**SUBMISSION TO SPECIAL RAPPORTEUR ON THE RIGHT TO PRIVACY**

**‘A BETTER UNDERSTANDING OF PRIVACY: CHILIDREN’S RIGHT TO PRIVACY’**

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This submission is prepared in response to the Special Rapporteur on the Right to Privacy’s call for submissions to inform a report on the privacy rights of children and how this interacts with the interests of others as the child develops the capacity for autonomy.

This submission addresses a particular privacy-related issue in relation to children and young people – namely the publication and sharing of images (photographs or video) of children where ongoing publication (or ability to view/access the image) is unwanted by the image subject (for convenience, I will term this ‘unwanted distribution’). It is suggested that the unwanted distribution of images may impact on the development of a child’s self-esteem, autonomy and relationships, particularly in the online environment, and thus the child’s overall psychosocial development.

It is submitted that the unwanted distribution of images has a potentially detrimental impact on development even where the image in question is not objectively harmful, offensive or embarrassing. This is significant because the ability to obtain legal redress for unwanted distribution of an image (including the ‘take down’ of an image) often depends on an image subject or their representative being able to establish that the image itself, or its distribution is, *objectively* harmful, offensive or invasive.

Recognising the potential impact of unwanted distribution of an image (even where that is ‘benign’) on child development can inform the way in which existing legal actions or avenues of redress related to the distribution of images are interpreted and applied. It can also inform the question of whether new legal responses to the issue of unwanted distribution of images are warranted.

# Unwanted online distribution of images as a privacy issue

Unwanted online distribution of images can be conceptualised as a privacy issue.

While there is no unitary definition of privacy, a number of scholars argue that privacy is best understood as being about control, whether in relation to certain domains (such as personal information) or, more generally, in the sense of controlling access to self in general[[1]](#footnote-1) or the management of social interaction.[[2]](#footnote-2) If privacy is understood in terms of control or choice over ‘when, how and to what extent’[[3]](#footnote-3) information about oneself is communicated to others, the unwanted online distribution of images of oneself, in so far as that implies a lack of control or choice, is properly conceptualised as a privacy problem.

# Why focus on images?

This submission focusses on images (rather than other sources of information) because images are a powerful medium of communication, as well as a rich source of information.

1. Research into cyberbullying has consistently found that images are the most impactful form of cyberbullying.[[4]](#footnote-4) One reason given for this by those who experience cyberbullying is the ‘concreteness effect’ of an image: that is photographs and videos capture people in poses, expressions and situations that may only have been fleeting but which are then preserved, possibly indefinitely.[[5]](#footnote-5) In its discussion paper on unauthorised photographs, the Australian Standing Committee of Attorneys General (SCAG) observed that ‘while a person might be comfortable presenting themselves in a particular way on a beach, a photograph, which facilitates a permanent image, provides a broader context for those images’[[6]](#footnote-6) and may allow for ‘ongoing objectification of the subject, and therefore ongoing harm.’[[7]](#footnote-7) Westin has described the impact of being photographed, filmed or subject to surveillance in terms of individuals no longer being able to ‘merge into the “situational landscape”’[[8]](#footnote-8) and in *Douglas & Ors v Hello! Ltd & Ors* the court described photographs as a particularly intrusive means of invading privacy.[[9]](#footnote-9)
2. While any image conveys visual information, a digital image often contains embedded information not observable on its face (metadata). As is noted in Facebook’s Data Policy:

We collect the content, communications and other information you provide when you use our Products, including when you sign up for an account, create or share content and message or communicate with others. This can include information in or about the content that you provide (e.g. metadata), such as the location of a photo or the date a file was created.[[10]](#footnote-10)

1. Digital or online images can be used to construct new information. For example, face recognition technology can sometimes be used to identify an image subject, or applied to create a ‘face print’ of the image subject that can be used to identify them from future images.[[11]](#footnote-11) Given the metadata associated with certain images, and the fact that images can be used to create new information (such as face prints), images are potentially very valuable to an organisation. In fact, the photographs on Facebook have been described as its ‘most vital assets’.[[12]](#footnote-12)
2. There is also an ‘innate connection’ between a person and their physical characteristics[[13]](#footnote-13) which might explain why many individuals believe they have a strong moral claim to the way their persona is represented, or objectified, by way of an image. Moral claims to one’s image (or the way one is represented) are often asserted regardless of whether the capture or use of the image is experienced as a violation of privacy, or whether it manifests in physical, mental or emotional harm. The idea of a ‘moral claim’ over how we are represented visually may go some way to explaining why the unwanted use of one’s image can be experienced as a violation of one’s autonomy — as further outlined below. It may also explain why people feel, among other things, ‘violated’ and ‘hurt’ upon being photographed, or discovering photographs or videos of themselves being published without their knowledge and consent.[[14]](#footnote-14)

# The views of children

This submission does not include first-hand views of children on the issue of unwanted distribution of images of themselves. Instead, it is simply acknowledged that it is essential that these views be actively sought and heard.

While there is evidence to suggest that young people are concerned about losing control over photographs and videos of themselves, especially when these are shared online,[[15]](#footnote-15) it is also important to acknowledge that more work needs to be done to seek out these views. It is also important to recognise that that ‘children’s experiences differ markedly around the world’[[16]](#footnote-16) and that different concerns are likely to apply depending on geographic and cultural context, as well as among different age groups.

# Potential impact of unwanted distribution of images on a child’s development

Images create certain impressions about those whom they depict. As noted by Leary and Kowalski, ‘the impressions people make on others have implications for how others perceive, evaluate and treat them, as well as for their own view of themselves.’[[17]](#footnote-17) Accordingly, impression management is implicated in the development of self and identity, and has implications for a person’s self-concept and self-esteem, as well as the way in which a person relates to others and, in turn, the development and quality of relationships.[[18]](#footnote-18)

Creating a favourable impression upon others is particularly important where those others are considered ‘significant’.[[19]](#footnote-19) Research has found that the views of peers are especially important to children and young people, and that peer disapproval and rejection corresponds with a number of negative future emotional and behavioural outcomes.[[20]](#footnote-20) Research also suggests that concerns about how one is viewed by others increase during early and middle adolescence and that by mid-adolescence individuals are ‘morbidly preoccupied’ with what others think.[[21]](#footnote-21) The adolescent preoccupation with what others think is accompanied by conscious decisions about the way in which the self is presented.[[22]](#footnote-22)

Self-presentation has been described as a vital skill that must be learned and practised during childhood and, in particular, adolescence.[[23]](#footnote-23) For many young people the internet is an increasingly important, integrated and integral part of their daily lives[[24]](#footnote-24) that provides numerous opportunities to engage in self-presentation and impression management,[[25]](#footnote-25) including through the medium of images (whether of themselves or others), as well as opportunities for social interaction. Users of social networking sites have been found to ‘invest great effort into managing an online identity that represents them in the best possible way’[[26]](#footnote-26) and there is considerable support for Stern’s assertion that the internet presents an opportunity for individuals to ‘put their best face forward’ and present ‘touched up’, although not necessarily unrealistic, self-presentations.[[27]](#footnote-27)

Not surprisingly, there is a growing body of literature devoted to exploring the ways young people present themselves online, including through image selection. What is surprising, however, is the relative dearth of literature focusing on implications for an individual of the online posting of images of themselves by *others,* or the subsequent use of such images.[[28]](#footnote-28)

Despite the paucity of studies on the implications for children and young people of the unwanted online distribution of images of themselves by others, a number of observations can be made. These observations are either based on findings from some of the studies that have explored the issue, or are drawn from the literature on self-presentation and impression management and/or child development in general.

