

Draft General Comment 25
Children's rights in relation to the digital environment
Submission of the Children and Young People's Commissioner Scotland.

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

We welcome the publication of this draft General Comment on children's rights in relation to the digital environment and are pleased to provide our comments on it. We particularly welcome the degree to which the Committee has engaged with children and young people when drafting this General Comment, embodying children's rights to be heard under Article 12 of the UNCRC and that the Committee has worked with the 5 Rights Foundation on a children's version of the General Comment.

The draft General Comment rightly emphasises the importance of protecting children from the risk of harm that exists in the digital environment (Articles 19 and 35), but also the ways in which the digital environment can help children realise the full range of their civil, political, social, cultural, economic and environmental rights. It is important that a balance is struck between the importance of protecting children in digital environments and ensuring they can access to what is an essential part of 21st century life.

We are pleased to see the Committee identify access to information via the digital environment (Article 13) as a civil right and acknowledged the importance of children having an access to diverse, accessible and beneficial content from a range of national and international sources and the importance of ensuring that internet filters are a means of protecting children from harmful material without impacting their freedom of expression. It is particularly important that States parties ensure that children in alternative care settings have equal access to the digital (Article 20), however we hear that this is not always the case and that, in some instances, access to the internet is seen as a privilege which can be withdrawn. As the draft General Comment notes, it is also important for States parties to provide parents and carers with support to gain the digital necessary to support their children, in line with their obligations under Article 18.

We share the Committee's view that it is important to protect children's privacy rights (Article 16), in relation to information which is gathered and stored about them across the digital environment, but we feel this must be achieved in a way which does not restrict their access to what is an increasingly mainstreamed part of society and which takes account of their evolving capacities. We are concerned that the creation of relatively high, arbitrary minimum ages for access to apps or websites (for example

under Article 8 of the EU's General Data Protection Regulation (GDPR)¹) may result in internet platforms taking less care to ensure their platform is safe for children under this age. Further, this may deny younger children from access to independent information and support on sensitive issues including mental and sexual health (Article 24).

The Covid-19 pandemic has highlighted the impact digital exclusion can have on children and we are pleased to see the draft General Comment highlight the importance of this issue and states' obligations to ensure children's rights are realised, including through allocation of public resources in line with article Article 26. Likewise, the pandemic gave rise to circumstances where children's participation in the digital environment was far from voluntary, for example in the use of various online platforms for learning; and in some cases mandatory, for example through the use of digital platforms for judicial and administrative hearings. This was highlighted in the Independent Children's Rights Impact Assessment on the Covid-19 Pandemic we commissioned and published in July 2020².

We have the following comments, which we help will assist the committee in improving the existing draft.

There needs to be clear differentiation between the broader "digital environment" which encompasses access to technology; access to specific apps or software on various platforms; access to social and communication apps and access to information available via the internet (i.e. the world wide web). Where what is meant is access to the world wide web, this should be clear.

There should more emphasis on the existing and potential impacts of artificial intelligence, automation and algorithms on children's rights. There is clear evidence that these systems discriminate against particular groups of children, based on partial, biased or unfairly obtained information, in ways companies do not necessarily intend but also do not themselves fully understand. The draft General Comment acknowledges that such processing of children's data interferes with a range of rights.

We draw the Committee's attention to the work of the English Children's Commissioner on the potential for economic exploitation of children (Article 32) through the monetisation of online gaming, including via "loot boxes" in which children gamble, using real money, in the hope of receiving additional content³.

We are concerned that some recommendations in the General Comment, for example ensuring automated search and recommendation systems do not prioritise paid content; ensuring automated systems can't impact children's emotions; and outlawing the targeting of children may be beyond the ability of many States parties, given the globalised nature of the digital environment. We would suggest additional engagement with industry representatives and the World Wide Web Foundation⁴ to ensure recommendations made are achievable.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774

¹ [GDPR Article 8](#)

² Observatory of Children's Rights Scotland. 2020. [Independent Children's Rights Impact Assessment](#)

³ Children's Commissioner (England). 2019. [Gaming the System](#).

⁴ [World Wide Web Foundation](#)