



OMBUDSMAN FOR CHILDREN

UN Committee on the Rights of the Child

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Submission to new GC - Children's rights in the digital environment

The Norwegian Ombudsman for Children welcomes the initiative for a new General Comment on children's right in the digital environment. We appreciate the opportunity to submit a comment. In devising this submission, we have consulted our Youth advisory board, the Norwegian Consumer Authority, the Norwegian Media Authority, National Criminal Investigation Service and Norwegian EU Kids Online researchers at the Department of media and communication, University of Oslo.

The Norwegian Ombudsman for Children is an independent body with a mandate to ensure that children's needs, rights and interests are given due consideration in all areas of the Norwegian society. We have a special duty to monitor that legislation protecting the interests of children is fulfilled and is in accordance with the Convention on the Rights of the Child (CRC). "A safer digital environment" is an area of priority for the Ombudsman.

Important perspectives in the General Comment

We recognize the need to clarify children's rights in the digital environment. Today the debates about children and digital medias are disengaged from children's rights. This often results in an imbalanced focus on risks and children are often regarded as passive users or victims. There is a need for a General Comment as a framework for how the CRC applies in the digital environment. It should give guidance as to how the different rights should be interpreted in a digital context. There is a risk that a General Comment will focus mostly on the negative sides, as does much of the public debate on the topic. The need to protect must not lead to anxiety, resulting in excluding children from the digital environment. It is important the Comment will ensure *participation, provisions and protection* of children's rights. The Comment should recognize that the digital environment is an integrated part of children's life, not something that exists in addition to their "real life".

We urge you to emphasize children as *autonomous and active* users. This is an important part of the rights-based approach. The Committee should elaborate the significance of *children's evolving capacities*. In General Comment no. 20 it is made clear that the more a child understands and knows, the more parents should transform commands and guidance, into reminders and after a while equal exchange of views. States should contribute to parents exercising appropriate direction and guidance in a manner consistent with the evolving capacities of the child. The question of what children decide, and what parents decide should be covered. In Norway, parents sharing pictures is a controversial topic, f. ex. bloggers posting pictures of their children without asking the child. Another topic is parents restricting children's screen time and surveilling what children do online. This must be elaborated in the GC.

The views of children are important in devising the comment. Children themselves often have a positive view on digital medias. They use the Internet to explore their identity, learn, participate, express their opinion, play, socialize, act as consumers, engage politically and find work opportunities. This must influence the way we consider children's rights. Children learn to identify and manage risks through use and participation. At the same time children must be protected against violence, abuse, invasion of their privacy, economic exploitation and harmful content. The Committee should acknowledge that protection and participation must be balanced.

The Comment needs to be based on *research* on children and digital media, for instance what opportunities and risks children face online, their digital literacy and evolving capacities. We would like to underline that *differences between countries* must be recognized. There are differences between the Global North and Global South, but there are also differences within the European countries. Norway is a country where 96 % of children between 9-17 years have their own cellphone with Internet access. On average they use the internet 3,8 hours per day. Many children have high digital competence. Due to the high use, they also have a higher risk of encountering negative things on the Internet. EU Kids Online 2018 shows that Norwegian children have inadequate skills when it comes to handling negative things.ⁱ

The Comment should also address *businesses'* responsibility to respect children's rights. In the digital environment businesses are important because they own social media networks, online games and produce content. They are f. ex. responsible for the content they make themselves, the personal data they collect and the content they make it possible for their users to share. All of this may be problematic for children's rights. The Committee should also address the major international companies, and the need for transnational measures. Here the UN can play an important role.

General measures of implementation by State parties

The states' obligation to undertake all appropriate measures to implement the CRC needs to be elaborated, for instance what measures are to be expected from the states and the state's responsibility towards business enterprises and other stakeholders. In General Comment no. 5, 19 and 20 you emphasize the need for a *comprehensive and cross-sectorial national strategy* based on children's rights. In Norway we see a need for the Committee to emphasize the obligation to have a comprehensive strategic approach for fulfilling, respecting and protecting children's rights in the digital environment. There are a lot of governmental agencies working on different questions in the digital environment, but their work is not coordinated. The Ombudsman has counted over 20 different governmental ministries, agencies and institutions working with children and digital media in 2019. In addition, there are a lot of NGOs and businesses working with children and the digital environment. We urge you to address the consequences of a fragmented and sectorized approach to children and digital media. This will be important for us when we advocate for a coordinated and right-based approach that is cross-sectorial and comprehensive.

