching pupils about personal data online, along with the tutorial 'Practical psychology of safety: managing personal data online" for educational staff.
UK Invited by the government, the UK's four leading ISP's who account for 85% of UK broadband subscribers have worked with the UK Government to offer free, network-level filtering and funded Internet Matters, a major parents portal that has attracted addition support from the BBC and Google. Along with Friendly Wi-Fi ensuring and UK mobile network operators, providing default-on blocking of adult content, UK families have one of broadest range of tools and guidance in Europe.

46 O'Neill, B. (2014) *Policy influences and country clusters: a comparative analysis of internet safety policy implementation.* EU Kids Online, London, UK.

Table 3: Instances of best practice: cross-cutting case studies

Cross-cutting case studies
Child Helpline International Child Helpline International is a collective impact organization working to defend the rights of children and youth worldwide. As of December 2015, it has a network of 183 independent child helpline members in 142 countries, including 44 CoE Member States. Headquartered in Amsterdam, in the Netherlands, this not-for profit organization, currently receives 14 million contacts a year from children and young people in need of care and protection, increasingly focused on digital matters.
Girls in ICT Initiative In 2016, forty CoE Member States hosted events to coincide with Girls in ICT days. Along with the Girls in ICT Portal, it is one of many initiatives used in support of the United Nations (UN) Sustainable Development Goals (SDGs) and targets. The Girls in ICT initiative speaks predominantly to Gender (SDG 5) but takes in Quality Education (SDG 10), Good Health and Well-Being (SD 3) and Decent Work and Economic Growth (SDG 8). The ITU, through its Telecommunications Development Bureau, supports and measures the effectiveness of all its projects by using a proven set of project management guidelines and tools.
Ireland's National Policy Framework for Children and Young People 2014-20 "Better Outcomes, Brighter Futures" is Ireland's first all-encompassing national children's policy framework and an excellent example. It adopts a whole Government approach to supporting children and young people (0 – 24 years) and encompasses the full range of children's rights to protection, participation and provision, enshrined in Ireland's constitution following a referendum in 2012. All Government departments and public agencies are fully committed. "Connected, respected and contributing to their world" is an outcome that supports and encourages children and young people to play a full role in society and which specifically references the importance of media, including social media, in children's lives.
UK Council for Child Internet Safety (UKCCIS) Established in 2010, this voluntary group of more than 200 organisations is drawn from across government, industry, law enforcement, academia and charity sectors. It works in partnership to help keep children safe online. The UKCCIS Executive Board brings together representatives from across the membership on a quarterly basis and is chaired jointly by the Department for Media, Culture and Sport, the Home Office and the Department of Education. This cross-departmental approach has enabled UKCCIS to maintain momentum and continuity through successive changes of government.

Analysis of gaps and suggestions for guidance

The legal framework and inventory

In the preparation of this report, a comprehensive inventory of relevant legal instruments and standards, case law, policy documents and publications or initiatives reflecting children's own views in the area of children's rights in the digital environment was compiled. Each item in the inventory contains detailed information on the source, the title, the date and a stable URL. Items were primarily selected on the basis of their children's rights impact and relevance for the digital environment. The selection also includes general human rights documents that are applicable to everyone, including children, and case law that, although not explicitly concerned with children, puts forward important general principles that could have an impact on children and their rights.

Given the many sources that can be found internationally, the selection of international policy documents and publications or initiatives reflecting children's own views at international level is indicative in nature. The international policy documents that are included are relevant documents issued by international organisations such as the United Nations including its agencies UNICEF and UNESCO, and the Organisation for Economic Cooperation and Development. Instruments specifically related to other continents than Europe were not selected, although a compilation and analysis thereof may be relevant in the future.

At the level of the CoE and the European Union, the inventory contains all relevant legal standards, such as Conventions, Directives and Regulations, as well as all policy documents issued since 2013. Certain policy documents dating from before 2013 have also been integrated, in case they are judged to be of particular relevance (such as the Recommendation on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment).

The inventory included, in the final section, publications and initiatives reflecting children's voices in relation to the digital environment. These comprise a mix of more or less inclusive efforts to represent children's own experiences and concerns about the digital environment in ways that can be acknowledged and heard in formal processes of provision, decision-making and governance. Some invite children to an online platform to 'have their say' (for instance, ReRights, a platform where – at present – children from 33 countries are registered to discuss their rights in the digital age). Others are one-off events designed to inform young people of their rights and thereby encourage their participation (as in the Better Internet for Kids webinar or the Nordic Youth Forum at EuroDIG 2012). Others are more sustained (as in youth participation in the Internet Governance Forum) or UNICEF's Voices of Youth.

