# CONTRIBUTION TO GENERAL COMMENT ON CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT

# 1. About the Alana Institute.

The **Alana Institute** is a non-profit civil society organization that seeks to safeguard the conditions necessary for the integral experience of childhood through its programs. Founded in 1994 and supported by an endowment fund since 2013, the **Alana Institute**’s mission is to “honor children.” Among its many programs are **Absolute Priority**[[1]](#footnote-1) and **Children and Consumerism**[[2]](#footnote-2), which deal with human rights issues for children and adolescents.

At the moment, they seek to contribute with a new overall opinion on the rights of children in the digital environment and on the efficacy of the Convention on the Rights of the Child, of which Brazil is a signatory. To this end, this document intends to present the main violations found by the activities of these programs, being: advertising aimed at children, artistic child labor, sensationalist police media shows, and personal data protection.

# 2. A brief overview of norms regarding childhood in Brazil.

In alignment with the Convention on the Rights of the Child, Article 227 of Brazil’s Federal Constitution founded the doctrine of fully protecting childhood and adolescence, and established that the rights of children and adolescents[[3]](#footnote-3) must be promoted and protected above all else, as an absolute priority, by the State, the family and society. Based on this constitutional norm, the Children and Adolescent’s Statute (Federal Law n. 8.069 from 1990) recognized children and adolescents as people at a special stage of development and as rights-bearing individuals, worthy of receiving integral protection and of having their best interest guaranteed, and as such establishes that their rights must be prioritized by policies, budgeting, and public services.

Meanwhile, the Consumer’s Defence Code (Federal Law n. 8.078 from 1990), in its chapter dedicated to regulating advertising, determines, in its article 36, the need for any form of advertising to be quickly and easily recognized by its audience, and, according to its article 37, forbids misleading or abusive advertising, including that which takes advantage of children’s lack of experience and judgement.

The Resolution 163[[4]](#footnote-4), issued by the National Council on the Rights of Children and Adolescents (Conanda), based on such regulation above cited, considers that child advertising is abusive accordingly to Consumer’s Defence Code and regulates the advertising and marketing communications targeting children under the age of 12 years old.

Following the increased awareness of the impact of massive personal data collection and treatment, Brazil approved the General Personal Data Protection Law (Federal Law n. 13.709 from 2018) which, in its article 14, presents special rules for protecting childhood, by establishing the best interest of children and adolescents as the general rule for treating data from this group, protecting them from any form of exploitation or rights violation. Furthermore, it requires the free, informed and specific consent, expressed and highlighted, by at least one legal guardian, for the treatment of data from people up to 12 years of age, with an exception for cases when the collection is necessary to contact parents or legal guardians to protect these individuals, in which case the data must be used only once and without being stored. The law also establishes that the holder of the data is responsible for taking all reasonable steps to verify that consent from a parent or guardian was obtained; for observing the principle of minimizing data collection in games, internet applications or other activities; for offering information in an accessible manner, compatible with the progressive development of children and adolescents and adequate to the child user’s understanding of the use of data by products and services directed towards or used mainly by them.

**3. Main concerns and violations of children’s rights in the digital environment.**

Brazilian children are massive digital users and that fact brings many concerns about violations of children’s rights in the digital environment[[5]](#footnote-5).

# 3.1. Advertising aimed at children in the digital environment.

Research and studies suggest that children up to 6-8 years old do not differentiate between advertising and content, nor do they have the necessary judgement to distinguish fiction from reality and, until they are 12, do not understand the persuasive nature of advertising[[6]](#footnote-6)[[7]](#footnote-7), making them easily influenced by this type of commercial strategy. In the face of the digitalization of means of communication and the increased access to the internet, children’s programs and commercials frequently invite their audience to visit their websites, social networks, and channels on video platforms on the internet.

