 **Input for the Committee on the Rights of the Child Draft General Comment No. 25 (202x)  
Children’s rights in relation to the digital environment**

**About ECPAT UK**

ECPAT UK is a leading UK-based children’s rights organisation campaigning and advocating for the right of children to be protected from threats of trafficking and transnational child sexual abuse. We have a long history of campaigning against child trafficking and exploitation in the UK, having produced the first research into trafficking of children in the UK in 2001. An integrated programme of research, training, practice and policy development, youth participation and advocacy informs our campaigning efforts. ECPAT UK has been instrumental in raising awareness of the plight of children trafficked into the UK for all forms of exploitation and advocating for changes in policy and legislation to improve the UK’s response to this abuse. We also work directly with young victims of trafficking, which provides insight into the experiences of these children and the processes and systems that they encounter. ECPAT UK is part of the ECPAT International network, which is present in 103 countries, working to end child sexual exploitation.

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**Overview**ECPAT UK welcomes this general comment on children’s rights in relation to the digital environment to guide the measures States should take to comply with obligations under the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols and how children’s existing rights apply in the digital environment. The following comments are based on ECPAT UK’s 26 years’ experience advocating for the rights of children in migration who are victims of exploitation, including our direct work with young people. We have used red text to propose suggested edits or additions to the general comment.

**III. General principles**

**A. The right to non-discrimination (art. 2)**  
Paragraph 12 rightly acknowledges child victims of exploitation as victims of discrimination. However, children are victims of many forms of exploitation which have an online element. Our suggested addition below will reduce the stereotyping and presumption of children as victims solely of sexual exploitation and reflect that many are victimised in labour and criminal exploitation as well as domestic servitude and organ harvesting;[[1]](#footnote-1) increasing awareness and therefore the likelihood of victim identification and appropriate response. Suggested rephrasing: *This includes minority and indigenous children, asylum-seeking, refugee and migrant children, LGBTI children, child victims of sexual and other forms of exploitation, children in poverty and children in alternative care, including institutions, and children from other vulnerable situations.*

**C. Right to life, survival and development (art. 6)**As above, paragraph 16 references child victims of sexual exploitation but not other forms of exploitation which are highly prevalent among children and often have a digital element, such as criminal exploitation and recruitment into labour exploitation. Suggested rephrasing: *These include content, contact and conduct risks, and threats that include bullying, gambling, sexual exploitation and abuse, recruitment into other forms of exploitation, persuasion relating to suicide and other life-threatening activities including by criminals, armed groups and those designated as terrorist groups.*

**V. General measures of implementation by States (art. 4)**

**C. Coordination**The digital environment transcends national borders, connecting individuals across State territories. As such, any response to the threats and opportunities it provides should have a transnational element that entails international cooperation and coordination. As such, we suggest the following addition to paragraph 28*:**It should also cooperate with businesses, civil society and other organizations to realize children’s rights in relation to the digital environment at cross-sectoral, national, regional and local levels as well as international and transnational levels.*

**I. The business sector**Digital businesses including Internet platforms operate transnationally, however many take advantage of differing levels of legislation and regulation in different nation States. For example, in the EU the ‘country of origin’ principle in the Audiovisual Media Services Directive means media service providers such as social media platforms established in one Member State are protected from compliance with restrictions imposed by other EU Member States receiving their services.[[2]](#footnote-2) This may create jurisdictional issues impacting the safety and protection of child users and their access to remedies. We therefore suggest the following addition to paragraph 37: *States should require businesses to prevent their networks or online services from being misused for purposes that threaten children’s safety and well-being, and to provide parents, caregivers and children with timely safety advice and prompt and effective remedy and ensure these mechanisms have extraterritorial reach.*