1. Self-esteem can be detrimentally impacted if others use or threaten to use an image to belittle, embarrass, or poke fun at the image subject,[[29]](#footnote-29) or where the image subject believes that the image reveals something ‘private’. This includes situations in which the image itself is ‘benign’ or ‘anodyne’,[[30]](#footnote-30) as well as those in which there is something ‘inherently’ embarrassing, private or offensive about the image.[[31]](#footnote-31)
2. An individual’s self-esteem can be detrimentally impacted if others respond or react to an image of that individual in a particular way – such as by making negative comments or changing their behaviour towards the individual in some way.[[32]](#footnote-32)
3. An individual’s self-esteem can be detrimentally impacted by the publication of an image which, in the image subject’s own view, is unflattering or embarrassing,[[33]](#footnote-33) or which reveals something of themselves that they either wish to keep back or which conflicts with a particular impression of themselves that they wish to create (an ‘identity claim’).[[34]](#footnote-34) Because people’s self-esteem can be affected by the way in which the individual in question *believes* others perceive them (regardless of whether or not this perception is accurate),[[35]](#footnote-35) the impact on self-esteem can occur regardless of whether and how others do respond or react.
4. The phenomenon of ‘context collapse’ can make it more difficult for an individual to manage impressions of themselves in an online environment. Context collapse is the term given to the fact that in the online environment, particularly in the context of social media, discrete audiences are often merged so that information is ‘pushed’ to all those with access to the online material, even if it was only intended for a particular group.[[36]](#footnote-36) Thus information or images that might be considered appropriate amongst friends may not be considered appropriate when seen by family members, work colleagues or professional contacts. An individual’s self-esteem can be lowered if they have created an unfavourable impression of themselves vis-a-vis a particular audience, or even if they believe they have done so.
5. An individual’s self-esteem can be affected by the extent to which they are able to control the presentation of self and regulate interpersonal boundaries. This is because the extent to which an individual can control access to themselves (including personal information about themselves) can itself be a source of feedback about that individual’s relational value[[37]](#footnote-37) (the extent to which a person feels valued by important others).[[38]](#footnote-38) This is separate from any *consequences* that may flow from a failure to regulate boundaries or control particular information.
6. It has been noted that control over one’s environment is one of the two most important predictors of self-esteem.[[39]](#footnote-39) Valkenburg and Peter posit that online communication may provide adolescents with the ability to control what they want others to know about them, as they can ‘create or modify the presentation of themselves, and they can choose the pace, breadth and depth of self-disclosure’.[[40]](#footnote-40) However, it is often the case that individuals in fact have little control over the way in which *others* present them in the online context, including by way of images of themselves that others might choose to upload and share. As noted by Rui and Stefanone, ‘[d]eliberate image construction is becoming more difficult because of the increasing number of information sources about individuals online’.[[41]](#footnote-41) Echoing that, and referring specifically to the practice of people posting photographs of others online, as well as the practice of ‘tagging’ people in photographs,[[42]](#footnote-42) Besmer and Lipford observe that people have reduced control over their image and its reach, a fact that may lead to embarrassment or humiliation.[[43]](#footnote-43)

Compounding this lack of control is the nature of the online environment itself. The unwanted online distribution of images can cause particular or additional harm – as discussed further in Part Four below.

1. Self-presentation involves conscious decisions both about what of oneself to present (and how) but also about what *not* to present, or what to keep back. According to Livingstone, the decision teenagers make about what to keep back is an ‘agentic act to protect their identity and their spaces of intimacy.’[[44]](#footnote-44) If the decision about what to keep back is removed from a person, therefore, as is the case when an image is distributed against the wishes of the image subject, it seems reasonable to suggest that the image subject may experience this in terms of a loss of agency, or ‘autonomy’. The importance of autonomy is discussed in Section B below.
2. The distribution of an image that conflicts with a person’s identity claims or which is embarrassing or reveals something the individual wishes to keep back can also impact on an individual’s relationships with others. During peer interactions, for example, adolescents ‘develop and reinforce shared norms, such as distinct language use, clothing style, music preferences’.[[45]](#footnote-45) These shared norms are then used as ‘identity markers’ and to reinforce a sense of belonging with those who share their interests and values.[[46]](#footnote-46) Where an image that does not conform to one or more of those norms is distributed, therefore, it is possible for this to undermine that shared sense of belonging. An image may also present an adolescent in a way that conflicts with that adolescent’s identity claims vis-a-vis their parents (for example, where it shows an adolescent engaged in underage drinking) or others. This has the potential to endanger the level of trust between the parent and child (or the child and others) and even the relationship itself. In terms of parents, specifically, this is significant not least because positive parental relationships have been shown to impact the quality of adolescents’ friendships.[[47]](#footnote-47)

The observations above suggest that the unwanted distribution of an image of children and young people can have potentially detrimental impacts on their self-esteem and autonomy, as well as upon their relationships. The role that self-esteem, autonomy and relationships play in development and the importance of each is considered further below.

## Role and importance of self-esteem

The development of self-concept and self-esteem is often considered key to the construction of ‘identity’. Identity has, in turn, been described as one of the key developmental goals of adolescence.[[48]](#footnote-48)

One’s self-concept has been described as the way one perceives oneself, the ‘picture’ that one has of oneself[[49]](#footnote-49) or the knowledge one has about oneself.[[50]](#footnote-50) The developmental importance of self-concept is captured by Burns in the following summary:

Many contemporary psychologists … ascribe to the self concept a key role as a factor in the integration of personality, in motivating behaviour and in achieving mental health.[[51]](#footnote-51)

Self-esteem is often considered to be the evaluative aspect of self-concept.[[52]](#footnote-52) It has been variously defined as constituting the ‘judgements we make about our own worth and the feelings associated with those judgements’[[53]](#footnote-53) and the ‘level of global regard one has for the self as a person.’[[54]](#footnote-54) What influences an individual’s self-judgement, in turn, is not only what others think of them but what that individual *believes* others think of them.[[55]](#footnote-55)

Low self-esteem has been associated with health problems and mood disturbances,[[56]](#footnote-56) including anxiety and depression,[[57]](#footnote-57) as well as with certain negative emotions such as shame, guilt[[58]](#footnote-58) and a tendency to suffer embarrassment.[[59]](#footnote-59) In adolescents, low levels of self-esteem have been implicated in a ‘wide range of maladaptive responses to the issues of adolescence’[[60]](#footnote-60) and have even been linked to suicidal ideation and attempted suicide.[[61]](#footnote-61)

Conversely high levels of self-esteem have been positively correlated with resilience[[62]](#footnote-62) and overall well-being. MacDonald and Leary, referring to some of the numerous studies on self-esteem, observe that

compared with people who score low on measures of trait self-esteem, people who score higher tend to be happier and less depressed, to have more friends, to be more satisfied with their interpersonal relationships, to worry less about being rejected, to conform less, to work harder on difficult tasks, to feel less lonely, are less likely to abuse alcohol, and to be less prone to a variety of psychological problems.[[63]](#footnote-63)

Childhood and adolescence is a crucial time for the development of self-esteem.[[64]](#footnote-64) During this time self-esteem is shaped by the views of others, particularly ‘significant others’ and then gradually internalised towards the self.[[65]](#footnote-65) Therefore, is important to healthy development that events do not encourage children to internalise negative responses.

## Role and importance of autonomy

Autonomy refers to ‘young people’s ability to feel, think and act independently’.[[66]](#footnote-66) An established body of research has found that individuals who lack a subjective sense of autonomy may experience lower wellbeing and non-optimal functioning.[[67]](#footnote-67) A sense of autonomy has been found to correlate closely with feelings of relatedness[[68]](#footnote-68) and to be something that assists in the construction of a personal identity[[69]](#footnote-69) and emotional functioning.[[70]](#footnote-70)

## Role and importance of relationships

In so far as the goals of adolescence have been identified as identity formation, autonomy, intimacy and the development of the sexual self,[[71]](#footnote-71) an individual’s relationship with others is central to all of these goals.

As discussed above, the development of self-concept and self-esteem is key to the construction of identity. Self-concept is fundamentally a social construct — the way one perceives oneself depends upon one’s perceptions of the responses of others and the process of social interaction, and therefore upon one’s relationships with others. Davis writes that ‘[p]eer relationships and the context in which they are experienced become central to the identity formation process during adolescence.’[[72]](#footnote-72) Davis also notes, however, that positive relationships with parents also promote adolescents’ identity development.[[73]](#footnote-73)

Achieving the goal of autonomy involves individuation — a gradual moving away from dependencies upon parents towards ‘more mature relationships’, such as those with peers.[[74]](#footnote-74) Clearly then the formation of new relationships and the changing nature of existing relationships are important facets of autonomy.