We also ask the Committee to comment on the duty to conduct *child rights impact assessment* (CRIA) when new measures are being considered. In our opinion, the states need clearer guidance on what a CRIA is and how to conduct such an assessment. The Committee needs to show that the CRIA is based on the relevant articles in the convention and what sources are relevant in such an assessment, for instance research and children's views. A comprehensive strategy that is not based on a CRIA and evidence-based knowledge may be not be in accordance with the CRC, counterproductive and inhibit the devolvement of children.

We are also concerned for the governmental lack of prioritizing *research* on children and the digital environment and the consequences for informed choice of measures. We also urge you to say something about children's participation in decision-making.

The general principles

In the draft you write that the Comment will include the four cross-cutting general principles. We agree that this is important and wish to give input on this. First, the right to be heard in matters affecting them and the best interest of the child are important principles to elaborate in the Comment. *Children's participation* is fundamental right and a key to understanding children's rights. This must be made very clear. The internet gives new and important ways for children to be heard and strengthen and expand their opportunity to participate. We hope you will give clear guidance on what this means for states, but also for other stakeholders working with children. States must involve young people in policy development, but children must also be given the opportunity to participate in schools, f. ex. making school rules on the use of cellphones. The relationship between art. 12 and the civil and political rights must be shown, for instance freedom of expression and freedom of assembly. All of these are important for children's digital citizenship.

The Comment must also emphasize the importance of *the best interest of the child*. We believe this will mostly be a question of translating General Comment no. 14 into the digital environment.

The states shall fulfill the rights of all children without *discrimination*. The Ombudsman has seen several examples of discrimination in the digital environment. We are worried that vulnerable children do not have access to digital media or is given the protection they are entitled to. For instance, children in institutions, unaccompanied minors, children with disabilities, Sami children and LGBTIQ-children. Organizations representing these children have told us about discrimination, cyber bullying and hate speech online. There is little research on this, even though the prevalence of bullying is most likely higher in these groups. Another topic is marketing at children. This can also be discriminating because groups of children are targeted on the base of f. ex. gender or ethnicity. There is a need for addressing these problems, and at the same time balancing risks with the possibilities the digital environment might represent for these children. The question of positive discrimination should be mentioned.

The *right to life, survival and optimal development* is important in the digital environment. Today, this is one of the most difficult articles to get a grip on. We recon the measures must prevent negative consequences and promote the optimal development for all sides of the child. In General Comment no. 17 you list up necessary conditions for an optimal environment that must be ensured in accordance with children's evolving capacities, if they are to realize their rights after art. 31. We recommend that the Committee make a similar list for the use of article 6, in the digital environment. EU Kids Online 2018 shows that children that are vulnerable offline, are likely to be vulnerable online. An important part of preventing this might be to improve children's *digital resilience*. In General Comment no. 20 you have given guidance to how resilience can be developed for teenagers. We encourage you to say something about factors that may promote resilience og wellbeing in the digital environment These suggestions might make it clearer for states, schools and others working with children how art. 6 should be understood.

Provisions

Several of the provisions in the convention are relevant in the digital environment. We agree with the list of articles in the draft and have added some articles to the list. We will first address some civil and political rights, then some economic, social and cultural rights.

Civil and political rights

Right to information should be interpreted as giving children a right access to digital media and to information when they have access. Children use mobile technology, and digital medias are important sources for communicating, receiving, creating and conveying information. States should encourage children should to make and distribute their own content digitally and not limit it. If children do not have access, all the other rights are not possible to fulfill. In countries where "everyone" has access, it is even more difficult not to. Since almost everyone has their own device in Norwayⁱⁱ the gap between those who have and don't, is even more problematic. This may lead to exclusion, and we urge you to address this.

When children have access to the digital environment, the information they get there should not be limited so that their right to information is not fulfilled. The Internet gives children a possibility to seek information and find help with their problems. Children should have the right to find information, support and get help and advice online, for instance about things they aren't comfortable speaking to adults about. The right should be interpreted as a right to correct information about and help on solving f. ex. mental health issues, sexuality and relationships.

All children must have an equal access to exploring their digital citizenship by universally available formats for children with disabilities. This is the responsibility of the states and the business. In addition, businesses must respect children's right to privacy and to do this, children must be able to access information about the terms and conditions of use in a language they understand. We have seen several examples of terms that are incomprehensible for children. We are also concerned that some of the information children might find is harmful and that children don't know how to separate fake news from other kinds of information and understand what harmful content or illegal commercial

marketing is. At the same time, risks online should not limit children's access to the digital environment. It's important to protect them by teaching them netiquette, how identify risks and strategies for keeping safe. Schools and parents have important roles in this. The comment should address strengthening legislation, policies to stop online abuse and educating parents and professionals working with children.

