



Is the UNCRC fit to purpose in
the

Digital Era?

eNACSO European NGO Alliance
for Child Safety Online

EVENT REPORT

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Introduction

The European NGO Alliance for Child Safety Online (eNACSO) was launched in September 2008 as the first NGO network dedicated to advocating for children and young people's online safety at a European and international level. The network comprises NGOs from 19 EU member States who are active in the field of child protection. eNACSO also works closely with NGOs from outside the EU through its Associate Member network.

eNACSO bases its work on the provisions of the United Nations Convention on the Rights of the Child (UNCRC). eNACSO advocates for the child's best interests, one of the guiding principles of the Convention¹, to be taken into account in all relevant national, European and international legislative and policy making forums with a focus on the internet and the new technologies. The UNCRC was adopted in 1989, thereby predating the arrival of the Internet as a mass consumer product by several years.

The Internet has had a profound effect on children's and young people's lives all over the world, bringing huge benefits but also a diverse array of risks. Yet public policy in many areas has yet to pick up on reflect this still relatively new fact.

At the Internet Governance Forum (IGF) 2012 in Baku, eNACSO hosted a discussion that focused on the way in which the Internet is posing new challenges to the UNCRC as well as the wider child protection community worldwide. The discussion revolved around the question "How can the work of the UN's Committee on the Rights of the Child be strengthened so as to ensure that the contemporary importance of cyberspace is fully reflected in its deliberations and the advice it gives to child protection agencies?"

What follows is a report of the discussion. eNACSO's intention was to start a debate about these issues which all parts of the policy-making and child protection community will participate in as we all collectively try to strengthen and take forward the work of the UNCRC.

¹ The Convention consists of 54 articles, including 40 substantive articles that provide children with specific rights. These include important guiding principles such as the "best interest principle" in Article 3, which mandates that "the best interests of the child shall be a primary consideration in all actions concerning children other basic rights."

Background


The adoption of the UN Convention on the Rights of the Child in 1989 marked a very important milestone in the development of an international framework of rights for children and young people. It became and remains the broadest and most rapidly adopted multilateral treaty in history. Since then, three optional protocols have been developed to supplement the Convention, the first two of which were adopted in 2000. One addresses the involvement of children in armed conflict. The second concerns the exploitation of children, child prostitution and child pornography. The third optional protocol opened for signature in February 2012. This requires States to provide children with a complaints procedure that will enable them to seek redress for violations of their rights at international level, if national mechanisms have been exhausted. The Convention and the protocols address a range of over-arching values and create a series of legal obligations, rights and responsibilities which are universal in nature and are applicable to both state and non-state actors.

However, the UNCRC did not anticipate, and could not have anticipated, the Internet and the extent to which private businesses would establish close relationships with children on a large scale. The development of the worldwide web in the early 1990s paved the way for a technology which, until then, had largely remained the preserve of academia and the research community. The web led the Internet out of the Ivory Tower into High Street stores and school classrooms, public libraries, cafes and children's bedrooms. It spurred a global, digital revolution, accessible through a continuously expanding number of digital devices, many of which (e.g. smartphones, games consoles, tablets and laptops) are extremely popular with children and young people across the globe.

Children and young people therefore have been major beneficiaries of the countless new opportunities that this new technology provides. These include education, communication and popular leisure activities. Furthermore, it is now increasingly argued that the *absence* of access to the new technologies can put children and young people at a disadvantage when compared to their counterparts either in their own country or internationally.

In addition to beneficial impacts the Internet also harbors risks and harm to young people. Although excessive concern and a climate of moral panic have at times dominated this debate, equally it is clear that the Internet presents a range of new or altered risks and potential harms to which policy makers and practitioners need to respond (Livingstone, 2010).

The UNCRC enshrines a set of rights that can be divided into three categories: provision rights, protection rights and participation rights (Cantwell, 1993). The first category includes rights that provide for basic needs; the second provides protection from physical and emotional harm; the third addresses participation in decisions affecting the child's life.



The right to freedom of expression and access to information across frontiers (art.13, 17), the right to freedom of association (art. 15), the right to participation in recreational activities and cultural rights (art.31) all belong to the third category. These are rights that, amongst others, present a real challenge vis-à-vis the rise and further development of the Internet. In this new context, potential access to information is dramatically increased and opportunities of self-expression and association across frontiers multiply every day. The realization of these rights are often neglected due to a lack of formal and informal education supporting young people to gain digital skills and use them responsibly. It is also possible that crude or age inappropriate filtering might also conflict with a child's right to access certain kinds of information. (Davies, 2011).