The development of friendships, sexual relationships and support networks in general requires varying levels of intimacy.[[75]](#footnote-75) Intimacy has been said to depend on self-disclosure.[[76]](#footnote-76) Self-disclosure, in turn, has been defined as ‘the act of revealing private information to others’.[[77]](#footnote-77) Research has demonstrated that self-disclosures in friendships precede self-disclosures to romantic partners and that development of intimacy in friendships may therefore serve to prepare young people for love relationships.[[78]](#footnote-78)

The importance of *positive* relationships to all aspects of social and emotional development is fairly self-evident. Child development textbooks devote large sections to a discussion of the influences and centrality of family, peer and other relationships.[[79]](#footnote-79) Asher and Parker argue that peer rejection has important implications for a child’s social and emotional adjustment, both in the short and long term,[[80]](#footnote-80) and peer rejection has been noted as a ‘salient source of stress during adolescence’,[[81]](#footnote-81) a factor that has a ‘directional relationship’ with depression[[82]](#footnote-82) and even risk factor in suicide.[[83]](#footnote-83) By contrast, strong friendships and social support networks may allow individuals to better cope with stresses[[84]](#footnote-84) and generally contribute to positive mental health outcomes and general wellbeing.[[85]](#footnote-85)

# Online distribution of images is an issue of particular concern

Although the distribution of images of a child or young person has the potential to impact detrimentally on development regardless of the medium in which images are shared, the online distribution of images raises issues of particular concern, for reasons set out below.

1. The ubiquity of the internet and the level of exposure afforded by online publication means that an image that in the past may have resided in relative obscurity can now potentially be viewed by millions for an indefinite period of time (a factor that has been termed ‘scaleability’[[86]](#footnote-86)). The size or potential size of the audience where an image is posted on the internet is one of the reasons that online images are considered such an impactful form of cyberbullying.[[87]](#footnote-87) As noted by the Law Commission of New Zealand, the potential for such a large audience can cause distress even where the image itself is not inherently intimate or embarrassing.[[88]](#footnote-88) Moreover, it is difficult if not impossible to control the audience who will have access to a particular image once online. Therefore, unwanted online distribution of an image can result both in access by unwanted audiences[[89]](#footnote-89) as well as a sense of fear, on the part of the image subject, of access by unwanted audiences.[[90]](#footnote-90)
2. Online publication raises concerns about the permanence, or persistence, of information. De Andrade has observed that ‘[w]hat we post on the internet becomes a kind of tattoo attached to ourself, hard and cumbersome to remove.’[[91]](#footnote-91) Numerous concerns have been expressed about the consequences of the persistence of online information. For example, Mayer-Schönberger has argued that memory impedes the ability of individuals to change: ‘by recalling forever each of our errors and transgressions, digital memory rejects our capacity to learn from them, to grow and to evolve.’[[92]](#footnote-92) In this sense, forgetfulness is ‘seen as fundamental to the development of self and identity, as well as to the capacity of individuals to make effective decisions.’[[93]](#footnote-93) Others express concerns not only about the future impact of the persistence of information but also about the *present consequences* of that persistence. Blanchette and Johnson have argued that the fear of persistent information may cause individuals to behave differently and hesitate to act or speak authentically.[[94]](#footnote-94)
3. Other concerns about the persistence of digital memory relate to what is presently unknown.[[95]](#footnote-95) Thus, as Graux et al have pointed out ‘[e]specially in today’s information society, it is practically impossible to predict all (negative) consequences of the use of personal data. And even if one can foresee a few, they tend to be abstract, distant and uncertain.’[[96]](#footnote-96)
4. The architecture of the internet itself can also give cause for concern: information, once online, can be indexed, searched and combined with other information about a particular individual. As Viviane Reding, former European Commission Justice Commissioner, has observed: ‘The Internet has an almost unlimited search and memory capacity. So even tiny scraps of personal information can have a huge impact, even years after they were shared or made public.’[[97]](#footnote-97)
5. According to the New Zealand Law Reform Commission, concerns about the online posting of images may be accentuated by the development of face recognition search engines and the linking, or tagging, of images with names and other data about the image subject.[[98]](#footnote-98) One of the consequences of the advances in facial recognition technology was illustrated in an experiment conducted by researchers from Carnegie-Mellon University.[[99]](#footnote-99) The researchers asserted that a combination of publicly available Web 2.0 data (such as photographs posted to Facebook), cloud computing, data mining, and face recognition software was ‘bringing us closer to a world where anyone may run face recognition on anyone else, online and offline — and then infer additional, sensitive data about the target subject, starting merely from one anonymous piece of information about her: the face.’[[100]](#footnote-100) The broader consequences of this experiment for privacy and security are manifold.[[101]](#footnote-101) In an interview with the Wall Street Journal, Google CEO Eric Schmidt was quoted as saying: ‘I don't believe society understands what happens when everything is available, knowable and recorded by everyone all the time’, and went on to predict that young people may in the future automatically be entitled to change their name to ‘disown youthful hijinks stored on their friends’ social media sites’.[[102]](#footnote-102) However, as Acquisti et al point out, it is one thing to change one’s name but quite another to change one’s face.[[103]](#footnote-103)
6. The online environment also provides opportunities for individuals to post information about others, including images, while remaining anonymous. The JSCCS notes that the ability to remain anonymous may encourage young people to behave online in a way that they would not behave offline

because anonymity affords them the opportunity to act on any anti-social impulses that might otherwise be tempered in public. Children, in particular, are ‘more likely’ to bully in the online environment because they are able to hide their identities. Those who are bullied physically and feel powerless go online feeling totally empowered.[[104]](#footnote-104)

Aside from the fact that anonymity may encourage behaviour online that would not have been indulged in offline, there is also the fact that the audience for online information is, for the large part, anonymous. This unknown audience may add to the harm suffered by an image subject when an image is published or shared online against that person’s wishes.[[105]](#footnote-105) One reason for this is that it is difficult for a person to manage an audience, or to tailor the impressions they create for a particular audience, when that audience is unknown and potentially quite diverse. In turn, this gives rise to the potential for ‘bad impressions’ to be created and maintained that can affect a person’s job prospects and their own self-esteem. Additionally, where an audience for a particular image is unknown, an image subject may be more fearful of who might see the image, and how they might react.[[106]](#footnote-106)

1. Another distinctive feature of information in an online environment is identified by boyd as ‘replicability’. That is, content can easily be duplicated and ‘altered in ways that people do not easily realize’.[[107]](#footnote-107) The ease with which content can be duplicated makes it more difficult to determine the authenticity and source of the information.[[108]](#footnote-108)
2. Finally, the internet presents unique challenges to regulators. While the internet might no longer be properly described as entirely ‘borderless’,[[109]](#footnote-109) it nevertheless represents a new realm and, according to Lessig, ‘demands a new understanding of how regulation works’, an understanding that ‘compels us to look beyond the traditional lawyer’s scope — beyond laws, or even norms. It requires a broader account of “regulation”, and most importantly, the recognition of a newly salient regulator.’[[110]](#footnote-110) That newly salient regulator is the architecture of the internet or, in Lessig’s terms, its ‘code’.[[111]](#footnote-111)

For all of the above reasons, the online distribution of images of children and young people is an issue of particular concern. That is not, however, to say that other forms of distribution are not also problematic.

# Unwanted distribution of images: not always a bad thing

Despite the fact that the unwanted distribution of an image may have a detrimental impact on the development of a particular child or young person, this is not necessarily so.

Whether harm actually eventuates depends on a range of factors — some internal (such as the level of a child’s resilience and self-esteem and their own response to an image of themselves) and some external (the way in which others respond to a particular image; the support network available to the image subject). Some individuals will be able to adopt strategies to manage the impressions of themselves that are given off, including those that arise from images posted by others. Strategies can include successfully persuading friends and others to remove unwanted images, and the use of ‘tools’ that enable the deletion of information or the linking of information to a particular individual. It is likely that the extent to which any given individual is able to employ strategies to manage their self-impressions will depend, upon other things, on their age and technological know-how.[[112]](#footnote-112)

It is also important to recognise that there are many positive developmental implications for children in capturing and sharing images of others and being active participants in using technology, including the internet and social media platforms.[[113]](#footnote-113) The practice of capturing and sharing images of others is also an instance of freedom of expression which, in itself, is a civil right that, along with others, is considered ‘fundamental to guaranteeing the right to health and development of adolescents.’[[114]](#footnote-114) Therefore, any response to the issue of unwanted publication needs to consider the overall effect on the interests, rights and freedoms of others.

