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THE UN COMMITTEE ON THE RIGHTS OF THE CHILD'S GENERAL COMMENT ON THE DIGITAL ENVIRONMENT

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In March 2021, the UN Committee on the Rights of the Child (CRC) adopted General Comment 25 (GC25) on children's rights in relation to the digital environment. A General Comment is an authoritative document which sets out how states should implement the UN Convention on the Rights of the Child (UNCRC) in specific contexts, such as the digital environment. A General Comment must apply in wealthier and poorer nations, to governments of all political stripes, and for all children whatever their abilities or circumstances. GC25 explains *why* states and other duty bearers must act and *how* they should act to implement children's rights around the world.

GC25 was widely recognised by policy and advocacy organisations around the world. Now every UN member state must ensure that all duty bearers within their jurisdiction meet their responsibilities to children's rights. Chaired by members of the GC25 drafting team responsible for international consultation among stakeholders and children, this panel critically discusses efforts to implement GC25. It highlights the particular challenges for communication policy and law, including generating meaningful participation from children regarding child online protection policy in Zimbabwe (paper 1), aligning European policies for a rights-respecting framework for internet governance (paper 2), reconciling parents' responsibilities with children's rights regarding privacy in the US (paper 3), and translating child rights-respecting initiatives into designing digital products and services (paper 4). The discussant is a UN expert advisor who will question the implementation of digital rights in a context of global inequalities.

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EXTENDED ABSTRACT – PANEL INTRODUCTION

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For too long, child rights advocates knew little about the internet while internet governance experts knew little about children's rights. In March 2021, the UN Committee on the Rights of the Child (CRC) adopted General Comment 25 (GC25) on children's rights in relation to the digital environment. A General Comment is an authoritative document which sets out how states should implement the UN Convention on the Rights of the Child (UNCRC) in specific contexts, such as the digital environment.

Like the Convention itself, General Comment 25 needs to apply in wealthier and poorer nations, to governments of all political stripes, and for all children whatever their abilities or circumstances. It has to balance the provision of guidance on a very broad range of issues with adequate depth, so as to be meaningfully applied. And it has to shore up children's rights today, while also anticipating the risks of harm and the potential benefits associated with future developments in the technological environment.

A major cross-sector and international collaborative effort was required to ensure GC25 could achieve its aims. To inform the process, the drafting team coordinated an international public consultation, receiving unprecedented numbers of submissions; consulted with 50 experts from across jurisdictions; and conducted consultations with over 700 children in 27 countries. This process surfaced deep theoretical dilemmas and disagreements, as well as diverse practical challenges for implementing meaningful and actionable digital policy.

For the child rights advocates uncertain exactly *how* to realize rights online as offline, GC25 provides a mandate and agenda. For policymakers uncertain *where* children fit into ongoing debates over internet governance, GC25 provides explanation and direction. For the public keen for children to thrive in a digital world, no longer 'canaries in the coal mine,' GC25 provides the road map for states to generate improvements. For 1000+ children consulted around the world, and the one in three internet users under 18 for whom they spoke, GC25 reflects their views on a matter that affects them greatly.

But it is easier to say that rights offline also apply online than it is to achieve this in practice. On publication, GC25 was recognized by OECD, United Nations Broadband Commission for Sustainable Development Goals, ECPAT (the Global Partnership to End Violence Against Children), International Telecommunication Union, UNESCO, WeProtect Global Alliance, World Childhood Foundation USA, World Health Organization and the European Commission. However, it is states rather than regional or other bodies who are the primary duty bearers bound to implement the Convention and its General Comments under international law. GC25 landed on the desk of every government in the world, and they must ensure that all

duty bearers within their jurisdiction meet their responsibilities to children's rights – including businesses and others whose activities significantly impact on children.

