

CHILDREN'S RIGHTS ALLIANCE

Real Solutions to Protect Children's Data

Introduction

The Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

In December 2015, the European Commission, Parliament and Council reached an agreement on reform of the EU data protection rules including the introduction of the General Data Protection Regulation (GDPR) to update and modernise the principles enshrined in the 1995 Data Protection Directive to guarantee privacy rights. The Regulation includes the introduction of a 'digital age of consent' meaning the age under which children require parental consent to sign up to digital media platforms involving the collection or processing of their personal data. Under the GDPR, Member States have discretion to introduce national legislation setting this limit at any age between 13 and 16.

In November 2016, the Children's Rights Alliance was invited to make a submission to the Government Data Forum on the General Data Protection Regulation (GDPR) and the age of consent for digital media. The Children's Rights Alliance made a submission and recommended that the age of consent be set at 13 years. The establishment of an age of digital consent requires a delicate balancing of the rights of the child, in particular the rights to participation and to access information with the rights to privacy and protection. However, in the Children's Rights Alliance view, we do not consider that parental consent alone is sufficient to protect children's data from exploitation and aggressive marketing techniques. This is because the obtaining of parental consent alone is fraught with difficulties (discussed below). It also places too much of an emphasis on parents and young people to make informed decisions in an ever changing technological environment. **Consent can provide illusory control and place an excessive burden on parents.**

Children's Rights in the Digital Era

The UN Convention on the Rights of the Child (UNCRC), which Ireland ratified in 1992, predates the evolution of the digital technology that is nowadays used in everyday life meaning that the Convention does not currently encompass an article on the digital rights of children. However, a number of rights enshrined in the UNCRC apply in the context of children and the digital era including:

- Article 3 (Decisions made in the child's best interests)
- Article 12 (The child's right to participate and have their views heard)
- Article 13 (Right to freedom of expression)
- Article 15 (Freedom of association)
- Article 16 (Protection of privacy)
- Article 17 (Access to appropriate information)
- Article 28 (Right to education)

However, one of the most fundamental rights when it comes to the online world is the duty on governments to take on all legislative, administrative and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (article 19).

Placing the Emphasis on Data Controllers

A third of global users of the internet are children and they are subject to significant amounts of marketing and profiling by information services and platforms. The US tried to address this issue in the 1990s by adopting the Children's Online Privacy Protection Act of 1998 (COPPA). This legislation included a rule that tech providers had to adopt parental consent when children were using child-specific services and other services. The age of 13 was adopted as digital consent for political reasons rather than on any evidence of legal rationale. In the US experience, we know that parental consent has not been truly successful in protecting children and young people's data. There have been difficulties in services achieving verified parental consent. Some parents experienced consent fatigue while others are concerned that not giving their consent would result in their child's social exclusion so they gave it anyway.

In the Children's Rights Alliance view, relying on digital consent as a means to protect children's data is not sufficient. It places an excessive burden on parents who are struggling to catch up when it comes to the digital world. Irish young people are said to have low digital literacy skills compared to their European counterparts. Recent research from DCU shows that over half of parents expressed 'a frustrating lack of knowledge about privacy techniques, filtering and password controls'. It is also worth noting that 36 per cent of 9-16 year olds surveyed, believe that they 'know more about the internet than [their] parents'. Clearly there is a need to provide good education and information to parents.

However, this approach takes the emphasis off the data controller, which in many cases may be a social media platform. If we are truly concerned about children's data, we should be imposing more restrictions on the use of their data by controllers. For example, the Oireachtas could legislate to forbid the use of children's data for marketing/commercial purposes, while at the same time include an exception for the use of legitimate interest to process children's data. Raising the age of digital consent will not make the digital world safer for children and it will not place any onus on industry to ensure that a child's data is not used for marketing or commercial purposes.

Evidence suggests that restricting children's access to the online world will be detrimental to building their digital resilience. In fact, allowing young people to explore online spaces with the support and understanding of the adults around them appears to be a far more effective way to equip them with the skills they need to do so safely. By requiring parental consent, the risk is that we encourage more children to lie about their age and to hide their illicit online activity. This is a serious concern that has been noted by the national child protection charity, the ISPCC. If and when the young person does encounter something they are uncomfortable with, they are less likely to seek their parents' advice.

A focus on proactive steps to ensure children's safety and online participation is in line with the UN Committee's view that States should 'adopt a national coordinating framework with a clear mandate and sufficient authority to coordinate all activities related to children's rights and digital media and ICTs'. **Establishing an office of a Digital Safety Commissioner would provide this type of coordinating framework.** Providing the Commissioner with legal powers to regulate the sector, provide better protection to children online and ensure that children/young people and their parents are educated is fundamental.

Recommendations:

- The State should take legislative measures to ensure that the personal data of children is not collected, retained or used for marketing or commercial purposes by data controllers except in cases where there is a legitimate interest to process the data.
- The State should ensure that businesses based in Ireland, that fall within the definition of data controllers, are aware of their responsibilities to children in protecting their right to privacy.
- The State should establish an office of a Digital Safety Commissioner to provide the framework to coordinate all activities related to children's rights and digital media and ICTs. The Commissioner should be granted the legal powers to regulate the sector provide better protection to children online and ensure that children/young people and their parents are adequately educated in digital media and safety techniques.