**The United Nations Convention on the Rights of the Child (UNCRC) and General Comment No. 25 on the rights of the child in relation to the digital environment (GC 25)**

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1. Introduction

The United Nations Convention on the Rights of the Child (UNCRC) was adopted in 1989. It is the most widely ratified human rights instrument to date. The UNCRC considers children as autonomous, active holders of rights, who possess a specific subset of individual and inalienable human rights.[[1]](#footnote-1) Its adoption has been seen as a landmark in international law by establishing children’s status “as legally empowered subjects of entitlement”.[[2]](#footnote-2)

The UNCRC defines ‘children’ in Article 1 as every human being below the age of 18 years (unless under the law applicable to the child, majority is attained earlier). A range of rights are attributed to children (infra), and States Parties who ratify the Convention commit to respect and ensure these rights. Ratifying States Parties also recognise the important role of the Committee on the Rights of the Child (CRC Committee) (Article 43 UNCRC), which is tasked with monitoring the implementation of the Convention (based on mandatory, periodic reports submitted by States) and may interpret the substantive provisions of the UNCRC by adopting General Comments (GCs). These GCs are not legally binding but constitute an important interpretation of specific provisions of the Convention, or the Convention as a whole in light of certain developments or phenomena.

Three additional Protocols have been adopted, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), the Optional Protocol on Children in Armed Conflict (OPAC) and the Optional Protocol on a Communication Procedure (OPCP). The latter provides children with a ‘complaint’ procedure when their rights are violated.

At the time when the UNCRC was adopted, digital technologies were not that pervasive in children’s lives. This has changed significantly in the 21th century. Almost every right attributed to children now has a digital dimension. This has also been acknowledged by the CRC Committee who adopted a General Comment on the rights of the child in relation to the digital environment in 2021. This digital environment in which children grow up encompasses “information and communications technologies, including digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology”.[[3]](#footnote-3) In the General Comment No. 25, the Committee affirms that “[i]nnovations in digital technologies affect children’s lives and their rights in ways that are wide-ranging and interdependent […]”.[[4]](#footnote-4)

1. Human rights impacted/addressed/covered

The UNCRC embeds four general children’s rights principles, which provide a lens through which the implementation of all other UNCRC rights under the Convention must be viewed.[[5]](#footnote-5)

The first principle is the **non-discrimination** principle which requires States Parties to respect and ensure the UNCRC rights “to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (Article 2 UNCRC). GC25 links equal and effective access to the digital environment to this principle, and warns for unfair treatment of children through the use of technologies and discrimination when automated processes use biased, partial or unfairly obtained data concerning a child.[[6]](#footnote-6)

The second principle states that the **best interests** of the child should be a primary consideration in all actions that concern them (Article 3 UNCRC).[[7]](#footnote-7) GC25 reminds States Parties that this should also be the case in all actions regarding the provision, regulation, design, management and use of the digital environment.[[8]](#footnote-8)

The third principle is embedded in Article 6, which guarantees the **right to life, survival and development**. In relation to this principle, GC25 requires States Parties to take action to protect children from a range of risks relating to “content, contact, conduct and contract encompass, among other things, violent and sexual content, cyberaggression and harassment, gambling, exploitation and abuse, including sexual exploitation and abuse, and the promotion of or incitement to suicide or life-threatening activities, including by criminals or armed groups designated as terrorist or violent extremist”.[[9]](#footnote-9) The CRC Committee also suggests that when children are very young, precautions may be needed, depending on the design, purpose and uses of technologies.[[10]](#footnote-10)

The fourth principle affords children the **right to be heard**, by allowing them to express their views freely in all matters affecting them. Those views should be given due weight in accordance with the age and maturity of the child (Article 12 UNCRC). GC25 acknowledges that digital technologies might be beneficial to realise this participatory right by helping to realise children’s participation at the local, national and international levels.[[11]](#footnote-11) Equally, States Parties might use such technologies to interact with and consult children.[[12]](#footnote-12) The CRC Committee stresses that when developing legislation, policies, programmes, services and training on children’s rights in relation to the digital environment, States parties should involve children, and give due weight to their views. At the same time, they should also ensure that digital service providers actively engage with children, applying appropriate safeguards, when developing products and services.[[13]](#footnote-13)

