

HUMAN RIGHTS MINING: IS THERE CHILDREN'S RIGHT TO A SAFE DIGITAL ENVIRONMENT?

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Abstract

The primary intent of the research is to examine if children can assert their right to a safe digital environment as an autonomous and independent right according to international human rights standards. The aim is to clarify how this concept is currently developed and formed, emphasizing certain key characteristics by examining the responsibilities of States. We are investing in this topic since the pervasiveness of information and communication technology (ICT) has provided children with unprecedented opportunities to learn about their rights. Simultaneously, with the increasing availability of the Internet and digital tools, children are exposed to risks like cyberbullying, privacy breaches, exposure to harmful content, and exploitation. All of those challenges have already been observed from multiple perspectives. However, in contrast to the prevailing focus on children's entitlement to a safe online environment within the security context, we are highlighting the perspective of human rights. The key difference between these legal spheres lies in how they view children's roles. While the security perspective tends to depict children mainly as vulnerable individuals (using a risk-focused approach), the human rights perspective recognizes children as central individuals in realizing their rights (employing a rights-based approach). This divergence in approaches results in different expectations, with the latter emphasizing children's active role in promoting and protecting their rights. Consequently, merging the concepts of 'safe' and 'secure' within the realm of human rights could potentially undermine children's ability to exercise their human rights autonomously, and should be avoided whenever possible. Utilizing this approach, an examination has been conducted to determine whether the entitlement to a safe digital environment could be regarded as an implied right, or if it could be derived from international treaties or secondary legal texts at both universal and regional levels. The findings reveal that children possess the entitlement to a safe digital environment, encompassing well-established substantive and procedural components. The only remaining step is for this right to be acknowledged by an interpreting body.

Keywords: *Information and Communication Technology, Human Rights, Children's Right, Risks of the Digital Environment, Safe Digital Environment.*

1. Introduction

Snow White defiantly took a bite, ignoring the repeated warnings from her caring guardians to keep strangers out. Despite being given age-appropriate and non-punitive safety advice that matched her maturity, she still opted to proceed, despite past painful encounters and a lack of reliable remedies. Without a doubt, it seemed logical to assume that she would avoid risky encounters and successfully navigate potential dangers, but she failed to do so. Why? Why did she not just close the windows? Did this beauty feel the need to enhance her appearance further? Was she seeking a specific product for treatment or personal care? Or was she simply enticed by the allure of pleasure and knowledge? There are multiple perspectives to consider on these complex issues. Whatever drove Snow White, it undoubtedly left her vulnerable in an increasingly hazardous environment. Fortunately, the story of Snow White concluded "happily" based on the prevailing ethical and societal norms of that time. However, what lies ahead for children and young adults who are growing up in a contemporary metaverse filled with augmented or merged realities?

Custers outlined a process in his article where legal rights from the physical world are adapted and applied extensively to the digital realm (Custers, 2021, pp. 2). The international human rights law framework often relies on 'soft law' instruments, such as General

Comments and recommendations from UN treaty bodies, which, despite their non-binding nature, play a crucial role in shaping the interpretation and application of human rights norms (Mukhatayeva & Buzurtanova, 2018, pp. 81-82). The continual extension and adjustment of the existing legal framework to address new challenges is a common practice in international law and the digital sphere, albeit one that has faced criticism (Ding, 2023, pp. 166). Instead of adhering to conventional approaches, Custers proposed a fresh perspective on developing new digital rights, emphasizing the need to consider the potential risks associated with deviating from established norms. His primary critique of the traditional approach stems from the realization that many current legal rights were lauded in a bygone era, shaped by core ethical and societal values that have since evolved (Hossain, 2023, pp. 73). This misalignment highlights the importance of tailoring legal frameworks to contemporary digital realities rather than relying on outdated precedents (Custers, 2021, pp. 4), as also demonstrated in *Little Red Riding Hood*.

