Lievens, Eva

Conference Paper

A children's rights perspective on the responsibility of social network site providers

25th European Regional Conference of the International Telecommunications Society (ITS): "Disruptive Innovation in the ICT Industries: Challenges for European Policy and Business" , Brussels, Belgium, 22nd-25th June, 2014

Provided in Cooperation with:

International Telecommunications Society (ITS)

Suggested Citation: Lievens, Eva (2014) : A children's rights perspective on the responsibility of social network site providers, 25th European Regional Conference of the International Telecommunications Society (ITS): "Disruptive Innovation in the ICT Industries: Challenges for European Policy and Business" , Brussels, Belgium, 22nd-25th June, 2014, International Telecommunications Society (ITS), Calgary

This Version is available at:
https://hdl.handle.net/10419/101441

A children's rights perspective on the responsibility of social network site providers

dr. Eva Lievens[1]

Social networking services play an increasingly important role in the life of children and young people, as part of the development of their own personality and identity, and as part of their participation in debates and social activities.
Council of Europe[2]

As accepted as the above statement is nowadays, there is much less certainty about the manner in which behaviour on social network sites (SNS) should be addressed and guided in order to ensure that opportunities for children in this environment are optimised and risks are minimised. *Multistakeholder approaches*, in which various actors (government, industry, civil society, educational institutions and parents) are thought to have a specific responsibility to contribute to a safe, positive, and creative online experience for young internet users, and *self-regulatory initiatives* have been encouraged and supported at different levels,[3] but the compliance of SNS providers with their own commitments as well as (European) regulatory standards and support in this area has been unsatisfactory at times.[4] Most often, it is argued that this is caused by the lack of convincing incentives to adopt higher standards of protection and offer empowerment-enhancing mechanisms as well as prevailing business principles and financial considerations.

It is the aim of this paper to analyse this issue from a children's right perspective and to identify a theoretical, broader basis that can be used by policymakers to persuade private actors to enhance their Corporate Social Responsibility efforts to provide young users with a communication and interaction platform that respects and helps realising their fundamental rights.

---

[1] Senior Research Fellow Research Fund Flanders, Interdisciplinary Centre for Law & ICT (ICRI) – KU Leuven – iMinds; Guest Professor at Ghent University. Comments welcome at eva.lievens@law.kuleuven.be. Please note that this paper will be elaborated on in the framework of the research project "Risk-reducing regulatory strategies for illegal and harmful conduct and content in online social network sites", funded by the Research Fund Flanders, in the course of 2014-2015.

[2] Council of Europe, Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services, 2012, https://wcd.coe.int/ViewDoc.jsp?id=1929453&Site=CM.

[3] Cf. the Council of Europe's Recommendation on the protection of human rights with regard to social networking services (*supra*, footnote 2) as well as the European Union's European Strategy for a better internet for children: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Strategy for a Better Internet for Children, COM(2012)196 final, http://ec.europa.eu/digital-agenda/en/news/communication-european-strategy-make-internet-better-place-kids.

[4] Ságvári, Bence and Máder, Miklós Péter, Industry. Towards the Socially Responsible Internet. Industry CSR practices across Europe, in: Brian O'Neill, Elisabeth Staksrud, Sharon McLaughlin, Towards a Better Internet for Children? Policy Pillars, Players and Paradoxes, Nordicom, 2013, 156; Lievens, Eva, "Is self-regulation failing children and young people? Assessing the use of alternative regulatory instruments in the area of social networks", ECREA Communication Policy and Law Conference: Communication and media policy in Europe: Assessing the past, setting agendas for the future, Manchester, 26 October 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2351774.

1. Children and fundamental rights

1.1. International level

The United Nations Convention on the Rights of the Child (UNCRC),[5] adopted by the UN General Assembly on 20 November 1989,[6] provides the international legal framework for children's rights.[7] Up until recently, the UNCRC did not contain an actual enforcement mechanism, which was considered a manifest flaw.[8] Children could not file complaints,[9] and the Convention could not be tested in specific cases by the courts.[10] In 2011, however, the Optional Protocol on a Communications Procedure was adopted,[11] which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014.[12] In addition, the UNCRC has a symbolic function[13] and a strong moral force.[14] The UN Committee on the Rights of the Child monitors the implementation of the UNCRC and issues critical remarks or recommendations.[15] It is then up to the national governments to take these into account.

Since the creation of the UNCRC it has been accepted across the globe that children are entitled to a number of fundamental rights that are important in the media environment, such as the right to

---

[5] United Nations, Convention on the Rights of the Child, 20.11.1989, http://www.unhchr.ch/html/menu3/b/k2crc.htm [hereinafer: UNCRC].

[6] Previous international documents on children's rights were: "Declaration on the Rights of Child", adopted by the League of Nations in 1924, and the 1959 "UN Declaration on the Rights of Child", which was adopted unanimously by the General Assembly of the United Nations on 20 November 1959, http://www.unhchr.ch/html/menu3/b/25.htm. For a detailed overview cf. Van Bueren, Geraldine, *The international law on the rights of the child*, Dordrecht, Martinus Nijhoff Publishers, 1995, 6-12.