Mapping Council of Europe documents against the UNCRC

Important for developing suggestions for guidance to governments, the compilation of the inventory of relevant standards (international, EU and CoE), case law, policies and publications (Annex 2), and the analysis of this inventory, all contribute to understanding the key gaps, suggesting priorities for future development.[47] Thus from the inventory, the legal standards and policy documents of the CoE were extracted and analysed against the background of the United Nations Convention on the Rights of the Child.[48] Having identified those rights of the child that are significant to their empowerment, protection and support in the digital environment, and having analysed to what extent existing CoE standards, policies and practices facilitate children in this regard, this section identifies key gaps arising in the realisation of children's rights in the digital environment and develops suggestions for future policy and practice on the basis of this analysis.

47. Three different types of documents can be distinguished: general human rights documents, applicable to all individuals, children included (such as the European Convention on Human Rights); documents that contain references both to individuals in general and children in particular (such as the Recommendation of the Committee of Ministers to member States on a Guide to human rights for internet users); and, finally, child-specific documents (such as the Strategy on the Rights of the Child 2016-2021).
48. This evaluation of the scope and contents was developed by undertaking a (visual) mapping that shows which legal instruments and policy documents included in the inventory, and in particular at the Council of Europe level, include or refer to which UNCRC rights (as addressed in section B), and how this relates to the broader rights categories of protection, provision and participation. Note that this mapping of CoE documents in the inventory against the UNCRC articles has been conducted in an excel spreadsheet that is available on request.

Gaps exist for particular rights or groupings of rights, in particular parts of Europe, and for particular groupings of children according to their distinctive needs. The task is begun here of examining which child rights need most attention in relation to the digital environment, and which strategies, instruments or practices might prove most effective. Specifically, the text of those documents was mapped in order to assess the extent to which UNCRC rights are covered by the various CoE documents, and to identify the focal points and gaps within the broader rights categories of protection, provision and participation. This exploration led to the following findings:

- with regard to *protection*, the documents contain frequent references to the right to privacy (art. 16 UNCRC), protection from harmful material (art. 17e UNCRC), and protection from violence, with a strong emphasis on sexual violence and exploitation (art. 19 and 34 UNCRC). The right to non-discrimination (article 2 UNCRC) is mentioned in a number of documents (such as the Recommendation of the Committee of Ministers to member States on a Guide to Human Rights for Internet Users and the Strategy on the Rights of the Child) but is not elaborated upon. Privacy tends to be discussed in very abstract terms – there is little about advertising, for instance;
- with regard to *provision*, the main focus is on education (art. 28 and 29 UNCRC). The numerous references to media literacy, digital literacy and digital skills were included under these education rights in the mapping. Other important provision rights in the digital age, such as the provision of information and material of social and cultural benefit (art. 17a UNCRC), attention for linguistic needs of minorities (art. 17d UNCRC), the right to play or provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity (article 31 UNCRC) are largely absent in the policy documents. Finally, provisions regarding special care or an explicit acknowledgement of digital rights of specific groups of children such as children with disabilities (art. 23 UNCRC) or children belonging to a minority (article 30 UNCRC) are lacking;
- with regard to *participation*, only two of the documents analysed (the Lanzarote Convention and the Strategy on the Rights of the Child) explicitly acknowledge the child's right to participation in policy-making processes ("*to involve children and give due respect to their views in the development, implementation and evaluation of its child-related standards, policies and activities*") (art. 12 UNCRC). The right to freedom of expression (art. 13 UNCRC) is often referred to in documents but rarely in a child-specific manner (or positioned as a counterbalance to measures to protect children from harmful content). The right to freedom of thought, conscience and religion (art. 14 UNCRC), the right to freedom association (art. 15 UNCRC) and the right to participate in cultural life and arts (art. 31 UNCRC) are not referred to in a child-specific manner. The right of children with disabilities to fully participate in the community is only mentioned in the Strategy on the Rights of the Child.

