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*Comments proposal to the drafting Committee on the Rights of the Child*

*In response to the call for contribution regarding the draft General Comment on the Rights of the Child in the Digital Environment*

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**Global Privacy Assembly's Digital Education Working Group**

*14 November 2020*

1. The Committee on the Rights of the Child has prepared a draft General Comment No. 25 (202x) on the rights of the child in relation to the digital environment and invites all interested parties to provide comments.
2. In a context where the impact of the digital environment on children's development, on their daily lives, their future and the opportunities available to them is becoming increasingly important, it is more essential than ever to promote respect for children's rights. The draft Comment, which provides guidance on measures to ensure full compliance with the obligations under the International Convention on the Rights of the Child (CRC) should therefore be welcomed and encouraged.
3. Children are particularly vulnerable to the risks associated with the digital environment. For this reason, protecting children's privacy online is a priority action including as part of the current Strategic Work plan <sup>1</sup>by the members of the Global Privacy Assembly of Data Protection and Privacy Authorities (GPA). Raising children's awareness and promoting data protection through education, helping them to become responsible digital citizens and to exercise their rights in keeping with the principle of parental responsibility are key objectives of actions undertaken by the GPA over the years. One of our overarching aims is to promote digital education that respects the rights and freedoms of all.
4. In this respect, the Data Protection and Privacy Authorities' Working Group on Digital Education (DEWG) created by the resolution adopted by the GPA in 2013 "[A Digital Education for All](#)" was mandated to "provide special protection for minors in relation to the digital world". The GPA adopted several resolutions on digital education at the initiative of the DEWG. <sup>2</sup>
5. By adopting this contribution, the DEWG intends to support the project's orientations, make proposals with particular regard to the right to protection of children's personal data.

**I. General remarks**

6. The DEWG notes with interest that the draft Comment considers the respect for privacy enshrined in Article 16 of the CRC as vital for the agency, dignity and safety of children and for the exercise of their rights (**§9**). *The DEWG therefore considers that, insofar as the right to privacy conditions the realization of the other rights of the Convention, it constitutes a general principle that could usefully be expressly mentioned in Chapter III of the draft Observation.*

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<sup>1</sup> Link to [the GPA Policy Strategy](#) (on page 9)

<sup>2</sup> [Resolution for the Adoption of an International Standard for Personal Data Protection Education](#) (2016)  
[Resolution on e-learning platforms](#) (2018)



7. The DEWG shares the Committee's commitment to promote the consideration of children's evolving capacities and best interests in the implementation of policies relating to their rights in the digital environment. Determining an appropriate balance between protection and emerging autonomy is more necessary than ever to allow children to take full advantage of the digital environment while minimizing the risks they may be exposed to. **§20-21**

## **II. The exercise of children's rights in the digital environment**

8. The draft Comment affirms that States should ensure that children, their parents or caregivers have access to the data stored, to rectify data that is inaccurate or outdated and to delete or rectify data unlawfully or unnecessarily stored by public authorities or private individuals or bodies. The DEWG shares this viewpoint and emphasises that since these are rights of individuals, it would be appropriate to state this explicitly. It is important to remember that that these rights fundamentally belong to children themselves and that, where parents or guardians exercise these rights on behalf of a child, they have an obligation to do so in the best interests of the child. **§73**
9. The DEWG welcomes the recognition of the need to inform children, as well as their parents and teachers, of their rights in order to ensure their effectiveness. Information should be presented in a child-sensitive and age-appropriate manner. It should also be easily accessible at all times and presented in a way that encourages children to learn more about their rights in the digital environment.
10. *Where parental control tools are used, the DEWG considers it important to provide children with age-appropriate information and suggests that information should be emphasized with a clear signal to the minor when an online service is operated by a parent or a guardian for the purpose of monitoring his or her online activity or location.* **§ 57**
11. The DEWG fully agrees with the fact that this information should also cover complaint mechanisms, as well as the services and remedies available when their digital rights are not respected. **§50**
12. In this regard, the DEWG welcomes the Committee's guidance on the need for complaints and reporting mechanisms that are prompt, available and accessible to children to ensure the implementation of children's rights in the digital environment, including the right to withdraw consent and the right to object to the processing of their personal data. **§45-73**