[7] See also: Commission of the European Communities, Commission Staff working document accompanying the Communication from the Commission Towards an EU strategy on the rights of the child, Impact assessment, COM (2006) 367 final, SEC (2006) 888, 04.07.2006, http://register.consilium.europa.eu/pdf/en/06/st12/st12107-ad01.en06.pdf, 6: "*The UNCRC provides a coherent and comprehensive framework against which to evaluate legislation, policy, structures and actions*".

[8] Kilkelly, Ursula, "The best of both worlds for children's rights? Interpreting the European Convention on Human Rights in the light of the UN Convention on the Rights of the Child", *Human Rights Quarterly* 2001, Vol. 23, 309; McLaughlin, Sharon, Rights v. restrictions. Recognising children's participation in the digital age, in Brian O'Neill, Elisabeth Staksrud, Sharon McLaughlin, Towards a Better Internet for Children? Policy Pillars, Players and Paradoxes, Nordicom, 2013, 316. For more on the implementation of UNCRC cf. Van Bueren, Geraldine, *The international law on the rights of the child*, Dordrecht, Martinus Nijhoff Publishers, 1995, 378-422.

[9] Meuwese, Stan, Blaak, Mirjam and Kaandorp, Majorie (eds), *Handboek Internationaal Jeugdrecht* [*International Youth Law Handbook*], Nijmegen, Ars Aequi Libri, 2005, 19 [in Dutch].

[10] Bainham, Andrew, *Children – the modern law*, Bristol, Family Law, 2005, 67. It is useful however to stress the fact that supranational courts, such as the European Court of Justice, for instance, do refer to the UNCRC in its caselaw.

[11] United Nations, Optional Protocol on a Communications Procedure, 2011, https://treaties.un.org/doc/source/signature/2012/ctc_4-11d.pdf.

[12] As of June 2014 45 States signed the Protocol, and 11 States ratified it. Cf. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-d&chapter=4&lang=en.

[13] Van Bueren, Geraldine, *The international law on the rights of the child*, Dordrecht, Martinus Nijhoff Publishers, 1995, xx.

[14] Kilkelly, Ursula, "The best of both worlds for children's rights? Interpreting the European Convention on Human Rights in the light of the UN Convention on the Rights of the Child", *Human Rights Quarterly* 2001, Vol. 23, 310.

[15] Kilkelly, Ursula, "The best of both worlds for children's rights? Interpreting the European Convention on Human Rights in the light of the UN Convention on the Rights of the Child", *Human Rights Quarterly* 2001, Vol. 23, 309.

freedom of expression (article 13 UNCRC) and the right to privacy (article 16 UNCRC). At the same time, children sometimes need to be protected, for instance, from content or behaviour that may harm them (article 17, *infra*, 19 - concerning protection from all forms of violence - and 34 - concerning protection from sexual exploitation - UNCRC).

Article 13 confirms the child-specific version[16] of the (general) right to freedom of expression[17] "*which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice*".[18] This fundamental right can only be restricted if this is provided by law and necessary "*for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals*" (para. 2). The article has a broad scope of application, which certainly extends to the internet as well as any other (future) medium. Recently, the UN Committee on the Rights of the Child emphasised that the increasing extent to which information and communication technologies are a central dimension in the lives of children entails that (equal) access to the internet and social media for them is crucial, also for the realisation of other rights closely linked to the right to freedom of expression, such as the right to leisure, play and culture (article 31 UNCRC).[19]

Equally important is the child's right to privacy, formulated in article 16 UNCRC.[20] According to this article, children cannot be subjected to any arbitrary or unlawful interference – by state authorities or by others (e.g., private organisations)[21] – with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. Moreover, it is clearly stated that the law should protect a child against such interference. The right to privacy is directed at the child itself and is to be protected in all situations.[22] In the online environment, privacy issues could, for instance, arise with respect to identification mechanisms or with regard to the collection of their personal data by service

---

[16] Kilkelly, Ursula, "The best of both worlds for children's rights? Interpreting the European Convention on Human Rights in the light of the UN Convention on the Rights of the Child", *Human Rights Quarterly* 2001, Vol. 23, 311.

[17] Similar articles are article 19 Universal Declaration of Human Rights, article 19 International Covenant of Civil and Political Rights, and article 10 European Convention on Human Rights and Fundamental Freedoms.

[18] The United Nations Committee on the Rights of the Child has stressed that it is not sufficient to just include the 'general' right to freedom of expression applicable to everyone in a country's constitution. It is necessary, according to the Committee, to also expressly incorporate the child's right to freedom of expression in legislation. See for instance: United Nations Committee on the Rights of the Child, General Guidelines for Periodic Reports, CRC/C/58, 20.11.1996, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.58.En?Opendocument: "*States parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37 (a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels*".

[19] United Nations Committee on the Rights of the Child, General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc. CRC/C/GC/17, 2013, n° 45.

[20] Again, this is a child-specific 'translation' of the general right to privacy, which is granted to everyone by, *inter alia*, article 12 Universal Declaration on Human Rights, article 17 International Covenant on Civil and Political Rights, and article 8 European Convention on Human Rights and Fundamental Freedoms.

[21] Hodgkin, Rachel and Newell, Peter, *Implementation handbook for the Convention on the Rights of the Child*, New York, Unicef, 2002, 216.