It seems sensible that Custers advocates for a situation-oriented approach, considering the replacement of dark trees in the Great Forest with algorithms, the death of the Queen, and the supplanting of the Westphalian system of public international law by both international human rights law and cyberspace (Dror-Shpoliansky & Shany, 2021, pp. 1252-1254). However, at this juncture, some of the rights addressed by Custers may have already reached a stage of consistent development or even enforceability, making their radical reconceptualization potentially unfeasible (Petryshyn & Hyliaka, 2021, pp. 17). Before drawing any definitive conclusions, it could be valuable to investigate what achievements have been made thus far, or as framed in Custers' paper, what lies within the confines of the box (Livingstone & Bulger, 2014, pp. 347).

To kickstart a broader discussion on new digital rights, Custers suggests a non-exhaustive list of rights that individuals should possess in the digital age. Among these rights is the entitlement to a secure online environment (Custers, 2021, pp. 12), linked by him to the government's responsibility of care, predominantly explored within the realm of security. He defines it as an expansion of an existing non-digital right without delving into further references. The primary aim of this investigation is to assess if the right to a safe digital environment could be claimed on behalf of children from the standpoint of international human rights. We will seek to elucidate the process and phase of its development by highlighting some of its key characteristics through the lens of the potential obligations of States. The necessity for such child-centric approach has been widely acknowledged. Within a child-centric framework, recognizing children as individuals with complete entitlements takes precedence, emphasizing their distinct needs and nurturing their empowerment as digital participants. Soft law serves as a flexible tool within the international legal system, often bridging gaps where formal treaties or customary international law may fall short. This flexibility is particularly relevant in the context of human rights, where treaty bodies utilize soft law to advance legal interpretations and enhance compliance (Milanovic, 2015, pp. 85). The widespread prevalence of information and communication technology (ICT) has offered children unprecedented opportunities to understand their rights. Nonetheless, as the Internet and digital technology become more readily available, children encounter risks such as cyberbullying, breaches of privacy, exposure to harmful content, and exploitation. A child-centric perspective stresses the importance of shielding children from harm while concurrently enabling them to navigate digital environments securely.

Following this, we agree with Custers viewpoint that it is the responsibility of governments to ensure the protection of human rights online. This is further supported by the State's sovereignty in the digital realm (Dakić, 2022, pp. 151-153), which mandates States to safeguard individuals, including every child under their jurisdiction. International courts and

treaty bodies increasingly acknowledge the significance of soft law as a foundational element in developing and enforcing human rights standards, thereby expanding the scope of legal obligations beyond explicit treaty provisions (Cantú Rivera, 2014, pp. 193-195). However, we diverge from Custers by prioritizing children's entitlement to a safe digital space within the realm of human rights, distinct from the security context. The rationale behind this lies in the distinct regulatory framework governing online (cyber)security through specialized policies and legal instruments (Council of Europe, 2001, ETS No.185), which, albeit aligned, maintain autonomy from the realm of human rights (Fuster & Jasmontaite, 2020, pp. 101-103). The crucial disparity between these legal domains lies in their treatment of children. While the security context often portrays children solely as at-risk individuals (adopting a risk-based approach), the human rights context acknowledges children as key actors in the realization of their rights (following a rights-based approach). This distinction in treatment entails divergent capacities, with the latter approach underscoring children's active involvement in promoting and safeguarding their rights. Therefore, amalgamating the notions of 'safe' and 'secure' within the domain of human rights could potentially undermine children's agency in exercising their human rights, and should be avoided wherever feasible.

For similar reasons, we refrain from delving into privacy considerations in this discourse, as they are addressed under robust data protection regulations. Shifting our focus towards human rights enables us to assess international policies and legislative frameworks, especially in light of concerns raised regarding national-level measures deemed insufficient in safeguarding children online. In this discussion, we distinguish between fundamental rights and human rights, with a particular emphasis on the latter category to align with the international legal perspective mandated by the research. Therefore, the differentiation between citizens and non-citizens is deemed irrelevant in this context.

