



Children's rights in the digital space

Editorial

Dear readers,

since the adoption of the United Nations Convention on the Rights of the Child over 30 years ago, society has changed in many ways. In 1989, hardly anyone had any notion of the significance that digitalisation would have in the future. Today, it shapes the lives of children and young people in multiple ways. The COVID-19 pandemic has shifted an even larger part of children's everyday lives into the digital space: social contacts, education and consumption are increasingly taking place in the digital world.

However, the pandemic has also shown that not all children are able to participate in digital everyday life. While in some countries of the world a large proportion of children, especially in rural areas, still do not have internet access, these numbers are significantly lower in European countries. Nonetheless, here too, a digital divide is evident. This divide reduces the chances of many children, especially those in vulnerable situations, to thrive in times of school closures and home schooling.



Growing up in an environment shaped by digital services and devices comes with risks and challenges, but also with opportunities for children. Ongoing digitalisation creates a need to extend the protection of children and their rights into the digital space. The digital world is complex and confusing; it involves a multitude of actors, including many economic actors; and it transcends national borders. Therefore, coordi-

nation and common strategies are needed. Corresponding initiatives have increasingly been pursued at the international, European and national levels in recent years. In this regard, the general comment of the United Nations Committee on the Rights of the Child on children's rights in the digital environment is an important step. Meanwhile, other international initiatives, such as the Council of Europe Strategy for the Rights of the Child and the recently published Strategy on the Rights of the Child by the European Commission, respectively also address the issue of children in the digital space.

In a **first contribution** in this newsletter, we present these initiatives. In a **second contribution**, Jutta Croll of the Digital Opportunities Foundation, explains the reform of youth protection in the media in Germany. In a following **interview**, Maialen Garmendia and Gemma Martínez of EU Kids Online Spain and Antti Järventaus of Save the Children Finland discuss the requirements for the protection of children's rights in the digital space from their individual perspectives.

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International and European initiatives on children's rights in the digital space

Sarah Molter, research officer at the Observatory

Today, there are several key documents dealing with children and their rights in the digital space.¹ Particularly relevant at the international level are the **Council of Europe Strategy for the Rights of the Child (2016–2021)** and the **General Comment on children's rights in relation to the digital environment** to the United Nations (UN) Convention on the Rights of the Child, as well as the **European Strategy on the Rights of the Child (2021–2024)** in the European Union. The basic principles of the **UN Convention on the Rights of the Child**² (non-discrimination, priority of the best interests of the child, right to life and development, respect for the views of the child) are the cornerstone for all documents, thus resulting in a convergence of values and structural commonalities between the various documents.

Extension of the UN Convention on the Rights of the Child: General Comment No. 25 on children's rights in relation to the digital environment

On 24 March 2021, the UN Committee on the Rights of the Child released a **General Comment on children's rights in relation to the digital environment**³. This comment is intended to support states in protecting and fulfilling children's rights also in the digital space. It is the 25th General Comment to the UN Convention on the Rights of the Child.⁴

In its General Comment, the UN Committee on the Rights of the Child makes it clear that knowledge of and access to digital technologies and the internet are of crucial importance for children, their thriving and for their future. However, it also points out that there are major disparities in the use of the digital space as well as taking



advantage of the opportunities it offers. This can lead to further deepening of existing social inequalities. In addition to the opportunities of the digital space for children, the Comment also mentions the risks that need to be taken into account.

The General Comment puts the **principles of the UN Convention on the Rights of the Child**⁵ in the context of the digital world:

- **Non-discrimination:** States should guarantee that all children have access to digital devices and the internet. Potential measures include projects to promote digital inclusion, or publicly accessible internet free of charge. States should prevent discrim-

1 The Digital Opportunities Foundation offers a comprehensive [overview](#) of relevant international documents in the field of children's rights in the digital space via its project [Children's Rights.Digital](#).

2 The text of the Convention and a child-friendly version can be found on the website of UNICEF.

3 Committee on the Rights of the Child (2021): [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#); see also the [glossary](#) on terms used; version in child-friendly language: 5Rights Foundation (2021): [In our own words – children's rights in the digital world](#).

4 General Comments of international treaties are not legally binding. Though in the case of the UN Convention on the Rights of the Child, states must comment on the General Comments as part of their periodic reports.

5 The explanatory notes published by the 5Rights Foundation offer further information and practical examples on the 25th General Comment to the UN Convention on the Rights of the Child and highlights findings from the consultations: 5Rights Foundation (2021): [Explanatory Notes. General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#).

UN Convention on the Rights of the Child (1989)

In 1989, the UN Convention on the Rights of the Child was adopted by the United Nations General Assembly. It is a legally binding international treaty that protects the rights of children between the ages of zero and 18 regardless of their ethnicity, religion, gender, language, or abilities. The Convention consists of 54 articles covering the rights of children in all aspects of their lives. In addition, the Convention sets out how governments should work together to make these rights universally accessible to all children. 196 countries have ratified the Convention so far, making it the most widely used and accepted human rights convention. It applies to nearly two billion children. For the Convention's monitoring, governments must submit periodic reports on the state of children's rights in their countries to the UN Committee on the Rights of the Child. The Committee can request further information and make recommendations. It is advised by the United Nations Children's Fund (UNICEF).

Our Rights in a Digital World

Already in 2018, the UN Committee on the Rights of the Child decided to work on a General Comment regarding the digital world. The 5Rights Foundation, which advocates for a more child-friendly digital space, acted as an advisor to the Committee. In a two-year consultation, 136 responses to the draft comment were submitted by civil society organisations, states and other stakeholders.¹ Children themselves were consulted as well: more than 700 children between the ages of nine and 22 from 27 states were involved in the consultation. These children and young people were asked how technology affects their rights and what measures they would like to see in place for their own protection. The report "Our Rights in a Digital World"² reflects these perspectives of children in the preparation of the General Comment. In addition to eight bundled demands, the report also includes direct quotes from children:

„On the internet I find more acceptance than in my real-life surroundings which showed me that it is okay to be different.“

„The minute we get home, we are on the cell phone. The cell phone may cause depression and bullying.“

„No one ever told me what the best techniques are to protect my data.“

„Digital technology plays a role because with [its] help... we can connect ourselves to the world and we can make an identity in the world.“

1 The statements have been published on the website of the UN Committee.

2 5Rights Foundation (2021): [Our Rights in a Digital World: A snapshot of children's views from around the world](#).

ination and digital exclusion based on sex, disability, socioeconomic background, ethnic or national origin, language, residence status, sexual orientation, or other grounds. In addition to removing barriers to access, states should also prevent children from being pushed out of and disadvantaged in the digital space. This includes, for example, cyber-bullying and online sexual harassment, which continues to affect girls in particular.

