

Privacy and Children

**Special Rapporteur on the right to privacy
consultation on privacy rights of children**

**Research Group on Technology, Information and Society - GETIS
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I remember that in my childhood, when they wanted to take a photo of someone, always asked permission. Even to me, adults ask, girl, we can take your picture? Then one day no one asked anything. The right of the camera was placed above all the rights, and from that day on everything changed, everything rigorously. "(Kundera, 1990, 36)

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1 INTRODUCTION

Privacy is an important value supporting how we develop our relationships with other people (Rachels, 1984), how we protect the autonomous spheres of our life (Rössler, 2005) and how we exercise control over our body and personal data (Solove, 2011, 1).

Despite the rise of the “know citizen” (Igo, 2014) and the conceptual disarray (Solove, 2011;) caused by increasing economic lead surveillance policies privacy is still considered by most legal scholarship one of the cornerstones of democratic societies (Gavison, 1980).

Although its conceptual inconsistencies and ambiguities (Gross, 1967), privacy, during the last century, has received an increasing level of legal attention what lead not only to the increase of its legal protection through its incorporation into constitutions, laws or judicial decisions, but also to its expansion to encompass and influence debates about sexuality, birth control, personal data (Solove, 2011) and informational self-determination (Doneda, 2008).

Regulating and protecting privacy in an interconnected and digitalised society is a complex and very ambiguous task. The rise of the informational mediated society empowered the role of new social entities creating a complex technological network of interaction and a novel economic model guided by surveillance practices and the the amorphous ubiquity of data, particularly, personal data. Data collection and processing is everywhere, paraphrasing Morpheus in Matrix, data is all around us. Even now in this very piece of text. “You can see it when you look out your window or when you turn on your television. You can feel it when you go to work, when you go to church, when you pay your taxes. It is the world that has been pulled over your eyes” (The Wachowski Brothers, 1999). Society’s “*bitification*” transforms deeply the relational context of human existence and impacts directly all traditional approaches used to regulate economic activities and protect human rights.

Floridi (2014, iv) points that the challenge to answer the questions arising from the symbioses between man and data “Is that we still used to look ICTs as tools for interacting with the world and with each other. In fact, they have become environmental, anthropological, social and interpretative forces. They are creating and shaping our intellectual and physical realities, changing our self-understanding, modifying how we relate to each other and ourselves, and upgrading how we interpret the world, and all this pervasively, profoundly, and relentlessly”.

This risky and pervasive context combined with all social changes arising from the development of data driven policy-making processes and the massive use of digital technologies in education and recreational activities, particularly after the “forced” digital transformation caused by the COVID19 pandemic, support the need to rethink a more fair, transparent, accountable and ethical use of personal data, particularly data related to vulnerable subjects like, elderly and children.

The lack of control and appropriate oversight over data and metadata gathered from children using applications for recreational and educational purposes creates a dangerous and challenging environment where values like “the child best interest”, security and privacy are normally ignored or disrespected. Applications designed to collect personal data or to induce consumption through abusive publicity are common features of an overlooked realm of personal data governance. Only recently, for example, the British regulatory body enacted a code of practice outlining how children's data should be protected (ICO, 2020).

Understanding the risks experienced in this context is key to promote an equalizing dynamic (Beck, 2011) able to distribute the threats associated with children's digitalisation and create regulatory and governance practices able to protect children's best interests. It is imperative that social-actors, particularly the policy-shaping ones, anticipate risks in order to better sustain its impacts and guide efforts in the direction of better privacy-enabling regulations, governance structures and technologies.

The effort carried out by the Special Rapporteur on the Right to Privacy is one key step on this direction and must be followed by other global stakeholders engaging with children's rights.

2 EXECUTIVE RESUME AND RECOMMENDATIONS

The research carried out to support the recommendations proposed below demonstrates a complete lack of interest in promoting and protecting children's privacy. For example, from 60 schools investigated only 18% had fully functional and privacy policies and 10% had information security policies.

In fact, the Brazilian Statute for Children and Teenagers, a federal law promoting a set of rights and obligations in relation to these subjects, does not formally list the right to privacy, what sometimes overshadow the discussion about more protective regulations applied to online actors exploring children's personal data.