It is pertinent to recognize the expanding and evolving digital landscape, encompassing a wide array of technologies such as information and communications technologies, including digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology (UN Committee on the Rights of the Child, 2021, General Comment No. 25). Although a thorough examination of children's entitlement to a safe online setting necessitates addressing each aspect of the environment mentioned beforehand, we will primarily focus this investigation on information and communication technologies (ICTs), which encompass digital networks commonly recognized as the Internet. The decision to center our research on this particular area stems from several factors, including the escalating reliance on the Internet to fulfill various other rights of children, the heightened risks (Lobe et al., 2021, pp. 13) observed during the COVID-19 pandemic, and the growing efforts to establish norms that safeguard children's online rights. Furthermore, we posit that a nuanced discussion of legal entitlements within current frameworks could have broader implications for other areas of the digital landscape through analogy (Ostroushko et al., 2021, pp. 1218-1220). Human rights treaty bodies have assumed implied powers to interpret and apply non-refoulement principles as inherent to other established rights, demonstrating the evolving nature of international human rights law through judicial and quasi-judicial decisions (Çalı et al., 2020, pp. 369-371).

In order to reach the contextualized answer to the research question herein, first we are examining what are necessary preconditions to claim a human right. Within this section of the paper, the focus is on the integration of human rights into the legal framework. Various theoretical frameworks, including legal philosophy and alternative viewpoints, will be briefly outlined in this discourse. Also, we are going to provide insight into more human-rights-specific methods of rights formation. Following an initial examination, we delve into the

study of universal treaty law, with particular attention given to the UN Convention on the Rights of the Child. The focus of this section of the research is on exploring whether the concept of a safe digital environment could be interpreted as an implied or secondary right, by analyzing the principles outlined in various articles within this source. After the analysis of the treaty law, we are shifting to secondary legislation at both, the universal as well as European levels. Regarding the universal perspective, our analysis centers on General Comment No. 25 (2021) from the UN Committee on the Rights of the Child. We are examining the requirements, both substantive and procedural, of this document, assessing how they could contribute to establishing the right to a safe digital environment. Within latter subsection we are also addressing the European secondary legislation such as ePrivacy Directive that serves as the foundation for governing privacy and electronic communications, including areas such as the confidentiality of communications, cookies, and direct marketing, as well as two other significant legislative acts introduced by the EU in 2020 are the Digital Services Act (DSA) and the Digital Markets Act (DMA) as well as other EU and Council of Europe instruments.

1. What does it take to claim a human right?

The belief rooted in the essence of human rights is that a moral framework, universally recognized, exists independently of societal and historical contexts, applying to individuals worldwide under any circumstances (Wrenn, n.d.). The capability approach has been recognized as a valuable framework for understanding human rights, emphasizing individuals' capacities to pursue fulfilling lives, which complements traditional liberal theories such as Rawls's justice as fairness (Robeyns, 2009, pp. 71-73). To delve deeply into this topic, our examination will briefly present the perspectives articulated in legal and political philosophy. Legal philosophy presents distinctive outlooks like legal positivism and Natural law theory. Legal positivism maintains that legal rights derive solely from positive law, which denotes statutes enacted by legitimate authorities. From this standpoint, human rights are constructs shaped by states or international bodies. In contrast, Natural law theory contends that certain rights are inherent to human nature, apart from positive law. These intrinsic rights are the foundation of legal rights. Sen's capability approach critiques both utilitarianism and Rawlsian social contract theory by highlighting the importance of what individuals are actually able to do and to be, thereby providing a more nuanced view of justice and human rights (Satz, 2011, pp. 562-563). Upholding human rights within the legal realm involves concepts such as recognition, denoting the acknowledgment of rights by legal systems, treaties, or agreements; enforcement, through mechanisms like courts and tribunals ensuring compliance with these rights; and redress, whereby individuals seek remedies for violations of their rights.

Shifting towards political philosophy, we encounter various ideologies such as liberalism, Social Contract Theory, and feminist perspectives (Buchanan, 2012, pp. 284). Liberalism emphasizes individual rights and freedoms as key aspects of political ideology, deeming human rights essential for societal equity. Similarly, Social Contract Theory, formulated by thinkers like Locke and Rousseau, proposes that individuals enter into a social contract to protect their rights, with governments tasked to safeguard these rights. Feminist perspectives highlight gender-specific rights and challenge conventional concepts of rights. Contributions from scholars further enrich the discourse. For instance, Rawlsian Justice introduces the veil of ignorance concept, where individuals envision a just society without knowledge of their status, resulting in principles that uphold basic freedoms (Fabienne, 2009, pp. 441-444). An alternative viewpoint is offered through the Capabilities Approach,

supported by Amartya Sen and Martha Nussbaum, which prioritizes human rights by focusing on individuals' capacities to pursue fulfilling lives (Alexander, 2008, pp. 37).