- **Priority of the best interests of the child:** The best interests of the child shall be a primary consideration in all actions affecting children. Where conflicts of interest arise – for example between the right to freedom of expression of adults and the right of children to privacy – states should treat the interest of the child as paramount. This may be relevant, for example, in online forums where children have to be protected from cyber-bullying. In order to assess what is in the best interest of the child, children should be consulted and involved to a greater extent.
- **Right to life and development:** States should protect children from dangers associated with the digital space and thus their emotional and physical development. Risks are listed as the four Cs: 1. Content, risk due to harmful content like portrayals of violence, 2. Contact, risk due to harmful content like sexual harassment, 3. Conduct, risk due to harmful actions like bullying, and 4. Contract, economic/commercial risks like hidden costs or losing control over one's own data.
- **Respect for the views of the child:** Children should be involved by decision-makers such as states, legislatures, companies and organisations. First and foremost, this includes informing children about digital technologies and their rights to enable them to participate actively.

It is emphasised that children need varying levels of support and freedom, especially in view of their age (Evolving capacities). The Comment also makes mention of fundamental **measures for the implementation** of children's rights in the digital space, including, among others, the revision and creation of laws, comprehensive political strategies, and improved coordination including clear accountability – also with regard to monitoring. The Comment goes on to address all **areas of children's lives** in which children's rights in the digital world are to be implemented. This concerns, among other things, the fields of civil rights and freedoms like access to information or the right to privacy, protection against violence and other exploitation, the fields of education, leisure and culture, and the protection of particularly vulnerable groups.

Council of Europe Strategy for the Rights of the Child (2016–2021) and Guidelines to respect, protect and fulfil the rights of the child in the digital environment



The **Council of Europe Strategy for the Rights of the Child (2016–2021)**⁶ is considered an important milestone in establishing children's rights in the digital world. The strategy includes children's rights in the digital space as one of five target areas. It emphasises that children have the right to participation, provision, and protection

in the digital world. Council of Europe member states are encouraged to enable children to use the internet creatively, critically, and safely, while at the same time en-

⁶ Council of Europe (2016): *Council of Europe Strategy for the Rights of the Child*. If the direct link is protected and does not work, please copy this following link into your browser: <https://rm.coe.int/168066cf18>

Gender digital divide

Compared to boys and men, girls and women have less access to digital applications, devices, and the internet. Especially in poorer countries, girls are less able to afford digital technologies. Moreover, stereotypes and fear of discrimination online discourage girls from using the internet. In the poorest countries, the gender digital divide regarding access to the internet is at around 30 percent.¹ Lack of access to the digital world disadvantages girls and women directly in education and on the labour market, among other things. In addition to this, the fact that women are less likely to be involved in the development of digital technologies means that women's perspectives are in the long run also less likely to be taken into account, for example when it comes to creating algorithms.

¹ ITU Telecommunication (2017): *ICT Facts and Figures 2017*.

Age and abilities of children in the digital space: processing of personal data

In the chapter Evolving capacities, the 25th General Comment to the UN Convention on the Rights of the Child emphasises that children need varying levels of support and freedoms in dealing with the digital world, based on their different development and abilities. The age of the children plays a decisive role in this regard.

The Council of Europe's guidelines to fulfil the rights of the child in the digital environment also draw on this principle. Paragraph 30 on the consent of children to the processing of their personal data states:¹ "Where states take measures to decide upon an age at which children are considered to be capable of consenting to the processing of personal data, their rights, views, best interests, and evolving capacities must be taken into consideration. This should be monitored and evaluated while taking into account children's actual understanding of data collection practices and technological developments. When children are below that age and parental consent is required, States should require that reasonable efforts are made to verify that consent is given by the parent or legal representative of the child."

¹ According to Article 4 of the EU General Data Protection Regulation (GDPR), personal data means any information relating to the identity of a natural person, for instance name, age, ID card number, location data and others.

sureing their right to privacy as well as protection from bullying, hate speech, radicalisation, sexual abuse, and other online risks. To this end, states should adapt the respective legislation and policies, provide access to appropriate technologies, and promote digital democracy education. The strategy also states that in order to keep up with the pace of technology development, investment in research as well as partnerships with the private sector are needed.

Council of Europe Strategy for the Rights of the Child (2016–2021)

In April 2016 in Sofia, the Council of Europe adopted the Strategy for the Rights of the Child to implement the UN Convention on the Rights of the Child, in short: Sofia Strategy. The strategy is binding for the member states. It was developed by a panel of experts with the participation of governments, international organisations, civil society stakeholders and children. It applies to persons under the age of 18 in the 47 member states of the Council of Europe. The strategy was accompanied by the Ad hoc Committee for the Rights of the Child (CAHENC) until 2019, and by the new Steering Committee for the Rights of the Child (CDENF) as of 2020. The Council of Europe is furthermore preparing an updated strategy for the period 2022–2027.

The strategy has been evaluated in 2017 and in 2020¹. The second **report on the implementation of the strategy** states that 34 countries have introduced legislation or policies to protect children in the digital sphere since 2016, and eight member states have introduced national strategies, action plans or other policy mechanisms to protect children online. Awareness-raising campaigns and materials, online helplines and reporting mechanisms, as well as the development of guidelines for relevant stakeholders have also been introduced. The Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment had been used by many states. A majority of states observed a positive development for children's rights in the digital space, though civil society actors were more critical and often judged the state of affairs to be inadequate, particularly with regard to privacy protection. In addition, the report identified a lack of digital literacy and education in schools and vocational training as well as the persisting lack of access to technology for girls and women as continuously existing problems. Other challenges are the excessive use of digital media and technologies. For a positive development, it is essential to achieve better coordination and cooperation with the industry, the report highlights. Moreover, opportunities in the area of education and participation must be used more intensively, especially with regard to children with disabilities, it adds.

