

Artificial Intelligence Act

Feedback on European Commission proposal COM/2021/206 final

August 2021

Overview

- 5Rights Foundation warmly welcomes the aims of the AI Act to ensure the development, marketing and use of artificial intelligence in conformity with Union values and a high level of protection of health, safety and fundamental rights.
- In particular the provisions in Recital 28, Article 5.1 and Article 9 together make for ground-breaking legislation, which both recognises and defends children's existing rights in the digital world, in line with the EU Strategy on the Rights of the Child 2021-2024. This has the potential to make the EU a world leader in ensuring children's rights in the digital world and, together with a similar recognition in related EU regulation, transform the digital sphere into a place where children can be safe and prosper, in Europe and beyond. It will be critical to maintain them in the final adopted law.
 - Recital 28 subjects the understanding of children's rights in AI systems to the prescriptions of the UNCRC General comment, saying that "it is important to highlight that children have specific rights as enshrined in Article 24 of the EU Charter and in the United Nations Convention on the Rights of the Child (further elaborated in the UNCRC General Comment No. 25 as regards the digital environment), both of which require consideration of the children's vulnerabilities and provision of such protection and care as necessary for their well-being."
 - Article 5.1.b prohibits any "AI system that exploits any of the vulnerabilities of a specific group of persons due to their age, physical or mental disability, in order to materially distort the behaviour of a person pertaining to that group in a manner that causes or is likely to cause that person or another person physical or psychological harm". This is highly welcome but this clause should be strengthened by a specific reference to children, as set out in the Explanatory Memorandum 5.5.2.
 - Article 9 sets out the standard for risk management for systems of high risk AI (assessment and management measures, including notably the "elimination or reduction of risks as far as possible through adequate design and development" (4.b). Point 8 of this article states that "When implementing the risk management system described in paragraphs 1 to 7, specific consideration shall be given to whether the high-risk AI system is likely to be accessed by or have an impact on children." 5Rights warmly welcomes this wording as few technologies are actually intended for use by children; maintaining and mainstreaming this concept with regards to the application of children's rights throughout the Regulation should be a priority.

- Regarding Title II - Article 5.1.a and 5.1.b – We welcome the ban on AI systems that use subliminal techniques to manipulate users and those that exploit the vulnerabilities of children. However, there is no means to enforce these provisions in the current text. It will be critical to fill this gap. 5Rights is working on a detailed framework for the oversight of AI systems in order to ensure transparency and the rights of the child and will share with the Commission in the coming months.
- Regarding Title II on High Risk AI Systems:
 - 5Rights maintains that all AI systems likely to be accessed by or have an impact on children should be considered high-risk and subject to risk assessment and mitigation measures. AI systems which are not designed based on child-centred principles, trained on appropriate data sets and tested to ensure neutral or positive outcomes for children, can have major impacts on children’s safety, privacy, cognitive development, health and educational outcomes, social relationships, economic well-being and freedoms. Children may be less able to recognise that they are interacting with and impacted by AI and less able to fully understand the implications thereof. They often lack the resources to respond to instances of bias or to dangerous content which has been amplified by AI technology. Children may be less able to react, manage stressful situations or seek redress. Their negative impacts can be more severe and longer-lasting on children than for adults.
 - The legal framework defining which AI systems are effectively high risk must be robust and future-proof. The complexity of the proposed system (based on the application of secondary legislation) may lead to loopholes.
- 5Rights Foundation also calls for the inclusion of the following elements in order to ensure children’s rights:
 - In Article 3 a clear definition of children as all those under the age of 18, as per UNCRC Article 1.
 - The broader recognition of children as de-facto or *likely* users, even if they are not the intended users. This is critical for training data and for innovation sandboxes. Recital 44 could be amended to include “likely” users. A para could be added further to Recital 72 and Article 53 to the effect that sandboxing schemes should systematically use a diverse set of use cases and users, and consider the specific rights and needs of children.
 - Ensuring that children are not subjected to the same level of personal responsibility as adults for understanding risk – children require an exemption to Recital 58 and Article 29, to ensure that when high-risk AI systems are likely to be used by children, the burden of responsibility for the safety and respect of fundamental rights of child users rests primarily upon the AI providers and operators.
 - Ensuring that information and training for systems likely to be used by children is in a format and language that children can easily access and understand. (Recital 70, Article 13)
 - Ensuring that data collected in post-market monitoring includes the age or age ranges of end users. (Article 61)

About 5Rights Foundation

5Rights Foundation develops new policy, creates innovative projects and challenges received narratives to ensure governments, regulators, the tech sector and society understand, recognise and prioritise children’s needs and rights in the digital world. Our work is pragmatic and implementable, allowing us to work with governments, intergovernmental institutions, professional associations, academics, and young people across the globe to build the digital world that young people deserve.

A child or a young person is anyone under the age of 18, as defined by the UN Convention on the Rights of the Child (UNCRC). Rights language refers specifically to “children,” however, children themselves often prefer to be called “young people.” We use the terms children and young people interchangeably, but in either case it means a person under the age of 18, who is entitled to the privileges and protections set out in the UNCRC.

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