Introduced and chaired by members of the GC25 drafting team responsible for the international consultations among stakeholders and children, this panel discusses ongoing efforts to interpret and implement GC25. Conceiving the child as a limit case for policy development, and recognising that, far from abstract legal principles, children's rights come to life at the level of children's everyday experiences, the panel will reflect on the difficulties of generating policy guidance to protect and uphold children's rights in a digital age. It highlights the particular challenges for communication policy and law, including generating the evidence base and meaningful participation from children regarding child online protection policy in Zimbabwe (paper 1), aligning state with regional policies in Europe so as to provide a coordinated and rights-respecting framework for internet governance (paper 2), reconciling parents' responsibilities with children's rights regarding privacy in the US (paper 3), and translating child rights-respecting initiatives into designing digital products and services used by children (paper 4). While four papers cannot capture the full range of issues that arise in relation to children's rights in the digital environment, the panel represents perspectives from three very different continents which contrasting approaches both to children and to internet governance. Through their commonalities and differences, the panel will seek to open a dialogue that represents diverse experiences across cultures and contexts, including the struggles and possible contestation that UN initiatives can occasion. A respondent to all four papers will reflect on the challenges of promoting coordination and implementing child rights-respecting governance in contexts of global inequality and conflict. Building on his role as expert advisor to the United Nations, he will suggest a framework for advancing the recommendations of General Comment internationally, before opening up the discussion for participation among the chairs, panellist and delegates.

PAPER 1

CHILDREN'S PARTICIPATION AT THE CENTRE OF DIGITAL POLICY MAKING – LESSONS LEARNT FROM A GLOBAL SOUTH LOWER-MIDDLE INCOME COUNTRY

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The rapid spread of technologies and the digitalization of even the most remote communities and households has changed the face of economies and societies throughout the world. It offers the unprecedented opportunity to combat existing inequalities, which have been further exacerbated by COVID19 and subsequent restriction measures.

This notion of the internet as a mechanism to realise the rights of the most vulnerable populations has been further emphasized by the Committee on the Rights of the Child in its General Comment No. 25 on children's rights in relation to digital environment (hereafter: GC 25), which notes that "*the rights of every child must be respected, protected and fulfilled in the digital environment*". This language, which is equally used to describe children's rights in the 'analogue' space, points towards the CRC's conceptualization of children's rights in relation to the digital environment as a continuum and constant interaction between the 'digital' and the 'analogue'. Importantly, the CRC Committee notes that the rights of children in the digital environment also apply to those children who do not yet have access, as their lives might nonetheless be directly and indirectly affected by the digital environment.

A key mechanism to realise the rights of every child both in the online and the offline space is meaningful participation of all children, especially of those most vulnerable. Article 12 of the UN Convention on the Rights of the Child notes that "*State Parties shall assure to children the right to express (their) views freely in all matters affecting the child (the views of the child being given due weight in accordance to the age and maturity of the child)*." This is operationalized in GC 25 which notes that in identifying and addressing the emerging risks that children face in diverse contexts, "[states should listen] to their views on the nature of the particular risks that they face."

Building strongly on the GC 25, this paper will showcase the lessons learnt from applying a comprehensive child participation approach in the context of developing a child online protection policy. The paper will investigate the comprehensive child participation approach in Zimbabwe. The latest available data shows that approximately 6.8 million Zimbabweans, or 40% of the population, are online, and use the internet (Hootsuite 2019). More than three quarters (76%) have mobile phone subscriptions, and mobile internet users account for the vast majority of internet users, with no specific data available on children's use of the internet. Initial qualitative research on online violence against women and girls conducted in Zimbabwe showed that these groups are especially vulnerable to online violence in the country, but also highlighted the experiences of boys as critical to addressing violence.

While online protection of children is incorporated incrementally into the existing policy framework in Zimbabwe, there is no dedicated policy to align an evidence-based and integrated approach to keeping children safe online that can guide the work of all relevant sectors. The Government of Zimbabwe, with support from UNICEF Zimbabwe Country Office, thus embarked on the development of a child online protection policy to provide that coherent framework, with the ultimate aim of ensuring that all children in Zimbabwe are safe online, and free to realise the essential benefits and opportunities that the digital space offers, and to fully realise all their rights, online and offline.