## **III. Protecting children's fundamental freedoms from profiling and automated decision making**

13. The DEWG welcomes the consideration of issues related to automated decision-making, which can undermine children's right to non-discrimination if it is based on biased, partial or illegally obtained information, and their ability to form and freely express their views in the digital environment. **§11-62**
14. As the observation project points out, these technologies can be used to influence children's behaviour and emotions, especially as they are sometimes used in contexts where the child is vulnerable, such as education, health or criminal justice contexts. **§63**
15. The DEWG therefore joins the Committee in encouraging States to introduce or update data protection regulations and design standards that aim to prohibit practices that manipulate children or seek to influence their behaviour in a way that is detrimental, including "emotional profiling". **§64**



#### **IV. The supervision of the commercial exploitation of children's data**

16. The DEWG recalls that children can be particularly vulnerable in the online environment and more easily influenced by behavioural advertising. They deserve specific protection which should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children. As a general rule, online services should refrain from profiling children on the basis of a digital record of their real or supposed characteristics for commercial purposes, unless by way of exception it is demonstrated that profiling is only carried out having taken full account of the best interests of the child and that specific protective measures and appropriate safeguards into the processing have been implemented”. **§42**
17. However, the DEWG questions the scope of paragraph 43, which refers to the need to ensure that parental consent<sup>3</sup> is obtained only in the context of commercial advertising and marketing. However, such collection of consent, while necessary for processing for these purposes, is sometimes required for processing for other types of purposes. *For consistency, it would be preferable to include this provision at the end of paragraph 72 in chapter VI.E, which mentions consent extensively.*
18. *The DEWG highly recommends avoiding marketing techniques which aim at encouraging minors to provide unnecessary personal data to obtain services or to weaken or deactivate their privacy measures.*

#### **V. The consideration of child-related specificities by public authorities and the private sector**

19. The DEWG welcomes the promotion of a child-centred approach that involves all actors in the digital environment, from government to the private sector.
20. The draft Comment recommends that States should update their national legislation to ensure that the digital environment is compatible with the Convention and its Optional Protocols, and make it mandatory, when drafting any legislation relating to the digital environment, to assess its impact on children's rights. *The DEWG recommends that such impact assessments are carried out from a human rights perspective, specifically based on the fundamental right to Data Protection, in order to assess and mitigate the risks that children are likely to encounter when accessing online services.* **§ 24**
21. The DEWG welcomes the special attention given to the data protection regulation in paragraph 72, which states that States shall take legislative and other measures to ensure that children's privacy is respected and protected by all organizations and in all environments that process their data. *The DEWG recommends adding an explicit reference to privacy by default in paragraph 72 as follows, “States should encourage the adoption of privacy-by-design and by default, such as high by default privacy settings and encryption, in services intended for or accessible to children ».*
22. The DEWG also shares the objective of promoting this approach to business, in particular by recommending the implementation of regulatory frameworks, industry codes and terms and conditions of use of services that meet the highest standards of ethics, privacy and child safety at all stages of the value chain, including conception and design<sup>4</sup>. **§39**
23. *In accordance with paragraph 72, the DEWG recommends a risk based approach in which a user's age is established with a level of certainty appropriate to the risk posed by data*

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<sup>3</sup> When necessary.

<sup>4</sup> [Resolution on e-learning platforms \(2018\)](#)



*processing or providing a baseline set of protections appropriate for children (via guidance or codes of conduct) which are applied to all users.*

24. The draft Comment states that where independent oversight bodies monitoring the activities in relation to the digital environment exist, human rights institutions should work closely with them. *These independent oversight bodies, including the data protection regulatory authorities that make up the GPA, have an important role to play in protecting children's rights on the Internet and in making children's rights in the digital environment a priority. Where they do not have the necessary means of action, such bodies should be empowered to assist children and parents in the exercise of their rights, receive complaints from children and respond to them in a child-sensitive manner, ensuring respect for their privacy and the confidentiality of discussions.* **§32**

## **VI. Consultation with children**

25. In developing policies and practices affecting children's rights in the digital environment, the Committee rightly advocates that States consult with children, their parents and caregivers to ensure that appropriate policies are put in place. **§23**
26. The participation of children in the development of digital technology and services is crucial to enable a digital environment suitable for children. The DEWG also shares the viewpoint that technology developers should also be encouraged to actively take into account children's voices. **§19**

