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**Children as social network actors:
legal challenges concerning membership, behaviour and liability¹**

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1. Introduction

Although social network sites (SNS) often limit the use of their services to users who are above a certain age (most often 13 years, *infra*), children from as young as 7 are present on platforms such as Facebook, Twitter, Instagram and Tumblr. In 2011, the EU Kids Online study found that 38 per cent of 9-12 year olds and 77 per cent of 13-16 year olds in Europe had a SNS profile.² A recent UK survey found that 30 per cent of children aged 7-11 in the UK have their own Facebook profile.³ Along the same line, recent findings show that 35% of Flemish 9-12 year olds have a Facebook profile.⁴ A study carried out in Germany found that 44 per cent of children under 13 use SNS that are actually aimed at teenagers and adults.⁵

Aside from challenges related to (young) children's social and technical capabilities to use SNS, legal questions are also increasingly raised. Generally, most national legal frameworks do not attribute full legal capacity to minors, e.g. the capacity to enter into a contract, which can generate legal uncertainty with regard to which actions they may validly perform.

The legal challenges that are associated with the use of SNS by minors, for instance the validity of membership, consenting to share or be tagged in photographs and liability for certain actions, have received little attention in comparison to widely publicised issues such as cyberbullying or privacy concerns. It is the aim of this paper to identify relevant legal issues related to SNS use by (young) children, to assess the applicability of existing legal frameworks and the potential impact thereof. First, based on a desk-research analysis of legislation, case-law, policy documents and existing Terms of Use of SNS, the paper assesses the rights and obligations of minors and the challenges related to the legal impact thereof. The second part contains an evaluation of whether we can respond to these challenges by means of regulatory tools or user empowerment mechanisms such as the use of innovative information provision tools or awareness-raising to achieve better informed decision-making by children (and parents).

¹ The research on which this paper is based is funded by the Agency for Innovation by Science and Technology (www.iwt.be; EMSOC research project; User Empowerment in a Social Media Culture, www.emsoc.be) and the Research Fund Flanders (www.fwo.be); Risk-reducing regulatory strategies for illegal and harmful conduct and content in online social network sites.

² LIVINGSTONE, Sonia, ÓLAFSSON, Kjartan and STAKSRUD, Elisabeth, 'Risky social networking practices among 'underage' users: Lessons for evidence-based policy', *Journal of Computer-Mediated Communication* 2013, 6.

³ NSPCC, Younger children and social networking sites: a blind spot, November 2013, http://www.nspcc.org.uk/Inform/resourcesforprofessionals/onlinesafety/younger-children-and-social-networking-sites_wda99104.html.

⁴ MEDIARAVEN AND LINC, Onderzoeksrapport Apestaartjaren 5, May 2014, <http://www.apestaartjaren.be/onderzoek/apestaartjaren-5>.

⁵ HOLLOWAY, Donell, GREEN, Lelia and LIVINGSTONE, Sonia, Zero to Eight, Young Children and their Internet Use, August 2013, http://eprints.lse.ac.uk/52630/1/Zero_to_eight.pdf.

2. Legal capacities of minors

2.1. Who is a minor?

In order to assess the legal capacities of minors we first need to know what is understood by the notion 'minor' and other terms often used to describe this category of individuals such as 'child', 'adolescent' or 'youth'. In many states and international policy documents these notions refers to individuals who have not yet reached the age of eighteen years.

For instance, the United Nations Convention on the Rights of the Child defines 'child' as *"every human being below the age of eighteen years of age unless under the law applicable to the child, majority is attained earlier"*. The Council of Europe Cybercrime Convention talks about 'minors', by which is meant *"all persons under 18 years of age"* (unless a Party requires a lower age limit not less than 16 years of age). Also at national level, such as in Germany (Art. 2 *Bürgerliches Gesetzbuch*), Belgium (Art. 388 *Code Civil/Burgerlijk Wetboek*), France (Art. 388 *Code Civil*) and the Netherlands (Art. 1:233 *Burgerlijk Wetboek*) the age of 18 is denoted as the age of majority.

According to Hodgkin and Nowell, *"setting an age for the acquisition of certain rights or for the loss of certain protections is a complex matter"*, which *"balances the concept of the child as a subject of rights whose evolving capacities must be respected with the concept of the State's obligation to provide special protection"*.⁶

Within this large category of young individuals a distinction can be made between various age groups. Etzioni, for instance, clarifies the distinction between children, teenagers and minors as follows: *"Children refers to those twelve and under, and teenagers refers to those between the ages of thirteen and eighteen. Minors is used to refer to both groups together."*⁷ Furthermore, Lievens has argued that the term 'child' is a more general term, used in different contexts, while the term 'minor', which we use in the analysis that follows, is linked to the age of majority and thus more often used in a 'legal' context.⁸

2.2. What can a minor do from a legal perspective?

Most national legal frameworks do not attribute full legal capacity to minors, e.g. to enter into a (valid) contract. For instance, Art. 1124 of the Belgian and French Civil Code stipulate that minors do not have the competence to enter into an agreement; the Dutch Civil Code states that minors are not capable of entering into agreements without parental consent⁹ However, it is usually accepted that minors can perform 'daily acts' such as buying food, tickets for the cinema, clothes, concerts, etc.¹⁰ In

⁶ HODGKIN, Rachel and NEWELL, Peter, *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, New York, 2002, 1, as cited in LIEVENS, Eva, *Protecting children in the digital era: the use of alternative regulatory instruments*, Martinus Nijhoff Publishers, Leiden/Boston, 2010, 29.

⁷ ETZIONI, Amitai, "On protecting children from speech", *Chicago-Kent Law Review*, Vol. 79, No. 1, 2003, 43.

⁸ LIEVENS, Eva, *Protecting children in the digital era: the use of alternative regulatory instruments*, Martinus Nijhoff Publishers, Leiden/Boston, 2010, 29.

⁹ Art. 1124 Belgian Civil Code: *"Incompetent to enter into contracts are: minors, individuals that are declared incompetent and, in general, all those who the law prohibits to enter into an agreement"*; Art. 1124 French Civil Code: *"Are incapable of entering into a contract, to the extent defined by law: Non-emancipated minors (...)"*; Art. 1: 234 (1) Dutch Civil Code: *"As far as the law does not provide otherwise, a minor has the legal capacity to perform juridical acts in his own name, provided that he is acting by permission of his legal representative"*.