In tracing the evolution of human rights, we can identify a series of distinct stages (Gill-Pedro, 2020, pp. 139). Commencing with the moral assertion phase, human rights are initially viewed as moral claims that are grounded in the concept of human dignity, standing apart from legal recognition. Subsequently, we observe the transition into the legal transmutation phase, where these moral entitlements are enshrined as legal rights, imbuing them with enforceability and incorporating them into legal structures. This evolution is then underscored by the interpretation and implementation phase, in which rights are elucidated and put into practice by courts, organizations, and advocates within particular circumstances.

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Analysis based on metrics of existing theories is not required in this context. In the present study, it suffices to acknowledge that a human right is undeniably and legitimately valid once it is formally introduced, meaning specifically listed in universal or regional human rights texts. In addition to this traditional method of establishing human rights, a human right can also gain full legal status through acknowledgment by international courts or treaty bodies, even when the right is not explicitly stated in the human rights wording. While decisions by human rights treaty bodies are not legally binding, they are often regarded as authoritative interpretations of international treaties, guiding states in their implementation and adherence to human rights obligations (Borlini & Crema, 2019, pp. 133). The interpreting body only needs to be able to apply the concept of implied rights or deduce the right from the provisions of one or more existing human rights listed in the document. Therefore, mere formal introduction does not determine the essential characteristics of a human right, and judicial protection does not solely rely on it.

If a human right lacks both formal acknowledgment and judicial recognition, it can still exist as either a new human right or a 'truncated' human right. New human rights refer to those rights that are initially conceptualized without being expressly acknowledged in any human rights treaty or legally recognized in any other manner. Initially, new human rights are potential candidates for legal recognition, but they are not immediately granted full rights status. A new human right may be temporary or permanent. On the other hand, a 'truncated' human right is a relatively new right in comparison to established human rights, emerging in human rights law and achieving a certain level of recognition through an ongoing process. However, it has not yet been fully incorporated into a new treaty text or an optional protocol within an existing human rights agreement, or acknowledged by treaty bodies. Unlike new human rights, truncated human rights are closer to full recognition, requiring only time or an event to finalize their status.

Initiating the legal evolution process. Consequently, our initial objective is to investigate whether the right of children to a safe digital environment can find its legal basis in any of these formal sources of International Human Rights (Council of Europe, 2001, ETS No.185; Borlini & Crema, 2019, pp. 136-139).

2. A quest for children's right to a safe digital environment in treaty law

The rights and principles established in the UN Convention on the Rights of the Child (United Nations, 1989) serve as the foundation for our discussion. By categorizing children's rights into provision rights, participation rights, and protective rights (Campbell-Barr, 2021, pp. 229-230), it becomes apparent that the entitlement to a safe digital environment falls within the latter category, aimed at preventing and addressing all forms of violence across various environments. The exploration of children's entitlement to a safe digital environment within the realm of protective rights is covered in the subsequent section of this research, which delves into the general comments provided by the Committee. In this section, we will delve into the right to a safe digital environment in relation to certain participation rights, such as the freedom of expression as outlined in Article 13 of the Convention, and the access to a variety of information sources as outlined in Article 17 of the Convention.

Additionally, we will explore this right concerning several principles of the Convention, including Article 2, which addresses non-discrimination, and Article 6, which addresses the right to life, survival, and development. The first paragraph of Article 3 of the Convention, focusing on the best interest of the Child, will be deliberated as a potential boundary principle for the scope of the right to a safe digital environment. Although the second paragraph of the same article highlights the child's right to necessary protection and care for their well-being, it is a crucial aspect of the right to a secure digital environment, even if it does not introduce any new value to the substantive or procedural guarantees. However, for the purpose of this analysis, it will be excluded as it primarily places responsibilities on parents and caregivers.