# Legal responses to the unwanted distribution of images of children and young people

Recognition that the unwanted online distribution of images can have a potentially detrimental impact on development has implications for determining whether extant legal responses to the issue of unwanted online distribution of images are sufficient. Understanding the developmental implications of unwanted online distribution of images can also help with interpretation and application of existing causes of action.

Depending on the jurisdiction in which the child or young person is situated and the nature of the image, various legal remedies might be available in relation to the unwanted distribution of an image. This submission does not attempt the enormous task of detailing potential remedies. However, by way of general observation, it can be said that many of them depend on an image subject being able to determine that an image or the way in which it is used is *objectively* harmful. For example, an image might be considered harmful where it invades someone’s *reasonable* expectation of privacy; is defamatory; reveals confidential (including intimate) information; is offensive; or is used to bully or harass a person. Additionally, a remedy may be available where an image is captured or published in breach of contract; or constitutes an infringement of intellectual property rights. The fact that the image is published against the wishes of the image subject will usually not suffice, in and of itself, to ground an action or secure the ‘take down’ (in the broad sense of removal from publication) of an image. Yet, as outlined above, even when an image is not objectively harmful, it has the potential to give rise to developmental harm where its distribution is against the wishes of the child or young person. For this reason, for some children existing legal remedies may be insufficient and additional remedies should be considered. One such remedy is to allow a child or young person to request the removal from publication (‘take down’) of an online image for no reason other than that person making the request wishes it to be removed.

Evidently, a child’s wishes that an image not be available would need to be balanced against other rights and interests. However, the starting point could be a presumption that continued publication, where that is unwanted, is contrary to the child’s best interests. The presumption could then be ‘rebutted’ in appropriate circumstances, which would necessitate weighing the child’s interests with those of others — including any other image subjects, the person who captured the image, the person who first shared or ‘published’ the image, and people who may further share or view the image (particularly if it is newsworthy) — to achieve a fair balance. I have set out in a little more detail, elsewhere, what a take-down scheme for unwanted images online might look like.[[115]](#footnote-115) What is key for present purposes, however, is to emphasise that for the purpose of any such scheme the starting point should be a presumption that unwanted distribution of an image is contrary to a child’s best interests. Taking this as the starting point guards against what might otherwise be the tendency to assess a child’s best interests from a purely objective standpoint: that is by asking whether the image is ‘objectively’ harmful, embarrassing or invasive of privacy and thereby ignoring the child’s own wishes and the potential for harm even where an image appears ‘benign’.

Although additional legal responses to the unwanted distribution of an image should be considered, a child or young person might be able to secure the removal of an online image of themselves by simply making a request to the person who posted it. Obviously, however, if the image has already been copied or further shared, its removal by the person who first posted it will not prevent further distribution. In some cases, a removal request can be made to an internet content host, usually an internet intermediary (such as Facebook or Twitter). A number of internet content hosts make available their own mechanisms for the removal of certain content. For example, Facebook’s terms state that it has the right to remove or restrict access to content that violates its various terms, including its community standards.[[116]](#footnote-116) The community standards are drafted broadly but refer specifically to removal of ‘explicit attempts to mock victims’ and the marking as ‘cruel’ of implicit attempts to mock victims, including by way of memes and GIFs.[[117]](#footnote-117) Some social media providers, including Facebook, make available tools for individuals to report abusive or problematic content.[[118]](#footnote-118) However, while such providers reserve to themselves the right to remove such content, they are generally under no obligation to do so. Moreover, the fact that an image subject does not want their picture to be available online is largely irrelevant if the image does not contravene the internet host’s own terms of service or is not otherwise unlawful.

An exception to the above position may apply to children in the EU who have the benefit of specific rights set out in the General Data Protection Regulation (GDPR).[[119]](#footnote-119) These rights include the right to erasure (or the ‘right to be forgotten’), in Article 17, and the right to object to processing, in Article 21. In applying these rights a data controller[[120]](#footnote-120) will usually be required to balance competing interests. A request to erase data, for example, can be resisted if the controller is able to show that processing is necessary ‘for exercising the right to freedom of expression and information’.[[121]](#footnote-121) If an individual objects to the processing of their personal data, in line with Article 21, then the controller must cease processing (which includes making the content unavailable[[122]](#footnote-122)) unless it can demonstrate ‘compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject’.[[123]](#footnote-123)

When considering the interests, rights and freedoms of the data subject who is child in relation to a request to erase or an objection to the processing of an image, it is important to recognise that while the problem of unwanted distribution of images of children and young people can be conceptualised as a privacy problem (for the reasons set out in Part I above), it is nevertheless a problem that implicates other rights including the right to development and the right to freedom of expression as set out in the Convention on the Rights of the Child (CRC).[[124]](#footnote-124) Data controllers should therefore take into account the potential developmental impact on an image subject of continued unwanted display of an image. Additionally, controllers should also recognise that a young person who does not wish an image of themselves to be displayed is making a choice about how to present themselves and self-presentation itself is a form of expression. The unwanted posting or use of images might also threaten expression in other ways — people might act differently not for fear of having their self-presentation claims challenged but for fear that a broader audience will have ‘access’ to those images and what they reveal about a person. The NSW Commissioner for Children has observed that the ‘unauthorised publication of photographs can cause distress to children, young people and families involved. It can make them fearful of further occurrences and affect their enjoyment of being in public places.’[[125]](#footnote-125) There is also some support in the research for the fact that surveillance from online audiences may have a chilling effect on people’s offline behaviour.[[126]](#footnote-126)

In terms of how data controllers should balance the interests of the person seeking erasure or objecting to processing with the rights and freedoms of others, the GDPR itself does not contain guidance on this but does recognise that children ‘merit special protection with regard to their personal data’.[[127]](#footnote-127) Thus, in seeking to strike a fair balance between the rights of those who are children (or who provided data when they were children) data controllers (or a regulator, as the case may be) should take into account the child’s best interests as a primary consideration.[[128]](#footnote-128) An understanding of the potential implications for child development of the unwanted distribution of an image can therefore inform the question of what is in a child’s best interests. Again, a useful starting point may be for controllers (and regulators) to presume that the continued online publication of an image (although not necessarily other forms of processing) is *not* in a child’s best interests where it is the child or young person who has made the request for erasure or objected to processing. As noted above, taking this as a starting point guards against a tendency to assess a child’s best interests from a purely objective standpoint.

# SUMMARY AND CONCLUSIONS

This submission has focussed on the unwanted distribution of images of children and young people. It has noted that images are a particularly powerful means of communication and a rich source of information. It was further noted that online distribution of images presents particular problems.

It is submitted that the unwanted distribution of images can potentially have a detrimental impact on development even where the image in question is not objectively harmful, offensive or embarrassing. Specifically, the submission suggested that self-esteem, autonomy and relationships can potentially be impacted by the unwanted distribution of images and that an understanding of these impacts should inform the way in which legal responses are interpreted and applied, as well as the question of whether new responses are required.

The submission has focused on the situation where distribution of an image is unwanted *by the image subject*,rather than situations where it is another (for example, a parent) who objects to the distribution of the image in question. That is to say, this submission assumes that the child or young person who is a subject of the image has sufficient awareness that the image is available and the capacity to develop a preference that it should not be. This is not to say that potentially detrimental impacts cannot occur in situations where there is no such awareness: but that is not the focus here.

In considering the application of existing legal responses to the issue of unwanted distribution of images of children and young people, and whether additional (new) responses are required, it is important to take into account that detriment does not necessarily follow from unwanted distribution of an image. It is also essential to take into account that there are many positive developmental implications for children in capturing and sharing images of others and being active participants in using technology, including the internet and social media platforms. Thus, any response that sought to protect children from what is merely a risk of harm would be overreach. Banning the capture of images of children and young people, or the sharing or online posting of images of children and young people, for example, would be excessive responses.

This submission has suggested that a take-down scheme in relation to the online publication of images of children and young people could be considered as a way of affording children greater control over their images – at least in jurisdictions where children or young people do not currently have the ability to request erasure of images or object to their processing. The starting point of any take-down scheme would be a (rebuttable) presumption that ongoing publication of an image of a child or young person where that is unwanted is against the child’s best interests. However, any such scheme would necessarily need to balance the rights and interests of the child or young person who wishes to secure take down of an image with the rights and interests of others. It would also be necessary to address enforcement difficulties which are inherent in any scheme designed to regulate online content.