¹⁰ VERSCHULDEN Gerd, "Hoofdstuk 2. Handelings(on)bekwaamheid van de minderjarige", in: VERSCHULDEN, Gerd, *Handboek Belgisch Familierecht*, Die Keure/La Charte, Brugge, 2010, 300.

order to assess whether legal consequences may be attached to their actions on a SNS, it has to be evaluated whether the action can be considered equal to such a 'daily act'.¹¹ An additional important factor is whether the minors in question have reached an age which allows them to discern the scope of their actions. This is most often decided by the judge, based on the specific circumstance of each case. We will discuss these issues in the next section.

3. Children's membership, behaviour and liability

3.1. Membership

Filling out personal details and accepting the Terms of Use (ToU) is usually the first step a minor has to take to set up a profile and become a member of a SNS. Although minors (and even adults) may not realise this, when they accept the ToU they are concluding a legal agreement with that particular platform. ToU establish the rights and obligations that will govern an agreement between two parties. These ToU usually contain provisions about intellectual property, choice of law, liability, the alteration and termination of the contract etc. Although there is some level of harmonisation on EU level with regard to the actual content of the agreement (such as the prohibition on the use of unfair terms), the issue of whether a valid agreement is established will still be decided on the national level.

In order for a contract to be valid under Belgian law, both parties must come to an agreement. In practice, this implies that two conditions have to be fulfilled: (1) the user must have acquired actual knowledge about what he or she is agreeing to or should have had the possibility to acquire this knowledge before concluding the agreement and (2) the user must have accepted this agreement, either silently or explicitly.

The actual knowledge of the ToU will be judged on a case-by-case basis, but Belgian jurisprudence, for instance, will take in to account availability, visibility and comprehensibility. The ToU have to be made available to the other party. Many SNS providers refer to their ToU when registering but it is often not necessary to actually read the text before accepting the terms. This type of agreement will be accepted under Belgian law, but the hyperlink has to be clear and prominent so that the user's attention will be attracted.¹² The ToU also have to be visible and readable, implying that lay-out can be of importance. Belgian judges have considered the following elements to evaluate the visibility of ToU: the colour, putting terms in an unexpected location (for instance a clause that limits liability that is located within the technical specifications section). As for comprehensibility, articles 40 §1 and 73 of the Belgian Act on Commercial practices¹³ are applicable to consumer agreements and they refer to the clarity and the comprehensibility of ToU. In addition, the EU Consumer Rights Directive contains provisions that allow Member States to introduce language requirements and to provide certain information in 'plain and intelligible language'.¹⁴ This implies that provisions have to be

¹¹ VAN EECHE, Patrick and VERBRUGGE Elisabeth, "De elektronische overeenkomst" in: VAN EECHE, Patrick (Ed.), *Recht & elektronische handel*, Larcier, Brussel, 2011, 205.

¹² DUMORTIER, Jos, *ICT Recht*, Acco, Leuven, 2013, 26.

¹³ Act of 6 April 2010 on Commercial Practices and Consumer Protection, *Official Gazette* 12 April 2010.

¹⁴ Art. 6 and 8 European Parliament and Council Directive (EU) 2011/83 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council [2011] OJ L304/64 (Consumer Rights Directive). However, the Directive defines a 'service contract' as *any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the*

drafted in a language that can be understood by a consumer. The average consumer is usually not familiar with legal terms so it is necessary that ToU are composed in such a way that they are clear for an average individual who does not have a legal background.¹⁵ Moreover, we can assume that this is even more difficult for children than adults, making it even more important to provide minors with information that is clear and understandable (cf. also *infra*). Dumortier argues that a stricter attitude has to be adopted for online platforms, because a website can have different colours, fonts, animations and, hence, a hyperlink towards the ToU can drown in the abundance of information. Also, if a user constantly has to click through different layers of text in order to get more information about the applicable ToU, this can have a dissuading effect and could be compared to the inability to acquire knowledge about the terms.¹⁶

We have to take into account that, in principle, minors lack the legal capacity to commit themselves to an agreement. In Belgium, in order to assess whether joining a SNS would constitute a valid agreement for the minor involved, it has to be evaluated whether the object of the agreement can be considered as a daily act (*supra*). The sanctions that can be imposed if an agreement concluded by a minor is considered invalid, depend on whether or not he or she has reached the age of discernment. This is decided by the judge and will be an issue of fact. Deeds of a minor who has not yet reached the age of discernment will always be declared invalid. In addition, a difference will be made between acts that are relatively void and those that can be declared invalid if a minor experiences damages. In principle a minor has to be represented by his parents or legal guardian. If he performs an act (e.g. buying a car, renting an apartment) without being represented by his parents or legal guardians, the judge will assess whether or not the minor has experienced a disadvantage. In this context, a disadvantage means an imbalance between the act and the financial and/or social position of the minor or an important imbalance between the performances of the contracting parties.¹⁷

We can conclude that a SNS membership agreement concluded by a minor could be found valid in certain situations and that, consequently, he or she could be subject to the sanctions in a case of the violation of the ToU. When deciding on the validity of such an agreement, courts should take into consideration that the sign-up process, the structure and the lay-out of a SNS may influence the minor's decisions or behaviour. The criteria of availability, visibility and comprehensibility (*supra*) should even be given more weight when assessing contracts to which minors have acceded. In practice, these criteria appear to be problematic. In a usability test of 2011, conducted with 12-17 year olds, researchers found that more than half of the users had difficulties in finding the ToU on Facebook. Most users had never seen or used the links at the bottom of each page.¹⁸ Users also

consumer pays or undertakes to pay the price thereof." The question arises whether there is a payment of a price in the context of SNS. For more information on this subject, see WAUTERS, Ellen, LIEVENS, Eva, VALCKE, Peggy, "Towards a better protection of social media users: a legal perspective on the terms of use of social networking sites", *International Journal of Law and Information Technology*, 25 March 2014, available at doi: 10.1093/ijlit/eau002.

¹⁵ WAUTERS, Ellen, LIEVENS, Eva & VALCKE, Peggy, "D1.2.4: A legal analysis of Terms of Use of Social Networking Sites, including a practical legal guide for users: 'Rights & obligations in a social media environment'", 2013, available on www.emsoc.be.