Other important findings have been observed:

- *lack of relevant case law*: the compilation of the inventory showed that there is very little case law by the European Court of Human Rights (as well as the Court of Justice of the European Union) that specifically addresses children's rights in relation to media, or the Internet. Aside from K.U. v. Finland, which concerned the State's positive obligation to ensure children's right to privacy in the online environment, the few cases that were selected either address traditional media (television, printed press), or discuss important aspects of the online environment but in a general manner, not specifically in relation to children;[49]
- at the national level, several cases regarding children's rights in the digital environment have already been brought before the courts. For example, in France, such cases have, for instance, dealt with children's protection rights, such as children's right to privacy (Article 16 UNCRC) (e.g. also in Spain: Supreme Court, *Sentencia 864/2015*, 10 December 2015) and the right to protection against injurious material (Article 17e CRC) (e.g. in France: Court of Appeal of Angers, *Prévenu v. Le Ministère Public*, 4 February 2002). Aside from this, the freedom of expression (Article 13 UNCRC) of children online has also been the subject of case law in France (Administrative Court of Clermont-Ferrand, *Corinne N. v. Collége Teilhard de Chardin,* 6 April 2006). These examples show that a compilation and analysis of national case law in light of the UNCRC could provide insights on the implementation of the rights and principles in the CoE Member States;[50]

49. See for instance Yildirim vs. Turkey, where the Court stated that access to online content "greatly contributes to improving the public's access to news" and the Internet "has now become one of the main ways in which people exercise their right to freedom of expression and information." (Judgment by the European Court of Human Rights (Second Section), case of Ahmet Yildirim v. Turkey, nr. 3111/10 of 18 December 2012).
50. At the time of writing, the Child Rights International Network is compiling the body of national case law pertaining to children's rights in the digital environment. They have shared this with us informally, and they propose to build on their analysis of this case law in an upcoming advocacy toolkit on children's rights in the digital environment, in a section on how to access justice though the courts. See https://www.crin.org/.

- *multi-dimensional rights:* Children's rights are often discussed or approached as being one-dimensional. However, from the perspective of the three Ps, many rights in the digital age are actually multi-dimensional and it would be helpful to consider and acknowledge this in a more explicit manner at different levels;
- the right to privacy, for example, might be considered as a right that offers a child protection, but equally as a precondition to provision of certain information, or as a precondition to participation in society. This implies that children have a right to privacy from everyone, although this is contested in various ways in relation to parents, educators and the government;
- the use of reporting mechanisms in social networking sites could be considered to protect children from material that they consider unwanted, but could equally be approached as a mechanism that allows children to participate in decisions about such content.

Gaps revealed from the case studies

Coordination:

- many State and cross-cutting initiatives tend to be short-term rather than sustained, smaller rather than national in scale, and few are subject to independent evaluation.[51] Also, they tend to be scattered across a range of areas and competent ministries or governmental departments (such as educational policy or a digital literacy strategy or the promotion of positive online content), leaving gaps in others;
- there is a gap in most CoE member states at the level of policy governance and design, particularly with regard to coordination at the ministerial level on the issues and policies that impact on children's engagement with digital media.[52] There is a need consequently for more sustained and coordinated approaches by governments with a cross-media policy perspective on the convergence of desktops, gaming, mobile phones, television, etc., as they relate to children.[53] A national platform to oversee and deliver key elements of protection, provision and participation rights in the digital age is needed. A review of international best practice in policy governance and implementation should be a priority;
- also lacking are future-oriented perspectives that build in an assessment of how technological innovation and ICT-related business developments (e.g. in relation to the Internet of Things) are likely to concern children and child rights, whether in terms of provision, protection or participation. These, even more than initiatives focused on present challenges, surely need to develop cross-national partnerships or collaboration. The ITU's Girls in ICT initiative, Safer Internet Day and WePROTECT represent notable exceptions;
- where industry plays a role in partnering with government of schools, again, it is rarely embedded into the curriculum (although see the French case as an instance of good practice).[54]

Protection:

- most often it is in relation to child internet safety that governments have taken most action, although we see a growth in educational initiatives centred on coding also;
- there appears to be a fair amount of new legislation in many countries around child sexual abuse material, harassment, extremism, and a range of other online risks, although whether this offers specific instances of best practice remains to be evaluated;
- there have also been a range of initiatives centred on cyberbullying. However, other forms of online risk appear to be rarely addressed (e.g. hate, harassment, body image and self-harm, etc.);
- it appears that most curriculum-based ICTs and child online safety come from a digital literacy and protectionist perspective. The competency and risk-centric approach means there are very few examples of initiatives that promote the use of positive, creative content. Those that are, are sporadic and quite