This submission has also suggested that a better understanding of the potentially detrimental developmental implications for children and young people of unwanted distribution of images can inform the way in which extant legal rights are interpreted and applied. For example, the application of the rights to erasure and objection to processing under the GDPR necessitate the consideration of the child’s best interests. Understanding that the ongoing publication of even benign images can impact detrimentally on development can therefore inform the question as to what is in the child’s best interests. It was, again, suggested that a useful starting point could be a presumption that unwanted distribution of an image is contrary to the child’s best interests. Once again, however, the presumption can be rebutted in an appropriate case as the rights and interests of others will need to be factored in.

This submission has argued that while the unwanted distribution of images of children and young people can be conceptualised as a privacy problem, it is a problem which implicates rights beyond the right to privacy. This includes the right to development. It also includes the right to be heard[[129]](#footnote-129) and it is therefore essential that the views of children and young people on the issue of unwanted distribution of images, including appropriate legal responses, be sought. This submission, as noted in Part III, has not sought out the views of children, but recognises the importance of doing so.

Finally, there is, as noted in Part IV, relative dearth of literature focusing on implications for an individual of the online posting of images of themselves by *others,* or the subsequent use of such images. I would therefore suggest that more research is warranted to gain a deeper understanding of the potentially detrimental implications for the development of children and young people of the unwanted distribution of images of themselves.