¹⁶ DUMORTIER Jos, *ICT Recht*, Acco, Leuven, 2013, 23.

¹⁷ *Ibid.*, p. 76.

¹⁸ SINADOW, Hanne, "Usability tests with young people on safety settings of social networking sites", European Commission, Safer Internet Programme, 2011 http://ec.europa.eu/information_society/activities/social_networking/docs/usability_report.pdf, 17.

mentioned that the text was very difficult to read because of the very small font, a lot of text, no titles, no keywords, colours, etc.¹⁹

In addition to the general validity of the agreement, we also have to consider the fact that certain SNS impose a minimum age of 13 for the use of their services.²⁰ This can be explained by the fact that most SNS originate in the USA where the Children Online Privacy Protection Act (COPPA) stipulates that websites that want to collect data from individuals under 13 have to obtain explicit permission from the parents if they want to collect data from children under 13. To avoid from having to comply with COPPA and obtaining consent from all parents of members who are not yet 13, US-based SNS include this age limitation in their ToU. If a SNS provider suspects or is alerted to the fact that a child under 13 is making use of its services, it will be able to suspend that account. Currently, it can be observed that the European Union is moving towards the US approach. In the proposal for the new Regulation on data protection a new article is introduced that states, *"the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorized by the child's parent or legal guardian."*²¹

Despite the age requirement, research shows that children are not dissuaded from setting up accounts on platforms such as Facebook, Twitter, Instagram and Tumblr. From a technical point of view it is very easy to circumvent this age limitation, since control is usually limited to an automatic check on the birth date which the new user specifies himself. Moreover, parents sometimes help to create a profile for their children, even if they are aware of the minimum age requirement. Some scholars argue that this, despite the good intentions of the parents, might give a signal to children that it is acceptable or normal to lie about their age.²²

3.2. Behaviour

The ToU of SNS also contain a number of clauses that have an impact on their members' activities on the platform. An example is the often included provision related to intellectual property rights on the content that is posted. Such clauses usually confirm that users own the content they post on the platform, but that at the same time they grant a broad license to use that content to the SNS provider.

¹⁹ SINADOW, Hanne, "Usability tests with young people on safety settings of social networking sites", European Commission, Safer Internet Programme, 2011 http://ec.europa.eu/information_society/activities/social_networking/docs/usability_report.pdf, 19. The study was conducted in 2011. Since then, Facebook has changed the lay-out of its Terms of Use, making it more structured.

²⁰ See for instance Facebook: *"You will not use Facebook if you are under 13"*.

²¹ Art. 8 (1) EUROPEAN COMMISSION Proposal on for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final, 25 January 2012, http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf.

²² BOYD, dana, HARGITAI, Eszter, SCHULTZ, Jason and PALFREY, John, "Why Parents Help Their Children Lie to Facebook: Unintended Consequences of the 'Children's Online Privacy Protection Act'", First Monday, Vol. 16, nr. 11, 2011. Facebook has recently been considering allowing under 13 year olds to sign up. for a system that would enable parental consent and supervision for this age group: BAILEY, Brandon, Facebook Patent Application: Verifying Parents' Consent For Kids Under 13, 3 June 2014, <http://www.siliconbeat.com/2014/06/03/facebook-patent-application-verifying-parents-consent-for-kids-under-13>.

Facebook:

*"You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition: 1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: **you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License).** This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it. 2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others)."*²³

Twitter:

*"You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, **you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).**"*²⁴

These clauses imply that all photos and videos that are uploaded by users can be used by the SNS in a commercial and non-commercial way. The licence is non-exclusive which means that the user can still use it any way he/she deem suitable, for instance license it to another party. It is transferable and sub-licensable, meaning that the SNS can give a third party authorisation to use content of an individual user and ask for payment for it. It is also royalty-free, which implies that that user will not get paid when the SNS decides to use his photos or videos. The license is worldwide, so the SNS can use it on a worldwide basis. In principle, the license granted to Facebook ends when photos and or/videos are deleted. However, if the content has been shared with other users and they have not deleted it from their profile, these photos and videos are still licensed to Facebook and they can still be used for commercial and/or non-commercial purposes.

We may wonder whether a minor is able to consent to this kind of license. According to Vanhees²⁵, in Belgian law, the transfer of exploitation rights can be considered to be an act that requires the consent of the justice of the peace (*supra*). Hence, the sole consent of a minor would entail that this provision would be declared null and void. However, Vanhees distinguishes between agreements of less than nine and more than nine years. When a minor licenses his exploitation rights for less than nine years, this is considered to be an act the minor can perform alone. But, the agreement can be declared null and void if it can be proved that the minor experiences a disadvantage (*supra*). Agreements longer than nine years are considered to be an act that the minor could not perform alone and thus will be declared null and void. SNS often do not mention a time limit, so this clause could in principle be declared invalid vis-à-vis minors.

²³ <https://www.facebook.com/legal/terms>.

²⁴ <https://twitter.com/tos>.

²⁵ VANHEES, Hendrik, *Een juridische analyse van de grondslagen, inhoud en draagwijdte van auteursrechtelijke exploitatiecontracten*, Apeldoorn, Maklu, 242-243.

The content that minors post on SNS will often also contain pictures and SNS often reserve the right to use the profile picture of a user in connection with commercial content.²⁶ For instance

Facebook:

*You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you. If you have selected a specific audience for your content or information, we will respect your choice when we use it.*²⁷

Google:

*If you have a Google Account, we may display your Profile name, Profile photo, and actions you take on Google or on third-party applications connected to your Google Account (such as +1's, reviews you write and comments you post) in our Services, including displaying in ads and other commercial contexts. We will respect the choices you make to limit sharing or visibility settings in your Google Account. For example, you can choose your settings so your name and photo do not appear in an ad.*²⁸

This type of clauses is related to the right of image, a right that is derived from the more general right to privacy, which requires a person's consent for both making the image and using that image. This right is approached differently across countries and has different legal bases. In Belgium for instance Art. 10 of the Copyright Act prohibits the author or owner of a portrait from reproducing or communicating it to the public without the consent of the person that is portrayed.²⁹ In addition, distributing a picture of someone else can be qualified as the processing of personal data, which also entails that consent must be given or that another legitimate reason must exist (Art. 7 Data Protection Directive).³⁰ The question whether there is a valid consent to use pictures of e.g.