¹ Council of Europe (2017): *1st report on the implementation of the Council of Europe Strategy for the Rights of the Child (2016–2021)*; Council of Europe (2020): *2nd implementation report on the Strategy for the Rights of the Child (2016–2021)*. If the direct links are protected and do not work, please copy these following links into your browser: <https://rm.coe.int/1st-report-on-the-implementation-of-the-council-of-europe-strategy-for/1680765420>; <https://rm.coe.int/2nd-report-on-the-implementation-of-the-coe-strategy-for-the-rights-of/16809f03eb>.

As a key action, the Committee of Ministers of the Council of Europe published concrete **Guidelines to fulfil the rights of the child in the digital environment**⁷ on 4 July 2018. These guidelines are intended to support member states in their efforts to take a comprehensive strategic approach to shaping the complex digital world for and with children. For their underlying principles and rights (best interests of the child, development of the child's capacities, right to non-discrimination, right to be heard, obligation to involve other stakeholders), the guidelines refer to the principles of the UN Convention on the Rights of the Child (see above: non-discrimination, primacy of the best interests of the child, right to life and development, respect for the views of the child). The guidelines highlight the rights of children in the digital space in all areas of life that affect them:

- **Right to access:** Children need access to devices, network connectivity, digital services and digital content, for instance to be able to exercise their right to education. States should protect children in vulnerable situations in particular from digital exclusion.
- **Right to freedom of expression and freedom of information:** For children to be able to exercise their right to freedom of expression and information, they should be educated extensively in what freedom of expression and information in fact means, for example through specific educational programmes.
- **Right to participation, play, assembly and association:** States should enable children to play digitally and come together online in age-appropriate ways. States should also take measures to ensure that children can participate in political debates, among other things.

⁷ Council of Europe (2018): *Guidelines to respect, protect and fulfil the rights of the child in the digital environment – Recommendation CM/Rec(2018)7 of the Committee of Ministers (2018)*.

No Hate Speech Campaign by the Council of Europe (2012–2018)

In 2013, youth organisations of the Council of Europe launched the No Hate Speech Movement. The campaign was designed to raise awareness of hate speech online and empower young people to take action against hate on the internet. It was also intended to promote young people's interest in political life and civil rights issues. The respective national campaigns will continue after the Council of Europe campaign ends. There are currently people in 40 states active in the campaigns.¹

¹ All national campaigns can be found at the Council of Europe's website.

Accessible gaming

There are numerous projects and initiatives on international level that advocate for accessible/barrier-free computer games, enabling people with disabilities to make good use of computer games. There are several concurrent recommendations on how to make such games more accessible. The Game Accessibility Special Interest Group of the International Game Developers Association (IGDA GA-SIG) has compiled a list of recommendations that include, for example, colour-blind-friendly designs or respective speed adaptations of games.¹

¹ Ellis, Barrie / Voelker, Tara / Hamilton, Ian (2017): *Guidance on how and why gaming hardware and operating systems can enable access for gamers with disabilities*.

- **Privacy and data protection:** Children have a right to protection of their personal data and the privacy of their communications. The principle of data minimisation⁸ should be observed and, above all, children should be provided with information on data protection that they understand.
- **Education:** States should promote appropriate digital literacy education and awareness initiatives in schools, but also in cultural institutions.
- **Protection and safety:** In order to protect children from violence, abuse, neglect and bad treatment online, states should also take measures to address risks (for example, the Safety by Design and Privacy by Design approaches), protection and awareness-raising measures (age verification systems, measures against cyber-bullying) and measures focusing on sexual abuse (victim rehabilitation measures, law enforcement measures).

European Strategy on the Rights of the Child (2021–2024)

The protection and promotion of children's rights is an important objective of the European Union and is enshrined in Article 3 of the **Treaty on the European Union**⁹ as well as in Article 24 of the **Charter of Fundamental Rights of the European Union**¹⁰ and in various secondary legislation. Other initiatives of the European Union to protect social rights include the **European Semester** and the **European Pillar of Social Rights**¹¹, which also make direct reference to children.

The European Commission adopted its first comprehensive **Strategy on the Rights of the Child (2021–2024)**¹² at European level on 24 March 2021. The UN Convention on the Rights of the Child can be considered a guiding document for the European Union in this area. One of the six thematic fields of the strategy includes the right of children to be safe in the digital world and to make use of the opportunities it offers.

Some legal instruments and policy initiatives have already been developed and implemented at European level: The **Audiovisual Media Services Directive**¹³ has been revised so that, for example, video platforms are required to restrict children's access to harmful content. The **Digital Services Act**¹⁴ furthermore imposes due diligence obligations on major platforms to better protect the well-being of children.¹⁵

In its Strategy on the Rights of the Child the European Commission has committed itself to a number of other measures.

- An update of the **Better Internet for Kids Strategy** is planned for 2022.

⁸ The principle of data minimisation is laid down in Article 5 of the EU General Data Protection Regulation (GDPR). It states that data may only be collected to the extent that it is needed to achieve the respective purpose.

⁹ Consolidated version of the Treaty on the Functioning of the European Union (2016/C 202/01).

¹⁰ Charter of Fundamental Rights of the European Union (2012/C 326/02).

¹¹ A booklet and additional information on the European Pillar of Social Rights can be found on the European Commission's website; see also the **European Pillar of Social Rights Action Plan** drafted by the European Commission on 4 March 2021.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. **EU strategy on the rights of the child** (COM(2021) 142 final). Together with the **European Strategy on the Rights of the Child**, a **proposal for a Council recommendation establishing a European Child Guarantee** was also adopted. See also the info box on the **European Child Guarantee** on p. 11.

¹³ Directive (EU) of the European Parliament and the Council of 14 November 2018 (**Audiovisual Media Services Directive**) (2018/1808).

¹⁴ Proposal for a Regulation of the European Parliament and the Council on a Single Market For Digital Services (**Digital Services Act**) (COM(2020) 825 final).

¹⁵ A complete list of all European measures aiming to safeguard children's rights in the digital world can be found on the website of the European Commission.

Safety by Design and Privacy by Design

Safety by Design means that online services are designed with the aim of protecting users' safety as much as possible, for example by setting the accounts of underage users to be secure-by-default or by prohibiting that adults can contact underage users.

