**KMDI Response to the Committee on the Rights of the Child’s Draft General Comment No.25 on Children’s Rights in Relation to the Digital Environment (November 15, 2020)**

*The Knowledge Media Design Institute (KMDI) is a cross-disciplinary research institute spanning twenty-five departments of the University of Toronto. The KMDI supports cross-sector research on the complex relationships between technology and society that aims to protect the rights and enrich the lives of humans.*

The *Draft General Comment* (“Draft”) represents a landmark contribution to the advancement and clarification of children’s rights, and their associated roles and responsibilities as citizens, in the digital information society. As Director of the KMDI, and as an expert on children’s digital culture, I applaud the CRC for this incredibly important intervention. The following feedback is intended to help refine and strengthen the Draft specifically the sections relating to children’s rights as producers of cultural content, advertising and marketing, privacy and data collection, age ratings systems and access, and the roles of the media industries and cultural institutions in supporting children’s rights in the digital environment.

**Children as cultural producers**

The KMDI commends the emphasis placed on supporting children’s rights as producers of digital content. This was one of the central recommendations of the KMDI’s response to the CRC’s concept note in May 2019. The Draft effectively communicates that children’s access to digital creation tools and platforms for sharing their creations are crucial for exercising their rights in the digital environment in ***Paragraph 18***. Putting the right to be heard (*Article 12*) at the forefront in this way is imperative, given that it is so often infringed upon in the digital realm, sometimes as a result of design choices and legislation otherwise intended to protect children from harm. The importance of children’s roles as cultural producers is also evidenced in ***Paragraph 51***, which affirms that the digital environment affords “unique opportunities” for children to “create and distribute their own content.” However, these opportunities are not only “unique” they are often critical. Increasingly, engaging in the creation and sharing of one’s own content is a necessary part of digital citizenship, as well as fundamental for the development of a more diverse and child-centered digital environment. These opportunities are highly valued by children themselves and play an essential role in children’s development of agency, identity, and cultural experience.

***Paragraph 55*** affirms that any restrictions aimed at increasing children’s safety (e.g. design features or user management policies) must be compatible with children’s right to freedom of expression (*Article 13*). This establishes a clear mandate for providers of digital creation tools and platforms that is reiterated in ***Paragraph 61***, which lists “censorship” as one of four potential rights violations that States should protect children from. However, it is not clear *how* this compatibility, and the more general issue of balancing children’s many rights, might be achieved in practice. More guidance for States and businesses on how to support children’s freedom of expression would be extremely useful, especially in contexts where there is high public concern about children’s safety, which can deflect attention away from children’s rights to be heard and be protected from censorship.

Supporting children’s newfound roles as producers of digital content will require a significant disruption of concurrent trends of configuring the child as either a passive “victim” in need of protection, or as a one-dimensional consumer whose agency is equated with purchasing power. An important part of challenging these trends is acknowledging that children’s roles as digital economic actors are diverse and sometimes include forms of cultural labour, the creation and exchange of intellectual property, as well as direct involvement in advertising and marketing (e.g. endorsing a toy in exchange for renumeration). This is recognized in ***Paragraph 122***, which also emphasizes that these roles introduce the potential for economic and other forms of exploitation and asks States to review “relevant laws and policies” to ensure that children are protected from such forms of exploitation. However, this does not adequately address the fact that many countries do not have robust laws when it comes to children engaged in cultural labour. Even in countries that do, children engaged in cultural labour are often at the center of complex legal disputes around royalties, renumeration, and consent. Much more needs to be done to ensure that children’s rights as economic actors, and as cultural producers more generally, are recognized and protected across an ever-growing array of digital platforms. These rights should be supported even in instances where no direct renumeration or economic exchange is involved. A clearer set of guidelines on this issue could provide an impetus for States to not only review existing legislation but develop new policies as needed.

**Regulating advertising, marketing, and commercialization**

Commercial advertising and commercially-driven data collection targeting children are pervasive across the digital environment, which the Draft addresses through the inclusion of several requirements prohibiting the use of highly persuasive advertising and the manipulation of children’s personal information for commercial purposes, outlined in Section V: J. In particular, ***Paragraphs 42*** and ***119*** provide strong statements about the harmful nature of these practices, and their negative impact on children’s right to privacy (*Article 16*), right to access to information (*Articles 13 and 17*), and others (including the right to be protected from commercial exploitation). Additional details about the commercial practices addressed in these paragraphs would be useful, particularly in terms of how they are defined (e.g. what is “highly persuasive advertising”?), as well as guidance on how States can identify these prohibited practices and distinguish them from ‘acceptable’ forms of commercialization.

TheDraft makes a strong case for increased State regulation of advertising, marketing, and commercialization in the digital environment, through the inclusion of a set of measures outlined in Section V: J. These requirements are incredibly important, with wide-reaching implications for children’s rights and wellbeing. ***Paragraph 49*** acknowledges that it is often challenging for children to obtain remedy when businesses violate their rights, reinforcing that there is a clear and growing need for increased State intervention in this area, and that the burden of negotiating unfair commercial practices should not be delegated to children and their parents/caregivers.

