

Children's rights in the EU

Digital Services Act

Position paper

Introduction

The adoption by the EU of the Digital Services Act (DSA) represents a singular opportunity to ensure children's rights are respected, protected and fulfilled online.

Children – persons under the age of 18¹ – make up one in five users of digital services in the EU. Children have specific rights codified in the [UN Convention on the Rights of the Child](#) and reflected in EU and national law. How their rights should be interpreted in the digital environment is set out in the recently adopted [UNCRC General comment No. 25](#). Signatories to the Convention must take the best interests of a child as a primary consideration in all actions and decisions that impact upon them, and have an obligation to ensure children's rights and interests are fulfilled, including by businesses.

Children's experience of the digital environment

Children's rights apply universally, yet digital providers routinely ignore children's presence, their rights and needs on services designed by adults for adults but regularly used by children. Even when children are the intended users of a service, their rights are often overlooked in favour of commercial outcomes and revenue generation.

The problems children face from the digital world are systemic. They are not restricted to technical bugs or bad actors but are also present in the features and architecture of the products and services on which children rely for access to education, health, entertainment, civic engagement and to manage their relationships with family and friends.

In a commercially driven environment, children are routinely presented with information, behaviours and pressures inappropriate to their evolving developmental capacity. They are introduced to unknown adults², nudged to make in-game purchases³, targeted by sexualised content,⁴ bombarded with targeted advertising and misinformation,⁵ and subjected to invasive, extractive data gathering.⁶

The normalising of services designed by and for adults creates an environment that is beyond children's development capacities, which is difficult to navigate and exposes

¹ UNCRC Article 1, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² [Omegle: Children expose themselves on video chat site](#), BBC, February 2021.

³ [The Rip-Off Games: How the Business Model of Online Gaming Exploits Children](#). A Parent Zone Report. August 2019.

⁴ 5Rights research uncovered several pornographic pictures shared in two Recommended public chats on AntiLand: "Hell on Heels" and "Fat Lovers 2.0" in April 2021.

⁵ [Facebook executives shut down efforts to make the site less divisive](#), The Wall Street Journal, May 2020.

⁶ Dataethics (2021), [Games are gambling with children's data](#).

children to a wide range of systemic risks. The resulting harms have been well documented by the EU Kids Online project⁷ as well as by the 5Rights Foundation.⁸

Implementing children's rights in digital policy and law

There is an increasing emphasis on children's rights in digital policy, together with legislative efforts that reflect the need to create accountability from the sector.

- The EU Strategy on the Rights of the Child includes a chapter on the digital environment citing UNCRC General comment No. 25 and calls on businesses to “ensure that children's rights, including privacy, personal data protection, and access to age-appropriate content, are included in digital products and services by design and by default”.
- The EU 2030 Digital Compass proposes a broader digital agenda seeking to “protect and empower children in the online space”.
- The EU draft Artificial Intelligence Act sets out due diligence requirements for high-risk AI applications, including as regards respect for children's rights based on UNCRC General comment No. 25.
- The Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment calls for measures to “require that business enterprises meet their responsibility to respect the rights of the child in all their operations” based on the child's best interests, including through safety and privacy by design and default.
- The OECD Recommendation on Children in the Digital Environment and Guidelines for Digital Service Providers recognises the primacy of the best interests of the child and calls on digital service providers to take a safety and privacy by design approach, in line with children's evolving capacities.
- The UK Age Appropriate Design Code sets 15 statutory standards for business to implement children's right to additional protections for their data (as mandated by GDPR), based on the principle that “the best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child”. Similar GDPR-based codes of practice and guidelines have been developed by Data Protection Authorities in Ireland (Fundamentals for a Child-Oriented Approach to Data Processing), the Netherlands and Sweden.
- The German Youth Protection Act obliges platforms to take precautionary measures to counter “risks from communication and contact functions, purchase functions, gambling-like mechanisms, mechanisms to promote excessive media usage behaviour, data disclosure and purchase appeals that are not age-appropriate”.⁹
- The US proposed Children and Teens' Online Privacy Protection Act and Clean Slate for Kids Act seek to reinforce data protection for children.

⁷ Livingstone, S., & Stoilova, M. (2021). The 4Cs: Classifying Online Risk to Children. (CO:RE Short Report Series on Key Topics). Hamburg: Leibniz-Institut für Medienforschung | Hans-Bredow-Institut (HBI); CO:RE - Children Online: Research and Evidence. <https://doi.org/10.21241/ssoar.71817>

⁸ See: Disrupted Childhood: The Cost of Persuasive Design (2018) and Risky by Design

⁹ <https://blogs.lse.ac.uk/mediase/2021/03/12/new-youth-protection-law-in-germany-participation-of-children-is-a-top-priority/>

- The UK proposed [Online Safety Bill](#) aims for a systemic, precautionary and risk-based approach to the digital world, with a particular emphasis on protecting children.¹⁰

Children's rights in the DSA

This growing policy agenda can be further embedded in the DSA, which has the potential to set a global standard for children's rights in the digital world.

The Commission's DSA proposal aims to create a safer digital space in which the fundamental rights of all users of digital services, including children, are protected. The proposal does not however take account of children's specific needs and rights and leaves them exposed to a wide range of risks across a vast array of services.

5Rights calls upon the co-legislators to amend the proposal to embed children's rights as set out in UNCRC General comment No. 25 and ensure *all* providers of services likely to be accessed by or impact on children fulfil their rights. The aim should be to provide better experiences for children online, not to lock them out of spaces they have a right to access.

To this end the DSA should include a children's clause in Chapter III, Section I, requiring all digital service providers to assess whether their services are likely to be accessed by or impact on children. If so, providers should be required to undertake child impact assessments and mitigate systemic risks to children's rights, based on statutory standards. Mitigation measures should include:

- adapting or removing system design features that expose children to content, contact, conduct and contract risks;
- implementing proportionate and privacy preserving age assurance;
- adapting recommender systems, automated decision-making and moderation processes to ensure these prioritise the best interests of the child across all parts of the service;
- ensuring the highest levels of privacy, safety, and security by design and default for users under the age of 18;
- preventing profiling, including for commercial purposes like targeted advertising for user under the age of 18;
- ensuring published terms are age appropriate and uphold children's rights.
- providing child-friendly mechanisms for remedy and redress, including easy access to expert advice and support.

The DSA must provide for sufficient transparency and regulatory oversight to ensure that such measures are effective and enforceable, including by ensuring businesses are judged against statutory standards for age assurance, child impact assessments, and age-appropriate design.

The children's clause should ringfence children's rights in the DSA, ensuring they are considered in their own right and not subjected to broader debates touching upon the balance of rights and obligations pertaining to adults' online experience.

¹⁰ 5Rights (2021), [Ambitions for the Online Safety Bill](#).

The DSA must guarantee a level of protection below which companies shall not fall, without precluding the provision of additional protections for children by national authorities, notably in view of technological innovations. The DSA's "one-stop-shop" enforcement mechanism should not inhibit the smooth and timely enforcement of children's rights throughout the territory of the Union.