**Children Creating, Making, and Sharing Media in Digital Environments**

KMDI Response to the Committee on the Rights of the Child’s concept note of a General Comment on Children’s Rights in Relation to the Digital Environment (May 15, 2019)

*The Knowledge Media Design Institute (KMDI) is a cross-disciplinary research institute spanning twenty-five departments and eleven faculties of the University of Toronto, in Toronto, Canada. Founded in 1996, the KMDI has a rich history of leadership in producing cross-sector research and contributing to public discussions on the complex relationships between information, technology and society, with the aim of protecting the rights and enriching the lives of humans.*

From drawing pictures to making home movies, children have long produced their own, do-it-yourself (DIY) media at the individual and local scale. Today, children’s media making increasingly takes place online, using digital tools and platforms, posted to web galleries and social networking forums. A recent survey of Canadian students in grades 4 to 11 found that 38% had “posted their own story or a piece of artwork” online, 33% had posted “videos or audio files of themselves doing something,” and 22% had posted a fan tribute or mash-up.[[1]](#endnote-1) Several of the most popular YouTube channels are hosted by children,[[2]](#endnote-2) and teen game developers are becoming self-made millionaires selling their creations in *Roblox.[[3]](#endnote-3)* Meanwhile, new applications aimed at enabling children’s media making are introduced daily, along with a multitude of DIY game design programs and software[[4]](#endnote-4). Schools and libraries in many countries have incorporated digital media creation into formal curriculum, afterschool clubs, and children’s programming. Making media content and viewing media made by other young people is now commonplace for an increasing number of “connected” children—i.e. those with access to the required technological devices, services, and infrastructures.

Media can play an extremely important role in children’s lives. It can provide a forum for connecting with peers and family, inspire shared cultures of practice, support identity formation and self-expression, as well as provide a primary source of entertainment and leisure. Engaging in media making is associated with a range of learning opportunities, from developing technical and artistic skills, to becoming knowledgeable about the inner workings and motives of the media and advertising industries. In 1999, the *Oslo Challenge* identified media as a key entry point for the advancement and protection of children’s rights. One of the most important aspects of the current trend toward *digital* media making is that it increases children’s access to tools of “mass” distribution. Whereas child-made media was once relegated to refrigerator doors and classroom bulletin boards, it can now be published in public venues. From an education perspective, this shift has the potential to support the development of many of the proficiencies children will need to become informed citizens and active participants in the digital economy. It moreover raises numerous new opportunities for the advancement of children’s cultural and communication rights, including children’s right to freedom of expression and the right to culture, leisure and play.[[5]](#endnote-5) The spread of child-made media has the potential to make the media as a whole more diverse and democratic, as the means of production and distribution are extended to a group historically excluded from directly contributing to these processes.

On the other hand, children’s increased participation in digital media making has also introduced a multitude of new challenges. Since many children make and share their creations on sites and platforms that are owned by companies, and run as business activities, children’s creativity is resituated in quasi-public contexts that are often corporately-controlled and market-driven.[[6]](#endnote-6) This raises complex questions about how and to what extent children’s rights are addressed within these contexts, who has access and who is excluded, and what are the obligations of the businesses providing these new participatory spaces to children. Children’s digital media making unfolds at the crossroads of several converging, and oftentimes competing, interests and expectations. These include geographically-bound legal and policy requirements,[[7]](#endnote-7) overarching commercial influences and corporate priorities, fluctuating parental concerns about children’s safety, enduring digital divides, and emerging “hierarchies of access.”[[8]](#endnote-8) Significantly, many of these challenges have not yet received adequate attention within the academic literature, or within the popular discourses and public initiatives currently aimed at supporting children’s access to digital tools and technologies. Important questions remain when it comes to children’s privacy, autonomy, authorship rights, and access. There are also gaps in our knowledge about the roles and responsibilities that adults will need to assume to ensure that children’s rights and well-being are properly fostered as they enter the social, legal, economic, and ethical relationships that come with participating in life online.

