



SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

November 2020

General Comment on children's rights in relation to the digital environment (GC25)

Thank you for the opportunity to provide feedback on the *Draft General Comment No. 25 Children's rights in relation to the digital environment* (DGC). This submission has been prepared on behalf of the [Australian Council on Children and the Media](http://www.childrenandmedia.org.au) (ACCM) by ACCM President [Professor Elizabeth Handsley](mailto:info@childrenandmedia.org.au), in consultation with the ACCM CEO Barbara Biggins OAM.

Introduction

ACCM is the peak Australian NGO providing information and advocacy on children's engagement with the media. Its members share a strong commitment to promoting the healthy development of Australian children. Their particular interest and expertise are in the role that media experiences play in that development.

ACCM's core business is to collect and review research and information related to children and the media; to provide information and advice on the impact on children of print, electronic and screen-based media; to provide reviews of current movies and apps from a child development perspective; to advocate for the needs and interests of children in relation to the media; and to conduct and act as a catalyst for relevant research.

ACCM has links to Australian organisations working on specific matters within our remit, including Collective Shout and the Obesity Policy Coalition. We respectfully adopt and endorse the statements made in Collective Shout's submission about prevention of child sexual exploitation online; reliance on industry self-regulation (and see our further comments below); and end-to-end encryption. We also adopt and endorse the Obesity Policy Coalition's statements about commercial advertising and marketing (and see our further comments below); access to information; privacy; health; culture, leisure and play; and business practices.

Article 17

ACCM was surprised and disappointed to see article 17 of the Convention on the Rights of the Child (**Convention**) mentioned only in connection with 'Access to information'. The concept of guidelines to protect children from 'information and material injurious to [their] well-being', as laid down in paragraph (e) of that article, must surely be central to any attempt to protect

Promoting healthy choices and stronger voices in children's media

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children's rights in the digital environment. That concept is significant both alone, as laid down in paragraph (e) of article 17, and in concert with other articles that can help to determine what material counts as injurious (for example articles 16, 24, 29 and 32). ACCM submits that the GC should include a separate section on article 17, or at least on paragraph (e) of that article (since other aspects are currently covered in section VI.A).

The separate section should include the following:

- Clarification of the role of States in 'encourag[ing] the development of appropriate guidelines'; and specifically in ensuring that guidelines are appropriate. This should be linked to the reference in paragraph 36 to 'States' ... obligations to ensure that the business sector meets its [relevant] responsibilities'. Paragraph 36 should also include more detail on the specific ways in which the business sector risks undermining (or continuing to undermine) children's rights.
- Explanation of the significance of article 29 in determining what material is beneficial to children, and conversely what material is injurious (including examples).
- Reference to other articles that can assist in determining what material is injurious (for example articles 16, 24 and 32).
- Stipulations as to the categories of content generally to be considered injurious to children, as mentioned elsewhere in the DGC (for example paragraphs 55, 85, 87 and 105).
- Guidance on how to 'bear in mind the provisions of articles 13 and 18' when guidelines are being developed. In addition, the last sentence in paragraph 55 should be amended to read: 'The development of any restrictions ... must bear in mind the provisions of a 13' as the current wording puts the proposition too strongly.

Further on the question of the role of business, ACCM submits that the GC should be more realistic as to the prospect of obtaining an 'effective remedy' (paragraph 37) when many of the most influential businesses in this context are based in the one country that has not ratified the Convention. Similarly, there is little prospect that industry self-regulation can be a useful supplement to State regulation (paragraph 39), including on content labelling (paragraph 56), when at the moment it operates more as a way of staving off State regulation. Perhaps these can be matters for further discussion and problem-solving after the GC is finalised.

Strategies

ACCM supports the DGC's various references to safety by design and similar concepts as part of the range of measures needed to support children's rights in the digital environment (for example paragraph 19). In our experience, regulation after the fact is too little, too late,

and practically incapable of protecting children in digital environments that were designed not only for adults but without taking full account of the rights and interests even of those adults.