**Protecting children’s privacy and data**

Section VI: E includes several requirements for States to strengthen the protection of children’s personal information and privacy rights. ***Paragraph 69*** provides a nuanced overview of the various and complex ways children’s privacy rights are threatened within digital contexts. The Draft reflects the concerns children themselves have about how their information is used, and by whom, once it enters the digital environment (***Paragraph 70***). The warning in ***Paragraph 75*** that legislation created (or expanded upon) to better protect children’s privacy must not “arbitrarily limit children’s other rights, for example their right to freedom of expression” is incredibly important. It would be useful to also include some explanation of how these rights can at times conflict and provide steps that States and businesses can take to resolve such conflicts.

***Paragraphs 78, 119 and 123*** recommend a “safety-by-design approach” as an effective means of ensuring that rights are protected systematically or “from the ground up.” However, safety-by-design is defined and applied differently in different fields and can include applications designed to automate decision-making in ways that discriminate, misidentify and over-simplify user interactions and intentions. For instance, responsibility for supporting children’s rights within a digital platform could be delegated to the program’s code, through which algorithms become tasked with monitoring and labelling user interactions in order to flag or omit behaviours deemed to be non-compliant. Such systems are well known to be highly limited, implicitly biased, and are often lacking in the type of contextual nuance required to effectively support children’s at times conflicting rights, such as the right to non-discrimination (Article 2) *and* the right to freedom of expression (Article 13). The General Comment should include a more robust description of what exactly is meant by “safety-by-design” in this context and take a clear position against the delegation of authority and responsibility for upholding children’s rights to algorithms and other forms of automation.

**Age-based ratings systems and access**

As established in Article 31, play and games are an incredibly important part of children’s lives. Today, this increasingly includes digital games and other forms of leisure involving digital technologies. In many places, children’s access to games is regulated to some extent by ratings or classification systems, which provide rules or guidelines on the “age appropriateness” of the themes or imagery contained within individual games, apps or websites. The Draft recognizes the usefulness of such systems, while calling on States and businesses to make sure they do not “curtail children’s access to the digital environment as a whole or interfere with their leisure opportunities” (***Paragraph 120***). This requirement is vital and addresses an overlooked consequence of age-based ratings systems, which is the systematic exclusion of children from meaningful leisure experiences.

In addition to interfering with leisure opportunities, age-based ratings systems can also restrict children’s access to important forums for self-expression, information, and content creation. Digital games and apps are increasingly connected and social, and their role in children’s lives continues to expand. Ratings systems and other forms of industry regulation, including industry codes and terms of services, should thus be required to support a more comprehensive range of children’s rights. Similarly, in ***Paragraph 39*** it should be clarified that the “best interests of children” includes opportunities for play and cultural life.

**Fostering industry support and cross-sector collaboration**

Now more than ever, the “mass media” (media and associated industries, such as the digital game industry) have a crucial role to play in both producing varied forms of content for children, as well as supporting children in the production and sharing of their *own* content (***Paragraph 51***). The importance of the relationship between children, children’s rights, and the media is further supported by ***Paragraph 117***, which outlines that digital technologies and services made for and/or accessed by children must be “designed, distributed and used in ways that enhance children’s opportunities for culture, recreation and play.” As described in ***Paragraph 52***, State support is often necessary to ensure a diversity of perspectives and a plurality of media producers, creators, platforms and service providers. This provision supports the creation of robust and inclusive media ecosystems. However, it is important to remember that mass media companies are among those businesses that have been found infringing upon children’s rights. For instance, some game companies provide rich and diverse play experiences for children, that also feature gambling-like design mechanics. Some media companies create diverse and high-quality content for children, while engaging in invasive data collection practices. A clearer acknowledgement of this tension would be useful for future State and cross-sector initiatives aimed at meeting the call to action for the mass media to support the diverse and plural creation of media *for and by* children.

For instance, ***Paragraph 52*** might specify that “child-friendly, age-appropriate digital content” should not feature highly persuasive advertising, gambling-like design features, or obscured data collection practices. This section should reiterate the call to action outlined in ***Paragraph 36***, put forth by children themselves, “for businesses to better respect, protect and remedy their rights in relation to the digital environment.” Since media industries are often directly responsible for implementing age-based ratings systems, ***Paragraph 120*** should include similar clarifications.

Asking States to encourage the production and dissemination of a broad diversity of content is key to fostering a robust and inclusive digital media ecosystem (***Paragraph 53***). However, production and dissemination alone are unlikely to result in universal access among children, particularly children of lower income families and those living in rural or remote areas, who face barriers and inequalities in terms of access to digital technologies and services. It is also unclear how States will ensure access to a plurality of digital content even among those who *do* have the devices and connections required, given that so much of the content created by commercial mass media can only be accessed through paid subscription or purchase. Some guidance on how States should address access to “premium” content should be provided.