Meaningful consultations with children of different age groups and backgrounds provided the centrepiece of the policy development process, starting from the initial conceptualisation through the development of the final draft. A total of 475 children were consulted through in-depth qualitative activities on their use and experiences of digital technology, and of the opportunities and benefits it presented, as well as the risks and dangers that they faced online on a daily basis. In addition, 6,743 U-

Report (SMS-based real-time data collection system) users were polled on their views and experiences. Many children consulted in the development of this policy noted that they had no or only limited access to the internet, and yet their lives were still impacted by the technology itself, illustrating the importance of that observation within Paragraph 4 of the General Comment No. 25. Children also noted the impact on their lives of the way in which digital technology and internet is used by those around them, including by their friends and peers.

Children frequently demonstrated the vast discrepancy between adults' views on risks and harms online, and the lived reality of children in relation to the digital environment. Their experiences also starkly highlighted the difference between their lived experiences and the views and perceptions of adults of their capacities and skills. This was particularly noticeable in some rural areas (which traditionally have less access to the Internet), where some children eloquently spoke about the use of VPN services and their advantages. Most importantly, children made it clear that they want and need support ranging from education and digital skills development to supportive and responsive systems when things go wrong for them online.

The information gathered during the consultations heavily influenced the content of the Child Online Protection policy and strategies and interventions flowing from the policy. Children's voices informed the development of training for social workers and allied professionals and support workers and provided a way to integrate online protection into the broader case management system. This training was targeted at those with very limited understanding of online safety and technology in general and promoted a balance of opportunities and protection. Further, an industry roundtable on child online protection was held, which brought the experiences of Zimbabwean children online directly to the private sector and shaped the development of a Code of Conduct for industry partners on Child Online Protection.

Consultations also provided areas of emphasis within the development of content for a curriculum for senior school learners on online safety and privacy, which integrated different aspects of GC 25 including protection and safety, right to express themselves, right to play, privacy and data protection. An alarming finding from the consultations were the reported experiences by school-going girls who disclosed that they were sexually harassed on school-specific WhatsApp groups, which were founded as a response to the school-closure during strict COVID-19 lockdowns. Following the girls' disclosure, their parents prohibited them to access these WhatsApp groups, which effectively denied them access to the only available source of learning for months. Therefore, dedicated risk mitigation measures for these incidents were included in the curriculum.

In summary, meaningful consultations with children from diverse background considerably shaped the conceptualisation and drafting of the child online protection policy and even influenced various interventions on mid- and down-stream level. Different priorities for the country were identified – education and awareness-raising (including of privacy), a focus on the opportunities and rights of children, as detailed in General Comment No. 25, the provision of integrated services, and the role and responsibilities of industry – all directly from the voices and experiences of children.

CRC Committee, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, CRC/C/GC/25 (2 March 2021), para. 4

Hootsuite/We Are Social (2019): *Digital 2019*, available at https://www.slideshare.net/DataReportal/digital-2019-zimbabwe-january-2019-v01?from_action=save [accessed 05 October 2019]

PAPER 2

LINKING GENERAL COMMENT 25 AND EUROPEAN UNION POLICY: FROM FRAGMENTATION TO COORDINATION

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The UN General Comment 25 (GC25) on the rights of the child in the digital environment is addressed to States. Although all Member States have ratified the UNCRC, the European Union (EU) itself is not a party to it. Yet, many of the elements of the GC25 are relevant to policy decisions and legislative initiatives taken and initiated by the EU. The GC25 requires ‘States’ to adopt a ‘comprehensive strategy and policy’, and to ‘coordinate policies, guidelines and programmes’. At the EU level, however, current and proposed rules that may affect the realisation of children’s rights in the digital environment are scattered and fragmented.