[22] Hodgkin, Rachel and Newell, Peter, *Implementation handbook for the Convention on the Rights of the Child*, New York, Unicef, 2002, 213; Meuwese, Stan, Blaak, Mirjam and Kaandorp, Majorie (eds), *Handboek Internationaal Jeugdrecht* [*International Youth Law Handbook*], Nijmegen, Ars Aequi Libri, 2005, 141 [in Dutch].

providers. Furthermore, monitoring a child's internet use (e.g. with the help of software), could be considered in conflict with the child's right to privacy. Finally, parents may neither, according to article 16, interfere with their child's correspondence. There is no reason to limit the application of this article to 'paper' correspondence, so monitoring e-mail conversations could be in conflict with the child's right to privacy as well.

Another crucial article with regard to media content and services is article 17 UNCRC.[23] This article requires states to ensure that children have access to "*information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health*",[24] since access to a wide diversity of information is a prerequisite for the exercise of other fundamental rights, most importantly the right to freedom of expression.[25] States are thus incited to pursue a proactive policy which stimulates the cultural, educational and informational potential of media with respect to children.[26] At the same time article 17 UNCRC also encourages the development of guidelines to protect children from harmful material. On the one hand, the internet and other new media technologies enable children to access a huge variety of educational material[27] and cultural opportunities, as "*powerful tool*[s] *that can help to meet children's rights under the UNCRC (e.g., to participation, information and freedom of expression)*".[28] However, on the other hand, the Committee on the Rights of the Child expressed concern that these technologies have also lowered the threshold of access to illegal and harmful material. More recently

---

[23] The European Court of Justice has also referred to this article in a case concerning potential harmful new media content: ECJ, Dynamic Medien v. Avides Media AG, C-244/06, 14.02.2008, para. 40.

[24] A general discussion on 'The child and the media' was held by the Committee on the Rights of the Child on the 7th of October 1996. A report of this discussion was included in the Report on the thirteenth session: United Nations Committee on the Rights of the Child, Report on the thirteenth session, CRC/C/57, 31.10.1996, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5a7331a09a8b4f3fc1256404003d10bd/$FILE/G9618895.pdf. Following this discussion, an informal Working Group was set up (CRC/C/57, p. 45). This Working Group met twice (cf. United Nations Committee on the Rights of the Child, CRC/C/66, 06.06.1997, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b27bf9857a55819d802564f3003b10ee/$FILE/G9717203.pdf, 51; United Nations Committee on the Rights of the Child, CRC/C/79, 27.07.1998, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a505a81ff8dcaf89802566d6003b6298/$FILE/G9817376.pdf, 46) and was also involved with the development of 'The Oslo Challenge', a call for action, addressed to "*everyone engaged in exploring, developing, monitoring and participating in the complex relationship between children and the media*". This document elaborates on ways to effectively implement articles 12, 13 and especially 17 UNCRC: "*The Oslo challenge signals to governments, the media, the private sector, civil society in general and young people in particular that Article 17 of the Convention on the Rights of the Child, far from isolating the child/media relationship, is an entry point into the wide and multi-faceted world of children and their rights – to education, freedom of expression, play, identity, health, dignity and self-respect, protection – and that in every aspect of child rights, in every element of the life of a child, the relationship with children and the media plays a role*" (cf. http://www.mediawise.org.uk/files/uploaded/Oslo%20Challenge.pdf).

[25] Meuwese, Stan, Blaak, Mirjam and Kaandorp, Majorie (eds), *Handboek Internationaal Jeugdrecht* [*International Youth Law Handbook*], Nijmegen, Ars Aequi Libri, 2005, 144-145 [in Dutch].

[26] Voorhoof, Dirk, "Media(recht) en kinder(recht)en" ["*Media(law) and children('s rights*"], Deel 1, 1.9., update 1995, in: Verhellen, Eugeen (ed.), *Kinderrechtengids (KIDS): Commentaren, regelgeving, rechtspraak en nuttige informatie over de maatschappelijke en juridische positie van het kind* [*Guide to children's rights: Comments, regulation, case law and useful information about the social and legal status of the child*], Gent, Mys en Breesch, 1994, 30 [in Dutch].

[27] Article 17 (a) emphasises the importance of disseminating information and material of social and cultural benefit to the child and in accordance with the spirit of article 29, which is related to education.

[28] Ruxton, Sandy, *What about us? Children's rights in the European Union? Next Steps*, Brussels, The European Children's Network, 2005, 109.

the Committee also indicated to be concerned about the extent to which access to the internet and social media lead to exposure to cyberbullying, pornography and cybergrooming.[29]

It has been argued that the word 'guidelines', used in article 17 UNCRC, indicates a preference for voluntary, rather than legislative constraints.[30] However, the Committee on the Rights of the Child has in one of their observations recommended to "*enact special* legislation *to protect children from harmful information, in particular from television programmes and films containing brutal violence and pornography*" (own emphasis).[31] This attitude is not limited to traditional media: the Committee is concerned about online media as well.[32] Recently, it has been argued that there is confusion about the scope of article 17 e) (in part created by the United Nations Committee on the Rights of the Child). According to Sacino, who analysed article 17 in detail, the scope of this paragraph does not concern the protection of children from harmful material by States themselves.[33] She contends that this particular State task is included within the scope of other articles (such as article 6 UNCRC, related to the protection and care necessary for the well-being of each child) and that article 17 e) solely concerns the encouragement of other actors, such as industry, to develop the guidelines mentioned in this paragraph.[34]

Article 17 also refers to article 18 UNCRC. This recalls the primary responsibility of parents for the upbringing and development of the child.[35] However, according to article 18 para. 2, States must

---

[29] United Nations Committee on the Rights of the Child, General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc. CRC/C/GC/17, 2013, n° 46.