²⁶ Facebook: "You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you. If you have selected a specific audience for your content or information, we will respect your choice when we use it." Google: "If you have a Google Account, we may display your Profile name, Profile photo, and actions you take on Google or on third-party applications connected to your Google Account (such as +1's, reviews you write and comments you post) in our Services, including displaying in ads and other commercial contexts. We will respect the choices you make to limit sharing or visibility settings in your Google Account. For example, you can choose your settings so your name and photo do not appear in an ad."

²⁷ <https://www.facebook.com/legal/terms>.

²⁸ <http://www.google.com/intl/en-GB/policies/terms/>.

²⁹ WAUTERS, Ellen, LIEVENS, Eva and VALCKE, Peggy, "Towards a better protection of social media users: a legal perspective on the terms of use of social networking sites", *International Journal of Law and Information Technology*, 25 March 2014, doi: 10.1093/ijlit/eau002.

³⁰ The processing can also be fair and lawful when it is necessary for executing the contract in which the individual has entered; when it is necessary in order to take steps at the request of the data subject prior to entering into a contract; when it is necessary for the controller to comply with a legal obligation; when it is necessary in order to protect the vital interests of the individual; when it is necessary to or the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed (Art. 7 Data Protection Directive). With regard to the grounds in Art.

Facebook users for commercial purposes on the base of the clause included in the ToU currently remains unanswered. Under the Data Protection Directive, consent is valid when there is (a) a clear indication of the wishes of the data subject; and consent is (b) freely given; (c) specific and (d) informed.³¹ It can be argued that it is unlikely that the consent of minor Facebook users with the general ToU meets these conditions given that 1/ you cannot set up a Facebook profile if you do not agree with the ToU ('freely given'), 2/ the majority of minors will not read the ToU during the signing-up process and 3/ even if minors would read the ToU they will most likely not be able to assess the potential (legal) impact of what they are agreeing to ('informed'). In addition, Art. 6 (b) of the Data Protection Directive also indicates that data must be "*collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes*". Whereas the clauses in Facebook and Google's ToU are formulated in a quite specific and explicit way, we may assume that in practice most minors will not realise or take into consideration that the photos that they upload to a SNS for 'personal' purposes may be used for commercial aims.

In the context of the right to image, in doctrine and jurisprudence, for instance in Belgium, it is usually argued that consent to make and use pictures must be explicit, prior, and subject to restrictive interpretation (implying that the consent must be explained in a manner so as to extend only to the images or goals for which the consent was given).³² Whether a minor can give consent will depend on whether he has reached the age of discernment or not. If he has, the judge will consider the maturity of the minor and for each individual act he will assess whether the minor was capable of a reasonable judgement of his interests.³³ If the minor has not reached the age of discernment, he will not be capable to give consent without the representation of his legal guardians.³⁴

The Belgian Privacy Commission emphasises that a minor who cannot yet estimate the (harmful) consequences of his or her behaviour ('discernment') cannot give his or her consent to process his or her personal data. In that case, only the parents can consent. For minors who are deemed to have already obtained this level of discernment the situation is not entirely clear. Various propositions have been advanced: certain scholars are of the opinion that in such a case both the minor and the parents should consent, other arguments are based on the autonomy of the minor with discernment and have led to the conclusion that a minor alone can give consent. As we have mentioned before, the notion of "discernment" in itself remains a vague criterion that must be assessed on a case-by-

7, the Article 29 Data Protection Working Party has stated: "*The order in which the legal grounds are cited under Art. 7 is relevant, but it does not mean that consent is always the most appropriate ground to legitimise the processing of personal data. Art. 7 starts with consent, and goes on to list the other grounds, including contracts and legal obligations, moving gradually to the balance of interests. It should be noted that the five other grounds following consent require a "necessity" test, which strictly limits the context in which they can apply. This does not mean that the consent requirement leaves more margin of manoeuvre than the other grounds in Art. 7*". Article 29 Data Protection Working Party, Opinion 15/2011 on the definition of consent, 2011 http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp187_en.pdf.

³¹ EUROPEAN PARLIAMENT and COUNCIL Directive EC/95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 1995, OJ L281/31, Art. 2 (h). For a detailed discussion the concept of consent, see KOSTA Eleni, *Consent in European Data Protection Law*, Martinus Nijhoff Publishers, Leiden, 2013, 434 p.

³² VOORHOOF, Dirk, "Commercieel portretrecht in België", 2009, http://www.psw.ugent.be/Cms_global/uploads/publicaties/dv/05recente_publicaties/VOORHOOF.finalversion.14.05.2009.pdf.

³³ DIERICKX, Linde, *Het recht op afbeelding*, Intersentia, Antwerp, 2005, 39.

³⁴ *Ibid.*, p. 39.

case basis. In practice, it seems unrealistic to expect that preliminary consent will be asked for posting or sharing of photos in which someone else is portrayed on a SNS. Yet it is important that young people are aware of the fact that the right to image exists and has a legal basis and that asking permission to share photographs in SNS should actually be a normal and logical step.

Another type of clauses that is often included in ToU relates to behaviour or acts that are not tolerated by SNS. For instance, Facebook's Terms of Use stipulate that *"6. You will not bully, intimidate, or harass any user. 7. You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence."* They also stipulate that *"You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law. We can remove any content or information you post on Facebook if we believe that it violates this Statement or our policies."* If a user violate these rules, Facebook will stop providing its services to that user. The Twitter rules state that *"You may not impersonate others through the Twitter service in a manner that does or is intended to mislead, confuse, or deceive others; You may not publish or post direct, specific threats of violence against others."* When Twitter is of the opinion that a user breaks these rules, they *"may suspend or terminate your accounts or cease providing you with all or part of the Services"*. Questions that arise in this context are again, first, related to minor's awareness of these clauses. If minors are not aware that they have agreed to these clauses and have moreover not read them, they may not be conscious of the fact that certain acts are prohibited in the ToU (such as cyberbullying). A second question relates to the sanctions that are imposed by the SNS providers in case of violation of the ToU and minors' potential to assess the impact of their acts. Facebook's termination provision, for instance, seems to be very broad, listing a lot of reasons to disable accounts, such as *"not using your real name, posting offensive content, scraping the site, joining too many groups, sending too many messages, 'poking' too many people, or sending the same message too many times"*³⁵ and hence making it difficult for minors to know when they are risking getting their account suspended. People using their real names have seen their accounts being disabled without warning or recourse because Facebook found they were in breach of their real name policy.³⁶ Yet, internet safety education initiatives aimed at minors often warn about using real names and instead advocate adopting a nickname. In addition, we can wonder how reasons such as 'sending too many messages' will be interpreted, as this may be subject to very personal attitudes. What may seem an extensive amount of messages to one minor, may be considered absolutely normal by another minor. This may entail that for certain minors the termination of their account on this basis of such a 'vague' reason may be unexpected.