**K. Remedies**The digital environment is a transnational one, connecting individuals across national borders. As such, any response to the threats and opportunities it provides should be transnational and involve international cooperation and coordination, and any training about remedies must reflect this to ensure that those remedies are used. For example, in acknowledging the need for judicial remedy for children outside the UK who are sexually exploited by UK nationals, the UK Government passed Section 72 of the Sexual Offences Act 2003, which gives power to UK law enforcement agencies to try UK citizens in UK courts for offences committed abroad irrespective of whether the sexual act committed abroad is considered an offence in that country.[[3]](#footnote-3) However, a recent independent, statutory inquiry into the sexual abuse and exploitation of children outside the UK by those with links to British institutions found that a low level of training and awareness of this legislation had resulted in its underuse.[[4]](#footnote-4) Thus we have suggested the following addition to paragraph 48 to ensure training of professionals covers the transnational mechanisms that help protect children in the digital environment. *States should provide specialized training for law enforcement officials, lawyers, prosecutors and judges that would specifically include issues related to digital environment and transnational remedial mechanisms to ensure effective implementation and enforcement of law regarding such violations.*

**VI. Civil rights and freedoms**

**E. Right to privacy (art. 16)**Paragraph 72 proposes end-to-end encryption as an example of privacy-by-design that would positively impact children’s rights. However, it is widely acknowledged by actors including the UK Home Office,[[5]](#footnote-5) the European Commission,[[6]](#footnote-6) the Australian E-Safety Commissioner[[7]](#footnote-7) and leading child protection NGOs such as the National Center for Missing and Exploited Children, the ECPAT International Network and the NSPCC[[8]](#footnote-8) and many others that end-to-end encryption in its current form poses substantial risks to children that are not proportionate to the privacy pay offs afforded to technology users. In particular, end-to-end encryption would limit the ability of technology platforms and law enforcement agencies to identify and respond to child sexual exploitation taking place online. It is therefore suggested that this is removed as an example of a measure States should take to ensure children’s privacy. ECPAT UK echoes the call of other child rights NGOs such as 5Rights Foundation[[9]](#footnote-9) in calling for an alternative of ‘high privacy default settings’ to be used in its place: *States should encourage the adoption of privacy-by-design, such as high privacy default settings ~~end to end encryption~~, in services that impact on children.*

**VII. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39; OPSC; OPAC)**The ECPAT International network has long monitored the sexual abuse and exploitation of children in countries with greater levels of poverty and inequality and fewer legal protections for children by offenders from the global North.[[10]](#footnote-10) In response to the jurisdictional challenges of bringing these offenders to justice, the UK introduced extra-territorial jurisdiction through Section 72 of the Sexual Offences Act 2003, which gives power to UK law enforcement agencies to try UK citizens in UK courts for offences committed abroad irrespective of whether the sexual act committed abroad is considered an offence in that country.[[11]](#footnote-11) With offenders increasingly carrying out offences online rather than in-person,[[12]](#footnote-12) this type of transnational offending in which victims and perpetrators are located in different States and subject to different jurisdictions will continue to increase. We have suggested an addition to paragraph 84 to help ensure States legislate appropriately and effectively so that child victims are identified and protected and offenders are brought to justice when both parties are located in different jurisdictions. This may also reduce risks of offenders adapting to exploit children in States with weaker legislation and law enforcement responses to online exploitation: *States should address the ways in which uses of digital technologies may facilitate, or impede the investigation and prosecution of diverse forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, child trafficking and gender-based violence, including through use of international law enforcement mechanisms and extra-territorial jurisdiction.*

**VIII. Family environment and alternative care (arts. 5, 9, 18, 20)**

Through our work with frontline professionals and child victims of trafficking, ECPAT UK has observed the use of technology to facilitate interactions between children in migration including victims of trafficking and their foster carers or other support workers. We are aware of cases in social care, foster care and the UK’s immigration system where use of substandard interpretation services such as Google translate have been substituted for adequate professional interpretation services, leaving children at risk of the consequences of misinterpretation. This can have a significant impact on children’s outcomes such as the credibility of their testimony in immigration processes when poorly translated accounts and testimonies appear to contradict other testimonies, or increasing the risk of children going missing and being re-trafficked due to misunderstandings between the child and their carers. While technology can provide significant benefits to both children and the professionals charged with their care, it should never replace human interaction and delivery of care in line with children’s rights and international and domestic legal standards. We suggest the following amendment to the wording of paragraph 94 so that it is clear technology should always support and never replace human interaction and legal standards of care to children: *Digital technologies may also be beneficial in ~~establishing~~ supporting relations between a child and prospective adoptive or foster parents, or reuniting children in humanitarian situations with their families.*