Besides, to expose children to advertising content directed at them often contributes towards intensifying problems that jeopardize child development such as: precocious eroticism, behavioral disorders, family stress, violence, and alcoholism, lack of environmental sustainability as well as eating disorders, such as obesity, anorexia and bulimia[[8]](#footnote-8). In this regard, it is worth to mention some results of the research ‘The Impacts of Banning Advertising Directed at Children in Brazil’, developed by the Economist Intelligence Unit – EIU[[9]](#footnote-9). By considering a scenario where, due to the prohibition of directing publicity to children, the marketing sector changes its strategies and starts announcing to adults, researchers concluded that decrease on marketing revenues is only temporary. Moreover, important social benefits have been identified and are related to a physically and psychologically healthier population with positive economic results ranging from $61 to $76 billion after 15 years of the ban.

Even if the majority of these websites and apps were not created and developed with an audience of children under 12 in mind, it is true that these digital spaces are occupied freely and indiscriminately by children, in which they are exposed to more publicity content from the brands advertised on TV.

Within this context, it is no coincidence that the most common form of advertising aimed at children at the moment is developed through *unboxing* videos produced by digital influencers.

Considering the visibility, reach and impact these influencers exert on children, many companies send them gifts and invite them so they may, surreptitiously, promote the brand’s products on their channels and social networks, which are followed by millions of children[[10]](#footnote-10).

The problem is this gray zone that prevents children, and even adults, from determining if a piece of content that cites brands, products and services is advertising, a game, information, or a spontaneous act by the influencer. This happens because, on social networks, the difference between an ad and entertainment is almost unnoticeable, since the act of opening and evaluating products, especially toys, gets mixed in with the rest of the content produced by the influencers, such as challenges, stories and daily activities.

The market, aware of the entertainment digital influencers provide to children, take advantage of this confusion to promote its commercial strategies for the children’s segment that watches these channels, with the intention of establishing loyalty, affiliation and the desire to consume what is being presented. The companies know that veiled advertising is more subtle and harder to identify for its target audience[[11]](#footnote-11).

To illustrate this advertising strategy aimed at children, developed by a multinational corporation through the use of influencers, could be cited a campaign conducted by Mattel in 2016, in which it established a partnership with a famous Brazilian child youtuber’s channel to promote the campaign ‘You Monster High Youtuber,’ with the intention of promoting its Monster High brand and products[[12]](#footnote-12). As a result of this case, a collective action was proposed by the State of São Paulo Public Prosecutor’s Office against Google, so the company may take safety measures and establish guidelines to keep children’s advertising out of its YouTube, a platform considered inappropriate for children under the age of 18 by YouTube's own term of use[[13]](#footnote-13).The Public Prosecutor is also investigating 15 other companies for making use of channels and children’s profiles on social networks to promote their brands, products, campaigns and services. Among the companies being investigated are Bic, Cartoon Network, Kidzania and McDonald’s[[14]](#footnote-14).

Therefore, in the discussion about the need to protect children from calls to consumption being presented, especially, in the digital environment, the guarantees indicated by the Convention on the Rights of the Child must be taken into consideration. Article 3 which provides that private agents, like corporations, shall also primordially consider the best interest of the child. Article 6 requires party States to safeguard full childhood development. Article 17, which deals with the relationship between children’s rights and the media, states that the media content to which a child is exposed must respect their well-being, as well as their physical and mental health, making clear the importance of the quality of the information and content to which the child is being exposed.

Furthermore, it is worth highlighting the guarantees of non-exploitation and non-violence, established in articles 19 and 36 of the Convention, respectively. Both of these guarantees seek to prevent not only physical but also psychological exploitation and violence. Considering that the child does not have sufficient defences against marketing appeals aimed at them and, therefore, is more easily manipulated by advertising, it is understood that such practices consist of a subtle form of psychological violence, considering that the child’s defence mechanisms are still incipient.

Finally, a UNICEF[[15]](#footnote-15) report stresses concerns about the effects of advertising on the physical and mental health of children and recommends that companies revise their practices in order to adopt marketing measures that respect the rights of children and adolescents.

For these reasons, we consider that the child has the right to be protected from marketing communications aimed at them, including in the digital environment, since it represents a violation of their rights, established by the Convention on the Rights of the Child, as well as in the existing legislation in Brazil.