The KMDI’s current and upcoming research initiatives are primarily focused on action-research aimed at supporting children’s rights as participants and cultural producers (or makers) in digital contexts.[[9]](#endnote-9) Our main research activity in this area seeks to contribute to a better understanding of the technologies, users (and non-users), and competing interests involved in children’s digital media making, by addressing both the exciting opportunities *and* the formidable challenges that are involved. Our goal is to produce empirically and theoretically grounded best practice guidelines and policy recommendations that support a child-centric, inclusive, ethics-based climate for children’s digital media making moving forward. This work expands on a recently completed multi-year, Canada-U.S., cross-sector research collaboration on the same topic, the *Kids DIY Media Partnership*. This Partnership brought together academics from a range of disciplines (information, education, law, design, and critical communication studies), non-profit organizations and child advocacy groups (MediaSmarts, Joan Ganz Cooney Centre @ Sesame Workshop), platform developers (Storybird, Sago Inc., DIY.org), media companies and public broadcasters (PBS Kids, CBC Kids), to discuss key issues relating to children’s digital media making, and collaborate on a series of related research projects.

The Kids DIY Media Partnership produced a wealth of valuable information and insight into several aspects of children’s digital media making. We conducted a detailed analysis of 120 websites and 15 games containing tools for children to make and share their own creations, inventorying their design features and affordances, privacy policies, and terms of service (TOS) contracts. We spoke to 21 children aged 6 to 12 years about their digital game-making activities, asking them about authorship and ownership rights, what they thought about the business practices of the commercial platforms they create with, and who has access to their data and content within these environments. We also held workshops with a total of 76 adults directly involved in the design, regulation or analysis of digital media making *platforms* (sites, games, apps) for children, seeking insight on current standards of practice, individual strategies, and unresolved challenges relating to how businesses in Canada and the U.S. currently address children’s rights, regulatory requirements, and social expectations. Out of this research, we produced a comprehensive picture of what children’s digital media making looks like in Canada and the U.S., across platforms and genres. Our research findings and conclusions build on a growing body of evidence that there is an urgent need for action and public discussion of children’s rights, agency, and well-being in digital environments.

This submission provides summaries of three overarching patterns identified in the Kids DIY Media Partnership studies and in the KMDI’s ongoing research in this area that have specific relevance to the General Comment on children’s rights in relation to the digital environment. The findings discussed herein correspond with six of the key groups of rights identified in the Concept Note. The submission provides recommendations to serve as starting points for answering two of the questions outlined in the Concept Note.

**Access to information, education and digital literacy[[10]](#endnote-10)**

Children face a myriad of complex questions about what exactly their rights and responsibilities are as producers and distributors of digital content. In both Canada and the U.S. these roles that are not well delineated within current laws and policies when minors are involved. There is also a widespread assumption that children, especially young children, are unable to understand the complexities of legal concepts such as intellectual property. Studies indicate that media literacy materials tend to seek to reduce complexity by simplifying terms and omitting exceptions from the discussion, often removing core aspects of children’s experience of intellectual property in the process[[11]](#endnote-11). However, recent research demonstrates that even young children (aged 4 to 6 years) can have nuanced opinions about key facets of intellectual property, from the ownership of ideas, to what makes a work original or derivative[[12]](#endnote-12). Contrary to traditional child development models and assumptions, many children develop a very early awareness, and at least a burgeoning understanding, of these concepts.

While platforms aimed at children tend to downplay business mechanisms and legal rules in their promotional texts and policy documents, children are clearly impacted by such processes. In 2016, we interviewed and held group discussions with 21 children aged 6 to 12 years who self-identified as “game designers.” One of the topics was authorship, in terms of who creates, owns and controls the content that children make in commercially-owned media making platforms such as *Minecraft*. Our young participants had mixed ideas about whether they owned the content they themselves created—some said yes, while others said it belonged to Minecraft or Microsoft. However, even our youngest participants expressed strong opinions about content ownership and offered thoughtful assessments about the “fairness” of ownership claims. The participants had situated knowledge of various legal terms, and formulated judgements about the meanings and implications of complex legal and economic processes, both for themselves and other players. At the same time, we found evidence of important gaps in children’s understanding of both the scope and specificities involved in creating original and derivative content within corporately-controlled forums. Moreover, most of the children did not believe that they themselves could be copyright owners. Some proposed that this was because their creations were made with tools and materials owned by a company.