Internet-based companies point to Article 13 arguing that only parents or professionals working with children have a responsibility to supervise and support children's access to the Internet, just as they do in many other situations.

Although parental engagement regards all aspects of a child's well being is always to be encouraged, many parents and professionals working with children may not always feel sufficiently confident about their understanding of the Internet. In recognising that parents may not always be sufficiently knowledgeable or up-to-date with recent web-based developments, what responsibilities does a company have once it has created an online environment that is accessed by children? What responsibilities and roles do other key actors such as schools and NGOs have in this area and are there other potentially more nuanced positions which ought to be reflected in international legal instruments.

The Convention allows for a lot of scope for positive interpretation but there remains a widespread belief that there is little appetite for seeking to adopt an additional protocol or for changing the substantive language of the Convention itself.

However,, the Committee on the Rights of the Child could develop a General Comment covering these issues. There are 13 general comments elaborating on different aspects of the Convention and there is one general comment currently in preparation on business and children's rights.

At this stage it may be advisable to encourage the UN CRC Committee to develop a new General Comment which specifically addresses the Internet as a major feature in children's and young people's lives.

With this questions and propositions in mind the discussion evolved as follows.



Figure 1: The panelists' ensemble at the event at the IGF in Baku

Framing the debate- the Panelists' perspectives

The participants agreed on the importance of the Internet for young people and children, emphasizing its benefits and value as a social and educational tool.


Mr. John Carr for example, highlighted that eNACSO understood and appreciated the positive benefits of the technology, in particular regarding all the different devices that can connect to the Internet to enrich children's lives. This is important both in terms of education and communication, and the possibilities that opened up to them and their families, or more generally as a place to have fun and keep up with popular culture. This is one of the reasons why, for example, eNACSO encourages and supports companies and governments, notably the European Union, to be active in this space and to create more positive and useful web-based content for children and young people. Simultaneously, eNACSO is a child protection organization and has to take into consideration any negative side effects of the way the Internet works.

With these preliminary remarks in mind, participants were asked by Mr. Carr to address the trade-off between protecting children and enabling or empowering children. Mr. Carr particularly addressed the issue of protecting children without being patronizing and controlling and without taking away the child's rights. Most legal systems guarantee UNCRC rights such as the access to information, free speech, right of association and assembly. However, it is also natural to also want to protect children from child abusers or from associating with extremist political organizations and accessing information about how to harm themselves or others. There is not a specific formula to solve this dilemma. Ultimately, what matters are the facts of each case and the need for proportional responses.

Mr. Carr explained to the audience how the idea of this discussion was triggered. While in a meeting with a major Internet company he had asked them to explain the reasons why they were not taking steps to prevent children from accessing adult content. They replied quoting the UNCRC affirming that, in their opinion, they had to respect its provisions especially the one regarding the evolving capacities of the child. Therefore, setting rules that might limit children's access by reference to a fixed age could potentially mean transgressing this important principle. US law might specify 13 as a lower age limit for accessing certain sites or services but the USA is not a signatory to the UNCRC.

This was the first time that a web-based company had used the UNCRC to justify their actions and behaviour on the worldwide web. This was one of the factors which triggered today's discussion in Baku. Frank La Rue, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, was very clear in stating his position on this topic. He argued that free speech and freedom of expression are fundamental rights, but States also have an obligation to protect children from exposure to harmful content. Actions such as the mandatory blocking of websites can be considered justified in accordance with international standards such as the protection of minors from sexual abuse².

² See Frank La Rue , Joint Declaration on Freedom of Expression and the Internet.




Ms. Maria Herczog, a member of the UN Committee on the Rights of the Child and President of Eurochild, stated during the discussion, that the third optional protocol on Communications Procedure (which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols), is extremely relevant in relation to the Internet and free speech. The Committee however, has not yet worked out a methodology in line with this Protocol on how children could complain, because it is a very complicated process and many issues need to be taken into consideration. Questions to be addressed include, but are not limited to, matters such as: how to empower children to submit complaints to the Committee? Who can represent them? What kind of support can they be given to submit their complaints? And how can they be made aware of their rights, especially those hard-to-reach children who are the most vulnerable and who require the opportunity to complain if they are not receiving enough support at home?

