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**Submission to the United Nations Committee on the Rights of the Child: in response to call for comments relating to Draft General Comment No. 25 (202x), on children’s rights in relation to the digital environment**

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# Acknowledgement of Country

*The authors wish to acknowledge the Traditional Custodians of the land in which the University of Newcastle resides and pay our respect to Elders past, present and emerging. We extend this acknowledgement to the Worimi and Awabakal people, and we also acknowledge the Elders past, present and emerging from all Aboriginal and Torres Strait Islander nations.*

# Background

Thank you for the opportunity to provide a submission in response to the Draft General Comment No. 25 (202x), on children’s rights in relation to the digital environment. Our submission will focus on four key themes: access to the digital environment, the rights of children as economic actors and content creators, the interests of parents and guardians, and finally, data collection. We would welcome the opportunity to discuss any aspects of this submission, recommendations and wider research further with members of the Committee.

# Introduction

There have been significant advances in technology since the United Nations Convention on the Rights of the Child was ratified by the Australian Government in December 1990. We know that this generation of children who have grown up with the internet, known as “Generation Z”, consider the use of social media and the technology as an integral part of their lives.[[1]](#footnote-1) In 2016, 97% of Australian households with children under 15 years of age had access to the internet, and 99% of 15-17-year olds were online, using the internet at an average of 18 hours per week.[[2]](#footnote-2) Moreover, it is estimated that over 80% of Australian four-year olds use the internet, with 40% of them having access to their own smart device.[[3]](#footnote-3) It is evident that children are becoming digitally literate from an increasingly young age, we, therefore, appreciate the draft general comment’s recognition of the central role that digital technology plays in the lives of children and its commitment to ensuring a right of access to the digital environment.

There is a pressing need for greater clarity on how children’s rights and interests can be promoted and protected in this digital age, particularly in light of the opportunities and risks associated with the use of technology. We especially welcome the inclusion of first-person quotations on the benefits of using digital technology in the first paragraph of the draft general comment. These quotations offer a vital insight into the views of children regarding the role that technology plays in their lives. While many States have conducted similar research at local levels, we would welcome the inclusion of a clause within the General Comment which invites all States Parties and technology companies to carry out regular consultations with children, to keep up with the rapid developments and changing nature of the digital environment.

Aside from the many benefits and opportunities associated with the right of access to the digital environment, we must also recognise the considerable risks that children experience in this space. In 2018, the Australian Centre to Counter Child Exploitation’s Child Protection Triage Unit received almost 18,000 reports of online child sexual exploitation alone.[[4]](#footnote-4) Children are not unaware of these dangers. Indeed, UNICEF held several workshops in 2017 which were attended by 490 children, aged between 10-18 and hailing from 26 different nations.[[5]](#footnote-5) The purpose of these workshops was for children to share their views on digital technology and discuss their hopes for our digitally mediated world.[[6]](#footnote-6) Participants voiced concerns about the role of the digital environment in their lives, understood the tension which exists between their own desires to participate in online life and the need to protect themselves from digitally based dangers, and they also recognised the responsibility of the adults in their life to keep them safe.[[7]](#footnote-7) These findings suggest that children and young people are not all labouring under the misapprehension that the internet is a purely safe space.

It is hoped that this General Comment will provide much-needed clarity on the rights of children in this space, while outlining the obligations on behalf of States Parties, technology companies, parents, guardians and educators in ensuring that all children are afforded the right of access to the digital environment in a safe manner.

# Recommendation 1: Access to the Digital Environment

We assert that draft paragraph 19 could be strengthened to oblige States to consider the views of children of *all ages and levels of maturity* in the design and development of laws, policies, programmes, services and training on their rights concerning the digital environment. Such an obligation should be mandatory, and States should be required to identify a unit of government which will be responsible for monitoring compliance with this section. Furthermore, we also assert that this paragraph should refer to the need to include the views of children and young people from the LGBTI+ community, as they traditionally experience greater abuse on the internet in the form of bullying, harassment and hate speech. This paragraph also notes that:

*States should ensure that designers and providers of digital technologies and services actively engage children, applying appropriate safeguards, and give their views due consideration when developing their services.[[8]](#footnote-8)*

We assert that this clause should be amended to include specific reference for the need to strike an appropriate balance (with regard to gender, age, disability and to ensure the participation of children from minority communities such as the LGBTI+ community), without discrimination of any kind. This is imperative to ensure adherence to Article 12 of the Convention and to enable all children who are capable of forming their own views the right to express them freely regarding their right of access to the digital environment.