3.3. Liability

With regard to liability, two issues may be relevant. First, when agreeing to the ToU of SNS minors also accept a clause which imposes liability for certain acts on users' on the one hand, and exonerates SNS providers for certain acts on the other hand.³⁷ Second, given the fact that minors can

³⁵ Schonfeld, Eric, 'Facebook Stirring Up Anger For Disabling Accounts', *Techcrunch* (11 July 2007) <http://techcrunch.com/2007/12/11/facebook-stirring-up-anger-for-disabling-accounts>.

³⁶ See Facebook's Statement of Rights and Responsibilities point 4 on Registration and Account Security: *"Facebook users provide their real names and information, and we need your help to keep it that way."* Also: MOSES, Asher, 'Banned for keeps on Facebook for odd name', *The Sydney Morning Herald* (25 September 2008) <http://www.smh.com.au/news/biztech/banned-for-keeps-on-facebook-for-odd-name/2008/09/25/1222217399252.html>.

³⁷ Cf. for instance clause 16.3 of Facebook's Statement of Rights and Responsibilities.

be offenders as well as victims of certain risks (e.g. cyberbullying) the question arises whether they can be held responsible for certain acts they commit on a SNS. In this paper we focus on the latter question. Additionally, we discuss whether parents or educators may be held liable for acts of the minor(s) they are responsible for.

3.3.1. *Minors*

An added complexity in the SNS environment can be found in the transforming role of minors, from passive and vulnerable media consumers to active content contributors and actors or perpetrators of certain (prohibited) behaviour. This element has also been taken into consideration in the classification of a number of genuine online risks for minors, put forward by the EU Kids Online study which considers children in the online environment as recipients but also as actors and participants.³⁸ This raises the question to what extent children might be held accountable for their behaviour on SNS, for instance in the case of cyberbullying, harassment, unauthorised sharing of intimate pictures or copyright infringement. Liability for such acts may be of a criminal or a civil nature.

Although minors' behaviour on SNS may trigger the application of existing *criminal* provisions (e.g. related to defamation or copyright), this will not automatically imply that they will be held responsible or liable. Next to the age of majority, most states have also adopted a minimum age of criminal responsibility, which can be defined as "*the age at which children are deemed to have the capacity to be legally responsible for breaches of the criminal law*".³⁹ There is no commonly accepted age minimum in international or European legislative or policy documents.⁴⁰ As a result, ages vary widely across the EU, from 8 (Scotland) to 18 (Belgium, Luxembourg).⁴¹ In order to determine this age it should be assessed "*whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour*".⁴²

In Belgium, the Youth Protection of 1965 states that minors may not be put on par with adults with regard to the responsibility and the consequences of their acts. However, if a minor commits an 'act that is described as a crime' they should be made aware of the consequences of that offence. As a result, the Youth Protection Act does impose, instead of the punishments of the Criminal Code, other measures, including supervision, education, disciplinary measures, guidance, advice or support. Measures can be imposed on parents or on the minors themselves. The age of the minor in question is taken into account; different measures will be imposed before and after the age of 12 years (Art. 37). If possible, the judge may give preference to victim-offender mediation (Art. 37bis). To our knowledge, at the moment, jurisprudence with regard to offences committed by minors in the SNS environment is scarce. Whereas it is important that existing legal provisions may be applied in

³⁸ HASEBRINK, Uwe, LIVINGSTONE, Sonia, HADDON, Leslie and ÓLAFSSON, Kjartan, "Comparing children's online opportunities and risks across Europe: cross-national comparisons for EU Kids Online, 2nd edition, Deliverable D3.2.", LSE, London, EU Kids Online, 2009, http://eprints.lse.ac.uk/24368/1/D3.2_Report-Cross_national_comparisons-2nd-edition.pdf.

³⁹ VAN BUEREN 2007, p 58. Cf., Art. 40 §3 United Nations Convention on the Rights of the Child: "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

⁴⁰ VAN BUEREN 2007, p 106.

⁴¹ THE HOWARD LEAGUE FOR PENAL REFORM, *Punishing children, A survey of criminal responsibility and approaches across Europe*, 2008, 6.

⁴² UNITED NATIONS, Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985, www.un.org/documents/ga/res/40/a40r033.htm.

serious situations, prevention and education about responsible digital citizenship should be a priority.

Depending on the legal system of a particular country, minors may be subject to *civil* liability, implying that they will be held liable for 'wrongful acts' or acts that have caused damage. Similarly to criminal liability, there is no harmonisation regarding civil liability across the EU. Whereas most jurisdictions provide a limitation on civil liability for minors, the constitutive elements such as "*the legal basis for fault-based liability, the minimum legal age (if any) for tort liability, the exemption from liability of children lacking discernment, the legal basis to hold children liable without discernment, the standard of care required from children, and the admissibility of holding children liable under strict liability norms*" differ in practice.⁴³ Ferreira roughly distinguishes between two types of jurisdictions: those who establish a (presumed) minimum age of tort liability (e.g. Germany and Portugal), and those where there is no such presumption (e.g. France, Belgium, Italy, Sweden, Finland, England and Wales).⁴⁴

For instance in Belgium, the general liability rule of Art. 1382 Civil Code stipulates that "[a]ny act by which a person causes damage to another makes the person through whose fault the damage occurred liable to repair such damage".⁴⁵ In order to be liable, three conditions have to be fulfilled: a fault needs to have been committed which can be imputed on the defendant (*in casu* a minor), there needs to be a compensable damage, and there has to be a causal link between the damage caused and the act or omission.⁴⁶ In practice, this implies that the minor has to have violated the general duty of care, meaning that he or she did not act as a 'normal, reasonable and careful' person and that his or her behaviour has caused considerable damage. It is also necessary that the minor has committed the act out of free will and that he or she must have been able to foresee that his or her behaviour would cause damage to the victim. This rule is formulated in a general manner, and as a consequence, judges will decide on a case-by-case basis whether a minor will be held liable or not. Age is an important guideline in this regard. Jurisprudence accepts that children can be held liable as of the age of seven. However, this is not a strict rule and judges will take into account other elements such as education and the behaviour after the act.⁴⁷ To achieve a higher degree of legal certainty, certain scholars advocate that a minimum age at which a minor is presumed to be conscious of his acts should be determined by law, no matter what the circumstances of the case are.⁴⁸