[30] Hodgkin, Rachel and Newell, Peter, *Implementation handbook for the Convention on the Rights of the Child*, New York, Unicef, 2002, 236. See also: United Nations Committee on the Rights of the Child, Report on the thirteenth session, CRC/C/57, 31.10.1996, retrieved from http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5a7331a09a8b4f3fc1256404003d10bd/$FILE/G9618895.pdf (on 22.09.2006), 44.

[31] United Nations Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Cambodia, CRC/C/15/Add.128, 28.06.2000, retrieved from http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/30dce34798ef39f480256900003397ac?Opendocument (on 27.09.2006), para. 36; United Nations Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Marshall Islands, CRC/C/15/Add.139, 16.10.2000, retrieved from http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e91ea24ff52b434ac125697a00339c0c?Opendocument (on 27.09.2006), para. 34-35.

[32] "*The Committee is concerned that no legislation exists to protect children from being exposed to violence and pornography through video movies and other modern technologies, most prominently, the Internet*": United Nations Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Luxembourg, CRC/C/15/Add.92, 24.06.1998, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/62258a94c261c9318025662400376374?Opendocument, para. 30.

[33] "*Article 17 is not to be a vehicle for State control of content: Article 17 does not require or authorize State censorship of the content of mass media communications*"; Wheatley Sacino, Sherry, *Article 17 Access to a diversity of mass media sources*, A commentary on the United Nations Convention on the Rights of the Child, Leiden, Martinus Nijhoff Publishers, 2012, 30.

[34] Ibid.

[35] In the same spirit, article 5 as well is – in our view – especially relevant when dealing with harmful content (although this article is not traditionally mentioned in this context). Article 5 refers to the responsibilities, rights and duties of parents (or other persons legally responsible for the child), to offer, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance to the child when exercising his or her rights. This provision could be interpreted as implying that parents have a responsibility to (do their best to) support their children in their approach to new media. The United Nations General Assembly has also touched upon the responsibilities of parents *et al*. in this respect: "*19. Encourage measures to protect children from violent or harmful web sites, computer programmes and games that negatively influence the psychological*

"*render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*". An example of this 'assistance' or, otherwise put, the 'duty of care' of the state,[36] could be the provision of adequate information by States to parents about media content to which their children can be exposed.[37]

1.2. European level

Children's rights have also increasingly been awarded a significant place in the European legislative and policy framework. Aside from the possible application of the European Convention on Human Rights[38] (article 8 – privacy and article 10 – freedom of expression) to children, the Council of Europe has, over the past decade, issued various documents concerning human rights in general, and children's rights in particular.[39] The EU has been active in this field as well, laying down a legal basis for the protection of children's rights in the Charter of Fundamental Rights (article 24) as well as the Lisbon Treaty, and developing a conscious EU strategy on the rights of the child.[40] A similar theme runs through the various documents at all levels: on the one hand, children are active subjects of rights who can invoke a number of fundamental rights, but, on the other hand, this also entails that sometimes they need to be safeguarded from harmful influences.

2. Children's rights in the information society

Numerous policy documents at European level, issued both by the European Union as well as the Council of Europe, have emphasised the importance of safeguarding children's rights in today's information society. Achieving a high level of protection of children in the digital space was, for instance, one of the priorities identified in the EU Agenda for the Rights of the Child.[41] Most recently,

---

development of children, taking into account the responsibilities of the family, parents, legal guardians and caregivers" (United Nations General Assembly, Resolution A world fit for children, A/RES/S-27/2, 11.10.2002, http://www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf, 16). Ultimately, parents or other carers are the only persons who will be able to monitor their children's actual media use.

[36] Voorhoof, Dirk, "Media(recht) en kinder(recht)en" ["*Media(law) and children('s rights*"], Deel 1, 1.9., update 1995, in: Verhellen, Eugeen (ed.), *Kinderrechtengids (KIDS): Commentaren, regelgeving, rechtspraak en nuttige informatie over de maatschappelijke en juridische positie van het kind* [*Guide to children's rights: Comments, regulation, case law and useful information about the social and legal status of the child*], Gent, Mys en Breesch, 1994, 8 [in Dutch].

[37] Hodgkin, Rachel and Newell, Peter, *Implementation handbook for the Convention on the Rights of the Child*, New York, Unicef, 2002, 236. Sacino finds that this reference deliberately avoids clarifying the relationship between the role of the States and the role of parents in the protection of young people from harmful media content, because there could not be found a consensus on the division of this responsibility: Wheatley Sacino, Sherry, *Article 17 Access to a diversity of mass media sources*, *A commentary on the United Nations Convention on the Rights of the Child*, Leiden, Martinus Nijhoff Publishers, 2012, 31.

[38] http://conventions.coe.int/treaty/en/treaties/html/005.htm.

[39] Cf. for instance: Council of Europe, Recommendation CM/Rec(2009)5 of the Committee of Ministers to member states on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment, https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

[40] Communication from the Commission Towards an EU Strategy on the Rights of the Child, COM(2006) 367 final, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0367&from=EN.