Regarding the specific matter of access to the digital environment, we are especially concerned about the digital divide which currently exists in many countries. In Australia, we know that there are geographical barriers for those in remote communities which can limit or prevent one’s access to the internet. This issue has previously been acknowledged by the Australian Government in their 2017 submission to the UN Office of the High Commissioner for Human Rights, wherein they noted that people in remote Indigenous communities, in particular, experience problems accessing the internet.[[9]](#footnote-9) More broadly, there is a significant divide between those in urban and rural areas in terms of access to the digital environment,[[10]](#footnote-10) a reality which was especially highlighted when Australia went into total lockdown in response to COVID-19.

We, therefore, welcome the recognition within paragraph 10 that the right to non-discrimination requires States to ensure that all children (including those living in rural and remote areas) have equal and effective access to the digital environment.[[11]](#footnote-11) There is some level of ambiguity regarding the inclusion of the term ‘*in ways that are meaningful for them’*, and we would welcome further clarity on this point.

We also assert that States should be encouraged to engage in public consultation with children and young people from these communities to determine what meaningful access means for them, and how this could best be implemented. Paragraph 10 proceeds to list some examples of measures which States can take to ensure the realisation of the right of access to the digital environment, which we welcome. To this end, it is important that States are monitored (regularly) and held to account regarding their commitment to overcoming the digital divide for children in remote and rural communities. Where access to the right to access the digital environment is denied, children must be afforded the right of access to justice to make a complaint and have this heard promptly. We particularly welcome the draft general comments commitments in this regard under Section K, however, we assert that the provision of culturally sensitive information should also be included in paragraph 50.[[12]](#footnote-12)

# Recommendation 2: Children as Economic Actors

It is widely accepted that the increased accessibility of information in the “Digital Age” has produced substantial educational, social and economic opportunities for children.[[13]](#footnote-13) In regard to the latter, there is limited engagement or recognition of the rights of children who work and experience economic benefits from their use of social media and technology. We would welcome further engagement on this matter within the text of the General Comment, particularly given the number of children who are content creators and earn significant amounts of money by posting sponsored content and monetized advertisements. The Instagram marketing industry is estimated to be valued between five and ten billion dollars, with equally lucrative opportunities available for sponsorship and product placement agreements.[[14]](#footnote-14) Similarly, videos which are uploaded to YouTube can be monetized or sponsored by third-party companies. Therein lies an incentive for content creators to produce regular videos through their channels and collaborate with companies for financial gain.

There are numerous high-profile examples of children and young people who have found fame online and earn significant amounts of money as content creators. For example, “EvanTube” is one of the most successful child influencers globally, with over 10 million followers across his various social media platforms.[[15]](#footnote-15) He produces toy reviews, challenges and experiments and has several commercial partnerships with brands.[[16]](#footnote-16) Similarly, 10-year-old Ryan Kaji’s YouTube channel, “Ryan’s World”, boasts over 23 million subscribers and earned an estimated $26 million in 2019 from commercial sponsorships and monetized advertising.[[17]](#footnote-17) Taytum and Oakley Fisher (2-year-old twins) have approximately 2 million followers on Instagram and make an estimated $10,000 to $20,000 per sponsored post.[[18]](#footnote-18) Thus, there are ample opportunities for children to capitalize on this growing industry at a young age.