With regard to SNS behaviour we may wonder, for instance in the case of cyberbullying, defamation or copyright infringement, whether minors can reasonably foresee the consequences of their actions. It is conceivable that it is hard for minors (or even adults) to grasp what it means to share content, to post a remark about someone else, as the loss of control over content that is made public in the

⁴³ FERREIRA, Nuno, "The harmonisation of private law in Europe and children's tort liability: A case of fundamental and children's rights mainstreaming", *International Journal of Children's Rights* 19, 2011, 580.

⁴⁴ *Ibid.* p. 580.

⁴⁵ Art. 1382 Civil Code.

⁴⁶ BOCKEN, Hubert and DE BONDT, Walter (Eds.), *Introduction to Belgian Law*, Kluwer Law International, The Hague, 2000, 248.

⁴⁷ WEYTS, Britt, "Het kluwen van aansprakelijke personen ingeval van een onrechtmatige daad van de minderjarige: de dader, de ouders, de onderwijzer, de jeugdinstituut, de opvoeder en de overheid", *T.J.K.*, 3, 2004, 147.

⁴⁸ DUBUISSON, Bernard, "Autonomie et irresponsabilité du mineur" in JADOUL, Pierre, SAMBON, Jacques, VAN KEIRSBlick, Benoit (Eds.), *L'autonomie du mineur*, LinkPublications des Facultés universitaires Saint-Louis. Travaux et recherches (37), 1998, 84 ; SCHOLLER, Céline, "La liberté d'expression des adolescents sur la toile: de la responsabilité à la responsabilisation des funambules", *RDIT* 33, 2008, 472.

digital sphere is so vast and irreversible. In addition, it may also be difficult for judges to assess the consequences and impact of such acts in the SNS environment, which appears to be a much more natural habitat for many children and young people than for adults. However, advanced technical skills and a high frequency of use do not automatically imply that children are mature enough to cope with behavioural challenges, be it as an actor or a target of certain acts.

B. Liability of parents and teachers

Although there is a possibility that minors themselves will be held accountable for their acts, parents and teachers may also be held liable in certain cases. Given the fact that minors often do not possess the financial means to pay for the damages, in practice usually a complaint will be filed against both parents or teachers and the children *in casu*.⁴⁹ In Belgium for instance, Art. 1384 of the Civil Code prescribes an assumption of liability for parents as well as teachers.⁵⁰ Parents and teachers can counter this assumption if they prove that they have made no mistake in the supervision or the education of their child. Concrete elements such as the age of the child, the environment and the timing of the factual elements can be of decisive importance. In an online context, Walrave et al. have argued that supervision with regard to a child's activities is very difficult and hence they advocate evolving towards a liability system without fault that would require an obligatory insurance.⁵¹ Given that research indicates that an increasing number of children own smart phones,⁵² which enables them to be always online, supervision by parents will only become more and more complex.

4. Empowering young SNS users

From the above analysis we may deduct that the legal impact related to a minor joining a SNS or behaving in a certain manner on an SNS will greatly depend on the minor's level of awareness and the foreseeability of the consequences of his or her behaviour. Hence, providing clear, age-appropriate information to this particular group of users might be key in reducing risks and maximising opportunities related to SNS use.

4.1. Information provision

Providing information to consumers is an intrinsic part of consumer law and it is believed that information will help consumers make informed decisions about services or products they want to use or acquire. It rests on the assumption that there is an asymmetry in information between sellers or service providers and consumers, putting the latter at a disadvantage, which can be an obstacle

⁴⁹ WEYTS, Britt, "Het kluwen van aansprakelijke personen ingeval van een onrechtmatige daad van de minderjarige: de dader, de ouders, de onderwijzer, de jeugdinstituten, de opvoeder en de overheid", *T.J.K.*, 3, 2004, 147.

⁵⁰ DUBUISSON, Bernard, "Autonomie et irresponsabilité du mineur" in JADOUL, Pierre, SAMBON, Jacques, VAN KEIRSBLOCK, Benoit (Eds.), *L'autonomie du mineur*, LinkPublications des Facultés universitaires Saint-Louis. Travaux et recherches (37), 1998, 84 ; SCHOLLER, Céline, "La liberté d'expression des adolescents sur la toile: de la responsabilité à la responsabilisation des funambules", *RDIT* 33, 2008, 472.

⁵¹ WALRAVE, Michel, DEMOULIN, Marie, HEIRMAN, Wannes, VAN DER PERRE, Aurélie, *Cyberpesten : Pesten in Bits & Bytes*, Observatorium van de Rechten op het Internet, 2009, available at www.internet-observatory.be/internet_observatory/pdf/brochures/Boek_cyberpesten_nl.pdf, 101-102.

⁵² For instance, in May 2013, 47% of US teenagers was reported to own a smart phone: MADDEN, Mary, E, Amanda, DUGGAN, Maeve, E, Sandra and GASSER, Urs, *Teens and Technology 2013*, <http://www.pewinternet.org/2013/03/13/teens-and-technology-2013/>.

“to welfare-enhancing consumer decision making”.⁵³ Under this paradigm legislative obligations imposed on providers to make certain information available for consumers are important to remedy this imbalance.