Privacy by Design means the practice of designing online services with the aim of ensuring users' privacy as much as possible, for example by setting the accounts of underage users to be private-by-default or by minimizing the amount of data collected.¹

¹ *Glossary General Comment No. 25 (2021) Children's rights in relation to the digital environment.*

European Strategy on the Rights of the Child (2021–2024)

This cross-cutting children's rights strategy is in force for the coming four years. It is intended to unite existing and future European actions and policies on children's rights. Children's rights are to be included as a cross-sectional task in all European policy areas. The strategy also aims to support member states in making the best use of EU funds. The guiding principles of the strategy are participation, equality, and inclusion. All children in the European Union, defined as all persons under the age of 18, have the right to equal protection and access to services. The strategy has been developed together with children: more than 10,000 children participated in the consultations. The strategy is based on the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, and also refers to Council of Europe standards and guidelines and its Strategy for the Rights of the Child.

- The new **Digital Education Action Plan (2021–2027)**¹⁶ aims to promote digital literacy among both children and adults, with a focus on dealing with disinformation.
- The initiatives **Youth Pledge for a Better Internet** and **Youth Call for Action** are to encourage companies to develop **comprehensible data protection concepts for digital services and applications** and to involve children in the design and development of new digital products.
- In order to promote the development and use of **accessible information and communication technologies (ICT) and assistive technologies for children with disabilities**, technologies such as speech recognition are to be promoted. The full implementation of the **Accessibility of Products and Services Directive**¹⁷ is also to be ensured.
- A range of **principles for the industry** are to be developed together with children, including in the field of Artificial Intelligence.¹⁸
- In the context of the **European strategy for a more effective fight against child sexual abuse**¹⁹, the Commission is to present a legislative proposal to effectively combat child sexual abuse online.

Better Internet for Kids Strategy (2012)

A 2011 **report from the European Commission on the protection of minors from harmful media in Europe**¹ highlighted very different levels of media literacy among children and an uneven level of protection in the individual member states. The **Better Internet for Kids Strategy**² drafted by the European Commission is intended to prevent further divergence and fragmentation of measures between the single states. National regulatory measures are not excluded, but the focus lies on self-regulation. The strategy relies above all on closer cooperation between the European Commission, the member states and the internet industry. The **Better Internet for Kids Platform**³ is an information portal for children, parents, and professionals within the framework of the strategy. In general, the strategy rests on four pillars: 1. promoting high-quality content online for children and young people, 2. increasing awareness and empowerment, 3. creating a safe online environment for children, and 4. combating child sexual abuse and exploitation. It sets out a series of actions to be taken by the Commission, by the member states, and by the industry across its entire value chain.

- 1 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of children in the digital world (COM/2011/0556).
- 2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *European Strategy for a Better Internet for Children (COM(2012) 196 final)*.
- 3 See the *website* of Better Internet for Kids.

The member states are called upon to create equal access for children, to promote digital literacy (also with the help of the Citizens' Digital Competence Framework²⁰), to support media literacy as part of education, to support the Safer Internet Centres co-funded via the European Union, and to promote educational participation, especially of girls, in the subjects of science, (information) technology, engineering and mathematics (STEM subjects).

ICT companies are encouraged to combat harmful conduct on the internet and remove illegal content, including child sexual abuse. Among other things, the companies should ensure that privacy and the protection of personal data are taken into account by means of technology design and default settings. Furthermore, they are to take measures against excessive use and addiction to online services or products.

- 16 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Digital Education Action Plan (2021-2027). Resetting education and training for the digital age (COM(2020) 624 final)*.
- 17 Directive (EU) of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services 2019/882.
- 18 See: UNICEF (2020): *Draft Policy Guidance on AI for Children*.
- 19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *EU strategy for a more effective fight against child sexual abuse (COM(2020) 607 final)*.
- 20 Find more information on the *website* of the European Commission.

Disinformation

Data from the 2018 Pisa Study¹ show that on average only 47 percent of 15-year-olds in the member states of the Organisation for Economic Cooperation and Development (OECD) can clearly distinguish opinions from facts when reading texts. Many children also find it difficult to search specifically for information on the internet. Disinformation (false information that is knowingly spread as such) and misinformation (false information that is unknowingly spread as such) promote phenomena such as hate speech and election manipulation and are considered a danger to democratic coexistence. Disinformation and misinformation have existed before digitalisation, but they spread much faster in the digital world. In addition, social media algorithms channel information in such a way that readers see themselves confirmed in the credibility of the information by the constant recurrence of the information – which significantly increases their impact.²

- 1 OECD (2021): *21st-Century Readers: Developing Literacy Skills in a Digital World*.
- 2 Suarez-Alvarez, Javier (2021): *Are 15-year-olds prepared to deal with fake news and misinformation? PISA in Focus, No. 113*.

Media addiction among children: data from Germany

For the Children's Report 2021¹ on the topic of media addiction, 669 children and 1,023 adults in Germany were interviewed in a representative survey commissioned by the German Children's Fund. The report represents one of the most important instruments for recording current developments with regard to the implementation of children's rights in Germany. Children and adults were asked about their understanding of media addiction, effective preventive measures and how they assess their own media use behaviour. A total of twelve percent of the children and adolescents stated that they had already experienced a form of media addiction themselves. A majority thought it would be sensible to deal with the topic of media addiction in schools. A large majority of the children and young people, and also of the adults, pleaded for potentially addictive media to be labelled accordingly. Furthermore, parents should be informed more about the topic of media addiction, and therapy and counselling services should be expanded, the respondents stated.

- 1 Hanke, Kai / Hofmann, Holger / Jonas, Cornelia / Kamp, Uwe / Krause, Torsten / Krüger, Thomas / Ohlmeier, Nina / Pohle, Sophie (2021): *Kinderreport Deutschland 2021. Mediensucht und exzessive Mediennutzung im Spannungsfeld von gesundem Aufwachsen und medialer Teilhabe von Kindern*. Deutsches Kinderhilfswerk (ed.) (available only in German).

Protection, provision and participation: reform of youth protection in the media in Germany

Jutta Croll is chairwoman of the Digital Opportunities Foundation, a non-profit organisation under the auspices of the German Federal Ministry for Economic Affairs and Energy and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Since January 2017, she is responsible for the project Child Protection and Children's Rights in the Digital World. Jutta Croll is a member of the steering committee for the drafting of the 25th General Comment to the UN Convention on the Rights of the Child.