We conclude that there is a clear need for a deeper and more concerted integration of legal issues within children’s digital literacy curricula. For many children, including several of the participants in our study, ideas about copyright are often introduced in the classroom, as part of a media or digital literacy curriculum. Previous work analyzing curriculum materials have flagged multiple problems with the information contained in many child-targeted copyright lesson plans. When children are taught about copyright, the emphasis is often placed on delineating *corporate* copyrights[[13]](#endnote-13). Meanwhile user rights, such as fair use or fair dealing, are either downplayed or omitted altogether (***Access to information***). Digital literacy materials often position children as copyright infringers, rather than as content creators or potential copyright holders. While copyright law is indeed highly complex and beyond the full comprehension of many adults, let alone children, research demonstrates that even kindergartners *can* grasp the underlying principles of authorship, attribution, and fair use that guide intellectual property rights. Scholars in this area advocate for a more comprehensive approach to teaching copyright at every grade level, one that encourages children “to confidently and thoughtfully claim their rights as both creators and users of copyrighted material.”[[14]](#endnote-14) Our findings concur there is a need for a firmer delineation of children’s rights as authors and digital citizens within digital literacy curriculum (***Right to education and digital literacy***).

In our workshops with children’s media professionals, participants also expressed concerns about younger children’s access to adequate information about the implications of posting content online. Several proposed that at least some of the problems currently associated with children’s digital media making might be addressed through curricula specifically aimed at teaching them about their rights and responsibilities as content *creators*. Others mentioned that parents and educators similarly often don’t have a solid understanding of the various issues involved, and lack adequate resources to effectively guide their children through complex copyright and privacy issues. This led to some concerns about children and parents’ abilities to make informed decisions about the legal relationships they enter into online, as well as some preliminary questions about how digital literacy might be built into companies’ privacy policies and TOS contracts.

**Freedom of expression, assembly and the right to culture[[15]](#endnote-15)**

Children’s increasing participation in digital media making has significant implications for businesses operating in the digital environment, as well as existing regulatory infrastructures. The shift raises several regulatory and policy questions that have not yet been adequately theorized or tested. This includes the new challenges that children’s media production presents to existing notions of authorship, ownership, and production. Many businesses in this area are thus coming up with their own responses to these questions, pioneering an important new facet of the digital landscape, but without adequate guidance or input from regulators, consistent access to relevant academic research, or informed public discussion. For instance, businesses that choose to take on the significant task of curating child-made media must make crucial decisions about what type of content will be published, what will be censored, and why. Although several developers have independently devised highly innovative, child-centric solutions to these challenges, such examples are not well documented, nor are they widely shared. In other instances, the tendency has been to strive to avoid controversy and minimize risk by implementing sweeping restrictions on what children can say and do within the media making platform or site. These restrictions are enforced in a range of ways, by moderators or through the inclusion of design barriers and automated filtering systems. They often result in the omission or removal of many children’s creations, and the systematic censorship of a wide range of words, themes, and ideas (***Freedom of expression and thought***).

An important set of issues brought up in our consultations with industry professionals involved the legal requirements, regulatory protections, and costs associated with maintaining digital media making platforms for children. Some reported that designers often choose to exclude children (e.g. through the inclusion of formal age restrictions) because of governmental regulations on collecting data from users under the age of 13 years, particularly those required by the U.S. *Children’s Online Privacy Protection Act* (COPPA) (***Right to culture, leisure and play).*** They told us that when companies allow younger users, they risk opening themselves up to potential litigation and civil penalties. The challenges involved in moderating online content and communication in order to make sites “safe” for children was raised as a related concern. Effective moderation requires people who can look over all content and comments, which necessitates a significant amount of time and monetary investment. In both cases, the money spent on legal fees or on moderator salaries was described as detracting investment from the platforms themselves—to making them better, expanding their features, and so on. Participants discussed the implications of legal and moderation concerns on the kinds and quality of digital media making tools available to children.