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**30 September, 2020**

1. For a discussion of control and access-based definitions of privacy see B.J. Koops et al, ‘A Typology of Privacy’ (2017) 38(2) *University of Pennsylvania Journal of International Law* 483, 558 - 563. [↑](#footnote-ref-1)
2. See generally Kirsty Hughes, ‘A Behavioural Understanding of Privacy and its Implications for Privacy Law’ (2012) 75(5) *The Modern Law Review* 806. See, also, W H Foddy & W R Finighan, ‘The Concept of Privacy from a Symbolic Interaction Perspective’ (1980) 10 (1) *Journal for the Theory of Social Behaviour* 1*.*  [↑](#footnote-ref-2)
3. Referring to Westin’s definition of privacy as ‘the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others’: Alan F Westin, *Privacy and Freedom* (Bodley Head, 1967), 7. [↑](#footnote-ref-3)
4. Peter K Smith et al, ‘An Investigation into Cyberbullying, its Forms, Awareness and Impact, and the Relationship between Age and Gender in Cyberbullying’ (Research Brief No RBX03-06, University of London, July 2006); Ersilia Menesini, Annalaura Nocentini and Pamela Calussi, ‘The Measurement of Cyberbullying: Dimensional Structure and Relative Item Severity and Discrimination’ (2011) 14(5) *Cyberpsychology, Behaviour and Social Networking* 267, 268. [↑](#footnote-ref-4)
5. Halla Beloff, *Camera Culture* (Basil Blackwell, 1985), 9. [↑](#footnote-ref-5)
6. SCAG, Unauthorised Photographs on the Internet and Ancillary Privacy Issues, Discussion Paper (2005), 9 [33]. [↑](#footnote-ref-6)
7. Ibid 12, 13 [54]. [↑](#footnote-ref-7)
8. Westin, n 3 above, 31. [↑](#footnote-ref-8)
9. *Douglas & Ors v Hello! Ltd & Ors* [2006] QB 125, [84] (Lord Phillips MR). [↑](#footnote-ref-9)
10. Facebook, *Data Policy* <https://www.facebook.com/policy.php>. [↑](#footnote-ref-10)
11. See, eg, Facebook, *Data Use Policy* n 10 above. [↑](#footnote-ref-11)
12. Somini Sengupta and Kevin J O’Brien, ‘Facebook can ID Faces, but using them grows tricky’, *NYTimes* (online), 21 September 2012, <http://www.nytimes.com/2012/09/22/technology/facebook-backs-down-on-face-recognition-in-europe.html?\_r=0>. [↑](#footnote-ref-12)
13. Alice Haemmerli, ‘Whose Who? The Case for a Kantian Right of Publicity’ (1999) 49(2) *Duke Law Journal* 383, 418. [↑](#footnote-ref-13)
14. Jessica Lake, ‘Is it Ok for People to Take Pictures of You in Public and Publish Them?’ *The Conversation* (Arts and Culture) (27 May 2014) <https://theconversation.com/is-it-ok-for-people-to-take-pictures-of-you-in-public-and-publish-them-27098>. [↑](#footnote-ref-14)
15. In the UK, for example, approximately 38 per cent of young people recently surveyed worried about losing control over images they had shared online: UK Safer Internet Centre, *Power of Image, A Report into the Influence of Images and Videos in Young People’s Digital Lives* (UK Safer Internet Centre, 2017) <<https://d1afx9quaogywf.cloudfront.net/sites/default/files/Safer%20Internet%20Day%202017/Power%20of%20Image%20-%20a%20report%20into%20the%20influence%20of%20images%20and%20videos%20in%20young%20people%27s%20digital%20lives.pdf>>, 6. Young people in England have reported experiencing discomfort and a lack of control over the posting of images online by family members: R. Butterfill et al, *Life in ‘Likes’: Children’s Commissioner Report into Social Media Use among 8-12 Year Olds* (Children’s Commissioner’s Office and Revealing Reality, 2017) < <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/01/Childrens-Commissioner-for-England-Life-in-Likes-3.pdf>>. [↑](#footnote-ref-15)
16. T. Swist and P. Collin, ‘Platforms, Data and Children’s Rights: Introducing a “Networked Capability Approach”’ 2017 19(5) *New Media and Society* 657. [↑](#footnote-ref-16)
17. Mark R Leary and Robin M Kowalski, ‘Impression Management: A Literature Review and Two-Component Model’ (1990) 107(1) *Psychological Bulletin* 34, 34. See also Alexander Peter Schoten, *Adolescents’ Online Self-Disclosure and Self-Presentation* (PhD Thesis, University of Amsterdam, 2007) 107 noting that self-disclosure and self-presentation are two important processes in adolescent social development. [↑](#footnote-ref-17)
18. Patti M Valkenburg and Jochen Peter, ‘Online Communication among Adolescents: An Integrated Model of its Attraction, Opportunities and Risks’ (2011) 48 *Journal of Adolescent Health* 121, 122. [↑](#footnote-ref-18)
19. As Harter and Whitesell explain: ‘Cooley postulated that significant others constituted social mirrors into which the child gazes in order to detect the opinions of others toward the self. These perceived opinions, in turn, are incorporated into the evaluation of one’s worth as a person’: Susan Harter and Nancy R Whitesell, ‘Beyond the Debate: Why some Adolescents Report Stable Self-Worth Over Time and Situation, Whereas Others Report Changes in Self-Worth’ (2003) 71(6) *Journal of Personality* 1027, 1035. [↑](#footnote-ref-19)
20. See, generally, Laura Smart Richman and Mark R Leary, ‘Reactions to Discrimination, Stigmatization, Ostracism, and Other Forms of Interpersonal Rejection: A Multimotive Model’ (2009) 116(2) *Psychological Review* 365. See also Mitchell J Prinstein and Julie Wargo Aikins, ‘Cognitive Moderators of the Longitudinal Association between Peer Rejection and Adolescents’ Depressive Symptoms’ (2005) 32 (2) *Journal of Abnormal Child Psychology* 147, 147: substantial increases in the prevalence of girls’ depression due to peer rejection. [↑](#footnote-ref-20)
21. Susan Harter, ‘Developmental Differences in Self-Representations During Childhood’, in William Damon, Richard M Lerner and Nancy Eisenberg (eds) *Handbook of Child Psychology, Social, Emotional, and Personality Development* (Vol 3, John Wiley & Sons, 6th ed, 2006) 505, 541. See also Susannah Stern, ‘Producing Sites, Exploring Identities: Youth Online Authorship’ in David Buckingham (ed) *Youth, Identity, and Digital Media* (MIT Press, 2008) 95, 97: ‘During adolescence in particular individuals typically begin to question and deconstruct how they think of their selves. This self-inquiry is not conducted in isolation, but rather in the context of, and through feedback from, meaningful others. [↑](#footnote-ref-21)
22. Sonia Livingstone and David Brake, ‘On the Rapid Rise of Social Networking Sites: New Findings and Policy Implications’ 2009 24(1) *Children and Society* 75, 79, citing Giddins (reference omitted). [↑](#footnote-ref-22)
23. Valkenburg and Peter, n 18 above. [↑](#footnote-ref-23)
24. E-Safety Commissioner, ‘Young People and Social Media Usage’ < <https://www.esafety.gov.au/about-us/research/youth-digital-dangers/social-media-usage>>; Ofcom, *Children and Parents: Media Use and Attitudes Report 2018* (Ofcom, 2019) < <https://www.ofcom.org.uk/__data/assets/pdf_file/0023/190616/children-media-use-attitudes-2019-report.pdf>>, 3; Pew Research Center, ‘Teens, Social Media and Technology 2018’ < https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>. [↑](#footnote-ref-24)
25. Amy L Gonzales and Jeffrey T Hancock, ‘Mirror, Mirror on My Facebook Wall: Effects of Exposure to Facebook on Self-Esteem (2011) 14(1–2) *Cyberpsychology, Behaviour and Social Networking* 79, 80; Stern, n 21 above. [↑](#footnote-ref-25)
26. Sanja Kapidzic, ‘Narcissism as a Predictor of Motivations Behind Facebook Profile Picture Selection’ (2013) 16(1) *Cyberpsychology, Behaviour, and Social Networking* 14, 14. See also Soraya Mehdizadeh, ‘Self-Presentation 2.0: Narcissism and Self-Esteem on Facebook’ (2010) 13(4) *Cyberpsychology, Behaviour and Social* *Networking* 357, 358: ‘studies suggest that the most important motive for hosting a personal homepage is impression management and self-expression’ (citing Krämer & Winter). [↑](#footnote-ref-26)
27. See, generally, Liam Bullingham and Ana C Vasconcelos, ‘The Presentation of Self in the Online World: Goffman and the Study of Online Identities’ (2013) 39(1) *Journal of Information Science* 101; Kristie Holmes, ‘Of Course I Don’t Post Too Much’ (2013) *SAGE Open* 1, 6; Brittany Gentile et al, ‘The Effect of Social Networking Websites on Positive Self-Views: An Experimental investigation’ (2012) 28(5) *Computers in Human Behaviour* 1929, 1929 (‘self-presentations tend to be selective, and carefully managed but not false’). [↑](#footnote-ref-27)
28. Noted in J. Chen et al, ‘Information Privacy Concern about Peer Disclosure in Online Social Networks’ (2015) 62(3) *IEEE Transactions on Engineering Management* 311, 311. [↑](#footnote-ref-28)
29. For example, Hinduja and Patchin who tell of a Facebook profile page where the user behind the page juxtaposed images of people and animals and compared their features: Sameer Hinduja and Justin W Patchin, *Bullying beyond the Schoolyard: Preventing and Responding to Cyberbullying* (Corwin, 2nd ed, 2009) 57. [↑](#footnote-ref-29)
30. As per the example above where it is the juxtaposition of an image with another image and/or the addition of text that transforms the image into a vehicle for offending, hurting or embarrassing the image subject. [↑](#footnote-ref-30)
31. For example, where intimate images are distributed or threatened to be distributed without the consent of the image subject. [↑](#footnote-ref-31)
32. As was observed by one of the respondents to Australia’s Joint Select Committee on Cyber-Safety’s (JSCCS) ‘Are you Safe?’ survey, ‘my brothers face book is the worst, he has 300+ friends and they all pick on the fat and ugly people just cause of the way they look’: JSCCS, Parliament of Australia, *High Wire Act: Cyber-Safety and the Young*, Interim report (June 2011).80 [3.55]. Solove gives an example of the girl who refused to clean up after her dog that had defecated on a subway train in South Korea. When a photograph of the girl was posted online ‘she was labelled *gac-ttong-nyue* (dog shit girl) and her pictures and parodies were everywhere. Within days, her identity and her past were revealed’: Daniel Solove, *The Future of Reputation: Gossip, Rumour and Privacy on the Internet* (Yale University Press, 2007) 1, quoting from a blog published by Don Park. [↑](#footnote-ref-32)
