<u>Subject</u>: Children's rights in the Artificial Intelligence Act

09 May 2022

Dear Members of the European Parliament and Council of Ministers of the EU,

Artificial Intelligence (AI) systems are increasingly integrated into products and services used by or affecting children, without taking account their specific vulnerabilities and rights, and routinely exposing them to a wide range of risks.[1]

We – representing more than 2000 children's rights organisations as well as parents' and mental health stakeholder associations, and speaking on behalf of some 200 million children, parents and mental health professionals in the EU – urge you to remedy this situation and ensure children's rights (as set out in the UN Convention on the Rights of the Child and elaborated in UNCRC General comment No. 25 as regards the digital environment[2]) are fully guaranteed across all AI systems likely to interact with or impact on children.

The AI Act offers a vision of what a responsible digital world looks like, aiming to ensure technology is developed and used in conformity with Union values and with a high level of protection for health, safety and fundamental rights – with particular attention for children. It builds on the global consensus that digital services that interact with or otherwise effect children must be designed with them in mind.

However, the absence of ex-ante risk assessments to determine which AI systems are high-risk for children is a critical weakness in the draft Act that will leave children exposed to a wide range of systems that negatively impact on their rights, health and safety. The risk associated with children interacting with AI systems is distinct from and higher than for adults.

In addition, it will not be possible to meet one of the objectives of the Act (to prohibit practices that "exploit vulnerabilities of children") without taking children's developmental capacities, vulnerabilities, and lack of autonomy into account in the enforcement process.

We thus urge you in your scrutiny and amendment of the AI Act to:

1. **Require a child rights impact assessment and, if necessary, child risk mitigation measures for all AI systems likely to interact with children or impact on children.[3] This**

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[1] See for example 5Rights' Disrupted Childhood report or the interactive microsite riskyby.design.

[2] UNCRC General Comment No. 25 (2021) on children's rights in relation to the digital environment: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation

[3] For an AI system to be "likely to be interact with or impact on children", the possibility of this happening needs to be more probable than not. Whether a service is "likely to interact with children" will depend upon whether the content and design of the system is likely to appeal to children, and any measures in place to restrict or discourage their access to the service. Importantly, it does not entail a requirement of age assurance or monitoring of users. See: https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/services-covered-by-this-code/#code4 Alternative language is that of the OECD

process can be specific to risks posed to children and need not entail a general risk management process as prescribed for AI systems more broadly considered "High-Risk".

2. Operationalise the ban on AI that exploits the vulnerabilities of children by applying the precautionary principle to the assessment of relevant systems, shifting the burden of proof from the child victim to the provider or operator of the AI system, and giving the Regulator a proactive duty to investigate AI systems on behalf of children, based on clear criteria with a clear process, covering the 4i's of intentions, inputs, instructions and impact.[4]

Childhood is a time of experimentation and personal growth, and while no environment is entirely risk free, technology environments in which children socialise, learn and play must be designed in a way that minimises risk and gives children the privacy, safety and security to which they are entitled.

This basic principle has for far too long been ignored in the digital world, and children have paid an unacceptable price. We are counting on you to re-establish the primacy of children's rights and lay the groundwork for a better digital future for all.

Sincerely yours,

Baroness Beeban Kidron
Chair, 5Rights Foundation

Victor Petuya
President, European Parents' Association

Guillaume Landry
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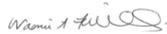
Professor Naomi A Fineberg
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Claudia Marinetti,
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Eylah Kadjar,
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Recommendation on Children in the Digital Environment and Guidelines for Digital Service Providers, which applies to services "where it is reasonably foreseeable they will be accessed or used by children". It is particularly important not to limit protections for children to systems "intended" for children as this would exclude from scope the main and vast majority of systems that children interact with and that impact on them.

[4] The 4 step model for regulating AI is set out in 5Rights Foundation (2021), Shedding light on AI: Regulating automated decision-making systems that impact children: https://5rightsfoundation.com/uploads/shedding-light-on-ai---regulating-automated-decision-making-systems-that-impact-children-1.pdf