The concerns expressed by these media professionals are indeed warranted. In our study of the available tools and spaces for making and sharing digital media online, we found a marked lack of sites, games, apps or other platforms that overtly allowed children to participate. Most contained age restrictions, buried in privacy policies and TOS contracts. Others allowed children to join and create, but did not include any child-accessible or even child-specific design features or language. Our comprehensive media scan, conducted between 2013 and 2014, identified only 140 active English-language websites that supported both children’s production and distribution. Even among those 140 sites, however, children’s media *sharing* was often undermined. Several did not provide on-site sharing features, but instead provided a link to Facebook or other social media sites, many of which prohibit children under the age of 13 years from joining (at least “legally”). Most of the sites we examined lacked adequate features for social interaction, peer mentorship, or collaboration between users, thus undermining many of the most promising benefits associated with media making, as well as the potential for these sites to serve as spaces for children to cultivate a sense of belonging and participation in a shared community (***Freedom of assembly***).

**Protection of privacy, identity and data processing[[16]](#endnote-16)**

Following the recent series of high profile scandals and controversies surrounding the “data economy[[17]](#endnote-17)” and its associated business practices, there is currently growing public concern about children’s privacy in the digital environment, and mounting questions about how their rights and identities are (or can be) protected when so many of their interactions, activities and relationships are embedded in big data flows. Children’s online privacy first emerged as a social issue in the early days of the World Wide Web, as companies began using websites, games, and other online tools to solicit personal information from children for direct marketing and advertising purposes. By the late 1990s, these practices were widespread, leading to the establishment of child-specific privacy legislation in many places, most notable among which was the U.S.’s COPPA. Today, in the U.S., Canada, and elsewhere, privacy laws regulate what and how personal information can be gathered from children to widely varying degrees. Research conducted since the late 1990s traces the continued proliferation and expansion of corporate surveillance and data collection practices throughout the children’s digital landscape. From websites and videogames, to virtual assistants and the emerging “Internet of Toys[[18]](#endnote-18),” businesses have steadily used connected technologies to gather information from children. The full implications of ubiquitous “dataveillance[[19]](#endnote-19)” and the various ways that children’s data is ultimately used (and abused) are not yet known. What is clear, however, is that fundamental experiences of childhood are becoming transformed in the process (***Protection of privacy, identity and data processing***).

On the issue of privacy rights and protections, the Kids DIY Media Partnership ended with more questions than answers. Our research produced contradictory conclusions on issues relating to children’s privacy, and how it intersects with children’s right to freedom of expression. On the one hand, previous research and our own consultations suggested that many businesses opt to ban children under the age of 13 years to avoid the costs and potential challenges associated with moderating children’s content, ensuring COPPA compliance, and reducing liability risks. This finding was supported by our media scan. It suggested that aspects of existing privacy laws were driving many businesses operating in the digital environment to prohibit younger children from participating because of the additional requirements involved in their inclusion. On the other hand, among the many websites, games and applications we examined that *did* target or otherwise include younger children, a significant proportion collected personal data for advertising and other undisclosed purposes. More than half of the 120 websites we examined in our content analysis overtly described engaging in such activities in their privacy policy. We suspect the actual number is even higher. While we are troubled by the arbitrary exclusion of children from key areas of digital culture, we are equally alarmed by the problematic data practices unfolding in many child-friendly digital environments.

Through these processes, children’s participation in digital media making is turned into a sort of “natural resource” for in-house business activities and for third-party sale on the data markets. These practices are common, but rarely disclosed in ways that would be accessible to children or their parents. Instead, privacy is largely defined as keeping personally identifiable information ‘safe’ from unwelcome strangers and bullies. The fact that many of the data collection practices identified in our study are seemingly permitted by privacy laws in Canada and the U.S. also means that platforms can advertise themselves as being “COPPA compliant” while concurrently collecting massive amounts of data from and about children. Studies show that public awareness of the various surveillance activities that unfold in these spaces is partial at best. Children report many gaps in knowledge about privacy policies and how their data is used online[[20]](#endnote-20). However, recent research also indicates that children and parents are increasingly concerned about these issues[[21]](#endnote-21).

In Canada, as in many places in the world, there is a clear and immediate need to address the widespread encroachment of children’s privacy rights, and devise more effective strategies for protecting children’s privacy and identity. Our research also shows, however, that including children in this process is critical for ensuring that any new policies or guidelines reflect the rich diversity of children’s cultures, the ever-changing nature of their needs and capacities, and a fuller range of their rights as digital citizens. Notably, a better balance must be achieved in supporting both children’s privacy and freedom of expression.