When the **Convention on the Rights of the Child** was adopted by the United Nations General Assembly in November 1989, it was visionary and at the same time comprehensible, binding on the signatory states – and thus influential. It is still of great importance today. However, in the past thirty-plus years, the world has changed:



children are growing up in an increasingly interconnected environment and digital technologies have a major impact on their lives.

The Council of Europe took this development into account with its **Sofia Strategy** for the implementation of the UN Convention on the Rights of the Child, adopted in April 2016. For the first time, it defined the digital environment as a fifth pillar of the strategy, alongside equal opportunities, participation, a life free of violence, and child-friendly justice. Subsequently, the Committee of Ministers of the Council of Europe adopted the **Guidelines to respect, protect and fulfil the rights of the child in the digital environment**²¹, which member states are obliged to implement.

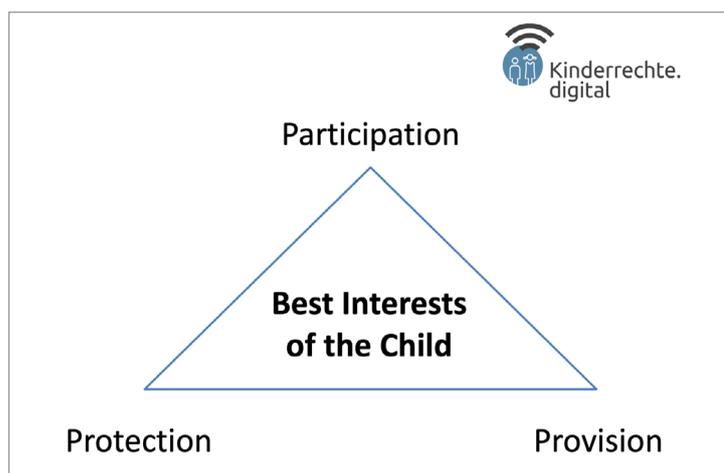
At the international level, the **25th General Comment to the UN Convention on the Rights of the Child**²², published on 24 March 2021 by the United Nations Committee on the Rights of the Child, sets a new milestone for children's rights in the digital world and provides an official interpretation of how states can meet their obligations defined in the Convention on the Rights of the Child with regard to digitalisation. The General Comment aims to make visible the potentials of digitalisation for the realisation of children's rights, and at the same time to address the inherent risks.

Both documents highlight the importance of the fundamental principles of the UN Convention on the Rights of the Child ("non-discrimination", "primacy of the best interests of the child", "right to life" and "respect for the views of the child") in view of the digitalisation of children's living environments. They thus provide guidance on how to understand and implement children's rights in the digital environment. These rights can be visualised in a triangle with the best interests of the child at the centre, while protection rights and provision rights form the foundation to ultimately achieve the participation rights at the top.

Digitalisation contributes significantly to children's ability to exercise their right to freedom of expression, to freely express their views in all matters affecting the child, and to demand that due weight be given to their views – in accordance with Article 12 of

²¹ More background information on the Guidelines can be found [here](#).

²² For more information on the 25th General Comment see [here](#).



Triangle of children's rights, according to the UN Convention on the Rights of the Child

the UN Convention on the Rights of the Child. Simultaneously, digital media provides young people with access to information and facilitates to exercise their right to freedom of association and assembly. This enables them to develop the skills that will allow them to participate actively in all decisions that affect young people.

Reform of youth protection in the media in Germany

The **Second Act amending the German Youth Protection Act**²³ (*Zweites Gesetz zur Änderung des Jugendschutzgesetzes*), which came into force in Germany on 1 May 2021, for the first time legally enshrines the participation of children and young people – and thus one of the basic principles of the UN Convention on the Rights of the Child – in youth protection. The participation of young people in the design of modern youth media protection laws is only logical and consequential, because children are often among the early adopters of new digital applications, devices and services and may be exposed to significant risks and dangers in some cases:

Risks from communication and contact functions, purchase functions, gambling-like mechanisms, mechanisms to promote excessive media use behaviour, the disclosure of personal and usage data to third parties without consent, as well as age-inappropriate purchase incentives, in particular through advertising references to other media, are explicitly named in the law. The law obliges platform providers to take precautionary measures to counter such risks. These include, among other things, child-friendly terms and conditions; safe default settings for the use of services that limit the risks of use depending on age, for example, by ensuring that user profiles can not be found by search engines; and easy-to-find information on provider-independent advice as well as help and reporting mechanisms. Support in this regard can be provided by the organisations of voluntary self-regulation which, together with the service providers, should develop guidelines for the implementation of such precautionary measures and also include the views of children and young people.

The Federal Review Board for Media Harmful to Minors will be converted to become the **Federal Agency for Child and Youth Protection in the Media** and will be commissioned, among other tasks, with connecting stakeholders in a process of dialogue-based regulation and with ensuring consistent law enforcement against providers. Young people under the age of 17 will be represented in an advisory board at the new federal agency, where they will participate in the regular evaluation of the effectiveness of the law.

The Youth Protection Act pursues a **holistic approach** by introducing the new protection goal of personal integrity of children and young people and by offering more orientation: By means of standardised age labels and descriptors of the po-

Tasks of the Federal Agency for Child and Youth Protection in the Media

1. Operating a review board for media harmful to minors
2. Promoting the further development of the protection of children and young people from harmful media by
 - promoting a joint responsibility of the state, the economy and civil society with the aim of coordinating an overall strategy for the realisation of the protection goals of child and youth protection in the media (protection from media that impair development and are harmful to young people, protection of personal integrity, support for orientation),
 - making use of findings on the effects of media on children and young people and providing orientation aids for children and young people, parents, and professionals, and promoting public discourse, as well as
 - pursuing regular exchange of information with institutions active in the field of child and youth media protection.
3. Monitoring compliance with the new provider obligations

Advisory board at the Federal Agency for Child and Youth Protection in the Media

The agency shall establish an advisory board to bring in the interests of children and young people, and to assist in promoting the objectives of protecting children and young people from harmful media. The advisory board includes up to twelve persons who are committed to the realisation of the rights and protection of children and young people. Two seats are to be filled by persons who are 17 years of age or younger. This is the first time in Germany that children and young people themselves are represented in such a public authority.