51. Although see O'Neill, B. (2014), ICT Coalition: First Report on the Implementation of the ICT Principles (Dublin Institute of Technology: Centre for Social and Educational Research) http://www.ictcoalition.eu/news/75/First_Report_on_the_implementation_of_ICT_Principles Croll, J. (2016) Let's Play It Safe – Children and Youths in the Digital World. Assessment of the Emerging Trends and Evolutions in ICT Services. White Paper for the ICT Coalition for Children Online, January 2016, http://www.ictcoalition.eu/gallery/100/REPORT_WEB.pdf
52. See for instance European Commission. (2015). Mapping safer Internet policies in the Member States The Better Internet for Kids (BIK) map : final report. Directorate-General for Communications Networks, Content and Technology.
53. Indeed, other than NICAM in the Netherlands or the BBFC's work with mobile classification and video music rating, countries do not appear to be responding to the digital consumption of media by children and young people as a whole.
54. France has by far the most sophisticated ICT and online child safety curriculum at all school ages. It is matched by a national programme of certification for pupils and teachers. France too, seems to be using gamification through its 2015 Ex Machina initiative, to boost digital resilience and cognitive development, but teachers find it difficult to use in a classroom context, according to the country case study.

formalised – school competitions around cyberbullying seems the most popular (e.g. Russia, France, UK, Germany).

Provision:

- as with the legal framework, most effort towards provision is focused on education, with some notable exceptions (e.g. the provision of positive online content in Germany and the UK, countries with strong public service broadcasting traditions). This leaves significant gaps in relation to age-appropriate information, for example;
- in many countries, since 2010 there has been a dramatic increase in activities around ICTs and child online safety in schools. The key driver is clearly increased broadband accessibility within schools, with schools heavily dependent on broadband access even in high income, urbanised countries like France, the UK and Germany. This marks a key and widening gap between the digital devices and content used in schools and in households;[55]
- with some exceptions, the lack of attention to provision of positive content for children in the online sphere is notable. The emphasis given to quality educational content for children in the traditional or legacy media world, particularly in the form of public service media provision, is seldom replicated in the online world, except in more commercialised forms.

Participation and digital inclusion:

- while it is understandable that the emphasis is heavily on protection, it is important to note the relative lack of best practice regarding provision (e.g. positive content policies) or participation. There is a gap in technology innovation aimed at children and an absence of reliable guidance on standards for new media content or platform development that takes into account the needs of children;[56]
- the needs and rights of those who are vulnerable or marginalised or digitally excluded are generally poorly addressed in the ten countries reviewed, including targeted attention and resources for women and girls; persons with disabilities, indigenous peoples and people living in rural areas; refugees and looked after children and other forms of vulnerability (e.g. mental health).[57]

Suggestions for guidance

There is need for a much more proactive, cross-national approach from governments in relation to empowering, protecting and supporting children in the digital environment. Given the fast pace at which the digital environment evolves and that children are often the early adopters and primary consumers of content, often in ways unrecognised by adults, government efforts should be grounded in an updated evidence base. Government approaches should involve multiple stakeholders, including the voices of children and parents, and these should be sustained over time and independently evaluated to ensure their effectiveness.

Provision:

- while 'the right to access the internet' does not formally exist, we note that both children and other stakeholders increasingly appear to assume such a right. As a gateway to many forms of provision and participation, internet access is becoming ever more taken for granted as a means of ensuring child rights, and in consequence, lack of (sufficient or reliable) access remains a problem for some children. These are, further, usually those who are already vulnerable or marginalised in society. Thus it is important to sustain and extend policies to overcome digital exclusion;
- policies directed at the empowerment, support and protection of children in the digital environment should be constructed in such a way that the policy objectives contained therein apply to all children (i.e., so that policies are truly non-discriminatory). In other words, inequalities in access, etc., may render