Other provisions of the UNCRC cover **civil, political, economic, social and cultural rights** attributed to children. These include, for instance, the right to freedom of expression and to receive and have access to information (Articles 13 and 17UNCRC), freedom of thought, conscience and religion (Article 14 UNCRC), freedom of association and peaceful assembly (Article 15 UNCRC), the right to privacy (Article 16 UNCRC), the right to protection from violence (Article 19 and 34 UNCRC), the right to health (Article 24 UNCRC), the right to education (Article 28 and 29 UNCRC), the right to culture, leisure and play (Article 31 UNCRC), and the right to protection from economic exploitation (Article 32 UNCRC). Additional provisions relate to evolving capacities of children and the rights, duties and responsibilities of parents and carers (Article 5 and 18 UNCRC), specific measures for children with disabilities (Article 23 UNCRC), protection of children in armed conflict, migrant children and children in other vulnerable situations (Articles 22, 30, 38 and 39 UNRCR), and administration of child justice (Article 40 UNCRC). Almost all these rights are of relevance in relation to digital technologies, and are, hence, to a greater or lesser extent discussed in GC25. Whereas it exceeds the scope of this report to discuss every right, a few rights merit further clarification.

The section on the **right to privacy** in GC25 is the most extensive one. The CRC Committee acknowledges that the child’s privacy may be threatened by data collection and processing by government bodies, companies and other organisations, by criminal activities as identity theft, or even by children’s own activities or the activities of family members, peers or others (for instance, when they share pictures or information about the child on social media).[[14]](#footnote-14) Even though the protection of personal data is not explicitly mentioned in Article 16 UNCRC, the CRC Committee devotes much attention to this issue, and cautions that activities such as “automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance” may lead to arbitrary or unlawful interference with children’s right to privacy.[[15]](#footnote-15) States Parties are reminded that they must take legislative, administrative and other measures to guarantee that children’s privacy is respected and protected by all organisations that process their data.[[16]](#footnote-16) Importantly, the CRC Committee also emphasises that legislative and other measures designed to protect the child’s privacy or personal data should not arbitrarily limit children’s other rights, such as their right to freedom of expression or protection.[[17]](#footnote-17) Another interesting reference relates to the possibilities that technologies offer parents to monitor their child’s activities (for instance through tracking devices or parental control software). In that regard, the CRC Committee states that such monitoring of a child’s digital activity should be proportionate and in accordance with the child’s evolving capacities.[[18]](#footnote-18)

The **right to play** is crucial for children. In the consultation with children during the drafting process of the GC25, children of all ages reported that “they experienced pleasure, interest and relaxation through engaging with a wide range of digital products and services of their choice”.[[19]](#footnote-19) Videogaming, for instance, is an activity that many children engage in and really like. At the same time, the CRC Committee also warns that leisure time in the digital environment might expose children to risks of harm, such as opaque or misleading advertising or highly persuasive or gambling-like design features.[[20]](#footnote-20) To minimise such risks, States Parties are advised to adopt data protection, privacy-by-design and safety-by-design approaches and other regulatory measures.[[21]](#footnote-21)

The CRC Committee recognises that the **right to protection from violence** is increasingly challenged as the digital environment may facilitate new ways to perpetrate violence against children.[[22]](#footnote-22) This includes the use of digital technologies to solicit children for sexual purposes and to participate in online child sexual abuse, for instance, through live video streaming, production and distribution of child sexual abuse material and sexual extortion.[[23]](#footnote-23) Additional risks relate to “cyberaggression, including bullying and threats to reputation, the non-consensual creation or sharing of sexualized text or images, such as self-generated content by solicitation and/or coercion, and the promotion of self-harming behaviours, such as cutting, suicidal behaviour or eating disorders”.[[24]](#footnote-24) To protect children from these risks, States Parties are requires to set up robust legislative, regulatory and institutional frameworks which need to be reviewed, updated and enforced.[[25]](#footnote-25)