In relation to other treaties and international conventions that aim to protect the rights of children, such as CEDAW and the Convention on the Rights of Persons with Disabilities, Ms. Herczog pointed out that although fundamental rights are largely guaranteed by international law, the de facto application of them in real life remains “wishful thinking”. Even if it seems obvious it is nonetheless still important to stress that children are individuals, not property, either of their parents or anyone else. Children are fully formed human beings with their own integrity and their own rights.

The discourse on rights and rules that could hinder children continued with a question from the moderator to the panellists related to COPPA- the Child Online Privacy Protection Act, a law in force in the United States since 1998 which applies to the online collection of personal information by persons or entities under U.S. jurisdiction from children under 13 years of age- and its consequences.

Ms. Herczog, in response to Larry Magid’s (moderator) question pertaining to social networks and their age limitation- the so called “rule of 13”(a rule stated in COPPA) - vis-à-vis potential restriction to the right to participate of kids under 13, stated that she had a very strong opinion about the issue, which was mainly related to her background as a sociologist and her years spent working in child welfare and teaching to social workers. She argued that when children are brought up in a nurturing, stimulating environment where they feel safe and protected by adults, they don't need any other special protection. Children are generally risks takers, which is a positive trait when this is triggered by the curiosity to know more about the world. Therefore, more emphasis should be placed on empowering children, making them resilient and helping them to understand what are the risks, how to ask for help and where to get proper support and information. However, there are also vulnerable groups of children in society. This group requires special attention and protection and poses an additional challenge to organizations and professionals working in this field.

Ms. Herczog concluded her presentation by describing how the Committee on the Rights of the Child works. The reporting mechanism was briefly explained as well as the issuing of General Comments. The latter are the detailed descriptions and explanations of the different articles of the Convention. Last year, the Committee launched a new general comment on protecting children against violence in which the Internet and media were mentioned more than once, partly as a positive opportunity for children but also as a risk.




Every year the Committee organises a general day of discussion. In 2012, the discussion was dedicated to migration. In 2006 it addressed the right to be heard by the article 12 of the Convention. In reviewing the materials of that general discussion, no mention had been made of the Internet in the year 2006. This underlines how time has changed, for today it would not be possible to hold such a discussion without mentioning the Internet and its implications on everyday life. The committee has decided to have a new general day of discussion on new technologies and their influence on children next year. All those present at the event and specifically eNACSO, the organisers of the debate, were invited to participate and be active partners with their contribution to this upcoming general day of discussion.

Ms. Herczog reiterated that a child rights-based approach and a holistic vision is necessary for future improvements, namely, to understand, to inform, to listen to views, but also to protect from danger. For instance, the Committee is recognizing that in Africa, mobile phones play an extremely important role in enabling children to communicate and access modern technology, even in places where the Internet is not accessible. This is due to the fact that children living in poverty and extreme situations have no access to modern technology. From an education, information and free speech point of view, this is a real barrier. The consequence of this situation is a widening gap between children throughout the world in terms of opportunities. This is something that needs to be looked at more closely in order to try to enable children to have access to all possible information flows everywhere.

Ms. Jasmina Byrne (UNICEF Office of Research, Innocenti Institute in Florence) described the work UNICEF is carrying out regarding the Internet and its consequences for children and their rights. UNICEF addresses this issue through research, carried out by the Office of Research but also by headquarters in New York, regional and their country offices. They advocate for policy change on a government level, programming as well as carrying out awareness-raising campaigns through country and regional offices. They also target corporations, encouraging them to protect children's rights through the application of corporate social responsibility and respect for children's rights.

Ms. Jasmina Byrne presented the findings from the study conducted by Innocenti: Child Safety Online: Global Challenges and Strategies and from national studies carried out by other parts of the organisation. She stated that the discourse regarding rights of children on the Internet has predominantly been influenced by wealthy and high-income countries, whereas middle income and lower income countries are only beginning to engage in this debate. This partly due to scarcity and availability of evidence on children's usage from these countries. From a rights point of view, we are aware the Internet offers opportunities and hazards specifically in terms of protection from violence and abuse, from sexual exploitation, sale and trafficking, and rights to privacy.

Through violence prevention programmes in schools, UNICEF has done a lot of research on the phenomenon of cyber bullying which emerged as one of the key issues. The percentage of children that are really affected by sexual solicitation and harm appeared to be much smaller compared to the number of children who feel harassed by their peers on the Internet. The study also showed that children use the Internet in similar ways all over the world: to learn, to communicate, use social networks and play games.