The information paradigm relies on the image of rational consumers, implying that they will be able, willing and competent to deal with the information provided, to read different languages, to make informed rational decisions and to enforce their information-based rights.⁵⁴ However, research in the area of behavioural economics shows that individuals do not always behave rationally and that predictions based on a rational approach often do not hold.⁵⁵ Human behaviour is limited by e.g. time constraints, computational capacities, understanding, memory and other capabilities.⁵⁶ With regard to children, Agosto conducted an experiment that was specifically aimed at minors’ online decision-making process.⁵⁷ Her findings confirm that young people suffer from time, cognitive and physical constraints with regard to web-based activities and decision-making.⁵⁸

Moreover, one of the biggest challenges when informing users of SNSs regarding their rights and obligations on these platforms is the fact that there is no such thing as a standard, average user. As a matter of fact, users of these services are almost as diverse as the world population with users from different countries, but also of different ages and socio-economic backgrounds. When it comes to children, we have already observed they are avid SNS users, already at a very young age. It is practically impossible that the provision of current standard, traditional, and usually complex ToU will cater for the specific needs of the billions of various types of SNS users around the world. Moreover, given the fact that SNS providers do not officially know whom of their users are younger than 13, it is very difficult to take protective measures for this very young age group. Age-adapted versions of the ToU would be useful, but as long as children under 13 can officially not sign up on SNS, this will only be effective for the users that are above this age.

According to Haapio and Passera, when designing information for users in general (and minors in particular), several questions need to be taken into consideration: (1) who are the users (2) what do they want or need to know to understand the legal implications (3) how can documents be made as clear, as engaging and accessible as possible?⁵⁹ It is equally important to raise users’ awareness of the relevance of information and to provide them with an incentive to act upon it. If users are aware but discard the information because they think it is not relevant to them all efforts in being transparent will have no effect. It is of the utmost importance that users are provided with a

⁵³ MICKLITZ, Hans W., REISCH Lucia and HAGEN, Kornelia, “An Introduction to the Special Issue on “Behavioural Economics, Consumer Policy, and Consumer Law”, J Consum Policy, Vol. 34, 2012, 272.

⁵⁴ MICKLITZ, Hans W., REISCH Lucia and HAGEN, Kornelia, “An Introduction to the Special Issue on “Behavioural Economics, Consumer Policy, and Consumer Law”, J Consum Policy, Vol. 34, 2012, 272.

⁵⁵ LUTH, Hanneke, *Behavioural economics in consumer policy, the economic analysis of standard terms in consumer contracts revisited*, Intersentia, Antwerp, 2010, 17.

⁵⁶ EISENBERG, Melvin A., “The Limits of Cognition and the Limits of Contract”, Stanford Law Review, 47(2), 1995, 211-259, 213; JOLLS, Christine, SUNSTEIN, Cass and THALER, Richard, “A Behavioral Approach to Law and Economics”, Stanford Law Review, 50(5), 1998, 1471-1550; KREPS, David, “Bounded Rationality” in NEWMAN (Ed.), *The New Palgrave Dictionary of Economics and the Law*, Palgrave MacMillan, Basingstoke 1998, 168-173.

⁵⁷ AGOSTO, Denise E., “Bounded rationality and satisficing in young people’s Web-based decision making”, *Journal of the American Society for Information Science and Technology*, 53 (1), 2002, 16-27.

⁵⁸ *Ibid.*, p. 21-22.

⁵⁹ HAPIO, Helena and PASSERA, Stefania, “Visual Law: What Lawyers Need to Learn from Information Designers”, Legal Information Institute Cornell University, Vox Populii, 2013, <http://blog.law.cornell.edu/voxpath/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers>.

motivation to obtain this kind of information and they will also need to be able to understand the information that is given to them. With regard to the latter element, it is important to be aware that there are differences in literacy and numeracy that have to be taken into account. This is especially relevant for young users.

Whereas the information itself is important, research has shown that the way information is formulated and presented is very important as well.⁶⁰

A first step in this process is thinking about the language. At the moment, ToU and privacy policies are usually very long texts that use formal and technical words, also referred to as 'legalese'. At the moment, lawyers use the so-called 'tested language' in widely used clauses, leading to the impression that Terms of Use and privacy policies are written by lawyers for lawyers and not for the actual users.⁶¹ For instance, according to Adams, *"the impetus has been to copy from precedent contracts of uncertain quality and relevance and make only those adjustments required to reflect what's different about the new transaction—everything else is given a pass. And in the absence of guidelines, lawyers are free to treat drafting as a craft, making it subject to individual whim. As a result, dysfunction is the norm. Among other problems, traditional contract language is full of archaisms (for example, use of "witnesseth" and "whereas" in recitals); redundancy (as in "terms and conditions" and "books and records"); chaotic verb structures (including drastic overuse of "shall"); and misconceptions as to the legal effect of phrases such as "best efforts," "indemnify and hold harmless," and "represents and warrants.""*⁶² Therefore, scholars are increasingly advocating a better considered use of plain language. However, the use of plain language may have some limitations. Legal documents often contain complex legal concepts which are not always easy to simplify.⁶³ Usually, the meaning of these concepts is so specific that their oversimplification may end up in devaluating their specific meaning. Moreover, from a cognitive point of view, explaining what a specific term means may require more words which would increase the amount of information an individual has to cope with, and, hence, again lead to information overload.⁶⁴

The use of plain language alone will probably not suffice to solve the problems of legal complexity or to make contracts and privacy policies more comprehensible for the general public.⁶⁵ Information design could be complementary. Haapio and Passera focus on the simplification of contracts with the purpose *"to make their language easier, their structure clearer and to introduce visualisations and information design as supporting communicative strategies"*.⁶⁶ Information design can be defined as

⁶⁰ KIM, Nancy, "The Duty to Draft Reasonably and Online Contracts", in: DIMATTEO, Larry et al. (eds.) *Commercial Contract Law: A Transatlantic Perspective*, Cambridge University Press, New York, 2013, 191; JOHN, Leslie, ACQUISTI, Alessandro and LOEWENSTEIN, George, "The Best of Strangers: Context Dependent Willingness to Divulge Personal Information", 2009, <http://ssrn.com/abstract=1430482> or <http://dx.doi.org/10.2139/ssrn.1430482>.

⁶¹ HAPIO, Helena, BERGER-WALLISER, Gerlinde, WALLISER, Bjorn and REKOLA Katri, "Time for a visual turn in contracting? *Journal of Contract Management* 2012, 10, 49–57.

⁶² ADAMS, Kenneth and ALLEN Tim, "The Illusion of Quality in Contract Drafting", *New York Law Journal* 2012, Volume 248, No. 11.

⁶³ BEN - SHAHAR, Omri and SCHNEIDER Carl, E., "The failure of mandated disclosure", *University of Pennsylvania Law Review* 2011, Vol. 159, 713.