1. Challenges in implementation/adoption

The CRC Committee requires States Parties to review, adopt and update national legislation to ensure that the digital environment is compatible with the UNCRC principles and rights.[[26]](#footnote-26) Additionally, as digital technologies affect almost every aspect and sphere of children’s lives, the Committee stresses that national policies and strategies need to be comprehensive[[27]](#footnote-27) and that policies, guidelines and programmes relating to children’s rights must be coordinated among central government departments and the various levels of government.[[28]](#footnote-28) Depending on the State structure and the organisation of competences across government bodies, ensuring comprehensiveness and coordination might be challenging in practice and will require conscious efforts and investment of sufficient and appropriate resources. According to the CRC Committee, coordination should not be limited to government bodies, but must also extend to schools, (ICT) businesses, civil society, academia and child rights organisations.[[29]](#footnote-29) This is as well might be complex to implement, but essential to reach the goal of the UNCRC. The responsibilities of businesses are highlighted in particular in GC25, given their significant role in the provision of digital services and products.[[30]](#footnote-30) This recognition that private sector actors, for instance those engaged in the design, development, and ongoing deployment of online platforms algorithmic systems, should fulfil their responsibilities to respect human rights and that States, as the primary duty bearers, should ensure this through appropriate legislative, regulatory, and supervisory frameworks, is in line with the UN Guiding Principles on Business and Human Rights and relevant regional and international standards.[[31]](#footnote-31) In this regard, the CRC Committee urges States parties to require “the business sector to undertake child rights due diligence, in particular to carry out child rights impact assessments and disclose them to the public, with special consideration given to the differentiated and, at times, severe impacts of the digital environment on children”. Such child rights impact assessments carry much potential to consider children very early in the design phases of services and products, but implementation thereof is still underused, and rarely mandated by legislation. Other challenges relate to the rapid evolution of technology (versus the often-slow adoption of legislation), the limited evidence that is currently available regarding the long-term impact of certain technologies on the development of children and the provision of appropriate and effective remedial judicial and non-judicial mechanisms for the violations of children’s rights relating to the digital environment.[[32]](#footnote-32)

1. Similar initiatives elsewhere

The Council of Europe Committee of Ministers’ 2018 Recommendation on Guidelines to respect, protect and fulfil the rights of the child in the digital environment[[33]](#footnote-33) was the first comprehensive document at the level of a regional human rights organisation to offer guidelines to Member States for the formulating legislation, policies and other measures to promote the realisation of the full array of the rights of the child in the digital environment. As the GC25, the Recommendation also strongly emphasises that business enterprises must meet their responsibility to respect the rights of the child in relation to the digital environment and that States must take measures in order to ensure that they do so.

In 2021, the OECD released its Recommendation on Children in the Digital Environment.[[34]](#footnote-34) This Recommendation, which is aimed at governments, is accompanied by ‘Guidelines for Digital Service Providers’ intended to support companies to enact measures to protect and respect the rights, safety, and interests of children.

The 2023 European Union Declaration on Digital Rights and Principles for the Digital Decade[[35]](#footnote-35) contains a section specifically aimed at children, in which it states that children and young people should be protection and empowered online. This section emphasises the importance of age-appropriate materials, and the right to be protected from all crimes committed via or facilitated through digital technologies. The EU bodies commit themselves to “promoting a positive, age-appropriate and safe digital environment for children and young people, providing opportunities to all children to acquire the necessary skills and competences to navigate the online environment actively, safely and make informed choices when online, and protecting all children against harmful and illegal content, exploitation, manipulation and abuse online, and preventing the digital space from being used to commit or facilitate crimes”.