Similarly ACCM notes a heavy reliance in the DGC on supporting parents to manage children's engagement in the digital environment so as to support the latter's rights (for example paragraphs 33, 91, 106 and 110). We acknowledge the significant role of parents, both under the terms of the Convention and in public expectations, and we celebrate any measures that States can take to support them. However, we submit that the DGC may be over-optimistic as to what parents can realistically provide. Persuasive design and covert tracking mean that even many highly educated and well-resourced parents find it difficult to manage their own use of digital media, let alone that of their children. For those in disadvantaged or vulnerable situations (paragraph 90) it can become practically impossible; and as the Convention and the DGC themselves recognise, parents can even be a source of harm to children (article 19 and paragraph 78). This is all compounded by the fact that parents are one of the most diffuse groups in society, and parenting is widely conceived as a deeply personal and private activity, making it difficult if not impossible for States to influence parents' behaviour or even get a message through to them as a group. For these reasons, ACCM would like to see a stronger emphasis on the role of States in regulating the providers of digital resources (content; platforms; hardware) and especially in pushing safety by design.

We submit further that paragraph 33 should stipulate that measures to educate and support parents and caregivers should draw on research as to how best to engage these groups; and that the statement in paragraph 89 should be extended to training parents to prevent victimisation as well as recognise and respond to victims.

Ages and stages

ACCM is strongly guided in its work by child development research and the knowledge that children at different ages and stages have different needs and interests. For this reason we have, for example, [consistently advocated](#) for a classification system for films and games that provides recommendations and restrictions organised around age-appropriateness, and we have criticised the current Australian system that is based on the vague concept of 'impact'.

Therefore ACCM notes with pleasure the various points in the DGC where such differences are acknowledged (for example paragraphs 17, 55, 82, 91, 92 and 118); and in particular the reference to the provision of content labelling on age appropriateness (paragraph 56). At the same time, however, we would like to see such acknowledgement built into the GC systematically, so that it does not emerge in a sporadic way, as is currently the case. For example, at paragraph 20, the reference to 'respect[ing] the evolving capacities of the child as

an enabling principle' should give equal weight to respecting the vulnerability of children in whom such capacities have not yet evolved. A further example is in paragraph 94 which contains the bald statement that children's privacy in their online activities should be respected, without any recognition of rights evolving along with children's capacities. See also paragraphs 77 and 79 where the discussion about children's privacy in relation to their parents lacks nuance as to the age of the child in question – that is, older children have higher expectations of privacy from their parents than do younger children.

We note further, in passing, that the DGC gives no details on the ages of the 709 children consulted in preparing the DGC, but rather tends to speak of their views as if they were a bloc. When ages are mentioned, as in footnote 1, it stands out that none is under 13; this may be consistent with a recognition that younger children's ability to recognise their own interests can be compromised, but such should be made clearer throughout the GC, and not buried in a footnote.

An important, fundamental principle like age appropriateness should not be positioned in such a way that it can be easily overlooked by those using the GC. The most appropriate (and space-economical) way of building the concept into the GC might be to add a section in the early part of the GC.

Such a section could read as follows:

Age appropriateness

The Convention recognises that children's needs and capacities evolve through the process of development during childhood and adolescence (Preamble, articles 5, 6(2) and 14). The risks and opportunities associated with a child's engagement in the digital environment vary depending on his or her age and stage of development. States should be guided by this consideration whenever they are designing measures to protect children in, or to facilitate their access to, that environment. The design of age appropriate measures should be informed by the best and most up-to-date research available, from a range of disciplines.

Further, the last sentence in paragraph 17 implies that appropriate use is determined by political decision-makers merely taking research into account. It is our observation that some influential people have a tendency to assume that they know which content is age-appropriate, and these assumptions are often fed by the way content is marketed, or the kind of content they themselves enjoyed as children. It is important to maximise the role of objective, rigorous science in this process in order to maximise protection of children's rights. Therefore we submit the last sentence in paragraph 17 should be rephrased to give research

a stronger role. Indeed we cannot think of a good reason to override research findings in designing policy measures. At the very least, the last sentence in paragraph 17 should be amended to be consistent with the statement in paragraph 31 that research ‘should inform’ State decision-making. ACCM submits further that paragraph 31 should be amended to ensure that research from a range of disciplines is used to this end.