23 Second Act amending the German Youth Protection Act of 9 April 2021.

tential risks and dangers²⁴, parents and educational professionals are provided with tools to select age-appropriate media offers. Through prevention and orientation measures, children and young people shall be empowered to develop media literacy and to deal with media both independently and confidently.

The rights and the protection of children are strengthened with the new Youth Protection Act, participation and involvement are prioritised, and the process of the digital transformation of society is made a little more child-friendly. Germany is thus the first country in the world to implement the demands of the General Comment on children's rights in relation to the digital environment in an exemplary manner.

National perspectives on children's rights in the digital space from Spain and Finland

Gemma Martínez is postdoctoral researcher on Social Communication, Maialen Garmendia is senior lecturer in Sociology, both work at the University of the Basque Country and are members of the Spanish team of the EU Kids Online network. EU Kids Online is a multinational research network that seeks to enhance knowledge of European children's online opportunities, risks and safety.

Antti Järventaus is development manager for digital welfare and children's rights at Save the Children Finland (SCF). SCF is a non-profit, non-governmental organisation devoted to improving the position of the whole child population and advancing the rights of the child.

Where do you come across "children's rights in the digital environment" in your work?



Antti Järventaus: Save the Children Finland has several activities related to the digital environment, in which child rights are of special relevance: There is the Child Protection and Finnish hotline *Nettivihi* (right to protection against violence, right to survival and development): We work to counter and prevent child sexual abuse, in particular in

digital environments. Our aim is to promote the rapid removal of child sexual abuse material from the internet and to prevent children and young people from becoming victims of sexual abuse.

In regard to online safety (right to protection against violence, right to privacy, right to education, right to identity), we also conduct studies, publish materials, train professionals and work directly with children to promote children's safety online. Topics range from online child sexual abuse, grooming and safety skills to online bullying and violations of privacy.

Another focus we put is on digital services for children and young people (right to participation, right to information, right to services, right to leisure and play): We provide

²⁴ Note by the Observatory: "Descriptors of risk potential" are explanatory symbols that indicate the main reasons for the age rating of a medium.

Reactions to the reform of youth protection in the media in Germany

Prior to 2021, the German Youth Protection Act was last updated in 2002. In terms of content, the reform at that time focused primarily on regulating the confrontation with harmful content. The 2021 reform was preceded by demands for a contemporary revision of the Act, which, among other things, was also intended to dissolve the fragmented legislative competence between the federal state and the Länder and to make the protection of minors from harmful media more uniform, convergent, and comprehensible. The amendment of the law in March 2021 was greeted with praise, but also criticism:

The Federal Working Group for the Protection of Children and Young People (Bundesarbeitsgemeinschaft Kinder- und Jugenschutz, BAJ) is in favour of the reform, but criticises, among other things, that the legal obligation to take precautionary measures for providers of online services only applies from a reach of one million users upwards. The organisation emphasises that preventive offers on the use of digital services for children, young people and parents should be "anchored" in a binding manner in schools as well as in child and youth welfare services.¹ Some associations of the ICT industry criticise the law in its design. They claim that additional regulatory and supervisory structures created confusion regarding responsibilities as well as ambiguity for providers.²

After two years, the future Federal Agency for Child and Youth Protection in the Media will evaluate the effectiveness of the law – under participation of an advisory board including young people.

- ¹ *Statement by the Federal Working Group for the Protection of Children and Young People (Bundesarbeitsgemeinschaft Kinder- und Jugenschutz (BAJ)) of March 2021. If the direct link is protected and does not work, please copy this following link into your browser: https://www.bag-jugenschutz.de/baj_stellungnahmen.html#Aenderung-Jugenschutzgesetz*
- ² *Press release by the Federal Association for Information Technology, Telecommunications and New Media (Bitkom), the Association of the German Games Industry (game), the umbrella organisation of the film industry (SPIO) and the Association of Private Media (VAUNET) of 4 March 2021.*

one-on-one counselling and group activities on different platforms, including gaming and social media platforms. Special emphasis is as well put on the online environment for preventing violent extremism (right to protection, right to survival and development, right to participation, right to information, right to education): We conduct online monitoring of violent extremist movements, thinking and activities and train professionals working with young people to recognise and take informed action against such motives.

To protect all children's rights, we are engaged in child rights advocacy on a global, EU and on national levels (all rights): Important tasks are monitoring the development of legislation and policy programmes related to digitalisation as well as information and communications technology companies.

Gemma Martínez and Maialen Garmendia: Our interest on child rights in the digital environment is relatively recent. When we started our research on children and the internet in 2006, our main focus was on children's online safety in order to protect them from potential harm derived from the risks they might expose themselves to. Whereas, as digital technology became strongly embedded in people's everyday life – after mobile devices' use became very popular – our research focus moved to children's general wellbeing, assuming that their involvement in the digital environment was essential.

What role does digitalisation currently play in the world of children?

Antti Järventaus: Generally, it plays a very big role. It has become one of the major environments of social interaction, learning, hobbies and other interests. Online and offline worlds are inseparably intertwined. The digital environment is where children find many kinds of positive things and sources of gratification, but it is also a place where some of them become victims of bullying, harassment, grooming, sexual abuse, privacy violations, identity thefts and so forth.

Gemma Martínez and Maialen Garmendia: The digital environment is an inherent part of children's lives and digitalisation is seen by them as an opportunity for socialising and leisure activities. As an average, 70 percent of Spanish children aged between ten and 15 have a smartphone for their own use, the older the children the higher this percentage is. Among those who are 13 years or older more than nine out of ten have one. Their most common online activities are: communicating with family or friends (70 percent), listening to music (63 percent), watching videos (55 percent) and playing games (47 percent). Whereas internet use for homework is with 43 percent lower²⁵, which shows that educational use is less wide spread among children.

How has the COVID-19 pandemic affected children and their relationship to the digital environment?

Antti Järventaus: Children's use of digital media has increased significantly at the cost of other activities such as hobbies. COVID-19 has increased social distancing especially for children whose schools have been closed (in Finland, currently children aged 13 years and up) and loneliness has increased significantly. Digital media has provided a means to replace the lost physical contact. COVID-19 has also put a lot of pressure on children's mental well-being and trust in the future. This is reflected, among other things, in the number of children and young people seeking help on different online counselling platforms.

Types of digital violence¹

Cyber-harassment is harassment of a person through digital media (for example emails, text messages, posts or direct messages on social networks). This form of harassment can be manifold (for example hate speech, sexual harassment, threats).