55. Obviously funding matters, but the lack of investment in broadband digital infrastructure for example, has meant that in many schools, the devices, platforms and content they use are often basic and bear little relationship to the high-speed wireless devices and content being used within households. Adding to this problem the active exclusion of social media, mobile devices and apps by schools, it is difficult to see how children can build genuine digital resilience. In order to close the digital divide between schools and households, there is strong case for implementing a "Bring Your Own Device "(BYOD) approach within schools. With the right acceptable use policies in place, it could be one way of bridging the gap between the formal approach to computing in curriculums and the increasingly haptic, highly socialized, mobile device-led experience of children at home.
56. See, as an example: Reese, L. de, Petito, L., & Pijpers, R. (2010). Producing and providing online content for children and young people: An inventory. Brussels: European Commission. Also, Harris, K. D., & General, A. (2013). Privacy on the Go. Recommendations for the Mobile Eco-System. Attorney General. Californian Department of Justice.
57. We saw some evidence of growth in provision of localized content, particularly for smaller countries' minority ethnic cultures. Interestingly, topline domains (TLDs) now allow most cultures (the first was Catalonia in 2003) to write in their own language script.

a 'one-size-fits-all' approach ineffective – therefore, policies should be adaptable/flexible to the extent that they can address the needs of all children (e.g., children with disabilities, children from minority groups, child refugees or those displaced by armed conflict, and other vulnerable groups who may not be reached by schools or supported by parents;

- high quality and unbiased information of all kinds are being increasingly sought by children online and should be both provided and made readily 'discoverable' by those of all ages and in different languages. Particularly important is information about health, including mental and sexual health, sexuality and identity, civil rights and community resources;
- information on all policies – including self-regulatory industry policies - directed at the empowerment, support and protection of children in the digital environment should be made accessible to children and young people in a format appropriate to their age and capacities;
- states' support for children's provision in the digital environment should take into account the diverse sources of content produced by both the public and private sectors that are likely to be consumed by children and seek to provide the appropriate incentives, investment opportunities, standards and technical guidance for the production of material of social and cultural benefit to the child;
- to empower, protect and support children in the digital environment, media literacy policies and initiatives should be framed against the backdrop of human rights, with 'media and information literacy'[58] interwoven with the right to freedom of expression and information.[59] A large body of evidence and evaluation has documented the many ways in which, at present, this is not occurring, with digital literacy limited to online safety or taught inappropriately by ICT teachers, and with e-learning policies overly focused on the provision of hardware to the neglect of digital curricula, resources, and teacher training;[60]
- given the pace and complexity of the evolution of ICT, it is crucial that digital literacy programmes and initiatives are periodically assessed and reviewed in order to ensure their continued relevance and currency. It is also crucial that both the protective and the participatory functions of media literacy are highlighted to provide children and young people with the skills and abilities to take steps to manage their online lives;
- in order to empower, support and protect children in the digital environment, children must first be made aware of the human rights to which they are entitled – and of the fact that these rights apply online as well as offline. Children cannot exercise/realise rights about which they are unaware, therefore, member States of the CoE should be encouraged to facilitate and promote human rights education to children.

Protection:

- policies and practices designed to protect children online should be sufficiently resourced so that implementation is effective and accountable among all concerned (including law enforcement, educators, industry and other content and online service providers, social workers, and child welfare agencies);
- it is important that efforts to protect children online do not inappropriately criminalise or penalise them as 'perpetrators' and that, rather, educational initiatives are sustained so that children act responsibly in digital environments;
- in relation to the digital environment it is important both to protect children from discrimination, and to empower and support children so that they themselves are non-discriminatory when operating in the digital environment – thereby acknowledging children's role as creators and distributors of content, and not solely as consumers of content;
- those with responsibility for the development of policies designed to empower, protect and support children should be encouraged to consider an educational approach to shielding children and young people from the risk of sexual exploitation (both online and offline). Part of this educative process necessarily involves teaching children how to avoid placing themselves at increased risk of becoming victims of sexual exploitation, as well as how to recognise such behaviour and manage their response. In the online context, children must be educated in, for example, the importance of non-disclosure when it comes to posting personal information online, as well as the need to exercise extreme caution when

58. Frau-Meigs, D. and Hibberd, L. (2016), Education 3.0 and Internet Governance: A New Global Alliance for Children and Young People's Sustainable Digital Development. Centre for International Governance Innovation and Chatham House.
59. O'Neill, B. and Barnes, C. (2008), Media Literacy and the Public Sphere: Contexts for Public Media Literacy Promotion in Ireland. Dublin Institute of Technology: Centre for Social and Educational Research.
60. For example, see Selwyn, N. (2014). Distrusting Educational Technology: Critical Conversations for Changing Times. Abingdon, Oxon and New York, Routledge.

befriending people online. The construction of appropriate, age- specific education programmes and information campaigns will require concerted multi-disciplinary efforts;

- Thus states could encourage the media - particularly those media which specifically provide content and/or services to children and young people - to promote the use of the media for the purpose of disseminating information (age- and format-appropriate) to children and young people on risk issues such as online sexual exploitation, and for States to facilitate the media in this regard.