**XI. Education, leisure and cultural activities**

**A. The right to education (arts. 28, 29)**Young people subject to immigration control may lack access to traditional educational settings depending on their immigration status and may learn in non-traditional settings. These children are among those most at risk of lack of Internet access, devices and connectivity, which can have a profound effect on their wellbeing, access to education and social isolation as evidenced during the Covid-19 pandemic.[[13]](#footnote-13) We therefore suggest the following addition to paragraph 111, so that all learning modes and environments are included: *States should invest equitably in technological infrastructure in schools, colleges and other learning environments; ensuring the availability of sufficient number of computers, quality connectivity and electricity, teacher-training on the use of digital educational technologies, and timely maintenance of school technologies.*

1. UK Home Office (2020) *National Referral Mechanism statistics UK: End of year summary 2019 second edition,* available at: <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019> [↑](#footnote-ref-1)
2. European Commission (2018) *Digital Single Market: updated audiovisual rules[updated on 02/10/2018]* available at: <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_4093> [↑](#footnote-ref-2)
3. UK Government (2020) *Sexual Offences Act 2003, Changes over time for: Section 72*, available at: <https://www.legislation.gov.uk/ukpga/2003/42/section/72> [↑](#footnote-ref-3)
4. Independent Inquiry into Child Sexual Abuse (IICSA) (2020) *Children Outside the United Kingdom Phase 2 Investigation Report,* available at: <https://www.iicsa.org.uk/document/children-outside-united-kingdom-investigation-report-9-january-2020> [↑](#footnote-ref-4)
5. UK Home Office (2020) *International Statement: End-to End Encryption and Public Safety,* available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925601/2020.10.11_International_statement_end-to-end_encryption_and_public_safety_for_publication_final.pdf> [↑](#footnote-ref-5)
6. European Commission (2020) *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions,* Brussels, 24.7.2020 COM(2020) 607 final, available at: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20200724_com-2020-607-commission-communication_en.pdf> [↑](#footnote-ref-6)
7. Australian E-Safety Commissioner (2020) *End-to- End Encryption Trends and Challenges - Position Statement,* available at: <https://www.esafety.gov.au/sites/default/files/2020-05/eSafety-E2EE-position-statement.pdf> [↑](#footnote-ref-7)
8. ECPAT International, NCMEC, NSPCC et al. (2020) *ECPAT network urges Facebook to rethink encrypting Facebook Messenger,* available at: <https://www.ecpat.org/news/tag/end-to-end-encryption/> [↑](#footnote-ref-8)
9. 5Rights Foundation (2020) *Consultation response: General comment on children’s rights in relation to the digital environment,* available at: <https://5rightsfoundation.com/uploads/--5Rights%20consultation%20response%20Draft%20General%20Comment%20No.%2025%20Children%E2%80%99s%20rights%20in%20relation%20to%20the%20digital%20environment.pdf> [↑](#footnote-ref-9)
10. ECPAT International (2016) *Offenders on the move: Global study of sexual exploitation of children in travel and tourism,* available at: <https://www.ecpat.org/wp-content/uploads/2019/06/Offenders-on-the-move-Global-Study-on-the-Sexual-Exploitation-of-Children-in-Travel-and-Tourism.pdf> [↑](#footnote-ref-10)
11. UK Government (2020) *Sexual Offences Act 2003, Changes over time for: Section 72*, available at: <https://www.legislation.gov.uk/ukpga/2003/42/section/72> [↑](#footnote-ref-11)
12. Independent Inquiry into Child Sexual Abuse (IICSA) (2020) *Children Outside the United Kingdom Phase 2 Investigation Report,* available at: <https://www.iicsa.org.uk/document/children-outside-united-kingdom-investigation-report-9-january-2020> [↑](#footnote-ref-12)
13. ECPAT UK, Migrant and Refugee Children’s Unit, Shpresa, Young Roots et al. (2020) *Letter to the Children’s Commissioner for England,* available here: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=12e9a983-ec25-44e9-9058-954de1ffa201> [↑](#footnote-ref-13)