**3.2 Artistic child labor in the digital environment: child youtubers.**

Artistic child labor is allowed in Brazil[[16]](#footnote-16) and other parts of the world and, in the context of digital platforms, child youtubers deserve special attention. Broadly speaking, child youtubers are children and adolescents that publish videos on the internet, on a variety of subjects of interest to a young audience, and are viewed and followed by a growing number of fans around Brazil. As a rule, they maintain channels on YouTube and profiles on various social networks.

It is understood that the videos produced by child youtubers, regardless of the existence of a contract, could be described as activities taking place in a work environment, since, in many cases, there is financial benefit and regularity. Furthermore, it is worth noting that many of the videos produced, if they are not sponsored by companies, are at least monetized by the platform, meaning the child is being compensated.

In this context, a debate on recognizing the existence of child labor in digital platforms is essential to protect the child from economic exploitation and from performing any work that may be dangerous or interfere with their education, or that may be harmful to their health or their physical, mental, spiritual, moral or social development, in the terms of Article 32 of the Convention on the Rights of the Child, specifically so that, respecting the current limitations and guarantees, performing as a child youtuber does not represent a violation to the child’s rights, nor lead to any risks to their development. Therefore, the practice of child youtubers – especially when it is habitual and monetized – must be considered as artistic child labor, with the appropriate protections stipulated, such as judicial authorization, educational and psychological accompaniment, and working day limits.

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# 3.3 Violations of adolescents in conflict with the law in the digital environment.

In regards to violations of the rights of children and adolescents in conflict with the law, it is important to highlight the existence of many radio and television programs dedicated almost exclusively to presenting violations, crimes and police actions in a sensationalistic fashion, making a spectacle of cases of urban violence, in a supposedly journalistic format, with a strong popular appeal, known as *programas policialescos* or sensationalist police media shows. The strategy of trying to reach an audience through sensationalism and violence make these programs into frequent violators of human rights, either by inappropriately exposing the image of the victims and the accused, or by violating the rights of the children and adolescents that are watching or, further still, as a result of the promotion of racism, sexism and homophobia, as well as legitimizing and encouraging institutional violence, such as police violence.

The rise of digital platforms created new forms of communication, and so in Brazil a strong movement by the State’s own security agents has taken root, in which they seek to publicize routine actions by military police in a fashion very similar to these sensationalist police media shows. As such, these videos, frequently posted on digital platforms, present content that emulates the format of the radio and television programs and, therefore, are also systematic violators of the rights of children and adolescents, especially of those in conflict with the law.

These are actions that often involve the exposure of children and adolescents, be it as victims of the actions or accused as suspects of illegal acts. It is worth pointing out that being on digital platforms means a greater ease in spreading the content, which is often in violation of rights and encouraging violence, and the impact that it can cause. Still, the expansion of mobile devices with cameras has led to a multiplication of recordings made by public security officers and, concurrently, a growth in violations in a decentralized fashion, making it difficult to control, and hindering the work of organizations that defend these individuals.

An example of these violations is the case of policeman approaching a child by asking their age using curse words, which are highlighted in the video’s comments[[17]](#footnote-17). The videos, released on channels created by police battalions, especially on the YouTube platform, show events recorded by state agents themselves, in which they show police incidents exposing children during operations. It is important to emphasize that, even with visual effect, it is possible to identify a child, and it is also possible to identify its community, reinforcing the stigma on the more peripheral communities[[18]](#footnote-18).

To conclude, it must be emphasized that the narratives presented in cop and crime contents create stereotypes about entire communities: an example of this is the fact that the regions that appear in the videos are mainly in the urban peripheries, reinforcing a superficial line of discussion about public safety, presenting the lowering of the age of criminal responsibility for children and other expressions of the penal State[[19]](#footnote-19) as solutions to the grave issues of public and institutional violence, which in the end violate the rights of the child.

In this sense, the videos published by these channels systematically violate national and international standards. It is important to highlight violations of the Convention on the Rights of the Child, in particular Articles 16, 19 and 36, which stipulate that no children shall be subjected to arbitrary or illegal interference on their private life, no children can be submitted to unlawful attacks on their honor and reputation neither to exploitation or violence.