Participation:

- while the focus is often on 'protection', rights of participation should also feature strongly – the right to be heard, the right to freedom of expression, and the right of access to information all come into play. Children play a range of social, community and civic roles at all ages, and increasing through adolescence as they take on increasing citizenship roles. These should be supported, valued and developed online and through the relation between online and offline spheres of engagement, recognising their rights according to their 'evolving capacities;'
- it is important that the protective function of participation is emphasised – i.e., it is only through participation that children and young people can be truly empowered, supported and protected in the digital environment. In order to protect children and young people from exploitation in all of its various manifestations, they must be actively and meaningfully involved in the formulation, implementation and review of policies directed at such protection;
- member States of the CoE should encourage those with responsibility for the formulation of policy (directed at the empowerment, support and protection of children in the digital environment) to acknowledge and facilitate the participation of children through the provision of appropriate information, and through the provision of appropriate channels through which children can make known their views;
- this includes consideration of the sexual exploitation of children, which undoubtedly constitutes a "matter affecting the child" (as per the wording of Article 12 CRC) and, as such, children have a right to be heard in this context. The challenge, of course, lies in striking the balance – while, at the same time, respecting the principle of parental responsibility (Article 5 CRC) and the 'best interests' principle (Article 3 CRC);
- children must be provided with avenues through which to make known their views and experiences (anonymously, if required) of exploitation and other risks issues on the internet, and these views and experiences should inform and influence resulting policies. In addition, children must be supported and empowered through the provision of sufficient and appropriate avenues through which to express concerns/report incidences (anonymously, if required) and through the provision of age- and format-appropriate information.

Balancing rights:

- article 3 ('best interests') requires that the formulation, implementation and review of policies directed at the empowerment, protection and support of children in the digital environment must do their utmost to consult children in determining their 'best interests' and ensure that the concept of 'best interests' is not interpreted in a purely protectionist manner;
- to navigate the tensions between children's right to freedom of expression and the sometimes-necessary, sometimes-excessive restrictions imposed on their use of digital media in schools, communities and other public or private locations, it is crucial that children are afforded real and meaningful opportunities to make expressive contributions to the formulation of policy in this domain, and that CoE member States actively encourage such contributions;
- when it comes to constructing law and policy directed at the empowerment, protection and support of children in the digital environment – an objective which clearly impacts on the rights of children – States parties should make accessible to children age-appropriate (and linguistically-appropriate) information explaining such measures – and must encourage the media to do likewise;
- the provision of a clear, evidence-based form of justification supporting any use of age restrictions is of particular importance in the context of the digital environment in light of the fact that law and policy aimed at protecting children in this arena, more often than not, has human rights implications;
- a purely protectionist approach to privacy should be avoided – privacy is a fundamental component of participation, therefore, it is important that policies, programmes and initiatives targeted at the empowerment, support and protection of children in the digital environment strive to strike the appropriate balance;
- the exercise of one's human rights is not simply an individual endeavour – rather, it is a human endeavour, dependent on mutual respect for the rights of each other. For example, not only do individuals have a

responsibility when it comes to protecting their own right to privacy, but also when it comes to protecting the privacy rights of others – policies directed at the empowerment, support and protection of children in the digital environment should promote and encourage respectful use of the data of others. Related arguments can be made regarding intellectual property, copyright or free speech.

Last, we note that policymakers must ensure that there are sufficient and appropriate avenues through which children and young people may make complaints and pursue remedies where they believe they have been disempowered, unsupported and unprotected in the digital environment. Possibly there is a case for establishing national and cross-national bodies and for establishing frameworks by which to measure and optimise multi-stakeholder initiatives in the digital environment. Such is the commonality of usage, that there could be significant economies of scale and shared best practice. Currently, there is considerable duplication and as the digital environment continues to mature, a professional standards body could create some cohesion and establish some benchmarks for best practice. In the context of the digital environment, policies directed at the empowerment, protection and support of children must necessarily be subjected to periodic review – this is particularly the case when it comes to the digital environment given the pace and complexity of its evolution.

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