Children's *freedom of expression* is a cornerstone in children's rights in the digital environment, and this right needs to be addressed. Digital medias can give children unique possibilities to express their opinion. This might be to friends, in groups or on video sharing platforms like YouTube. Freedom of expression consists of, amongst others, freedom to seek, receive and share information and ideas of all kinds in the digital environment. Children should be able to speak out, but they should also be given guidance from parents and other adult about how they should use their right in a way that doesn't harass other people and violate their rights. Several young people have told us about the way adults treat young people online. The Ombudsman has seen examples in social medias lately of adults ridiculing children when they express an opinion. An important part of getting children to exercise their right is by raising the awareness of adults and holding them accountable for the way they treat children expressing their opinion. Even though this might not be direct violation of children's rights, there is a need for addressing the digital behavior of adults.

Freedom of assembly is important in the digital environment. Young people wish to spend time with their peers, also in the digital environment. The comment should emphasize that children's right to assembly in all forms must be respected, in accordance with the restrictions in art. 15 nr. 2. Digital assemblies are important for children in finding their identity and hanging with friends. Children must have the opportunity to form f. ex. their own associations, forums and networks online. Queer Youth Norway have told us that for LGBTIQ-children, digital media often is an important part of finding their identity by being able to discuss with other people in the same situation. Children must also learn about the consequences their actions in online forums might have, and how forums might be Ecco chambers or that sharing pictures of themselves in forums might not be safe.

Preservation of identity is an important article for children, but there is little guidance in how to interpret this right. Children interact with others in different ways, in many of these interactions they form a digital identity. For instance, when they make and evolve avatars or bit emojis, post pictures or videos of themselves or write something in social medias. We hope the Committee will elaborate this article and its use in the digital environment. This article must be interpreted in a broad sense, and the Committee should say something about to what extent children have a right to their own digital identity and the measures the states should take to preserve it. There's also a need for examples of what this means. This right must be seen in relationship to children's right to privacy, and their right to be forgotten if they wish.

Economic, social and cultural rights

The significance of *family environment, parenting and* alternative care should be covered in the Comment. Parents and other caregivers should introduce their children to the digital environment in a safe way and give them the necessary skills to evolve their capacities. Parents should not only be concerned about screen time but pay attention to and give the children guidance on safe use. They should be part of children's digital life, as they take part in their soccer games and homework. The state, kindergartens and schools should also inform parents about digital parenting.

The right to education is important for attaining skills needed to use digital media in a safe way. The curriculum must interpret digital literacy in a broad sense and address several topics related to risks children met in the digital environment, for ex. privacy, fake news, harmful content, cyber bullying, sexting, harmful advice from influencers and commercial marketing and exploitation. Surveys in Norway show how the collection of children's personal information and algorithms are used to tailor advertising, information or suggestions children get in social medias. It is important that children learn to analyze these mechanisms. In Norway, sharing of sexualized pictures and messages is increasing. EU Kids Online 2018 showed that 32 % of Norwegian 11-17 year have received messages with sexual content, and the prevalence is highest among children 15-17-year-old (52 %). In 2018 the Ombudsman consulted 200 young people about sexual harassment. The young people talked a lot of

the digital environment, and sexualized pictures (“nudes”). They told us that asking for and sharing nudes was quite common. The young people told us about exploring their sexuality online, and most of them were unaware of the associated legislation. Taking, having and sharing nudes of children under 16, and in most cases children 16-18, is a criminal offense in Norway. The young people asked for more sexuality education in schools and wanted to learn more about setting boundaries and relationships. We hope that the General Comment can underline the importance of sexuality education also in the digital environment.

The EU Kids Online 2018-survey showed that Norwegian children have inadequate handling skills in handling negative things that happen online. Managing negative things should therefore also be part of the curriculum.

Children have *a right to leisure and play*. This right is about children having spare time to do things they enjoy, for instance gaming and being online with their friends. Play is important in children’s lives and can be part of developing an identity. Digital media might f. ex. give vulnerable children a possibility to feel part of online communities and of belonging. In Norway we have seen examples lately of how children with disabilities take part in communities and make friends in the digital environment through playing online games. The Comment should give clear guidance to the content of this right and elaborate why is important.

Other important rights are the *highest obtainable standard of health and rehabilitation for children exposed to exploitation and abuse*. The Ombudsman assumes that article 24 gives children the right to help in handling mental health problems, regardless of how the need for help has occurred. It can be due to something that has happened in the digital environment, for instance stress and pressure due to influencers, body images etc. It should be interpreted as giving children right to access to information about health issues digitally. The digital environment can be an important source for getting information and help regarding their health. The state should ensure high quality information digitally. In addition, it should be interpreted as an obligation for the states to ensure children digital help to their problems and tell them who can help them. Young people are increasingly talking about the stress and pressure they experience in their life. The Ombudsman’s Youth Advisors are concerned that the information and help young people get is not good enough. The Comment should emphasize the importance of involving children in the development of help, also digitally.