The General Data Protection Regulation (GDPR) mentions that children merit specific protection with respect to their personal data, and refers to children a few times, but the actual (extra) requirements for data controllers towards children remain vague. Especially with respect to profiling and (solely) automated decision-making, which the GC25 requires States to prohibit when done for commercial purposes on the basis of a digital record of their actual or inferred characteristics, the GDPR provisions are ambiguous (van der Hof et al., 2020). Moreover, enforcement is currently still lacking. A few investigations into children’s data processing are ongoing but so far very few sanctions have been imposed. Other measures are laid down in the Audiovisual Media Services Directive (AVMSD), which requires that video-sharing platforms (such as YouTube) ensure that children are protected from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development. These same platforms will also be subject to what is going to be the Digital Services Act (DSA), proposed by the European Commission in December 2020. This proposal aims to regulate intermediary services and to “*set out uniform rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected*”. More specifically, the preamble to the proposal states that the proposal will “*contribute to the protection of the **rights of the child** and the right to human dignity online*”. Throughout the proposal, children and their rights are referred to a few times. The most important provision (Article 26, recital 57) relates to a risk assessment obligation that is imposed on the very large online platforms (such as Facebook, YouTube, or TikTok). They should identify, analyse and assess any significant systemic risks stemming from the functioning and use made of their services in the EU. One of the categories of systemic risks relates to “*any negative*

*effects for the exercise of the fundamental rights to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the **rights of the child***". A second legislative initiative pending at the EU level that has the potential to significantly impact children's rights in the digital environment is the proposal for an Artificial Intelligence Act (AIA). The proposed AIA aims to ensure a high level of protection of fundamental rights in general and on the rights of specific groups - including children - through a risk-based approach. The proposal prohibits o.a. AI-systems that "*exploits any of the vulnerabilities of a specific group of persons due to their **age**, physical or mental disability, in order to materially distort the behaviour of a person pertaining to that group in a manner that causes or is likely to cause that person or another person physical or psychological harm*", and imposes obligations on AI-systems that are considered to be high risk. With regard to such high risk systems, a risk management system should consider whether the system is "*likely to be accessed by or have an impact on **children***".

Whereas it is promising that both the proposal for the DSA and the AIA seem to agree with the approach in the GDPR and the AVMS that children merit specific protection, it still remains to be seen how these proposals will evolve throughout the ongoing legislative process. Moreover, it is unclear to what extent there is a real coordination between the existing and proposed legislative instruments (and their drafters). And although the European Commission has confirmed its commitment to the UNCRC in its recently published EU Strategy on the Rights of the Child (2021), there is a risk that an inconsistent approach throughout the different legislative instruments related to the digital environment weakens the protection of children, and, hence, the objective of the GC25.

Against this background, this contribution explores the link between the GC25 and EU action. By mapping (1) the GC25 demands on States, (2) the competence of the EU and (3) the measures included in EU (proposed) legislation, gaps, overlaps and the level of coordination are detected and assessed. This analysis also includes a focus on the obligations that are imposed on businesses, as the GC25 determines that States have the obligation to ensure that businesses meet their responsibilities to respect children's rights and prevent and remedy abuse thereof in relation to the digital environment. Finally, recommendations on how a more coordinated approach could be shaped are formulated in order to ensure that children's well-being in the digital age is fully realised. An important part of such a coordinated approach regards the extent and manner in which children's views are given due weight during the shaping and implementation of policies.

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PAPER 3

FROM PRIVACY INTEREST TO PRIVACY RIGHT: CREATING A POLICY FRAMEWORK THAT SUPPORTS FAMILIES AND EMPOWERS CHILDREN IN DIGITAL SPACES

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General Comment 25 of the United Nations Convention on the Rights of the Child provides that children have a *right* to privacy in online spaces. The language contained within the Comment clearly set forth what this means for children and families living in countries bound by the Convention, and it offers member nations strikingly articulate guidance towards creating laws that protect, but perhaps more importantly, empower young people to thrive online.

