



Subject: Children's rights in the Digital Services Act

21 April 2022

Dear Members of the European Parliament, Council of Ministers of the EU and European Commission,

Tomorrow you have a choice: confirm children's rights in the digital world or leave millions of children across the European Union exposed to online harms, dramatically undermining the objective of the Digital Services' Act (DSA) to create a safer digital space where the fundamental rights of all users are protected.

Both the Parliament and Council have demonstrated a strong commitment to ensuring the DSA protects children, in line with EU and international law, the EU Strategy on the Rights of the Child as well as the EU Digital Principles. You have found agreement that the best way to do this is to implement the commitment made in General comment No. 25 to the UN Convention on the Rights of the Child¹ and the OECD Recommendation on Children in the Digital Environment² to require service providers to ensure a "high level of privacy, safety and security" for children.

We – representing more than 2000 children's rights organisations as well as parents' and mental health stakeholder associations, and speaking on behalf of some 200 million children, parents and mental health professionals in the EU – are concerned that in the final stages of negotiation this objective, and children's fundamental rights, will be undermined.

As you finalise the DSA, we strongly urge you to:

1. **Include a citation of UNCRC General comment No. 25** to ensure the Act and any interpretation thereof is underpinned by established international law with regards to children's rights in the digital environment.
2. **Require service providers ensure a "high level of privacy, safety and security *by design*"** for children, as set out in UNCRC General comment No. 25 and already implemented by companies complying with the UK's Age Appropriate Design Code³. The DSA should set a clear bar against which services can be judged. Watering this fundamental principle down to a much vaguer requirement to "take appropriate and proportionate measures" and citing service design only as one example of such a measure incentivises a "minimal reform" approach and robs the regulator of clear criteria for enforcement.
3. **Ensure all services likely to be accessed by children⁴ or used in practice by children are in scope, without loopholes.** Language which limits application to services "predominantly" used by children or where the provider "is aware" that some of the recipients of its service are

¹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/25&Lang=en

² <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0389>

³ <https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services-2-1.pdf>

⁴ For a service to be "likely to be accessed by children", the possibility of this happening needs to be more probable than not. Whether a service is "likely to be accessed by children" will depend upon whether the content and design of the system is likely to appeal to children, and any measures in place to restrict or discourage their access to the service. See: <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/services-covered-by-this-code/#code4> Alternative language is that of the OECD Recommendation on Children in the Digital Environment and Guidelines for Digital Service Providers, which applies to services "where it is reasonably foreseeable they will be accessed or used by children".

children reproduces the fatal flaw of the US' Child Online Privacy Protection Act (1998) that has underpinned the design and roll-out of the digital services that now dominate children's digital lives. COPPA applies to operators of online services that are directed at children, as well as to operators of online services directed at a general audience if the operator has "actual knowledge" that it is collecting personal information from children. This "actual knowledge" standard has created an incentive for providers to look the other way when children use their sites and is at the heart of the problem you are now seeking to fix, whereby children and their needs are ignored online.⁵

Dear esteemed negotiators,

Children's rights apply to all under 18s; they are inalienable, unconditional and indivisible. All children have the right to a high level of protection and to their best interests being taken into account, wherever they are.

This basic principle has for far too long been ignored in the digital world, and children have paid an unacceptable price. We are counting on you to re-establish the primacy of children's rights, and lay the groundwork for a better digital future for all.

Sincerely yours,



Baroness Beeban
Kidron
Chair, 5Rights
Foundation



Victor Petuya
President, European
Parents' Association



Guillaume Landry
Executive Director,
ECPAT International



Jana Hainsworth,
Secretary General,
Eurochild



Professor Naomi A
Fineberg
Chair of the COST
Action into
Problematic Usage of
the Internet



Claudia Marinetti,
Director, Mental
Health Europe



Eylah Kadjar,
Secretary General ad
interim of Terre des
Hommes

⁵ See e.g. <https://www.adexchanger.com/data-exchanges/getting-childrens-privacy-right-requires-opening-your-eyes/>