⁶⁴ *Ibid.*, p. 714.

⁶⁵ HAPIO, Helena, "Contract Clarity and Usability through Visualization", in: MARCHESE, Francis and BANISSI, Ebad (Eds.) *Knowledge Visualization Currents*, 2013, Springer, London, 69.

⁶⁶ HAPIO, Helena and PASSERA, Stefania, "User-Centered Contract Design: New Directions in the Quest for Simpler Contracting", *Proceedings of the IACCM 2011 Academic Forum for Innovative Research & Practice*, 26

*“the process of identifying, selecting, organizing, composing, and presenting information to an audience so that it can be used efficiently and effectively by that audience to achieve a specific purpose”.*⁶⁷ Legal visualisation can be done in two ways. First, images inserted in the document can be used to highlight, clarify and explain the content of some of the provisions. Second, images about the content of the document can provide guidance on how to read, how to use the contract and about certain content of the agreement itself.⁶⁸

However, visualisation, just like the use of simple language, can also have limitations. For instance, the user may be confused if the text of the legal document does not match the visual representation. Moreover, visualising legal documents puts an extra cost on companies.⁶⁹ In addition, bringing design into legal thinking also requires a different mind-set by lawyers. To visualise legal documents, designers and lawyers will have to work together. As Mitchell states: *“Design is not about aesthetics. It is about functionality and effectiveness. As such content is front and centre. Designers have to make decisions about what data to present (and not to present), as well as decisions about how most effectively to present it”.*⁷⁰ At the same time, lawyers will have to provide the necessary input and guide designers when it comes to legal concepts, notions and implications and their necessary nuances.

4.2. An experiment: A legal design jam with children

Passera developed the concept of Legal Design Jams in which she brings together to bring designers, lawyers, coders, etc. together to give a legal document a user-friendly ‘visual makeover’. Through information design, visualisation, plain language and focus on the user, the aim to introduce innovations in legal design and legal thinking. Drawing on this concept and her experiences with this concept, a ‘mini legal design jam’ with children was organised within the context of the EMSOC-project in May and June 2014.⁷¹ The aim of this workshop was to propose recommendations for the formulation and design the ToU of the website of the Flemish public broadcaster’s children’s channel (Ketnet) which also offers certain social networking capabilities. Children from 8 to 10 years old together with their parents participated in the workshop. Questions that were addressed were for instance what both children and parents consider to be the most important terms when they want to register for Ketnet’s website, which values they consider to be of relevance, which types of behaviour they considered positive and negative and which specific language they would propose to use to provide information (e.g. “rules of the game” instead of “Terms of Use”). A comprehensive report on the results of these workshops will be published in July 2014.

October 2011, Tempe (AZ), USA (R. F. Henschel, ed., Proceedings of the 2011 IACCM Academic Symposium for Contract and Commercial Management . The International Association for Contract and Commercial Management, Ridgefield, CT, 2011, 83.

⁶⁷ HAYHOE, G.F., “Telling the Future of Information Design”, *Communication Design Quarterly*, Vol. 1, 2012, 23-26.

⁶⁸ HAPIO, Helena, “Bringing Design Thinking into Contract Design, Visual Tools for Better Contracting – Part I”, Presentation at the IACCM Thought Leadership Webinar, January 2014.

⁶⁹ HAPIO, Helena, “A Visual Approach to Commercial Contracts”, *Jusletter IT*, 2011, available at <http://www.multisensory-law.org/de/publication/visual-approach-commercial-contracts>.

⁷⁰ MITCHELL, Jay A., “Putting some product into work-product: corporate lawyers learning from designers”, *Working Paper Stanford Law School*, 2013, <http://ssrn.com/abstract=2325683>, 14.

⁷¹ User Empowerment in a Social Media Culture, www.emsoc.be.

5. Conclusion

Research shows that minors are active SNS users and that they can take up different roles: as recipients but also as actors and participants. In this paper we tried to assess certain challenges in terms of membership, behaviour and liability. Our analysis has shown that the assessment of legal consequences will often depend on a minor's level of discernment a minor, implying that most situations will have to be decided on a case-by-case basis. This may cause legal uncertainty for SNS users as well as SNS providers as the latter may not be aware of legislation and jurisprudence in all Member States where they are operational.

Parents have a certain degree of responsibility and can in specific instances be held accountable when they cannot prove that they did not fail in educating or supervising their child. We may wonder whether this is a reasonable expectation in an online environment. Technologies change and new services emerge, making it sometimes very difficult to keep up with these fast evolutions. Monitoring children's use of SNS is not always straightforward. Mobile devices allow children to be online anytime, anywhere. Restricting access is one of the most obvious solutions. However, whereas research⁷² shows that this indeed leads to fewer risks and also to less harm, it also entails that minors will be exposed fewer online opportunities. Research also suggest that when young people turn to their parents concerning questions they have about SNS, many parents lack the skills and knowledge to help their children with these types of issues. This implies that parental responsibility in the legal framework should be reconsidered but that at the same time it is crucial that parents are sufficiently media literate so that they can help and support their children.

SNS providers define rights and obligations in their ToU. If a user violates these rules, the SNS may impose sanctions, which often results in the suspension or the deletion of the account. Yet, it is doubtful that young SNS users themselves are always aware of these ToU or the consequences of their online behaviour. SNS providers do provide information and publish several documents such as ToU, privacy policies and community guidelines. However, whereas these documents are intended for users, they seem to be drafted for lawyers by lawyers. Incorporating visual techniques and avoiding complex legal writing throughout these documents may be an innovative mechanism that can help SNS users in general and minors in particular, to make better and informed decisions about signing up and behaving in a certain manner.

Such techniques will not only increase costs, but also investment in time and effort. Therefore it is necessary to provide strong incentives for SNS providers to commit to drafting user-friendly legal policies. Given the international operations of most major SNS providers, supranational pressure seem more appropriate than national measures. We believe that it is the task of the European Commission to start focusing on minors' rights and obligations within SNS and incentivising online service providers to develop visualisation tools that can help make law (more) meaningful to minors by giving them a better insight into these rights and obligations and by guiding them in making truly informed decisions regarding their online choices and behaviour.

⁷² DUERAGER, Andrea and LIVINGSTONE, Sonia, How can parents support children's internet safety?, 2012, <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/ParentalMediation.pdf>.