**Recommendations Relating to Questions Outlined in the Concept Note**

The KMDI endorses the recommendations that emerged from the Kids DIY Media Partnership*,* which called for: (a) improvements to children’s digital literacy education, and (b) enhanced rights for children’s digital authorship, ownership, participation, and privacy. These recommendations correlate to two of the main questions identified in the concept note of the General Comment:

***Question 1: How should the practices of businesses operating in the digital environment support the realisation of children's rights?***

There are four areas of practice in which businesses operating in the digital environment can implement immediate changes that would better support the realization of children’s rights:

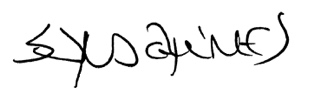
* **Terms of Service and Privacy Policies**: TOS contracts and privacy policies on children’s platforms must not be imbalanced in favour of business interests; They must comply with existing legislation, and must not infringe upon or omit children’s rights.
* **Copyright**: Children must be afforded the same copyrights over their creations as adults; They should be allowed to reuse copyright material to the extent permitted by fair dealing.
* **Design**: Platforms must be designed to respect children’s rights to expression and creation; Concerns about safety and risk must be balanced with proper consideration of children’s rights and autonomy.
* **Age Restrictions**: Platforms must apply realistic age restrictions; Age restrictions should only be applied if there is a real justification for excluding children.

***Question 2: How can States better realise their obligations to children's rights in relation to the digital environment?***

There are three areas of practice in which States can implement immediate changes that would enable them to better realize their obligations to children’s rights in relation to the digital environment:

* **Children’s Rights**: There is a need for States to make clear statements on children’s rights in digital environments; States need to be proactive in addressing the regulatory grey areas in this area.
* **Digital Literacy**: Children must be given a more balanced and comprehensive picture of what their online rights and responsibilities are, including legal implications, starting in the earliest years; Adults need additional education on children’s rights, to teach, model, and design best practices for kids.
* **Business Supports:** Regulations for supporting children’s rights online must not be so complex or so ambiguous that businesses look for loopholes or require professional assistance to meet them; Resources must be developed to encourage and enable businesses to operate platforms for children that support and enhance their rights.

There remain several, crucial, unanswered questions about how children’s rights can be more effectively and systematically supported in the digital environment. Some of these questions remain unanswered because they have not yet been addressed by lawmakers. Others, however, highlight important gaps and shortcomings within the existing regulatory frameworks and industry standards of practice. The expansion of children’s access to digital creation tools brings with it a wide range of exciting possibilities for supporting literacy and skill development, fostering agency and citizenship, and increasing children’s participation in the shaping our shared digital culture. It clear that the responsibility for realizing this potential cannot be delegated to the industry alone. Nor should the onus be offloaded onto children, teachers, and their caregivers through a narrow focus on digital literacy strategies. Fully supporting children’s newfound roles as digital media makers and participants in the digital society requires a disruption and shift in current trends, regulatory policies, and social conceptualizations that configure the child a consumer or passive victim—rather than the active, engaged creators that so many of them already are.