It can be argued that young people in the United States, however, have not directly benefited from the enactment of Comment 25 (nor any other provision of the UNCRC). This is because the United States is the only United Nations member country to not have ratified the Convention. Despite this lack of direct benefit, the United States is poised to indirectly benefit by Comment 25, as it provides persuasive guidance to lawmakers and other policy advocates.

One key step towards this goal will be a robust discussion regarding the meaning of free speech in the digital age. In the United States, children have an *interest* in privacy, but this interest is not often considered a legal right (Meyer, 2003). In Europe, most of the information stored on digital platforms is viewed as *data*, whereas in the United States, this information is often referred to as *speech*. Creating a comprehensive analytical framework to analyze this issue will be critical moving forward (Stuart, 2014). The recognition of data as a source of risk to young people is central to this discourse. Due to the nature of childhood, it is also critical to discuss the role of parents as enforcers and protectors of children's rights (Woodhouse, 1993).

The collection, storage, and sale of an individual's online behaviors and disclosures is a common source of regulation in both the United States and in Europe. The United Nations Convention on the Rights of the Child (UNCRC) Comment 25 considers the impact of such by third parties and the harms these behaviors cause children. In addition to the recognition of actual harm to children, the UNCRC recognizes the evolving ability of children to give consent to these data processes and encourages collaboration by key stakeholders, especially amid the realities of the Covid-19 pandemic (Livingstone et al, 2021). This could ensure digital platforms protect children's data and empower children in a manner consistent with their developmental abilities.

Lawmakers in the United States could benefit from reexamining provisions of COPPA (1998) to be more consistent with policy dictated by the laws in the United Kingdom and guidelines set forth by the UNCRC Comment 25. Congresswoman

Castor (2021) and Senators Blumenthal and Blackman (Sorken et al., 2022) have pending bills that would both update COPPA and borrow from key provisions of UK and EU privacy laws to provide better protections for children's data.

A second element to consider is how the United States balances *free speech* and *privacy*. Words matter. And definitions, especially in the context of lawmaking, are critical to the creation and enforcement of public policy. Our First Amendment Freedom of Expression clause prohibits the government from limiting an individual's (and in most instances, a digital platform's) speech except in the most limited of circumstances. Unlike our counterparts in Europe, these limited circumstances are not defined by a balancing test of expression and privacy interests. US laws instead support a framework that weighs expression over privacy.

The United States has previously recognized children as a class of individuals needing special protections. These protections are considered exceptions to typical regulations surrounding free speech. For example, pornography is viewed as a form of speech under American jurisprudence, but child pornography, while speech, is not protected by the Constitution, as child pornography is uniquely and especially harmful to children in its creation and circulation. This is one example of how the United States treats children differently than adults when considering the boundaries of free expression.

Lastly, and perhaps most importantly, is the recognition of the unique nature of childhood and the evolving capacities of young people to fully participate in society (Dailey & Rosenbury, 2018). Current US frameworks recognize childhood as a condition of vulnerability requiring protection. European frameworks, and more broadly, the United Nations Convention on the Rights of the Child Comment 25, recognize childhood not merely from a perspective of vulnerability. Instead, their lenses focus on a perspective that both empowers youth and lays out a foundation to recognize that their affirmative rights must be central to discussions of moderating digital platforms and centralizes providing access of information and inclusion alongside discussions centered on safety and privacy. Specifically, paragraph 67 addresses the intersection of a child's right to privacy and a parent's right to speech and autonomy, encouraging thoughtful conversation about how families can balance competing interests in the digital environment.

European families benefit from novel policy structures that benefit exploration and growth through the offering of age-appropriate design and protection. Families in the United States can also reap the rewards of the groundbreaking work of policy makers in the European Union.

Moving forward, these three components offer a starting point for deliberations focused on moving US policy forward in the context of children's rights online. These signposts will likely bring forth further conversation and new ideas, which should be embraced, even as the conflict long held beliefs and practices. Our children are the first generation to grow up alongside iPhones and apps. And while we do not have our own lived experiences to guide them as they walk this new path, the United States has the experiences of the UNCRC and Europe to serve us as a compass as we chart our own course past recognizing a child's interest in online privacy and towards the recognition of online privacy as a child's right.