Despite the growing number of children capitalizing on social media as content-creators, they have not yet received the same recognition as children in alternative forms of employment, such as child actors for example.[[19]](#footnote-19) This has been previously noted by Emma Nottingham, who stated that ‘in contrast to child actors and child performers, who have to have a license and have limits to the number of hours they can work, children who appear in YouTube family vlogs do not benefit from any legal protection.’[[20]](#footnote-20) As children have limited legal rights as to their earnings and working conditions, there is a substantial risk of exploitation by sponsors, social media companies and parents.[[21]](#footnote-21)

The potential economic opportunities on social media platforms for children must be balanced against Article 32 of the Convention. In doing so, State shall provide for employment standards for children, including minimum working ages, regulation of hours and conditions of employment and appropriate penalties for non-compliance.[[22]](#footnote-22) This risk of exploitation for children who are “economic actors” in the digital environment is recognised at paragraph 122 of the draft general comment. This submission supports the measures proposed in this paragraph 122; namely that States should:

* Review relevant laws and policies to ensure that children are protected against economic and other forms of exploration and that their rights with regard to work in the digital environment and related opportunities for remuneration are protected;
* Inform parents and children about protections that apply, and ensure that appropriate enforcement mechanisms are in place;
* Legislate to ensure that children are protected from harmful goods (such as weapons or drugs) or services (such as gambling).

We further submit that social media platforms which provide the option for users with a sufficient following to apply for a “verified” account, such as Instagram, YouTube and TikTok,[[23]](#footnote-23) should put in place measures to ensure children are aware of their rights and obligations in the digital environment prior to providing verification.

We also assert that a clause should be inserted into the General Comment calling upon States to enact clear guidelines to provide protections for children engaging in paid work across the digital environment. Such guidelines should be developed in consultation with children themselves and should be written in child-friendly and accessible formats.

A commitment to training and awareness-raising should also be embedded within the guidelines for child content creators to ensure their safety and protection, while also informing them of their privacy and how their data will be stored. We understand that children are concerned about these issues, and we welcome the draft general comment’s commitment to the right to privacy under section E. However, we assert that this section could go further in calling upon States to enact specific safeguards for child content creators and those who use the digital environment for financial benefit.

# Recommendation 3: The Role of Parents and Guardians

A central question in any discussion about the rights of a child to access the digital environment is how their rights can be balanced against the interests of parents and guardians. We understand that while parents may have considerable and well-founded concerns, there is a need to weigh these against the many benefits for children and their right of freedom of expression under Article 13. We welcome the draft general comment’s recommendation under paragraph 58, which calls upon media and other organisations to provide reliable information to parents (and children) about the nature of digital services, as well as the associated opportunities and risks. We believe that parents and guardians must be fully informed and have the necessary skills to help children navigate the many opportunities and risks which arise in the digital environment.

In regard to balancing the interests of parents against those of children, we assert that there are particular risks associated with children’s participation in family blogging and/or vlogging. In many cases, these channels are run by a parent and potentially, without the informed consent of the child involved. In these cases, there are clear risks from the perspective of the child’s right to privacy. Paragraph 77 of the draft general comment notes that:

*States should advise parents and caregivers, and the public, on the importance of the child’s right to privacy, and on how their own practices may threaten that privacy, for example by building a digital identity for that child that may be used by third parties in ways that can be revealing, embarrassing or even dangerous.’*

We recommend that the issues relating to family-run content creation should be highlighted in the General Comment, and States should be invited to work with children, children’s rights organisations, and technology companies to ensure children’s rights are being respected in any family vlogging arrangement.

# Recommendation 4: Data Collection

Finally, there is a clear need to better understand the ways in which children and young people use social media and technology for their economic benefit. Paragraph 31 recognises the need for data collection and research as a means of mapping and understanding the implications of the digital environment for children’s rights. We believe there is a pressing need for States Parties to monitor, in particular, how many children and young people use social media and sites such as Instagram, YouTube, TikTok and other sites for economic gain.