33. De Vries’s doctoral findings suggested that individuals are aware of the importance of looking good on social network sites and that as a result of using such sites are likely to invest in their appearance cognitively and behaviourally. She also speculates that it is possible that the focus on physical appearance in self-presentations on social networking sites might be an important factor in explaining negative self-views, such as increased body dissatisfaction: Dian A de Vries, *Social Media and Online Self-presentation: Effects on How we See Ourselves and Our Bodies’ on Social Network Sites* (PhD Thesis, University of Amsterdam, 2014) 129, 134. [↑](#footnote-ref-33)
34. This is discussed in the literature on so-called ‘self-presentational predicaments’ or ‘face threats’: see, eg, Andrew Besmer and Heather Richter Lipford, ‘Moving Beyond Untagging: Photo Privacy in a Tagged World’ (2010) *Chi ’10: Proceedings of the SIGCHI Conference on Human Factors in Computing Systems* 1563; Andrew Smock, ‘Self-Presentation on Facebook: Managing Content Created by the User and Others’ (Paper presented at the Annual Meeting of the International Communication Association, Singapore, 22–26 June 2010); Litt et al, ‘Awkward Encounters of an “Other” Kind: Collective Self-Presentation and Face Threat on Facebook’ (2014) *CSCW ’14 Proceedings of the 17th ACM Conference on Computer Supported Cooperative Work and Social Computing* 449. [↑](#footnote-ref-34)
35. This is explained further in Part A, below. [↑](#footnote-ref-35)
36. See, eg, Michael Wesch, ‘YouTube and You: Experiences of Self-Awareness in the Context Collapse of the Recording Webcam’ (2009) 8(2) *Explorations in Media Ecology* 19; Alice E Marwick and danah boyd, ‘I Tweet Honestly, I Tweet Passionately: Twitter Users, Context Collapse, and the Imagined Audience’ 2010 *New Media and Society* 1. [↑](#footnote-ref-36)
37. Leary describes relational value as the ‘degree to which a person regards his or her relationship with another individual as valuable or important’, and goes on to say that ‘[c]learly the higher a person’s relational value in the eyes of other people, the more likely they are to include, support, and protect him or her, so relational value, inclusion and acceptance are closely related’: Mark R Leary, ‘Sociometer Theory and the Pursuit of Relational Value: Getting to the Root of Self-Esteem’ (2005) 16(1) *European Review of Social Psychology* 75, 82. [↑](#footnote-ref-37)
38. Irwin Altman, ‘Privacy a Conceptual Analysis’ in Daniel H Carson (ed) *Man-Environment Interactions: Evaluations and Applications, Part II* (Dowden, Hutchinson Press, 1974) (Section 6: Privacy) 3, 22. [↑](#footnote-ref-38)
39. Valkenburg and Peter, n 18 above. [↑](#footnote-ref-39)
40. Ibid, 123 . [↑](#footnote-ref-40)
41. Jian Raymond Rui and Michael A Stefanone, ‘Strategic Image Management Online’, (2013) 16(8*) Information, Communication and Society* 1286, 1286. [↑](#footnote-ref-41)
42. Facebook, *What is Tagging and How Does It Work?* <https://www.facebook.com/help/124970597582337 >. [↑](#footnote-ref-42)
43. Besmer and Lipford, n 34 above, 1563. [↑](#footnote-ref-43)
44. Sonia Livingstone, ‘Taking Risky Opportunities in Youthful Content Creation: Teenagers’ Use of Social Networking Sites for Intimacy, Privacy and Self-Expression’ (2008) 10(3) *New Media & Society* 393, 406. [↑](#footnote-ref-44)
45. Katie Davis, ‘Friendship 2.0: Adolescents’ Experiences of Belonging and Self-Disclosure Online’ (2012) 35 *Journal of Adolescence* 1527, 1528. [↑](#footnote-ref-45)
46. Ibid. [↑](#footnote-ref-46)
47. Katie Davis, ‘Young People’s Digital Lives: The Impact of Interpersonal Relationships and Digital Media Use on Adolescents’ Sense of Identity’ (2013) 29 *Computers in Human Behaviour* 2281, 2282. [↑](#footnote-ref-47)
48. Erikson H Erikson, *Identity: Youth and Crisis* (Faber & Faber, 1968) 161. See also Peter and Valkenburg, n18 above, 221. Kroger notes at xv that adolescence is a time of transformation in identity although also observes, at 34, that questions have been raised about Erikson’s proposed timing of development: Jane Kroger, *Identity in Adolescence* (Taylor and Francis, 2004). [↑](#footnote-ref-48)
49. See, eg, Joel M Charon, *Symbolic Interactionism: An Introduction, an Interpretation, an Integration* (Prentice Hall, 6th ed, 1998) 82. Note, however, that while defining self-concept in this reasonably simplistic way may be fairly widely accepted in psychology literature (see, eg, Laura E Berk, *Infants, Children, and Adolescents* (Allyn and Bacon, 4th ed, 2002) 367), Burns reminds us that the concept itself is complex and multi-dimensional: R B Burns, *The Self Concept: Theory, Measurement, Development and Behaviour* (Longman, 1979) 28. [↑](#footnote-ref-49)
50. Jennifer D Campbell and Loraine F Lavallee, ‘Who am I? The role of self-concept confusion in understanding the behaviour of people with low self-esteem’ in Roy F Baumeister (ed) *Self-Esteem: The Puzzle of Low Self-Regard* (Plenum, 1993) 3, 4. [↑](#footnote-ref-50)
51. Burns, n 49 above, 2. [↑](#footnote-ref-51)
52. Berk, n 49 above, 602. Charon describes the self-esteem (or self-judgement) as part of self-concept: Charon, n 49 above, 82; but others have used the term ‘self-concept’ to describe only the knowledge aspects of the self-schema, as distinct from the evaluative component of the self-schema: Campbell and Lavallee, n 50 above. [↑](#footnote-ref-52)
53. Berk, n 49 above, 369. [↑](#footnote-ref-53)
54. Susan Harter, ‘Causes and Consequences of Low Self-Esteem in Children and Adolescents’ in Roy F Baumeister (Ed) *Self-Esteem: The Puzzle of Low Self-Regard* (Plenum, 1993), 88. See also the definitions offered by the following authors: Sarah Tazghini and Karen L Siedlecki, ‘A Mixed Method Approach to Examining Facebook Use and its Relationship to Self-Esteem’ (2013) 29 *Computers in Human Behaviour* 827, 827: ‘Self-esteem refers to the extent to which one prizes, approves, likes or values oneself’; Michael A Stefanone, Derek Lakaff and Devan Rosen, ‘Contingencies of Self-Worth and Social-Networking-Site Behaviour’ (2011) 14(1-2) *Cyberpsychology, Behaviour and Social Networking* 41, 42: ‘Self-esteem refers to one’s appraisal of the value or worth of the self’; Maxine Wolfe, ‘Childhood and Privacy’ in Irwin Altman and Joachim F Wohlwil (eds) *Children and the Environment* (Plenum Press 1978) 175, 218: ‘Self-esteem can be generally defined as the evaluation individuals customarily maintain with regard to themselves.’ [↑](#footnote-ref-54)
55. Harter and Whitesell, n 19 above, 1035 referring to Cooley: the perceived opinions of others are ‘incorporated into the evaluation of one’s worth as a person’; Charon, n 49 above, 83. [↑](#footnote-ref-55)
56. Anita DeLongis, Susan Folkman and Richard Lazarus, ‘The Impact of Daily Stress on Health and Mood: Psychological and Social Resources as Mediators’ (1988) 54(3) *Journal of Personality and Social Psychology* 486, 491. [↑](#footnote-ref-56)
57. Leonard I Pearlin et al, ‘The Stress Process’ (1981) 22 *Journal of Health and Social Behaviour* 337, 345; MacDonald and Leary, above n 52, 360. [↑](#footnote-ref-57)
58. June Price Tangney & Ronda L Dearing, *Shame and Guilt* (Guilford Publications, 2nd ed, 2002) 59. [↑](#footnote-ref-58)
59. Rowland S Miller, ‘On the Nature of Embarrassability: Shyness, Social Evaluation and Social Skill’ (1995) 63(2) *Journal of Personality* 316, 325 (correlation between social self-esteem and embarrassment); Mark R Leary and Sarah Meadows, ‘Predictors, Elicitors, and Concomitants of Social Blushing’ (1991) 60(2) *Journal of Personality and Social Psychology* 254, 257. [↑](#footnote-ref-59)
60. Joseph M Boden, David M Fergusson and L John Horwood, ‘Does Adolescent Self-Esteem Predict Later Life Outcomes? A Test of the Causal Role of Self-Esteem’ (2008) 20 *Development and Psychopathology* 319, 321 citing studies by Rutter (1987) as to the link between high self-esteem and resilience and Evans et al 1994, Hammen 1992 and Harter 1993 in relation to the link between low self-esteem and maladjustment during adolescence (references omitted). [↑](#footnote-ref-60)
61. L Cherif et al, ‘Self-Esteem in Adolescent Suicide Attempters: A Cross-Sectional Comparative Study’ (2019) 4 *Clinics in Surgery: Psychiatry*; Rob McGee and Sheila Williams, ‘Does Low Self-Esteem Predict Health Compromising Behaviours among Adolescents’ (2000) 23 *Journal of Adolescence* 569; James C Overholser et al, ‘Self-Esteem Deficits and Suicidal Tendencies among Adolescents’ (1995) 34 (7) *Journal of the American Academy of Child and Adolescent Development* 919, 924. [↑](#footnote-ref-61)
62. MacDonald and Leary, above n 52, 355*;* Steven J Spencer, Robert A Josephs and Claude M Steele, ‘Low Self-Esteem: the Uphill Struggle for Self-Integrity’ in Roy F Baumeister (ed) *Self-Esteem: The Puzzle of Low Self-Regard* (Plenum, 1993) 21, 27. [↑](#footnote-ref-62)
63. Geoff Macdonald and Mark R Leary, ‘Individual Differences in Self-Esteem: A Review and Theoretical Integration’ in (eds) Mark L Leary and June Price Tangney *Handbook of Self and Identity* (Guilford Publications, 2nd ed, 2011) 354, 355. [↑](#footnote-ref-63)
64. Virgil Zeigler-Hill, ‘The Importance of Self-Esteem’ in Virgil Zeigler-Hill (ed) *Self-Esteem* (Taylor and Francis, 2013) 1, 13; Unni K Moksnes et al, ‘The Association Between Stress and Emotional States in Adolescents: The Role of Gender and Self-Esteem’ (2010) 49 *Personality and Individual Differences* 430, 430–1, 434; Harter, n 54, 106. Cf Boden, Fergusson and Horwood, n 60 above. [↑](#footnote-ref-64)
65. Ibid 1046. [↑](#footnote-ref-65)