[41] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Agenda for the Rights of the Child, COM(2011)0060 final, http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52011DC0060: "*The Commission will*

in May 2014, the Council of the European Union adopted the *Human Rights Guidelines on Freedom of Expression Online and Offline*.[42] Amongst other priorities these guidelines emphasise the need for the European Union to "*ensure that the media, both mass and social, recognize and respect the rights of the child, as enshrined in the Convention on the Rights of the Child*".[43] In addition, "*the EU will promote awareness raising and media and internet literacy and its importance for the safe and responsible use of the Internet, especially for children and young people, in the context of programmes of education and training on human rights, according to the UN Declaration on Human Rights Education and Training*".[44]

In April 2014, the Committee of Ministers of the Council of Europe, in its *Guide to human rights for internet users*, explicitly included a section targeted at children and young people.[45]

> *As a child or young person, you have all the rights and freedoms outlined in this guide. In particular, because of your age, you are entitled to special protection and guidance when using the Internet. This means:*
>
> *1. you have the right to freely express your views and participate in society, to be heard and to contribute to decision making on matters affecting you. Your views must be given due weight in accordance with your age and maturity and without discrimination;*
>
> *2. you can expect to receive information in a language appropriate for your age and training from your teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve your privacy;*
>
> *3. you should be aware that content you create on the Internet or content concerning you created by other Internet users may be accessible worldwide and could compromise your dignity, security and privacy or be otherwise detrimental to you or your rights now or at a later stage in your life. Upon your request, this should be removed or deleted within a reasonably short period of time;*
>
> *4. you can expect clear information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged illegal content. This information should be adapted to your age and circumstances and you should be provided with advice and support with due respect for your confidentiality and anonymity;*
>
> *5. you should be afforded special protection from interference with your physical, mental and moral welfare, in particular regarding sexual exploitation and abuse on the Internet and other forms of cybercrime. In particular, you have the right to education to protect yourself from such threats.*

---

contribute to empowering and protecting children when they are vulnerable, notably by: […] supporting Member States and other stakeholders in strengthening prevention, empowerment and participation of children to make the most of online technologies and counter cyber-bullying behaviour, exposure to harmful content, and other online risks namely through the Safer Internet programme and cooperation with the industry through self-regulatory initiatives (2009-2014)".

[42] Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, 12 May 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf.

[43] Ibid., p. 8.

[44] Ibid., p. 15.

[45] Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, https://wcd.coe.int/ViewDoc.jsp?id=2184807.

Specifically with regard to SNS, the Council of Europe's *Recommendation on the protection of human rights with regard to social networking services* already articulated in 2012 that these services can significantly advance human rights and fundamental freedoms, in particular the right to "*freedom of expression, to create and to exchange content and ideas*". At the same time, given the increasingly central role that these services play in the lives of children,[46] the recommendation pointed to the fact that this particular group of users should "*be protected because of the inherent vulnerability that their age implies*".[47]

It has been argued by Livingstone and Bulger that children's rights online are currently far from realised.[48] The question that is at the center of this paper is who is responsible for (better) achieving this aim?

The Council of Europe *Recommendation on the protection of human rights with regard to social networking services* not only points to responsibilities of parents, carers and educators[49] but also to member States, civil society, and the private sector - SNS providers.[50] Some would argue that social networking platforms are hosted by private companies, that it is their right to conduct their business in the way they see fit (exercising their freedom to conduct a business as laid down in article 16 of the EU Charter of Fundamental Rights) and that they are not 'obliged' to take up responsibility to protect children on their networks. The idea, however, that businesses have a significant role to play in safeguarding human rights can be framed within a larger debate, which is currently high on the policy agenda of organisations such as the United Nations, and the European Union.

---

[46] Recent research has found that 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 (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). A recent UK survey found that 30 per cent of children aged 7-11 in the UK have their own Facebook profile (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). Along the same line, findings of May 2014 show that 35% of Flemish 9-12 year olds have a Facebook profile (Mediaraven and Linc, Onderzoeksrapport Apestaartjaren 5, May 2014, http://www.apestaartjaren.be/onderzoek/apestaartjaren-5).

[47] Council of Europe, Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services, https://wcd.coe.int/ViewDoc.jsp?id=1929453&Site=CM.

[48] Livingstone, Sonia and Bulger, Monica, A Global Agenda for Children's Rights in the Digital Age, 2013, http://www.unicef-irc.org/article/993, 4.

[49] Council of Europe Recommendation CM/Rec(2012)4: "*Parents, carers and educators should play a primary role in working with children and young people to ensure that they use these services in an appropriate manner. (...)*."

[50] For instance, Council of Europe Recommendation CM/Rec(2012)4: "*While not being required to control, supervise and/or rate all content uploaded by its users, social networking service providers may be required to adopt certain precautionary measures (for example, comparable to "adult content" rules applicable in certain member States) or take diligent action in response to complaints (ex-post moderation)".*

3. Who is responsible for safeguarding children's rights?

Essentially, children's 'rights' – including measures to protect them – mean very little unless individuals, bodies and public institutions can be held to account for upholding them and unless there are mechanisms in place to enable children to enforce them.
Helen Stalford[51]

Many actors are involved in putting the protection of fundamental rights into practice: governments, civil society organisations, industry as well citizens. These actors often cooperate in multi-stakeholder strategies, but in the context of this paper we focus on the role and responsibilities of States, on the one hand, and industry, on the other hand. In this context, in 2011, the United Nations issued the *Guiding principles on business and human rights*.[52] These principles, which are part of the larger United Nations "Protect, Respect and Remedy" framework,[53] highlight the responsibility of States to "*protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication*".[54] On the other hand, "*[b]usiness enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved*".[55] This includes the obligation for businesses to carry out human rights due diligence and track the effectiveness of their response to verify whether adverse human rights impacts are being addressed.