1. M. Oswald, H. James & E. Nottingham, ‘The not-so-secret life of five-year-olds: Legal and ethical issues relating to disclosure of information and the depiction of children on broadcast and social media’ (2016) 8(2) *Journal of Media Law*198-199 [↑](#footnote-ref-1)
2. Australian Bureau of Statistics, *Household use of information technology* (Catalogue 8146.0 28 March 2018). [↑](#footnote-ref-2)
3. Australian Centre to Counter Child Exploitation, *Online Child Sexual Exploitation: Understanding Community Awareness, Perceptions, Attitudes and Preventative Behaviours* (Research Report, Australian Centre to Counter Child Exploitation, February 2020) 11. [↑](#footnote-ref-3)
4. Australian Centre to Counter Child Exploitation, (Fn. 3) 2. [↑](#footnote-ref-4)
5. A. Third et al, *Young and Online: Children’s perspectives on life in the digital age* (The State of the World’s Children Companion Report, 2017) 19. [↑](#footnote-ref-5)
6. Ibid, 14. [↑](#footnote-ref-6)
7. UNICEF, *The State of the World’s Children 2017: Children in a Digital World* (Report, December 2017) 82-83. [↑](#footnote-ref-7)
8. Draft General Comment No. 25 (202x), 4. [↑](#footnote-ref-8)
9. Letter from Australian Government to the Office of the High Commissioner for Human Rights, ‘Australian Response to OHCHR Questionnaire pursuant to HRC Resolution 32/13’, January 2017 <https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/AUSTRALIA.docx> [↑](#footnote-ref-9)
10. J. Thomas et al, *Measuring Australia’s Digital Divide: Australian Digital Inclusion Index 2019 (*RMIT University and Swinburne University of Technology, Melbourne, for Telstra) 7. [↑](#footnote-ref-10)
11. Draft General Comment No. 25 (202x), 3. [↑](#footnote-ref-11)
12. Ibid, 9. [↑](#footnote-ref-12)
13. United Nations Children’s Fund, ‘The State of the World’s Children: Children in a Digital World’ (2017) 13-35.   [↑](#footnote-ref-13)
14. “The Influencer Marketing Industry Global Ad Spend: A $5-$10 Billion Market by 2020, MediaKix (6 March 2018) <<https://mediakix.com/blog/influencermarketing-industry-ad-spend-chart/#gs.ibuM4hc>> and A. Saragoza, ‘The Kids are Alright? The Need for Kidfluencer Protections’ (2020) 28(4) *American university Journal of Gender, Social Policy & The Law*575.  [↑](#footnote-ref-14)
15. P. Guinaudeau, ‘The rise of Kidfluencers – Meet the kids making millions on social media’ *BrandTrends* (2 June 2019) <[https://brandtrends.com/influencers/the-rise-of-kidfluencers-meet-the-kids-making-millions-on-social-media/#:~:text=   
    EvanTube&text=Evan%20of%20EvanTube%20is%20arguably,are%20enthralled%20by%20his%20channel](https://brandtrends.com/influencers/the-rise-of-kidfluencers-meet-the-kids-making-millions-on-social-media/#:~:text=%0BEvanTube&text=Evan%20of%20EvanTube%20is%20arguably,are%20enthralled%20by%20his%20channel).>  [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. M. Berg, ‘The Highest-Paid YouTube Stars of 2019: The Kids are Killing It’ *Forbes*(18 December 2019) <<https://www.forbes.com/sites/maddieberg/2019/12/18/the-highest-paid-youtube-stars-of-2019-the-kids-are-killing-it/?sh=273b493438cd>>. [↑](#footnote-ref-17)
18. S. Maheshwari, ‘Online and Making Thousands Before Age 4: Meet the Kidfluencers’ *The New York Times*(1 March 2019) <<https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html>>.  [↑](#footnote-ref-18)
19. M. Masterson, ‘When play becomes work: Child labor laws in the era of “Kidfluencers”’ (forthcoming) *University of Pennsylvania.* [↑](#footnote-ref-19)
20. See E Nottingham, “Dad! Cut that Part Out! Children’s Rights to Privacy in the Age of ‘Generation Tagged’: Sharenting, Digital Kidnapping and the Child Micro-Celebrity” in J. Murray, B. Swadener and K. Smith (eds), *The Routledge International Handbook of Children’s Rights* (Routledge 2019) as cited in E Nottingham, ‘We Need To Protect Children Who Appear On Social Media: 'Generation Tagged' And The Youtube 'Kidfluencer'’ (12 July 2019) < <https://www.winchester.ac.uk/news-and-events/press-centre/media-articles/we-need-to-protect-children-who-appear-on-social-media-generation-tagged-and-the-youtube-kidfluencer.php>> [↑](#footnote-ref-20)
21. Masterson, (fn. 15). [↑](#footnote-ref-21)
22. CRC, Art 32(2). [↑](#footnote-ref-22)
23. For verification, Instagram requires the user to be “notable”; YouTube requires the user to have at least 100,000 followers; TikTok requires the user account to be “authentic, unique and active”.  [↑](#footnote-ref-23)