Parents in industrialized countries appear to be keeping up with their children because they know more about the Internet, but this is not the case in developing countries where family composition plays an important role. In fact, in many cases families in developing countries are extended, grandparents and parents often migrate or in worst cases, have died. Who, in these cases, is the responsible adult in children's lives? Who is the person that has to provide guidance and support to children also when using Internet? What about children who are under care of the State and children who are living in public institutions, who is responsible?


It is evident that some children are more vulnerable than others even if researchers are not in agreement on who these vulnerable children are exactly. Some of them, particularly researchers from Europe, think that on the Internet everybody is equally vulnerable, regardless of family conditions or general circumstance. However there are many other researches asserting that there is a certain group of children who are more vulnerable to risks on the Internet than others. These include for example those who have a history of psychological problems and those from poor families and neighbourhoods. Children who use Internet cafes are also at a higher risk because there is no supervision, but also personal characteristics such as sex, age, ability and disability are important. In countries where violence is tolerated in the “off-line” world, is more likely to be pronounced on-line, which places children at a higher risk.

Finally, the study conducted by UNICEF Innocenti also showed that the biggest sources of support for children are their peers whenever they encountered a problem on the Internet. Therefore, it is important to create a support network around children, not only in terms of building children's resilience but also strengthening the environment that already exists: their peers, older brothers and sisters, mentors. This is one of the most effective strategies when it comes to addressing risks that exist on the Internet.

Other possible strategies include removing impunity for abusers, proper legislation, and cooperation among law enforcers across different jurisdictions, increased protection of children from the private sector, and to make sure that children have enough opportunities to access support and recovery services. Unfortunately, social workers and other professionals are not necessarily aware of the risks posed by the Internet. They know very well how child protection works in the physical world and those of them that are specialized in protection linked to new media, often do not share their knowledge. The Internet is the extension of a child's physical world, thus it is necessary to start thinking holistically and to educate every professional working with children of the risks and opportunities that exist in relation to the net.

During the last ISPCAN conference in Istanbul this gap was evident, professionals who are talking about child abuse in the physical world don't really relate the issue to those describing risks for children online. Therefore, bringing these professionals together is one of the really important tasks that our organizations are to tackle in the future.

The UNICEF presentation was concluded by Ms. Kate Pawelczyk (digital and safety coordinator based in the New York office). She explained that the NY office is also carrying out their research on the effects of the digital world, and reiterated the importance of the Internet as a way to engage with people through social media. Cyber bullying, as mentioned previously, is an emerging issue that UNICEF has been looking at, as



well as exposure to inappropriate content and how industry players can take a role in reducing accidental exposure.

Another important aspect UNICEF has been analysing is children's involvement in policy-making processes when strategies and services for a safer internet are discussed. For example, in Turkey children were directly involved in a consultation by the government and in the end they came up with a declaration to ICTs asking them to respect diversity and empower children, particularly girls. In Turkey there is quite a big discrepancy between girls and boys when it comes to access, which is why this issue was addressed.

One of the final questions posed addressed social media and schools. As most schools have filters that block the use of social media, would this be a potential violation of the UN Convention? The answers from the panellists were very similar. All of them pointed out that teachers in many countries are not as familiar with the Internet and social media as children. Teachers often teach a big number of children per class, they may fear that allowing social media diminishes her/his control. For the education system to accept and include this new technology in schools, the quality and access to information would need a major change.

The last point mentioned by the panellists was Human Rights in business, where businesses are obliged to respect Human Rights that States have the responsibility to protect. UNICEF, in cooperation with Save the Children and the UN Global Compact, has issued 10 principles for business and children's rights which' aim is to interpret the UNCRC in the context of businesses. The 10 principals talk about the responsibility of companies to respect children's rights, for instance, use children in child labor. These principles are not legally binding for companies but they are encouraged to respect them.

Two of these principles are particularly relevant to this discussion: the first principle that deals with products and services and the second that addresses responsible marketing and advertising. Ultimately, companies ought to understand that there is an added value in taking on children's rights because their image and reputation may attract customers who are ethically conscious and aware of children's rights. The human rights and businesses mention was much appreciated by the other panellists who recognized the importance of the work UNICEF is doing and consider extremely important to hold companies accountable.

The closing remarks highlighted the authority and importance of the UNCRC and the United Nations, particularly in the developing world. That is one reason why eNACSO enthusiastically cooperates with the UN and particularly the COP initiative within the ITU, because it reaches parts of the world that no other institution can reach.

With this in mind, any suggested framework that would further discuss this area should emphasize the broad range of benefits of Internet use, of which respect for fundamental rights and principles enshrined in the UNCRC would be a vital component.