[Castor, Rep. Castor Reintroduces Landmark Kids PRIVCY Act to Strengthen COPPA, Keep Children Safe Online](https://castor.house.gov/news/documentsingle.aspx?DocumentID=403677)

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PAPER 4

DESIGNING FOR CHILDREN'S RIGHTS IN A DIGITAL WORLD: INTRODUCING A GLOBAL VOLUNTEER NETWORK INITIATIVE

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The distinction between Child Rights and Child Rights in the digital world is a very 'adult' one. For many children growing up today all over the world, there is no distinction between "digital" aspects of their life and "non-digital" aspects. They perceive both part of everything they do and take it for granted that internet connectivity is a standard affordance of most part of their lives. For many children in 2022, "digital" is a regular part of life and always has been. "Digital" is intertwined in

children's homes, schools, learning, play, entertainment, creativity, and communication with family and friends. This means that children behave the same way in digital and non-digital environments and interactions and expect similar experiences. Children know that a playground is a safe place designed for kids to play independently, with others their age. They may not know that an online/digital playground, such as an app or virtual world, is not safe in the same way. This may lead to dangerous situations.

This is exactly why the UN Committee on the Rights of the Child's adaptation of General Comment 25 is critical – because children had taken for granted that the digital world was designed for them the same way the physical world was, with the same safety, privacy, participation, and social rules. And it was not. Until now.

General Comment 25, and policy proposals and legislation that have emerged since its instalment both in the UK and the US, state that companies must shift their products' process, design, and assessment, to a child rights framework. This is a huge change in the digital industry that was initially creating digital products and services for adults, and paid little attention to the needs of children, as they are not paying customers.

In the non-digital world, these issues have been addressed for many years: toy companies, educational companies, and entertainment and adventure services for children have been designed with children's unique needs in mind. Child development professionals, as well as education professional, special child-safety experts, and child-rights SDGs have been implemented in the design and development of physical products and experiences for children for years. While there is still a range of quality within this area, both legislation and consumer trends have led to a standard of products for kids, which allows kids safe and age-appropriate experiences (and some piece of mind for parents). Products and services are marked by the age they are fit for, as well as other affordances and limitations.

This has not been the case in the digital world. Parents struggle to keep up with the ever-changing landscape of digital play for children, and many times are not aware of the challenges and risks children may face playing their games, watching their videos and shows, and communicating with friends on apps. Safety, privacy, age-appropriate content, age-appropriate interfaces, are just some of the challenges children may face in digital environments that were not designed with children's rights in mind.

Sometimes parents know that there are risks, but do not have the time and capacity to understand them and monitor them, so they disconnect their children from the digital world altogether. This, to, is problematic since the digital tools are an important part of children's lives today, offering them unique learning environments, play and creation opportunities, and communication with peers and family. In a recent study about children during the Covid 19 pandemic it was shown that digital communities were a lifeline for teens.

General Comment 25 allows some of this weight to be lifted from parents and shifts responsibilities to the companies themselves: They should consider all these issues

when designing products and experiences for children, allowing both kids and their families and safe way to use digital products to their fullest potential.

For most digital technology companies, transition of their priorities of business and design from the general digital business models to child-centred ones may be a challenge. That's why The Designing for Children's Rights guide, a global volunteer network decided to offer designers themselves a set of guidelines and case studies to help them make better products for children. Rather than turning to companies and big organizations, D4CR local chapters around the world help educate designers who are interested in making better products for children, based on a child-rights framework. Many designers understand the need of ethical design and want to both create developmentally appropriate experience for children, while letting them enjoy the incredible play, learning, and communication capabilities digital environments have to offer. Their design guide is free for everyone, with example of products that include safety, privacy, inclusion, creation, and many other principles of child-centred design. The community is growing constantly, including designing from the largest digital play companies in the world. This is just the beginning.

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