Cyber-bullying is bullying of one or more persons through digital media with the aim of specifically excluding, insulting or mocking the person(s) concerned.

Cyber-stalking is the establishment of contact against the will of the person concerned through digital media with the aim of threatening, harassing or stalking that person.

Doxing means collecting and publishing personal data (for example photos or videos) that can be found on the Internet or threatening the person concerned with publication. Doxing is also often associated with the intention of threatening the affected person with violence.

Hate speech means that people are either directly degraded, attacked or insulted, or hate and violence are incited against them. Hate speech takes place mainly through the commenting functions on social media.

Cyber-grooming means the targeted initiation of contact and sexual harassment of children and young people on the internet. Adults build up trust for this purpose, often using a different identity, in order to force victims, for instance, to watch sexual acts on camera or to perform them themselves. Real-life encounters and violence may also occur.²

In **Revenge Porn**, images or videos with intimate or sexual content are published online without the consent of the person shown in this material. Often times, images or videos are used that were initially sent and exchanged voluntarily. Depictions, especially in pictures or video, of sexual acts, on, with or in front of children (often referred to as **child pornography** in legislation) is widely spread via the internet.³

- 1 Also see the Observatory's publication on digital violence: Lange, Katrin / Molter, Sarah (2020): Digital violence against women: new forms of violence and approaches to fight them in Europe. Newsletter 2/2019.
- 2 For an overview of endangering phenomena for children and young people in the digital space and for further scientific assessment, see also the publication of the Federal Review Board for Media Harmful to Young People (now the Federal Centre for the Protection of Children and Young People in the Media) (2019): *Gefährdungsatlas Digitales Aufwachsen. Vom Kind aus denken. Zukunftssicher handeln* (available only in German).
- 3 See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *EU strategy for a more effective fight against child abuse* (COM(2020)607 final).

²⁵ Garmendia Larrañaga, Maialen Sorkunde / Jiménez Iglesias, Estefanía / Karrera Juarros, Iñaki / Larrañaga Aizpuru, Nekane / Casado del Río, Miguel Ángel / Martínez Fernández, Gemma / Garitaonandia Garnacho, Carmelo (2019): *Actividades, mediación, oportunidades y riesgos online de los menores en la era de la convergencia mediática*. [Activities, mediation, opportunities and online risks of minors in the era of media convergence].

Gemma Martínez and Maialen

Garmendia: The role of parents and teachers as mediators of children's online activities, both as precursors of digital opportunities and as guardians of their online safety and well-being has been key during COVID-19. On the one hand, Spanish parents' anxieties, fears and hopes inherent to their responsibility as digital mediators were exacerbated during the months of strict lock-down and household confinement²⁶. Both, parents and children showed high levels of concern regarding the impact of online education in the child's academic performance. On the other hand, school use of digital devices has boosted since the lockdown. Even though the Government had set "a laptop for every child" policy in 2010, the cutbacks in education caused by the crisis made the digitalisation policy voluntary for schoolmasters. Therefore, information and communication technology's implementation was very uneven among schools before the lockdown. Though school staff's commitment on digital literacy policies has become far more common as they are increasingly aware of the opportunities the digital environment offers for learning.



What are currently the biggest hurdles for children in the digital environment?

Antti Järventaus: On a global level, it is equal access to the digital environments, including devices, connectivity, skills and other support. Regarding online safety, the problem is that too many children still fall prey to groomers and cyberbullies, are affected by harmful content, become involved in harmful communities, commit harmful or illegal deeds themselves, or overuse digital media. Another big hurdle is privacy issues: Children's personal information and their right to privacy is not respected enough. Social media companies amass children's data even against the General Data Protection Regulation.

Gemma Martínez and Maialen Garmendia: The biggest hurdle Spanish children have in the digital environment may come from the lack of support. So, they are referred to as digital orphans, as neither their parents nor their teachers engage often in their activities. Therefore, children may expose themselves to online risks while surfing the net, and they are not able to cope with them.

What support would be needed to overcome these hurdles? What opportunities lie in the digitalisation for children?

Antti Järventaus: In regard to the digital divide, more investment is needed to boost the connectivity and education. In regard to online safety, parent's role is key. Parents, however, are not well enough equipped to support their children's online safety. In regard to privacy, the General Data Protection Regulation needs to be enforced more rigorously, children should not be allowed to join social media platforms before they reach the age when they are legally allowed to provide their personal data to the platforms. Their data should not be sold to third parties and terms of service should be written in a child-friendly language.

European Child Guarantee

On 24 March 2021 the European Commission has adopted a **proposal for a Council Recommendation establishing a European Child Guarantee**¹. 14 June 2021 it was adopted by the Council.² The proposal was preceded by an extensive feasibility study³ commissioned by the European Commission.

The European Child Guarantee complements the second pillar of the Strategy on the Rights of the Child (the right of children to fulfil their potential regardless of their social background). The Child Guarantee's aim is to promote equal opportunities for children at risk of poverty or social exclusion.

Member states are encouraged to provide children in need with effective and free access to

1. early childhood education and care,
2. education and school-based activities,
3. at least one healthy meal each school day, and
4. healthcare.

In addition, effective access to healthy food and adequate housing should be ensured.

The Recommendation guides member states on how to achieve these commitments via a variety of individual measures. Among other things, they are asked to implement a national coordination, to develop an action plan involving stakeholders for the period until 2030, and to report progress in implementation to the European Commission every two years. To finance the Child Guarantee, member states should allocate adequate resources and also make full use of the support available at European level, in particular from the European Social Fund Plus (ESF+) and the European Regional Development Fund (ERDF).

See also the **publications of the Observatory** on the Child Guarantee:

Lange, Katrin (2020): **Prospects for an EU-wide Child Guarantee to combat child poverty in Europe**. Newsletter 2/2020, and Lange, Katrin (2021): **Eine europaweite Kindergarantie als Instrument zur Bekämpfung von Kinderarmut**. Hintergrundinformation (available only in German).