Specifically tailored to children's rights are the *Children's rights and business principles*, drafted by the UN Global Compact, Unicef and Save the Children in 2013.[56] According to these principles "*respecting and supporting children's rights requires business to both prevent harm and actively safeguard children's interests*".[57] Businesses are called upon to guarantee that products and services are safe and aim to support children's rights through them. This includes, for instance, "*[r]estricting access to products and services that are not suitable for children or that may cause them harm, while ensuring that all such actions align with international standards, including non-discrimination, freedom of expression and access to information*".[58]

---

[51] Stalford, Helen, *Children and the European Union: rights, welfare and accountability*, Oxford, Hart Publishing, 2012, p. 2.
[52] United Nations, Guiding principles on business and human rights, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[53] Ruggie, John, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Protect, Respect and Remedy: a Framework for Business and Human Rights, 2008, http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf?3e3ea140.
[54] United Nations, Guiding principles on business and human rights, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, p. 3.
[55] Ibid., p. 13.
[56] Unicef, Children's rights and business principles, 2013, http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf.
[57] Ibid., p. 3.
[58] Ibid., p. 24.

Source: Children's rights and business principles, p. 21

Additionally, in 2013 the Committee on the Rights of the Child published a *General comment on State obligations regarding the impact of the business sector on children's rights* .[59] This General Comment is addressed at States to provide guidance on how they can create a facilitating environment for businesses to respect children's rights. It is explicitly recognised that "*duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises*" and that both parties, States and business enterprises, must take up these responsibilities. Businesses can take active steps toward this goal by undertaking child-rights due diligence and States should carry out child-rights impact assessments.[60] With regard to transnational companies that operate on a global scale (as SNS most

[59] CRC General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en, 4.

[60] CRC General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights,

often do), the Committee clarifies that States must ensure that the companies that operate within their borders are adequately regulated within a legal and institutional framework that guarantees that children's rights are respected.[61] In addition, the legislation in question should be clear and predictable.[62] We can wonder whether, at the moment, in the digital environment this is not area where significant improvements are urgently needed. Internet service providers that operate globally are not only subject to many different legislative obligations, they are also confronted with varying degrees of legal uncertainty in different parts of the world because legal frameworks are not adapted to or are challenged by the nature of online activities. This is also the case with regard to issues that are linked to the protection of human rights. The recent judgment of the European Court of Justice in the *Google Spain* case is an illustration thereof.[63] In that case, the Court decided that "*the operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person's name links to web pages, published by third parties and containing information relating to that person, also in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful*". The judgment, which addresses questions related to the balance of the right to freedom of expression and the right to information with the right to privacy and reputation,[64] is very controversial and seems to imply that a significant extra burden will be put on search engine operators. On the other hand, the case also illustrates that globally operating companies that have their origins in the United States, will increasingly be expected to respect and uphold European human rights standards.

Finally, the General Comment does contain a number of specific references to the issue of digital media: on the one hand, States should provide children with age-appropriate information regarding web-related safety, on the other hand, States should coordinate with ICT industry and encourage them to develop and implement suitable measures to protect children from inappropriate material.

Corporate Social Responsibility

We can frame the question related to the responsibility of ICT industry in general, and SNS providers in particular, within the general debate on Corporate Social Responsibility (CSR). According the European Commission this notion refers to "*companies taking responsibility for their impact on society*" and is a factor "*important to the competitiveness of enterprises*".[65] Potential advantages of CSR are linked to risk management, cost savings, access to capital, customer relationships, human

---

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en, 17 and 20.

[61] CRC General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en, 12.

[62] CRC General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en, 15.

[63] European Court of Justice, *Google Spain v. AEPD*, C-131/12, 13 May 2014.

[64] Ausloos, Jef, European Court Rules against Google, in Favour of Right to be Forgotten, 13 may 2014, http://blogs.lse.ac.uk/mediapolicyproject/2014/05/13/european-court-rules-against-google-in-favour-of-right-to-be-forgotten/.

[65] http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm.

resource management, and innovation capacity.[66] In 2011, the Commission adopted "A renewed EU strategy 2011-14 for Corporate Social Responsibility".[67] In this strategy is it emphasised that human rights are an increasingly significant element in CSR and that companies should implement "*a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of: maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large; and identifying, preventing and mitigating their possible adverse impacts*".[68] The strategy also refers to the UN *Guiding principles on business and human rights* (*supra*) and recommends a better implementation. As one of the steps in achieving this goal, the general principles were translated to specific sectors. For the ICT sector, the drafting of the *ICT Sector Guide on implementing the UN Guiding principles on business and human rights*[69] was commissioned by the European Commission.[70] In this guide, the six core elements (cf. different colours in the figure below)[71] for CSR to respect human rights are elaborated and specifically applied to activities carried out by companies in the ICT sector.