66. Jochen Peter and Patti M Valkenburg, ‘Adolescent’s Online Privacy: Towards a Developmental Perspective’ in Sabine Trepte and Leonard Reinecke (eds), *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web* (Springer, 2011) 221, 224. [↑](#footnote-ref-66)
67. Ronald Fischer and Diana Boer, ‘What is More Important for National Well-Being: Money or Autonomy? A Meta-Analysis of Well-Being, Burnout, and Anxiety across 63 Societies’ (2011) 101(1) *Journal of Personality and Social Psychology* 164, 167. See generally Richard M Ryan and Edward L Deci, ‘Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination and Will?’ (2006) 74(6) *Journal of Personality 1557*; Gary B Melton ‘Decision Making by Children: Psychological Risks and Benefits’ in Gary B Melton, Gerald P Koocher and Michael J Saks (eds) *Children’s Competence to Consent* (Springer, 1983), Chapter Two, 21. [↑](#footnote-ref-67)
68. See generally, Barbara A Oudekerk et al, ‘The Cascading Development of Autonomy and Relatedness From Adolescence to Adulthood’ (2015) 56(2) *Child Development* 472; A Taradash et al, ‘The Interpersonal Context of Romantic Autonomy in Adolescence’ (2001) 24(3) *Journal of Adolescence* 365. [↑](#footnote-ref-68)
69. Charles C Helwig, ‘The development of Personal Autonomy throughout Cultures’ (2006) 21 *Cognitive Development* 458, 458. Altman posited the link between the achievement of self-identity and the ability to control access to self through the employment of privacy mechanisms as follows: ‘Privacy mechanisms define the limits and boundaries of the self. When the permeability of these boundaries is under the control of a person a sense of individuality develops. But it is not the inclusion or exclusion of others that is vital to self definition; it is the ability to regulate contact when desired. If I can control what is me and what is not me, then I can define what is me and not me, and if I can observe the limits and scope of my control, then I have taken major steps towards understanding and defining what I am. Thus, privacy mechanisms serve to help define me. Furthermore, the peripheral functions to which control is directed — regulation of interpersonal interaction and self/other interface processes ultimately serve the goal of self-identity’: IrwinAltman, above n 38 above, 50. [↑](#footnote-ref-69)
70. Lili Qin, Eva M Pomerantz and Qian Wang, ‘Are Gains in Decision-Making Autonomy During Early Adolescence Beneficial for Emotional Functioning? The Case of the United States and China’ (2009) 80(6) *Child Development* 1705. [↑](#footnote-ref-70)
71. Peter and Valkenburg, n 66 above 221, 224 (citing Butako and Steinberg: references omitted). See also Kaveri Subrahmanyam and Patricia Greenfield, ‘Online Communication and Adolescent Relationships’ (2008) 18(1) *The Future of Children* 119, 124 drawing on John Hill’s claim that adolescent behaviour is best understood in terms of the four key developmental tasks of adolescence (identity, autonomy, intimacy and sexuality). [↑](#footnote-ref-71)
72. Katie Davis, ‘Friendship 2.0’, n 45 above, 1528. [↑](#footnote-ref-72)
73. Katie Davis, ‘Young People’s Digital Lives’, n 47 above, 2282. [↑](#footnote-ref-73)
74. Peter and Valkenburg, n 66 above, citing Steinberg; Berk, n 49 above, 619. [↑](#footnote-ref-74)
75. Berk, n 49 above, 620 (adolescents stress that intimacy is the most important characteristic of friendship) and 626 (‘the achievement of intimacy in dating relationships lags behind that in friendships’); Daniel J Solove, ‘Conceptualising Privacy’ (2002) 90(1087) *California Law Review* 1087, 1121–2. [↑](#footnote-ref-75)
76. Sabine Trepte and Leonard Reinecke, ‘Preface’ in Sabine Trepte and Leonard Reinecke (eds) *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web* (Springer, 2011) v; Berk, n 49 above, 622–3; Duane Buhrmester and Karen Prager, ‘Patterns and Functions of Self-Disclosure during Childhood and Adolescence’ in K J Rotenberg and K J Rotenberg (eds), *Disclosure Processes in Children and Adolescents* (Cambridge University Press, 1995) 10–56. [↑](#footnote-ref-76)
77. Nicole C Krämer and Nina Haferkamp, ‘Online Self-Presentation: Balancing Privacy Concerns and Impression Construction on Social Networking Sites’ in Sabine Trepte and Leonard Reinecke (eds) *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web* (Springer-Verlag, 2011), 128 (citing Asher). [↑](#footnote-ref-77)
78. Berk, n 49 above, 624. [↑](#footnote-ref-78)
79. See, eg, Robert S. Feldman, *Child Development* (Pearson, 5th ed, 2009); Berk, n 49 above, (Chapter on Family Relationships and Children’s Stress Responses). [↑](#footnote-ref-79)
80. Steven R Asher and Jeffrey G Parker, ‘Significance of Peer Relationship Problems in Childhood’, in Barry H Schneider et al (eds) *Social Competence in Developmental Perspective* ( NATO ASI Series D: Behavioural and Social Sciences - Vol 51, Kluwer, 1989). See also Michelle F Wright and Yan Li, ‘The Association Between Cyber Victimization and Subsequent Cyber Aggression: The Moderating Effect of Peer Rejection’ (2013) 42(662) *Journal of Youth and Adolescence* 662, 663, citing research on peer rejection and noting that: ‘When adolescents experience rejection by peers, they may repeatedly experience the negative attitudes of others over a long period of time’; Laura Smart Richman and Mark R Leary, ‘Reactions to Discrimination, Stigmatization, Ostracism, and Other Forms of Interpersonal Rejection: A Multimotive Model’ (2009) 116(2) *Psychological Review* 365, 376 referring to some of the consequences of rejection. [↑](#footnote-ref-80)
81. Belinda Platt, Kathrin Cohen Kadosh and Jennifer Y F Lau, ‘The Role of Peer Rejection in Adolescent Depression’ (2013) 30 (9) *Depression and Anxiety* 809, 817. [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. See, eg, Government of Western Australia, Department of Health, *Suicide Prevention Strategy 2009–2013: Everybody’s Business*, 28 (Table 3). [↑](#footnote-ref-83)
84. Richard M Ryan and Edward L Deci, ‘On Happiness and Human Potentials: A Review of Research on Hedonic and Eudaimonic Well-Being’ (2001) 521(1) *Annual Review of Psychology* 141, 154 (referring to research suggesting that having stable, satisfying relationships is a ‘resilience factor across the lifespan’ (references omitted)). [↑](#footnote-ref-84)
85. Amanda L Forest and Joanne V Wood, ‘When Social Networking is Not Working: Individuals with Low Self-Esteem Recognize but Do Not Reap the Benefits of Self-Disclosure on Facebook’ (2012) 23 *Psychological Science* 295, 295; Roy F Baumeister and Mark R Leary, ‘The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation’ (1995) 117(3) *Psychological Bulletin* 497; Patti M Valkenburg, Jochen Peter and Alxander Schouten, ‘Friend Networking Sites and Their Relationship to Adolescents’ Well-Being and Social Self-Esteem’ (2006) 9(5) *Cyberpsychology and Behavior* 584, 589. [↑](#footnote-ref-85)
86. danah boyd, *Taken Out of Context: American Teen Sociality in Networked Publics* (PhD Thesis, University of California, 2008) 33. [↑](#footnote-ref-86)
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112. For example, Litt et al found that when confronted by threats to self-presentation in the context of Facebook, those with greater skills in manipulating the technology were better able to ameliorate the threats in question: Litt et al, ‘Awkward Encounters of an “Other” Kind: Collective Self-Presentation and Face Threat on Facebook’ (2014) *CSCW ’14 Proceedings of the 17th ACM Conference on Computer Supported Cooperative Work and Social Computing* 449, 459. [↑](#footnote-ref-112)
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118. See, eg, Facebook, Report Something, *How to Report Something* < <https://www.facebook.com/help/181495968648557>>; YouTube, *Reporting and Enforcement Center* < <https://www.youtube.com/yt/policyandsafety/reporting.html>>; Instagram, *Report Something*, Privacy & Safety Center, < https://help.instagram.com/165828726894770/>. [↑](#footnote-ref-118)
119. Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation. [↑](#footnote-ref-119)
120. A data ‘controller’ is defined in GDPR, art 4(7) and is essentially a person or entity who determines (or is involved in determining) the purpose for which personal data is processed and the means by which it is processed. By way of example, if a person posts personal information about another to a social media site, that person will be considered a data controller, as would the organisation behind the site in question. [↑](#footnote-ref-120)
121. GDPR art 17(3)(a). Erasure can also be resisted if one of the other grounds set out in GDPR art 17(3)(b)-(e) applies. [↑](#footnote-ref-121)
122. As per the definition of processing in GDPR, art 4(2). [↑](#footnote-ref-122)
123. GDPR art 21(1). It can also continue to process data where that is necessary for the ‘establishment, exercise or defence of legal claims’. [↑](#footnote-ref-123)
124. Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 6(2) (right to development) and art 13 (right to freedom of expression). [↑](#footnote-ref-124)
125. NSW Commission for Children and Young People, n 90 above, 3. [↑](#footnote-ref-125)
126. Ben Marder et al, ‘The Extended ‘Chilling’ Effect of Facebook: The Cold Reality of Ubiquitous Social Networking’ *Computers in Human Behavior* 60 (2016) 582. [↑](#footnote-ref-126)
127. GDPR, Recital 38. [↑](#footnote-ref-127)
128. The CRC, art 3(1) provides that ‘in all actions concerning children…the best interests of the child should be a primary consideration’ and this requirement is mirrored in the Charter of Fundamental Rights of the European Union, art 24(2). While these provisions will not bind all those who must consider requests for erasure or notices of objection to processing, a child centred approach to the protection of children’s personal information does require that the child’s best interests are a primary consideration. [↑](#footnote-ref-128)
129. CRC, art 12. [↑](#footnote-ref-129)