- 1 EU COM (2021): *Proposal for a Council Recommendation Establishing the European Child Guarantee. (COM(2021) 137 final).*
- 2 EU Council (2021): *Council recommendation establishing a European Child Guarantee (9106/21).*
- 3 *All published studies as part of the feasibility study for an EU Child Guarantee can be found on the dedicated website of the European Commission.*

²⁶ Vuorikari Riina /Velicu Anca /Chaudron Stephane / Cachia Romina / Di Gioia Rosanna (2020): *How families handled emergency remote schooling during the Covid-19 lockdown in spring 2020.*

Gemma Martínez and Maialen Garmendia: Family and teachers could play an essential role supporting children with necessary skills for shifting risks into new opportunities, by sharing and engaging with their online experiences rather than restricting them. While families claim more help from schools, institutions, industry and other stakeholders to support them when providing their children with a safer and better internet, the school environment can also contribute to promoting digital skills among children²⁷. Besides, children could also benefit from the pedagogical change connected to information and communication technology implementation, promoting learning strategies such as: problem or project-based learning, connected learning, or cooperative learning; which are more strongly related to the skills required for 21st century's citizens.

Which children need specific support?

Antti Järventaus: Generally, children who are vulnerable in the offline life are at increased risk of victimisation in the online environment, too. These are for example children whose equal access to the digital environment has been hampered due to economic reasons, skills or disability. Specific support is also needed by children who have fallen victims to online harm or crime, including grooming, child sexual abuse, bullying, hate speech, harassment, extortion, and so forth.

Gemma Martínez and Maialen Garmendia: Some children's digital vulnerability and their potential disadvantages compared to their peers go hand in hand with certain individual, social and cultural characteristics. First, Spanish families along with schools and other stakeholders must invest more efforts on engaging more with younger children's online experiences who even if less exposed to risks are more likely to experience more harmful experiences. Second, children's families from lower socioeconomic backgrounds are less digitally skilled and engage less with their children's online activities, which may limit the opportunities they may benefit from. Therefore, these families may need specific support for improving digital skills and mediate more effectively. Third, policy-makers should pay special attention to students with specific educational needs (nine percent of Spanish students). These children, their families, educators and other supporting staff need specific trainings adapted to their own abilities in order to meet the new opportunities in the digital environment for overcoming offline social, conduct or cognitive barriers.

Research on children in the digital space

UNICEF Office of Research – Innocenti coordinates research on children and digitalisation. Within this framework, the **Global Kids Online** project provides an overview of research on children in the digital space worldwide during the COVID-19 pandemic, also addressing social and digital inequalities, specific vulnerabilities of children, child protection, and children's rights.¹ The **Disrupting Harm** project addresses online risks for children, sexual exploitation, and violence against children online.²

Moreover, **UNICEF** has published further research on the situation of children during the COVID-19 pandemic, among others on children's internet access and on school closures during the pandemic.³

The **EU Kids Online network** produces comparative and thematic reports from Europe and produces an annual report with findings from the 19 countries within the network.⁴

The **DigiGen research project** explores the impact of the digital transformation on youths and has produced a report examining the digital exclusion of children in Europe during the pandemic.⁵

- 1 See the website of *Global Kids Online*.
- 2 See the website of *Disrupting Harm*.
- 3 Reports and further information can be found on the website of *UNICEF DATA*.
- 4 Smahel, David / Machackova, Hana / Mascheroni, Giovanna / Dedkova, Lenka / Staksrud, Elisabeth / Ólafsson, Kjartan / Livingstone, Sonia / Hasebrink, Uwe (2020): *EU Kids Online 2020: Survey results from 19 countries. See results of single states here. More reports are available at the website of EU Kids Online*.
- 5 Ayllón, Sara / Holmarsdóttir, Halla Holmarsdóttir / Lado, Samuel (2021): *Digitally deprived children in Europe. DigiGen working paper series No. 3. For more information, see the website of the DigiGen project*.

Poverty and digital exclusion

Children from low-income households are particularly affected by digital exclusion. The EU average risk of not having internet access is about 20 percent higher in low-income households than in high-income households.¹ 5.3 percent of children aged six to 16 in the European Union live in households that do not have internet and a computer. The differences between European countries are significant: in Iceland, only 0.4 percent of children are affected by digital exclusion, whereas in Romania and Bulgaria, 23.1 and 20.8 percent, respectively, are affected. Children of single parents, parents from non-EU countries, parents with lower education and children from large families are particularly at risk of poverty and digital exclusion.²

- 1 Eurostat (2019): *Database on Digital economy and society [isoc_i_ci_in_h]*.
- 2 Ayllón, Sara / Holmarsdóttir, Halla / Lado, Samuel (2021): *Digitally deprived children in Europe. DigiGen working paper series No. 3*.

²⁷ Garmendia Larrañaga, Maialen Sorkunde / Martínez Fernández, Gemma / Larrañaga Aizpuru, Nekane / Jiménez Iglesias, Estefanía / Karrera Juarros, Iñaki / Casado del Río, Miguel Ángel / Garitaonandia Garnacho, Carmelo (2020): *Las familias en la convergencia mediática: competencias, mediación, oportunidades y riesgos online. Resultados de la encuesta EU Kids Online a padres y madres de menores de 9 a 17 años en España [Families in the media convergence: competences, mediation, opportunities and risks online. Results of the EU Kids Online survey of parents of children aged 9-17 in Spain]*.

What opportunities do you see in the UN Convention on the Rights of the Child and other international initiatives to strengthen children's rights in the digital space?



Antti Järventausta: The new General Comment helps governments to identify where further regulation and support is needed and to put more focus on those issues. It gives civil society organisations new tools for monitoring the governments and requiring improvements where deficiencies are spotted. The **European Child Guarantee** aims

at a comprehensive approach calling for the EU Member States to commit to National Action Plans for tackling child and family poverty. This approach may provide political and policy space to ensure that the most vulnerable children and youth will have better opportunities to thrive for their potential as well as to be better protected in the digital space. As regards the **European Child Rights Strategy**, one of the core strategic approaches in the strategy is to ensure that the European framework to protect children's rights in the digital environment will be applied in the Member States and thus, the Strategy paves the way for a more comprehensive guidance for strengthening the rights of children in the digital environment.

Gemma Martínez and Maialen Garmendia: The rights' perspective can contribute to empowering the children as active subjects whose voice needs to be listened to. As we will not be able to build a safer internet for them unless we give them the chance to help us in providing it. Children's digital rights are vital for their future citizenship. And if they are to become active citizens, they will need to be digital citizens.

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