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2. Benjamin Nicoll and Bjorn Nansen, “Mimetic Production in YouTube Toy Unboxing Videos.” *Social Media + Society* 4, 3 (2018): 1. [↑](#endnote-ref-2)
3. Matt Weinberger, “A video game you've never heard of has turned three teens into multimillionaires—and it's just getting started,” *Business Insider.* July 25, 2017, https://www.businessinsider.com/roblox-how-teenage-developers-are-making-millions-2017-7 (accessed May 12, 2019). [↑](#endnote-ref-3)
4. Sara M. Grimes, “Little Big Scene: Making and Playing Culture in Media Molecule's *LittleBigPlanet*,” *Cultural Studies* 29, 3 (2015): 379. [↑](#endnote-ref-4)
5. Sonia Livingstone and Amanda Third, “Children and Young People’s Rights in the Digital Age: An Emerging Agenda.” *New Media & Society* 19, 5 (2017): 657. [↑](#endnote-ref-5)
6. Sara M. Grimes, “Child-Generated Content: Children’s Authorship and Interpretive Practices in Digital Gaming Cultures,” in *Dynamic Fair Dealing: Creating Canadian Culture Online*, eds. Rosemary J. Coombe, Darren Wershler and Martin Zeilinger (Toronto: University of Toronto Press, 2014), 336. [↑](#endnote-ref-6)
7. Sara M. Grimes, “Persistent and Emerging Questions About the Use of Terms of Service Contracts in Children’s Digital Media Sites and Platforms,” *University of British Columbia Law Review* 46, 3 (2013): 681. [↑](#endnote-ref-7)
8. Sara M. Grimes and Deborah A. Fields, *Kids Online: A New Research Agenda for Understanding Social Networking Forums* (New York: The Joan Ganz Cooney Center at Sesame Workshop, 2012). [↑](#endnote-ref-8)
9. The author of this submission, Dr. Sara M. Grimes, is the KMDI Director and the Principal Investigator of the Kids DIY Media Partnership. [↑](#endnote-ref-9)
10. This section draws on findings and arguments previously published in Deborah A. Fields and Sara M. Grimes, “Pockets of Freedom, But Mostly Constraint: Emerging Trends in Children’s DIY Media Platforms,” in *Young & Creative: Digital Technologies Empowering Children in Everyday Life*, eds. Ilana Elea and Lothar Mikos (Göteborg: International Clearinghouse on Children, Youth & Media/UNESCO, 2017), 159. It also draws on Sara M. Grimes and Vinca Merriman, “Technically They’re Your Creations, But…Children Making, Playing, and Negotiating UGC Games,” in submission. [↑](#endnote-ref-10)
11. David Cooper Moore and John Landis, ““I Got It From Google”: Re-contextualizing Authorship to Strengthen Fair Use Reasoning in the Elementary Grades,” in *The Routledge Companion to Media Education, Copyright, and Fair Use*, ed. Renee Hobbs (New York: Routledge, 2018), 258. [↑](#endnote-ref-11)
12. For example, see Kristina R. Olson and Alex Shaw, “‘No Fair, Copycat!’: What Children’s Response to Plagiarism Tells Us About Their Understanding of Ideas,” *Developmental Science* 14, 2 (2011): 431; and Alex Shaw, Vivian Li, and Kristina R. Olson, “Children Apply Principles of Physical Ownership to Ideas,” *Cognitive Science: A Multidisciplinary* Journal 36 (2012): 1383. [↑](#endnote-ref-12)
13. Tarleton Gillespie, “Characterizing Copyright in the Classroom: The Cultural Work of Anti-Piracy Campaigns,” *Communication, Culture, & Critique* 2, 3 (2009): 274. [↑](#endnote-ref-13)
14. Moore and Landis, *I Got it from Google*, 272. [↑](#endnote-ref-14)
15. This section draws on findings previously published in Fields and Grimes, *Pockets of Freedom*. [↑](#endnote-ref-15)
16. This section draws on findings previously published in Sara M. Grimes and Deborah A. Fields, “Children’s Media Making, But Not Sharing: The Potential and Limitations of Child-Specific DIY Media Websites,” *Media International Australia* 154 (2015): 112. [↑](#endnote-ref-16)
17. Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2019). [↑](#endnote-ref-17)
18. Giovanna Mascheroni and Donell Holloway, *The Internet of Toys: Practices, Affordances and the Political Economy of Children’s Smart Play* (London: Palgrave Macmillan, 2019). [↑](#endnote-ref-18)
19. Deborah Lupton and Ben Williamson, “The Datafied Child: The Dataveillance of Children and Implications for their Rights,” *New Media & Society* 19, 5 (2017): 780. [↑](#endnote-ref-19)
20. Steeves, *Young Canadians*. [↑](#endnote-ref-20)
21. Common Sense Media, “Common Sense and SurveyMonkey Poll Finds “Privacy Matters” for Parents and Teens on Social Media,” *Common Sense Media*. June 11, 2018, https://www.commonsensemedia.org/about-us/news/press-releases/common-sense-and-surveymonkey-poll-finds-privacy-matters-for-parents (accessed May 15, 2019). [↑](#endnote-ref-21)