The DGC makes occasional reference to the concept of ‘proportionate and evidence-based’ measures (for example paragraph 58); this concept could be used more systematically throughout the GC, for example in relation to the content labelling referred to in paragraph 56.

The need for age-appropriateness extends beyond the experiences children have in the digital environment, for example the information to be provided to children in accordance with paragraph 50 should also be prepared in more than one form, to cater to different stages of development.

Risks and opportunities

ACCM has been similarly pleased to see numerous references in the DGC to both the risks and the opportunities associated with children’s engagement in the digital environment (for example paragraphs 4, 15-16 and 40). However, once again, the references to risks are haphazard and at times appear as something of an afterthought (for example paragraphs 10-12). Paragraph 57 speaks of a need to ‘balance protection [from harmful material] against children’s rights’, when such protection is a right.

We also wonder if the DGC might be a little over-optimistic as to the potential benefits for children of digital technologies. For example ‘the use of digital technologies to promote healthy lifestyles, including social and physical activity’ (paragraph 105) seems unrealistic given the risks posed by the frequent incorporation of features such as persuasive design, covert tracking with onselling of children’s personal details, and simulated gambling elements, which can undermine these things.

We submit that the GC should remind all stakeholders of the need to recognise both sides of the risk/opportunity equation and to strike a balance. We endorse the statement in paragraph 17 that States should adopt a precautionary approach to the use of digital devices, but we further submit that in the sentence in that paragraph beginning ‘Moreover’, the words ‘although there is insufficient evidence that early use of digital devices may increase the risk of later digital addiction’ should be omitted. A precautionary approach necessarily implies that there is insufficient evidence, but is widely regarded as appropriate where children’s wellbeing is concerned.

Advertising and marketing

ACCM would like to see stronger statements in the GC about the risks to children's healthy development from advertising and marketing. It is pleasing to see the recognition in paragraph 40 that the impact of such content on children is not always intentional. However, the statement could make it clearer that it is not enough for States to limit their consideration to messages 'aimed', 'directed' or 'targeted' at children, because children see, and are influenced by, a much larger range of advertising. Indeed, since we know that children under 13 routinely access social media designed for children aged 13 and older, we also know that children are routinely subjected to age-inappropriate advertising on those platforms alone. Therefore the decision as to what is 'age appropriate' for the purposes of regulation should be based on the (likely) presence of children in the audience for particular content or on a particular platform, and not on whether it is aimed (etc) at them. Nor does ACCM support the limitation of regulatory measures to 'child-directed products' (paragraph 42) as children consume, and certainly desire, many products that are not specifically directed at them.

Other matters

ACCM would also like to submit the following:

- The GC should acknowledge that children who appear competent with digital device hardware and software are not immune to harm from the content they access by those means, as this appears to be the view of many parents and other adults (for example in paragraph 20, to strengthen the statement about independent engagement on digital devices; and in paragraph 21, in response to the observation about competence developing unevenly).
- Compliance with the recommendations in the GC may be better coordinated by a human rights institution than a media regulation institution (paragraph 28) as the latter are often too closely aligned with business.
- The GC should extend the recommendation about search engines in paragraph 54 to social media feeds and algorithms.
- The statement in paragraph 61 about children not being prosecuted for the expression of their opinions should be qualified to exclude hateful opinions.
- The use of automated systems to make inferences about a child's inner state is better framed as an instance of economic exploitation, under article 32, than as an interference with freedom of thought under a 14 (as per paragraph 63).
- We applaud the reference in paragraph 77 to the risks associated with 'sharenting' (ie parents transmitting private images or information about their children online).

- We submit that it is more important for regulations to be effective than 'to be compatible with and keep pace with regulation in the offline environment' (paragraph 105).
- We are not aware of any evidence that classification systems prevent access to the digital environment as a whole (paragraph 120).

END OF SUBMISSION