Similar questions emerge in regard to ***Paragraph 59***, which states that children’s freedom of expression “includes freedom to seek, receive and impart information and ideas of all kinds, using any media of their choice.” This is a welcome confirmation of children’s role and agency as cultural producers and participants. Yet, it does not address the fact that children face many barriers in accessing tools and platforms for engaging in the production and distribution of media, that vary from the technical and the financial, to the logistical and the physical. Some acknowledgement of varying accessibility, inequities, and other barriers to access that exist across different media forms is recommended.

The expansion of children’s access to the digital environment introduces a wide range of exciting possibilities for literacy, skill development, agency, citizenship, and “opportunities for culture, recreation and play” (***Paragraph 117***). It clear that the responsibility for realizing this potential cannot be delegated to the industry alone, just as it is clear that businesses have a central role to play in ensuring that children’s rights are prioritized within commercial digital platforms. In ***Paragraphs 36, 37, and 38***, the Draft provides a series of actions that States should take in requiring businesses to support and protect children’s rights within their networks and services. Many of these actions involve developing new legislation (or extending existing legislation) aimed at better regulating businesses in their dealings with children. A vital starting point for accomplishing this task is outlined in ***Paragraph 28***, which requires States to identify a government body responsible for coordinating policies and programmes aimed at supporting children’s rights in the digital environment, among other government departments and levels of government, as well as with businesses, organizations, experts, and entities, across sectors. However, the Draft should provide more guidance on *how* States, businesses, and stakeholders including regulators, NGOs, parents, academic researchers, educators, and of course children themselves (outlined in ***Paragraph 19***), can be brought together to engage in the collaborative work required to develop this legislation.

**The role of cultural institutions in supporting children’s rights in the digital environment**

There are several paragraphs in the Draft that encourage States to provide resources, technologies, services, and content aimed at supporting children and enabling a greater number of children to engage with a fuller range of diverse and enriching digital experiences. This includes ***Paragraph 29***, which specifically addresses digital inclusion, equality of access, and affordability of connectivity; ***Paragraph 108***, which asks States to ensure access to digital technologies for informal learning and extracurriculars, leisure and cultural activities that support children’s engagement in their own creative practices and those of others; ***Paragraph 111***, which requires States to provide equitable high-quality technologies and content to schools; and ***Paragraphs 115-117***, which call on States to work with professionals, parents and digital providers to ensure children have access to technologies and services made for play, fun and culture. Moreover, ***Paragraph 118*** requires States to ensure that opportunities for digital culture and play are “balanced with the provision of attractive alternatives in the physical locations where children live.” All of these represent valuable interventions that will greatly benefit children and advance children’s rights in the digital environment. However, little detail is provided about how these changes should be implemented, what role commercial/for-profit businesses should play, and who should be responsible for their provision.

Notably, in many contexts, organizations belonging to the cultural institutions sector, which includes art galleries, libraries, archives, and museums, among others, are already established leaders in providing the types of services outlined in these paragraphs. Cultural institutions are also often at the vanguard of technological innovation and cultural shifts. These institutions educate, promote culture, enable hands-on engagement, and provide high-quality content in a range of areas. While the Draft does mention cultural institutions in ***Paragraphs 53*** ***and 109***, the cultural institutions sector does not currently appear to be seen as a key stakeholder or as an active participant in the work of designing and implementing new legislation and initiatives aimed at supporting children’s rights in the digital environment. Instead, cultural institutions are largely positioned as a desirable but supplementary source of resources and content. I believe this is a major oversight. In many countries, the cultural institutions sector fills a prominent and valuable function in children’s lives. Libraries are often the primary points of technology access and connectivity for children, especially children of lower income families, while museums provide enormous amounts of educational support and cultural content to both schools and families. The cultural institutions sector has an important and potentially major role to play in helping States, children and the other identified stakeholders to meet many of the goals and requirements set forth in the Draft, particularly those relating to ***Section VI. Civil rights and freedoms*** and ***Section XI. Education, leisure and cultural activities***.

Along with these comments and suggested revisions, I would like to commend you on the production of this incredibly important intervention, which provides a comprehensive and grounded roadmap for States around the world to better support and protect children’s rights in relation to the digital environment. I appreciate the emphasis that was placed on gathering a rich and diverse body of evidence, perspectives, and experiences, including the global children’s consultation. As the co-lead of the Canadian contingent of the children’s consultation, I also commend you on the balanced approach adopted throughout the Draft, which does a great job of communicating the nuance and diversity of children’s needs, hopes and fears in relation to digital cultures, technologies, and processes. I look forward to seeing the General Comment in its final form, and all of the initiatives, policies, and innovations that will emerge as a result.

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