# 3.4 Protecting children’s personal data in the digital environment.

Although Brazil, like many other countries, has taken a decisive step towards protecting the personal data of children and adolescents with the approval of legislation that considers them to be vulnerable individuals, doubts persist[[20]](#footnote-20) as to the capacity to implement these laws, especially in the context of countries facing financial and ideological difficulties in maintaining an authority guaranteeing independence – one that can issue guidelines and explanations, that can cover gaps in details in principiological laws. Without an independent authority with the technical and financial capacity to educate and monitor, it is not likely that there will be a change in practices by businesses and the State, an important collector of children’s data, especially within public education.

Without a monitoring authority, Brazilian families, whose children make precocious and intensive use of digital devices and the internet, and have little understanding of the negative impacts resulting from the mass abuse of personal data, will be, even with the approved legislation, left alone to the task of safeguarding the rights of these vulnerable individuals, disrespecting the principle of shared responsibility for this task.

Among the main risks of negative impacts regarding illegal children data usage, it is important to consider: physical, moral and emotional safety due to non-authorized and malicious contact, identity frauds, reduction of social and economic opportunities due to early overexposure and/or algorithmic discrimination, behavioral modulation and opinion manipulation and, finally, commercial exploitation.

Beyond the need for expansion in relation to the need for entities to monitor the treatment of data and of the applicable legislation, the expansion of technology companies into schools, including Brazilian schools[[21]](#footnote-21), calls for a debate by the global community on the need for advances in the regulation of this field, especially considering that studies on big data and discrimination[[22]](#footnote-22) point to a high risk of negative impacts on the most vulnerable specifically in education.

Moreover, the Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education stablishes that the minimum standards should address the privacy and data protection, ensuring in particular respect for the rule of law and ethical practices with regards to personal data. States must also ensure that no personal, including biometric data, be collected or retained without consent, or be shared with third-parties without express consent and for purposes other than education, including for commercial, immigration, or security purposes[[23]](#footnote-23).

It is worth noting that, like other countries, a trend of installing increasingly sophisticated security cameras[[24]](#footnote-24) is spreading around Brazilian cities and even schools[[25]](#footnote-25), without representatives considering the implications in relation to children’s rights and their physical and psychological well-being, making it necessary to deepen the debate on this issue, and that advances in the debate on the need for regulation[[26]](#footnote-26) include the special needs of this highly vulnerable group.

This scenario presents violations of the Convention on the Rights of the Child, specifically to Article 16, which guarantees the rights to intimacy and privacy, and to Article 32, which establishes the protection of children and adolescents from economic exploitation.

# 4. Recommendations.

In the face of the challenges presented in this document, the **Alana Institute**, through its aforementioned programs, seeking to contribute to the United Nations Committee on the Rights of the Child, presents the suggestions that it:

* hold audiences, events and in-depth discussions on the issues of advertising aimed at children, artistic child labor, sensationalist police media shows, and personal data protection in the digital environment and its effects;
* recommend to party States regulatory restrictions in advertising aimed at children under twelve years old, artistic child labor, sensationalist police media shows, and the protection of personal data in the digital environment;
* reiterate the responsibility of businesses, especially of digital platforms and services, in safeguarding the rights of children;
* recommend that party States create mechanisms to evaluate the effectiveness of terms of use on digital platforms, which must be accessible to children;
* issue recommendations on the regulation of the responsibility of digital platforms, considering the need for special jurisdiction for the rights of children;
* promote studies specifically on advertising aimed at children through the insertion of brands into content created by digital influencers on social networks and video sharing platforms;
* establish guidelines for the artistic work of child influencers in the digital environment, especially for child youtubers;
* analyze the laws and proposals for rules for the treatment of children’s personal data in effect in party States, as well as the enforcement structures and application of these, especially of thematic authorities;
* analyze the potential impacts on the rights of children of the use of facial recognition technologies in widely used spaces;
* determine the main risks of using purely automated decision making methods that may impact children’s access to social and economic opportunities, and how party States should act to preserve the best interest of these individuals in a special stage of development.