1. Recommendations

GC25 provides States Parties with a comprehensive blueprint on how to interpret the 1989 UNCRC in light of the technological developments that society has faced over the past decades. It is clear that ensuring the rights of children in the digital environment is a shared responsibility of all stakeholders. States Parties must establish strong and up-to-date regulatory frameworks, businesses must undertake child rights due diligence, and parents, carers and educators must be informed, and afforded opportunities to gain digital literacy. Above all, children must be involved in the debate and their views on how their rights should be effectively realised should be given due weight by policymakers and businesses alike. The CRC Committee also plays an important role in monitoring how States Parties implement the obligations listed in GC25 based on the periodic reporting mechanism.

1. I Iusmen, H Stalford (2015) 'Introduction: The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions' in I

Iusmen, H Stalford (eds), *The EU as a Children's Rights Actor* (Barbara Budrich Publishers) 9. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. UN Committee on the Rights of the Child (2021) 'General Comment No. 25 on the rights of the child in the digital environment', CRC/C/GC/25, para. 2 (hereafter: General Comment No. 25). [↑](#footnote-ref-3)
4. General Comment No. 25, para. 4. [↑](#footnote-ref-4)
5. General Comment No. 25, para. 8. [↑](#footnote-ref-5)
6. General Comment No. 25, para. 9-10. [↑](#footnote-ref-6)
7. See also: UN Committee on the Rights of the Child (2013) ‘General comment no. 14 on the right of the child to have his or her

best interests taken as a primary consideration (art. 3, para. 1)’, CRC/C/GC/14. [↑](#footnote-ref-7)
8. General Comment No. 25, para. 12. [↑](#footnote-ref-8)
9. General Comment No. 25, para. 14. [↑](#footnote-ref-9)
10. General Comment No. 25, para. 15. [↑](#footnote-ref-10)
11. General Comment No. 25, para. 16. [↑](#footnote-ref-11)
12. General Comment No. 25, para. 18. [↑](#footnote-ref-12)
13. General Comment No. 25, para. 17. [↑](#footnote-ref-13)
14. General Comment No. 25, para. 67. [↑](#footnote-ref-14)
15. General Comment No. 25, para. 68. [↑](#footnote-ref-15)
16. General Comment No. 25, para. 70. [↑](#footnote-ref-16)
17. General Comment No. 25, para. 74. [↑](#footnote-ref-17)
18. General Comment No. 25, para. 76. [↑](#footnote-ref-18)
19. General Comment No. 25, para. 106. [↑](#footnote-ref-19)
20. General Comment No. 25, para. 110. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. General Comment No. 25, para. 80. [↑](#footnote-ref-22)
23. General Comment No. 25, para. 81. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. General Comment No. 25, para. 82. [↑](#footnote-ref-25)
26. General Comment No. 25, para. 23. [↑](#footnote-ref-26)
27. General Comment No. 25, para. 24. [↑](#footnote-ref-27)
28. General Comment No. 25, para. 27. [↑](#footnote-ref-28)
29. Ibid. [↑](#footnote-ref-29)
30. General Comment No. 25, para. 35. [↑](#footnote-ref-30)
31. E Lievens (2021) ‘Growing up with Digital Technologies: How the Precautionary Principle Might Contribute to Addressing Potential Serious Harm to Children’s Rights’, *Nordic Journal of Human Rights*, vol. 39, no. 2, pp. 128–45, doi:10.1080/18918131.2021.1992951; United Nations Committee on the Rights of the Child (2013) ‘General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights’, CRC/C/GC/16. [↑](#footnote-ref-31)
32. General Comment No. 25, para. 44. [↑](#footnote-ref-32)
33. Council of Europe (2018) ‘Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on guidelines to respect, protect and fulfil the rights of the child in the digital environment’, https://search.coe.int/cm/Pages/result\_details.aspx?ObjectId= 09000016808b79f7, 12. [↑](#footnote-ref-33)
34. OECD (2021) Recommendation on Children in the Digital Environment, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0389%20. [↑](#footnote-ref-34)
35. European Parliament, Council and European Commission (2023) European Declaration on Digital Rights and Principles for the Digital Decade (2023/C 23/01). [↑](#footnote-ref-35)