## **VII. Digital Education**

27. The draft Comment highlights the need for robust data protection and privacy in "public settings such as...school", and the use of educational technologies to deliver educational benefits. **§ 75-112**
28. In this regard, the DEWG points out the 2018 GPA resolution on e-learning platforms adopted in 2018<sup>5</sup> which called on Educational authorities and E-learning platform providers and manufacturers, including providers of data driven services directed at students, to take measures to ensure the effective protection of pupils' data and use ethical applications for activities specifically designed to the education area.
29. The DEWG emphasises that the recommendations made in this resolution are all the more relevant as classrooms have become increasingly connected environments in the context of the health crisis. *This calls for particular transparency and vigilance with regard to the conditions for reusing and analysing students' data, and in particular learning analytics, in view of students' evolving capacity to understand processing activities and the possible consequences for their social and professional futures.*
30. The DEWG welcomes the Committee's proposal to promote the inclusion of digital literacy in school curricula and teachers' trainings on these issues.
31. Paragraph 113 details the competences that should be included in school curricula: while there is a reference to informing the child about his or her rights in the digital environment and possible remedies, there is no specific mention of the protection of personal data. *The DEWG therefore suggests these paragraphs are amended to add the protection of personal data and privacy. Digital literacy curricula should distinguish clearly between data protection issues on the one hand and broader online safety issues such as cyberbullying, harmful online content and fake news on the other. Ensuring that children understand from an early age the difference between these issues is key to empowering them in the digital environment.*

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<sup>5</sup> [Resolution on e-learning platforms](#) (2018)



32. In this respect, it is relevant to mention that in 2016, the GPA adopted a resolution for the adoption of an international personal data protection Competency Framework<sup>6</sup> developed by the DEWG, which is already being implemented in school curricula and teacher training programs in many GPA member jurisdictions.
33. *The DEWG suggest to take into account measurement indicators by school level to identify the level of knowledge of children on the right to privacy and protection of personal data.*
34. The draft Comment rightly notes that “it is of increasing importance that children gain an understanding of the digital environment including its infrastructure, business practices, and persuasive strategies, uses of automated processing and personal data and surveillance. *The DEWG recommends in this respect that the acquisition of this knowledge should be included in school curricula as well as in teachers training on these issues. Such programmes and training should also include practical lessons and concrete awareness-raising actions on privacy risks, data protection solutions and remedies, including the role of data protection authorities in this regard. §114. In addition to this point, it is suggested to use materials referring to the deployment of competences relevant to data protection and privacy rights articulated by school level.*

#### **VIII. Other comments**

35. Chapter X deals with the health and well-being of children in the digital environment. While recognising the opportunities offered by digital technologies for health, the DEWG wishes to emphasise the particularly sensitive nature of personal data related to children's health, and calls on the Committee *to stress that States must ensure that devices that collect health data concerning children, including biometric and genetic data, comply with existing legislation and adhere to high standards of personal data protection, privacy and bioethics.*
36. Paragraph 118 deals with the need to balance children’s access to culture, leisure and play opportunities in the digital environment with access to attractive alternatives in the offline world. *In this regard, the regulatory framework should incentivize online services to encourage children to disconnect at regular intervals so as to seek out alternative culture, leisure and play opportunities with friends and family in the offline world.*
37. Paragraph 31 states that in order to enable the development of appropriate public policies concerning children, it is important to promote knowledge and research in this field and thus have the necessary data made available. *It would be useful to highlight that such data collection must comply with the data protection legislation and shall not affect children’s right to privacy.*

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#### **Addendum**

The Global Privacy Assembly (GPA) is the premier global forum of data protection and privacy authorities aimed at advancing global privacy protection in the digital age and establishing a global regulatory environment with clear standards and a high level of data protection. The GPA brings together the initiatives of more than 130 data protection and privacy authorities from around the world. The GPA develops joint statements, declarations, communiqués and resolutions to promote privacy in the international public debate, including data subjects’ rights by speaking with a unified voice on these issues. It also appoints representatives to observe activities at international organisations.

The GPA works closely with the UN, by means of the UN Executive Office of the Secretary General’s Observer Status to the GPA and close contacts with the UN Special Rapporteur on Privacy, Joseph Cannataci.

The Global Privacy Assembly membership is organised into Working Groups that concentrate on the most significant Assembly initiatives identified by the membership, deriving their mandate and direction from the Closed Session, typically leading from Resolutions

<https://globalprivacyassembly.org/>

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<sup>6</sup>[Resolution for the Adoption of an International Competency Framework on Privacy Education \(2016\)](#)  
[International Competency Framework for school students on data protection and privacy \(2016\)](#)