1. The **Absolute Priority** program was created with the mission to bring visibility and effectiveness to Article 227 of the Brazilian Federal Constitution, which places children and adolescents as the absolute priority for families, society and the State. The program also develops initiatives with the Executive, Legislative and Judiciary branches, in order to demand the guarantee, with absolute priority, of children and adolescents’ rights when they are violated, and in the promotion of social and budgetary public policies. It acts, specifically, in projects in the areas of Access to Justice, Climate Justice, Media and Information, and Public Budget. More information at: prioridadeabsoluta.org.br/english. [↑](#footnote-ref-1)
2. **Children and Consumerism**’s objective is to present ways to minimize and prevent the harm caused by marketing communications aimed at children. The program defends the end of any and all marketing communications aimed at children, in order to protect them from the abuses practiced by advertising. It acts by sending notifications to businesses and reporting abuses to the appropriate public offices. In addition, the program also participates in the drafting and execution of public and legislative policies related to publicity aimed at children. More information at: criancaeconsumo.org.br. [↑](#footnote-ref-2)
3. According to Brazilian legislation, a child is any person under the age of 12, and an adolescent is any person between 12 and 18 years old, as stated in the 2nd article of the Children and Adolescent’s Statute. [↑](#footnote-ref-3)
4. Available at: <http://criancaeconsumo.org.br/wp-content/uploads/2019/05/Resoluc%CC%A7a%CC%83o-163-traduc%CC%A7a%CC%83o-ingle%CC%82s.pdf>. Viewed on 5.8.2019. [↑](#footnote-ref-4)
5. According to the TIC Kids Online Brasil 2017 study, 85% of children and adolescents between 9 and 17 use the internet. This number reaches 74% for children between 9 and 10, and 82% for children between 11 and 12. Also according to this study, 73% of children and adolescents between 9 and 17 use the internet for communication and social networks, and 77% watch videos, programs, movies or series on the internet, with this figure reaching 84% for children between 9 and 10In addition, the research showed that 42% of the interviewed children stated that its parents know “more or less” what they do on the internet; 34% declared to not know how to change privacy settings on social networks. Also, considering the abilities of children between 9 and 17 years old, 33% recognized to not know how to deactivate sharing of localization. Available at:<http://www.cetic.br/pesquisa/kids-online/indicadores>. Viewed on 5.8.2019. [↑](#footnote-ref-5)
6. Report by Professor Yves de la Taille on PL 5921/2001 develop by request of the Federal Psychology Council, ‘Advertising Aimed at Children - Psychological Considerations’ Available at:<https://site.cfp.org.br/wp-content/uploads/2008/10/cartilha_publicidade_infantil.pdf>. Viewed on 8.5.2019. [↑](#footnote-ref-6)
7. Children and television advertising – Swedish Consumer Agency Erling Bjurström, sociologist hired by the Swedish Government in 1994-95. Available at:<http://criancaeconsumo.org.br/wp-content/uploads/1994/02/Children-and-television-advertising.pdf>. Viewed on 5.8.2019. [↑](#footnote-ref-7)
8. Available at: <http://criancaeconsumo.org.br/consumismo-infantil/>. Viewed on 5.8.2019. [↑](#footnote-ref-8)
9. Available at: http://criancaeconsumo.org.br/wp-content/uploads/2014/02/TheEconomist\_EN.pdf. Viewed on 5.8.2019. [↑](#footnote-ref-9)
10. O programa Criança e Consumo, do Instituto Alana, já atuou em diversos casos que versam sobre publicidade direcionada ao público infantil no YouTube por meio de canais de youtubers mirins: [↑](#footnote-ref-10)
11. Available at: <https://www.dci.com.br/impresso/audiencia-de-youtuber-teen-explode-e-desafia-anunciantes-1.704795/3.297934>. Viewed on 5.8.2019. [↑](#footnote-ref-11)
12. Available at: <http://criancaeconsumo.org.br/acoes/mattel-do-brasil-ltda-voce-youtuber-escola-monster-high-fevereiro2017/>. Viewed on 5.8.2019. [↑](#footnote-ref-12)