Article 39 must also be covered. For children exposed to different kinds of exploitation in the digital environment, *rehabilitation* is important. The consequences of what the child has experienced must not be undermined because it has a digital dimension.

Protection

An important part of children’s rights is to protect them from different forms of harm. There’s an apparent link between children’s positive rights and protection. The balancing of participation and protection should be made clear, and the dilemmas addressed. Below we will address some articles that are important to cover in the Comment.

The right to privacy is important for children in the digital environment. Some issues that might impose on children’s privacy is GPS-tracking, parents access to children’s digital devices and addit-functions on websites that collect information and can reveal sensitive information about the child. Another problem is parents sharing pictures online of their children. EU Kids Online showed that 33 % of children aged 11-17 had experienced parents sharing pictures of them without consent, and 17 % had asked their parents to remove something they had shared. The Committee should address the states responsibility to ensure that children’s right to privacy is being respected by others, including the right to have unwanted personal information removed from the Internet,

Another challenge is businesses collecting children’s personal data and using the data to target their marketing by using algorithms. A recent study from Consumption Research Norway finds that Norwegian teenagers said that they had received ‘problematic’ marketing in their social media profiles, such as gambling (77%), cosmetic treatments (48%), products promoting weight loss (71%) and alcohol (25%). The research showed that the marketing was tailored.ⁱⁱⁱ In addition, there is a need

for information about potential consequences about sharing personal data when engaging online. Now children give their personal data without understanding the consequences. General Comment no. 20 mentions this, but there`s a need for more elaborate information. Also, the businesses responsibility when targeting young consumers and their terms and conditions of use needs to be addressed. So, does the digital consumer competence of children.

Children have a right to *protection from violence* such as cyber bullying and hate speech. The General Comment should say something about the consequences of different forms of cyber violence, and the responsibility of the states and schools to prevent and help children. The Ombudsman is concerned about the lack of research on cyber bullying and the ongoing debate on the definition of cyberbullying. We hope the Committee will contribute to clarifying what children can expect from the government to protect them, and the need for a more right- based- and evidence-based work to combat violence online.

The General Comment should also address the right to *protection from sexual abuse and exploitation*. Sexual abuse and exploitation in the digital environment are problems on the rise, for instance sharing of nudes between young people, grooming and internet related abuse from adults. This is an area where children might have different roles, and the roles might be shifting. One problem is children sharing pictures of children. In Norway there is a rise in cases where children under 18 are accused, charged and convicted for sharing sexualized material of other children. There is a need for a common practice regarding how these cases should be handled by the police and justice system. We should not criminalize children, as they are often shifting between being victims and perpetrators. Another topic is protection from adults asking for, buying and sharing pictures of children online. This is an arena where there`s a need for international collaborating and for the national police to work to uncover networks of persons who have a sexual interest in children.

Article 36, the right to protection against *other forms of exploitation* prejudice to the child`s health and wellbeing may also be relevant and apply to harmful content, commercial marketing directed at children and value-based influencing; religion, radicalization etc. if the content is damaging their health or wellbeing. We ask for clarification on the content of this obligation and the obligation of the states to fulfill, respect and protect the right.

Further information and assistance

This General Comment will be important for our work to ensure that Norwegian children`s rights are fulfilled, respected and protected. Do not hesitate to contact us if we can be of assistance to you, for instance by giving feedback to the next draft. We wish to contribute in the process after this submission. We have appointed a group of Youth advisors on safe digital environment. The advisors are making a rapport with their recommendations which will be done by June 21. We wish to send this rapport to you. This might give you more information about young people`s point of view in Norway. We can also provide further references that might be relevant for your work.

Best regards

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This letter has electronic approval and is therefore not signed.

ⁱ Staksrud og Olafsson (2019) Tilgang, bruk, risiko og muligheter. Norske barn på Internett. Resultater fra EU Kids Online-undersøkelsen i Norge 2018. Universitetet i Oslo. Institutt for medier og kommunikasjon.

ⁱⁱ Norwegian Media Authority (2018) Children and media 2018.

ⁱⁱⁱ Rosengrav, Steinnes og Storm- Mathisen (2019) Markedsføring og personvern i sosiale medier. En flermetodisk undersøkelse med barn som medforskere. Oppdragsrapport nr. 13-2018. OsloMet: Forbruksforskingsinstituttet