The way forward

In conclusion, it would be important to inform any future debate on the importance of the principles set out in the UNCRC in the digital era. The best strategy to handle possible risks would be through a multi stakeholder approach in order to empower children, parents, care takers and to hold companies responsible for their behaviour in the online world.

eNACSO will continue to cooperate, foster analysis and debates with a number of organizations and will directly provide a contribution to the next general day of discussion of the UN Committee on the Rights of the Child. Moreover, cooperation with UNICEF within the framework of the next ISPCAN conference will be sought in which it hopes to tackle the issue of child safety online from different perspectives.



Figure 2: Mr Larry Magid the moderator of the event



Figure 3: A moment of the debate during the event

Annexes

UNCRC articles 5 and 13 analysis in light of the use of new technologies

Article 5 states

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

This notion of the “evolving capacities of a child” is rightly seen as a major advance for children. However, it was developed when the working assumption was that every child could be seen and assessed by a person competent and entitled to make an informed decision about the child. In remote environments such as the internet for now and the foreseeable future that is a practical impossibility. And even if it was not, the ability of, say, private companies to make such intimate assessments would raise major concerns about how and where the information thus obtained might be stored, who might have access to it and for what purposes?

In a similar vein Article 13 states:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice’.

This is interpreted by some as putting a key obstacle in the way of attempts to control what sites a young person might visit. It is qualified to a degree by section 2 of the same clause

The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order or of public health or morals.

Yet even so the section is redolent of a different age. There are, of course, other clauses in the Convention which impose duties to protect children from, for example, sexual exploitation and harms of different kinds nonetheless it is evident that the UNCRC did not anticipate the potential degree of intrusiveness into young people’s lives that the internet represents.

From: UNICEF Convention on the Rights of the Child in the Digital Age, by Social and Civic Media Section, UNICEF

Translation on UNCRC Articles to the Digital age, art 13:

By explicitly providing that every child has the right to express him or herself through “any other media”, article 13 of the CRC was drafted with foresight to include and to accommodate future technological developments through which individuals can exercise their right to freedom of expression.

Hence the framework of the international human rights law remains relevant today and equally applicable to new communication technologies such as the Internet.

The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an “enabler” of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for children to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights.

As set out in article 19 paragraph 3 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, there are certain exceptional

types of expression which may be legitimately restricted under international human rights law. However, any limitation must pass the following three-part cumulative test:

It must be provided by law, which is clear and accessible to everyone (principle of predictability and transparency); and

It must pursue one of the purposes set out in article 19, paragraph 3, namely

(i) to protect the rights or reputation of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); AND:

(c) It must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality)

Moreover, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial or other unwarranted influences

in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application. As such, legitimate types of information which may be restricted include child pornography (to protect the rights of children), hate speech (to protect the rights of affected communities), defamation (to protect the rights and reputation of others against unwarranted attacks), direct and public incitement to commit genocide (to protect the rights and reputations of others and advocacy of national), and advocacy of national, racial or religious hatred

that constitutes incitement to discrimination, hostility or violence (to protect the rights of others such as the right to life).

It is important to emphasize that due to the unique characteristics of the Internet, regulations or restrictions which may be deemed legitimate and proportionate for traditional media are often not so with regard to the Internet. For example, in cases of defamation of individuals' reputation, given the ability of the individual concerned to exercise his/her right of reply instantly to restore the harm caused, the types of sanctions that are applied to offline defamation may be unnecessary or disproportionate.

Similarly, while the protection of children from inappropriate content may constitute a legitimate aim, the availability of software filters that parents and school authorities can use to control access to certain content renders action by the Government such as blocking less necessary, and difficult to justify.

(UN General Assembly, Human Rights Council, Seventeenth Session, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue)

Extract: General comment No. 13 (2011)

“The right of the child to freedom from all forms of violence”

[...]The Committee on the Rights of the Child (hereinafter: the Committee) issues the present general comment on article 19 of the Convention on the Rights of the Child (hereinafter: the Convention), since the extent and intensity of violence exerted on children is alarming. Measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children's development and societies' potential non-violent solutions for conflict resolution.

[...]The following non-exhaustive lists outlining forms of violence apply to all children in all settings and in transit between settings. Children can experience violence at the hands of adults, and violence may also occur among children [...]

[...]**Mental violence.** “Mental violence”, as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include:

[...](g)Psychological bullying and hazing by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as “cyberbullying”). [...]