13. Available at: <http://www.mpsp.mp.br/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=2640591.PDF>. Viewed on 5.8.2019. [↑](#footnote-ref-13)
14. Available at: <http://criancaeconsumo.org.br/acoes/mattel-do-brasil-ltda-voce-youtuber-escola-monster-high-fevereiro2017/>. Viewed on 5.8.2019. [↑](#footnote-ref-14)
15. ‘The Children's Rights and Business Principles’. Available at: <https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf>. Viewed on 5.8.2019. [↑](#footnote-ref-15)
16. The Constitution establishes, in its Article 7, item 33, the prohibition of night, dangerous or unhealthy work for minors, and of any type of work for children under 16, except in the condition of apprentice starting at 14 years old. Even so, one type of child labor is authorized by Brazilian law: artistic child labor. This permission is justified by the guarantee to freedom of artistic expression, also safeguarded constitutionally in Article 5, item IX. According to this norm, the Constitution guarantees to all, with no distinction of any nature, the free expression of intellectual, artistic, scientific and communications activities. This provision, added to Convention n. 138 and Recommendation n. 146 of the International Labour Organization (ILO), ratified by Brazil, authorize child labor when its goal is the participation of the child in artistic presentations, in order to harmonize the constitutional provisions of protection from child labor and free artistic expression. We must also emphasize that the Child and Adolescent Statute establishes the need for legal authorization for the child to work. [↑](#footnote-ref-16)
17. Available at:<https://www.youtube.com/watch?v=LzLdlCzchw0&t=113s>. Viewed on: 8.6.2019. [↑](#footnote-ref-17)
18. Available at:<https://www.youtube.com/watch?v=kMUX6UC_ypM>. Viewed on 8.6.2019. [↑](#footnote-ref-18)
19. The age of criminal responsibility in Brazil is 18, as established by the 1988 Constitution, in article 228, which states that children and adolescents are not imputable and are subject to a special norm. Therefore, Brazil is in alignment with the Convention on the Rights of the Child. However, there are some normative proposals in National Congress to reduce the age of criminal responsibility in Brazil that are gaining more and more traction both in the parliament and in civil society. [↑](#footnote-ref-19)
20. CONJUR. Questões sobre a nova Autoridade Nacional de Proteção de Dados da MP 869/2018. Available at: <https://www.conjur.com.br/2019-jan-24/opiniao-questoes-anpd-mp-8692018>. Viewed on 5.9.2019. [↑](#footnote-ref-20)
21. ESTADÃO. Gigantes da tecnologia entram na briga por novo espaço: a sala de aula. Available at: <https://link.estadao.com.br/noticias/cultura-digital,gigantes-da-tecnologia-entram-na-briga-por-novo-espaco-a-sala-de-aula,70002724698>. Viewed on 5.9.2019. [↑](#footnote-ref-21)
22. Executive Office of the President. Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights. Available at: <https://web.archive.org/web/20161219083427/https://www.whitehouse.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf>. Viewed on 5.9.19. [↑](#footnote-ref-22)
23. Available at: <https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5cdbed4724a694a8e46c067c/1557917021963/Abidjan-Principles-Designed-online-final+%289+May%29.pdf>. Viewed on 5.9.2019. [↑](#footnote-ref-23)
24. Convergência Digital. Salvador integra 1900 câmeras em sistema único de segurança. Available at: <https://www.convergenciadigital.com.br/cgi/cgilua.exe/sys/start.htm?UserActiveTemplate=site&UserActiveTemplate=mobile&infoid=49299&sid=18>. Viewed on 5.9.2019. [↑](#footnote-ref-24)
25. G1. Câmeras de segurança são instaladas em escolas municipais de Buzios, no RJ. Available at: <https://g1.globo.com/rj/regiao-dos-lagos/noticia/2019/05/09/cameras-de-seguranca-sao-instaladas-em-escolas-municipais-em-buzios-no-rj.ghtml>. Viewed on 5.9.2019. [↑](#footnote-ref-25)
26. MICROSOFT. Facial recognition: It’s time for action. Available at: <https://blogs.microsoft.com/on-the-issues/2018/12/06/facial-recognition-its-time-for-action/>. Viewed on 5.9.2019. [↑](#footnote-ref-26)