Child safety online is one of the topics that is addressed in the ICT sector guide under the element of 'Integrating and acting on potential impacts'. Detailed measures are proposed for ICT companies to consider, such as providing direct links and information on ways for users to report abusive images or behaviours such as bullying, implementing effective age and identity verification mechanisms at the level of individual users, implementing appropriately heightened security measures for personal information that has been collected from children, seeking parental consent before using or disclosing information collected from children, considering any unintended consequences of decisions on child safety and engaging with child safety and children's rights experts to provide ongoing feedback and guidance on the company's policy in this area.[72]

Along the same lines, the *Council of Europe Guide to human rights for internet users* encourages a genuine dialogue between the private sector and relevant state authorities and civil society regarding the implementation of their CSR, with a specific focus on transparency and accountability, in line with

---

[66] Ibid.

[67] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A renewed EU strategy 2011-14 for Corporate Social Responsibility, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF.

[68] Ibid., p. 6.

[69] Shift and the Institute for Human Rights and Business, *ICT Sector Guide on implementing the UN Guiding principles on business and human rights* (for the European Commission), June 2013, http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf.

[70] The Human Rights Guidelines on Freedom of Expression Online and Offline, adopted by the Council of the European Union in May 2014 specifically emphasise that "*the EU will promote the implementation of the guidance for ICT/telecommunications companies on business and human rights, developed by the Commission on the basis of the UN Guiding Principles on Business and Human Rights*" (Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, 12 May 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf, p. 15).

[71] 1/ Developing a policy commitment and embedding respect for human rights; 2/ Assessing human rights impact; 3/ Integrating and acting; 4/ Tracking performance; 5/ Communicating performance; and 6/ Remediation and operational-level grievance mechanisms: Shift and the Institute for Human Rights and Business, *ICT Sector Guide on implementing the UN Guiding principles on business and human rights* (for the European Commission), June 2013, http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf.

[72] Ibid., p. 49-50.

the *Guiding Principles on Business and Human Rights* (*supra*).[73] The Appendix to this recommendation contains an actual guide which aims to raise users' awareness of the corporate responsibilities of Internet service providers and providers of online content and services.[74] It is mentioned explicitly, for instance, that these companies should inform users about their rights, freedoms, possible remedies and how to obtain them, including "*easily accessible information on how to report and complain about interferences with your rights and how to seek redress*".[75]

Incentives for SNS providers to invest in the realisation of children's rights

Traditional justifications for companies to adopt a clear CSR strategy are, amongst others, moral obligations, sustainability, license to operate[76] and reputation.[77] Porter and Kramer have argued that these justifications have significant limitations because of their emphasis on the tension between business and society, instead of on their interdependence. Hence, they advocate focusing on shared value, and making choices that benefit both sides.[78] According to them, "*the essential test that should guide CSR is not that a cause is worthy but whether it presents an opportunity to create shared value – that is, a meaningful benefit for society that is also valuable to the business*".[79] And while Porter and Kramer were aware of the fact that this requires radically different thinking in business, they were also convinced that CSR is increasingly significant to competitive success.[80] Transposing this way of thinking about CSR to the domain of children's rights in the digital environment it is necessary to consider the fact that whereas CSR activities in this field are definitely beneficial for society, they may also be "*valuable for businesses in supporting the emergence of knowledgeable and responsible future users and developing and maintaining trust towards their services and brands*".[81] Trust[82] and confidence in

---

[73] Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, https://wcd.coe.int/ViewDoc.jsp?id=2184807.

[74] E.g. "*your Internet service provider and your provider of online content and services have corporate responsibilities to respect your human rights and provide mechanisms to respond to your claims. You should be aware, however, that online service providers, such as social networks, may restrict certain types of content and behaviour due to their content policies. You should be informed of possible restrictions so that you are able to take an informed decision as to whether to use the service or not. This includes specific information on what the online service provider considers as illegal or inappropriate content and behaviour when using the service and how it is dealt with by the provider*: Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, https://wcd.coe.int/ViewDoc.jsp?id=2184807, Appendix.

[75] Ibid.

[76] According to Porter and Kramer, the notion of 'licence to operate' "*derives from the fact that every company needs tacit or explicit permission from governments, communities, and numerous other stakeholders to do business*": Porter, Michael and Kramer, Mark, Strategy and society: the link between competitive advantage and corporate social responsibility, *Harvard Business Review* 2006, 3.

[77] Porter, Michael and Kramer, Mark, Strategy and society: the link between competitive advantage and corporate social responsibility, *Harvard Business Review* 2006. Cf. also Unicef, Children's rights and business principles, 2013, http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf, 3.

[78] Ibid., 5.

[79] Ibid., 6.

[80] Ibid., 13.

[81] Ságvári, Bence and Máder, Miklós Péter, Industry. Towards the Socially Responsible Internet. Industry CSR practices across Europe, in Brian O'Neill, Elisabeth Staksrud, Sharon McLaughlin, Towards a Better Internet for Children? Policy Pillars, Players and Paradoxes, Nordicom, 2013, 161.

