

‘Age verification’ by VSPs at the intersection of audiovisual media regulation, data protection and children’s rights

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non-discrimination
(article 2 UNCRC)

best interests
(article 3 UNCRC)

freedom of expression
(article 13 UNCRC)

freedom of thought
(article 14 UNCRC)

right to privacy
(article 16 UNCRC)

right to have access to
diverse information +
protection against
harmful content
(article 17 UNCRC)

right to leisure, play &
recreation
(article 31 UNCRC)

right to protection
from commercial
exploitation
(article 32 UNCRC)

life & development
(article 6 UNCRC)

right to be heard
(article 12 UNCRC)

Age verification x children's rights: a balancing exercise



Balancing children's rights

- children's rights might conflict (e.g. protection from harmful content v. right to data protection/privacy)
- impact on children's rights may differ according to methods for age verification / age assurance (e.g. age estimation – risk discrimination, development)



Balancing children's rights and rights of others

- children's right to protection from harmful content v. businesses' freedom conduct business
- children's right to protection from harmful content v. adults' right to freedom of expression and to receive information
- *default child-friendly settings?* no certainty about age, protection for all? age verification only for adults?



Guidelines to respect, protect and fulfil the rights of the child in the digital environment



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56. States should require the use of effective systems of age-verification to ensure children are protected from products, services and content in the digital environment which are legally restricted with reference to specific ages, using methods that are consistent with the principles of data minimisation.

Council of Europe, [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



English > Human Rights Bodies > CRC > GC children's rights in relation to the digital environment

The Committee	COMMITTEE ON THE RIGHTS OF THE CHILD	Country-specific information
Introduction Membership Meeting of States parties/Elections Upcoming elections for all treaty bodies	General Comment on children's rights in relation to the digital environment <p>The Committee on the Rights of the Child is drafting a General Comment on children's rights in relation to the digital environment.</p> <p>In March 2019, the Committee invited all interested parties to comment on the concept note of the General Comment. The Committee appreciates the 135 submissions it received from States (29), regional organisations (3), United Nations agencies (2), national human rights institutions and Children's Commissioners (6), children's and adolescent groups (5), civil society organisations (52), academics (19), the private sector (7), and other entities and individuals (12).</p> <p>The Committee will take into account all submissions when deciding on the content of the draft General Comment. All submissions are published below.</p> <p>States</p>	<input type="text" value="Seleccione un país"/> <input type="button" value="GO"/> Meetings and deadlines Sessions Calendar of country reviews by treaty bodies Deadlines for the submission of documentation
Basic documents Convention OP on Sale of Children OP on Children in Armed Conflict OP on a communications procedure Rules of procedure		Search Treaty body database Universal human rights index
		Publication Fact Sheet No.10

Age-based or content-based systems designed to protect children from age-inappropriate content should be consistent with the principle of data minimization.

Robust age verification systems should be used to prevent children from acquiring access to products and services that are illegal for them to own or use. Such systems should be consistent with data protection and safeguarding requirements.

United Nations Committee on the Rights of the Child, [General Comment No. 25](#) on the rights of the child in relation to the digital environment



YouTube^{DE}



Sign in to confirm your age
This video may be inappropriate for some users.

SIGN IN

Recital (51) When taking the **appropriate** measures to protect minors from harmful content [...], the **applicable fundamental rights**, as laid down in the Charter, should be **carefully balanced**. That concerns, in particular and as the case may be, the right to respect for private and family life and the **protection of personal data**, the freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the **rights of the child**.

Article 28b AVMSD



1. Member States shall ensure that **video-sharing platform providers** under their jurisdiction take appropriate measures to **protect**:

(a) **minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development** in accordance with Article 6a(1);

...

3. Those measures shall consist of, *as appropriate*:

...

(f) establishing and operating **age verification systems** for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;

...

(h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;

...

Personal data of minors collected or otherwise generated by video-sharing platform providers *pursuant to* points (f) and (h) shall **not** be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

Age verification x data protection: General Data Protection Regulation

human being under the age of 18 years
(article 1 UNCRC)



any information relating to an *identified or identifiable* natural person ('data subject')



- (38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

Age verification x data protection = challenges!

GDPR compliant age verification

- Processing of personal data for the purpose of age verification should comply with the principles laid down in the GDPR (transparency, data minimisation, purpose limitation, fairness, lawfulness, sensitive data...)
- Age verification should not lead to excessive data processing: usually the only attribute that needs to be known is whether a certain individual is under a certain age (not exact date of birth, not even exact age)
- Use of profiling for determining age (age estimation)? Specific protection!

Avoiding commercial exploitation of children's data

- Data obtained in the context of protective measures (art. 6 + 28b AVMSD) should not be processed for commercial purposes, such as direct marketing, profiling and behavioural targeted advertising (NRA or DPA?; art. 28b (5) AVMSD)

Age verification x data protection = opportunities?

DP-b-D/D

Data Protection-by-Design and Data Protection-by-Default (article 25 GDPR) – design with children

DPIAs

Data Protection Impact Assessments (article 35 GDPR): take into account full range of children's rights – level of risk re method of age verification (e.g. profiling)

CoC

Codes of conduct (article 40 GDPR) – sector-specific or topic-specific

Ways forward

- ✧ Inform children
- ✧ Involve children
- ✧ Perform a CRIA
(purpose – measure - impact)
- ✧ Set up closer cooperation
between media
regulators and data
protection authorities



The rights of the child in the digital environment are **interlinked**. Realising those rights necessitates an **integrated** approach which entails **cooperation** between different regulatory authorities and other stakeholders.

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www.ugent.be
<https://www.ugent.be/re/mpor/law-technology/en>

Do you want to know more about children and data protection?

Follow our research project:

**A children's rights perspective on privacy and data protection in the digital age:
a critical and forward-looking analysis of the
General Data Protection Regulation and its
implementation with respect to children and youth**

<https://www.ugent.be/re/mpor/law-technology/en/research/childrensrights.htm>