While the Brazilian Constitution formally recognises the right to privacy (Article 5, X) and more recently the Brazilian Constitutional Court recognised the right to data protection (STF ADIs n. 6387, 6388, 6389, 6393, 6390), the recently enacted national data protection Law recognises that personal information related to children must be processed under the best interest principle, it only points superficial guidelines and does not establish clear rules about children's personal data and privacy.

On the government level, despite the growing interest, there is no coordination between the different actors responsible for promoting and protecting children's rights, and the policies developed do not engage properly with the impact that digital technologies had on the privacy of children, particularly the ones, like the Brazilian ones that engage early and heavily with Internet. One clear example is the inexistence of effective oversight mechanisms to ensure the confuse mix of age verification and age-based approaches fixed by Brazilian law.

Recommendations:

- A. Coordinate an international effort to raise awareness about children's privacy in the educational sector. This must be grounded on the work of a multistakeholder task force working with representatives of different educational communities and practices;
- B. Promote the development a multidimensional framework (Governance, processes, technologies-tools and human parameters) promoting the protection of privacy on the educational industry, particularly on the deployment of online educational applications, platforms and practices¹;
- C. Develop an international framework guiding the design and operation of privacy-friendly educational applications for children²;
- D. Support research and policy-making investigations about educational data governance and oversight. Create an international platform to promote and support the development of research and policies tackling the lack of governance and oversight over data children produce through its online educational activities.
- E. Create and promote training guidelines about information security, data protection and privacy to teachers, school's staff and parents. All educational ecosystem actors need to be aware of data protection practices and techniques to support children's privacy during their education.
- F. Promote strategies to educate children about their privacy and informational security. Privacy should be discussed during the different stages of children education. Schools, governing bodies and regulators need to implement educational and training strategies campaigns, activities and practices to educate children about data protection and information security. The use of gamification strategies, plays, challenges and *hackatons* are options that, respecting the children age and capabilities, should be encouraged.

¹ The SIM3 (Security Incident Management Maturity Model) could provide a good starting point>
<http://opencsirt.org/wp-content/uploads/2019/12/SIM3-mkXVIIIc.pdf>

² See for example a very initial approach taken by the GSMA on Privacy Design Guidelines for Mobile Application Development in 2012:
https://iapp.org/media/pdf/resource_center/gsmaprivacydesignguidelinesformobileapplicationdevelopmentv1%20%281%29.pdf

3 RESEARCH

3.1 Methodology

The study used a mixed approach to investigate how Brazilian schools engage with student's privacy and data protection. The researchers selected by each region a group of 15 schools, mostly private ones, based on quality reports and educational rankings. The selected school web site was searched and two factors were investigated: a) Privacy Policy and the Informational Security Policy Availability. Once these information were assessed the researchers contacted the schools through e-mail, WhatsApp or telephone to confirm the information displayed and to ask if the school provided training to its staff on privacy and data protection.

This is the initial stage of a broader investigation. The results would probably be impacted with the increase of the research sample, the inclusion of a larger number of public schools and particularly by the entering in force of the Brazilian data protection law.

3.2 Data

Region	Schools investigated	Privacy Policy	Information Security Policy	Use of Online Platform
North and Northeast	15	3	3	15
Southeast	15	2	1	13
Centre-east	15	0	0	14
South	15	6	2	15
Total	60	11	6	57
Percentage	100%	18%	10%	95%

3.3 Insights

Although its PoC (Proof of Concept) approach the research pointed some major findings:

- A) Schools are moving digital without taking in account its pupil's privacy and informational security;
- B) There is a general lack of interest in governing bodies, regulators and schools in promoting children's privacy online. This is evidenced by:
 - 1) The lack of awareness about the need to protect children's privacy on the educational sector, particularly online.
 - 2) The inexistence of public available guidelines or frameworks on how to promote and protect children in the educational sector;

3) The inexistence of governance and oversight over the data children produce during their online educational activities;

4) The absence of training and awareness sessions about data protection and information security directed to the educational community (staff, parents and children).

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