[82] Ibid., 160.

services is an increasingly important factor for businesses in the ICT sector,[83] argued to be able to sustain, among other goals, a competitive knowledge economy and a digitally skilled labour force.[84] In its *Strategy for a better internet for children*, the European Commission also pointed to the fact that "*analyses show that a better and wider use of the Internet by children is opening the door for intensive business development in innovative online content and services*".[85] Along the same lines, the *Children's rights and business principles* indicate how considering how products and services can better meet children's needs can also be a source of innovation and create new markets.[86] The focus of ICT companies, such as SNS providers, in developing their CSR strategy, should hence be on the fact that children are a target audience worth investing in, instead of concentrating on the idea that incorporating protection and empowerment mechanisms into services is an additional cost.[87] For SNS providers this would mean in practice that a mutually beneficial CSR strategy should include a conscious and substantial investment of resources (financial, personnel, etc.) in putting the rights laid down in articles 13, 16 and 17 UNCRC into practice. This could for instance entail the (further) development of reporting mechanisms with a fast and supportive follow-up, the provision of clear and age-appropriate information in a transparent manner through innovatively designed Terms of Use and privacy policies[88] or participatory strategies to involve young users in the improvement and identification of elements that should be included in the CSR strategy.

Conclusion

Respecting, protecting and promoting human rights is a substantial responsibility of various actors. States or governments should facilitate an environment in which businesses can protect children's rights and must oversee the efforts of the latter.[89] Businesses must both prevent harm and actively

---

[83] O'Neill, Brian, First Report on the Implementation of the ICT Principles, April 2014, http://www.ictcoalition.eu/gallery/75/ICT_REPORT_Final.pdf, 7.

[84] Livingstone, Sonia and O'Neill, Brian, Children's rights online: challenges, dilemmas and emerging directions, in van der Hof, Simone, van den Berg, Bibi and Schermer, Bart, Minding minors wandering the web: regulating online child safety, Springer, 2014, 20.

[85] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Strategy for a Better Internet for Children COM(2012)196 final, http://ec.europa.eu/digital-agenda/en/news/communication-european-strategy-make-internet-better-place-kids, 2. Also: "*With the wide proliferation of tablets, smart phones and laptops that children use heavily, the potential market for interactive creative and educational online content for both young children and teenagers is substantial. Online and mobile apps and games provide unprecedented opportunities for business development, in particular for SMEs and creators, as they allow for direct contact with potential users/clients. Children themselves could become online creators and start up businesses.* (p. 4).

[86] Unicef, Children's rights and business principles, 2013, http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf, 3.

[87] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Strategy for a Better Internet for Children COM(2012)196 final, http://ec.europa.eu/digital-agenda/en/news/communication-european-strategy-make-internet-better-place-kids, 4.

[88] Cf. Wauters, Ellen, Lievens, Eva and Valcke, Peggy, "D1.2.5: Re-designing & re-modeling Social Network terms, policies, community guidelines and charters: Towards a user-centric approach", EMSOC Project, 2014, available on www.emsoc.be.

[89] Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, https://wcd.coe.int/ViewDoc.jsp?id=2184807: "*The obligations of States to respect, protect and promote human rights include the oversight of private companies. Human rights, which are universal and indivisible, and related standards, prevail over the general terms and conditions imposed on Internet users by any private sector actor*".

safeguard children's interests.[90] Both parties are essential to achieve this common aim, and hence, must avoid to try to transfer their responsibility to the other party.

In light of this general principle, increasingly detailed insights into CSR and fundamental (children's) rights could be combined with empirical research into children's use of SNS to achieve a well-considered, detailed development and elaboration of policy in this area by SNS providers. The principles detailed in the *ICT Sector Guide on implementing the UN Guiding principles on business and human rights* are useful to carefully consider a CSR policy with regard to children's rights, not only with regard to (further) putting in place measures to lower risks, but also with a view to integrating tools and strategies that enable children to make the most of the opportunities that SNS offer them. Creating a corporate social agenda[91] which, according to Porter and Kramer, goes beyond best practices, should be a priority. Already existing initiatives, such as the ICT (Principles) Coalition[92] and the European Commission's Community of Practice for Self- and Co-regulation,[93] that aim to share best practices may be helpful, but SNS providers must also be encouraged to go one step further in devising pioneering CSR strategies that are tailored to their specific features and advance the rights of a significant proportion of their current and future users: children.

[90] Unicef, Children's rights and business principles, 2013, http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf.

[91] Porter, Michael and Kramer, Mark, Strategy and society: the link between competitive advantage and corporate social responsibility, *Harvard Business Review* 2006, 7.

[92] http://www.ictcoalition.eu/. A first independent evaluation report of the implementation of the Coalition's principles to which a wide range of ICT industry actors committed, was published in April 2014 (O'Neill, Brian, First Report on the Implementation of the ICT Principles, April 2014, http://www.ictcoalition.eu/gallery/75/ICT_REPORT_Final.pdf). This initiative can only be applauded given the often voiced criticism that "*continued updating and independent evaluation of [self-regulatory] codes and guidelines remains uncertain*": Livingstone, Sonia and O'Neill, Brian, Children's rights online: challenges, dilemmas and emerging directions, in van der Hof, Simone, van den Berg, Bibi and Schermer, Bart, Minding minors wandering the web: regulating online child safety, Springer, 2014, 25.

[93] http://ec.europa.eu/digital-agenda/en/communities/better-self-and-co-regulation.