As to the right to freedom of expression, it has played a crucial role in establishing the right to access the Internet within the legal framework. The concept of "through any media" in Article 19 of the Universal Declaration of Human Rights (UDHR) (United Nations, 1948) has been interpreted to include the right to the Internet (Human Rights Council, 2011). Over time, this evolved into the right to Internet access, which has been widely acknowledged in positive law, academic circles, and judicial recognition. Similarly, Article 13 of the Convention, which mentions "through any other media" should not be narrowly applied to children's rights compared to those of adults under a similar provision. Children's right to Internet access, like that of adults, would be meaningless without adequate safety measures in place. These safeguards are already outlined within the realm of the right to access information, along with the State's responsibility to shield children from harmful online content (Lansdown, 2022, pp. 104). Therefore, according to Article 13, children can be deemed to have the right to a safe digital environment as part of their implicit entitlement to Internet access, safeguarding them from online content risks.

The interpretation of Article 17. of the Convention could lead to varying perspectives on the concept of a safe digital environment. Despite the initial impression that this article restricts access to diverse information sources to only mass media, the evolving digital landscape has significantly transformed how children interact with mass media in terms of both access and safety (Lansdown, 2022, pp. 105). It seems that the digital realm falls under the categories of 'diverse sources' and 'diverse media' as defined in Article 17. Consequently, the standards for the information available through various sources and media extend to the digital sphere as well. This implies that online content should be child-friendly, and devoid of hate speech, misinformation, discrimination, gender bias, or any other harmful influences (Lansdown, 2022, pp. 106), which can pollute the online environment. Furthermore, section (e) of Article 17 could be seen as urging States Parties to implement measures to shield children from harmful materials, especially in the digital domain (Lansdown, 2022, pp. 107). This viewpoint was put forth by the Committee on the Rights of the Child in Comment No. 7

(2005) (OHCHR), expressing concerns regarding the proliferation and accessibility of modern technologies, such as Internet-based media, and recommending regulatory actions to safeguard children. Likewise, General Comment No. 9 (2006) (UN Committee on the Rights of the Child, 2006) emphasizes the obligation of State Parties to shield children from detrimental content, particularly pornographic material, xenophobic propaganda, or any discriminatory content that could reinforce prejudices (UN Committee on the Rights of the Child, 2006). Consequently, the right to a safe digital environment can be viewed as a derivative right aimed at protecting children from content-related risks.

Whether online or offline, the environment cannot ensure safety in the presence of discrimination. Therefore, the assurance of non-discrimination is crucial for creating a safe digital space. Discussions on discrimination in the digital realm mainly focus on ensuring equal access to digital technologies and the Internet, aiming to prevent the emergence of new social divides (Vassilakopoulou & Hustad, 2023, pp. 963-965; Krupiy & Scheinin, 2023, pp. 17-19). Within the context of discrimination-related digital exclusion, both substantive and procedural guarantees under Article 2 of the Convention are pertinent. In terms of substance, Article 2 places positive obligations on State Parties to facilitate equal rights realization for children, emphasizing the outcome-driven nature of this responsibility (Vaghri, 2022, pp. 34). It necessitates State parties to provide unhindered and protected access for children in public areas, as well as to invest in policies and programs that enable affordable access to digital technologies for all children within educational environments, communities, and homes. This obligation aims to eradicate exclusion as a classic form of discrimination by fostering inclusive digital participation for children. Moreover, it acknowledges that children may face further discrimination in the digital realm, either through technologies themselves (e.g., biased algorithms, automated decision-making) or interactions facilitated by them (e.g., receiving hateful messages) (UN Committee on the Rights of the Child, 2021). Unlike exclusion, these direct discriminatory acts pose imminent threats to a safe digital environment. Substantive guarantees within Article 2 focus on mitigating content and contact risks, thus enhancing the safeguarding of the right to a safe digital space. Non-discrimination requirements emerge as complementary components that broaden the scope of protection within the right to a safe digital environment, addressing various forms of discrimination that children may encounter in the digital sphere.

In order to fulfill procedural guarantees as stated in Article 2 of the Convention, State Parties must first enact appropriate legislation that encompasses all banned forms of discrimination and deals with both public and private entities (Lansdown & Vaghri, 2022, pp. 67-69). Furthermore, the Committee advises State Parties to implement comprehensive actions in areas such as public policies, research, and awareness campaigns, and to proactively take special measures to prevent discrimination based on disability, gender, sexual orientation, and other factors (UN Committee on the Rights of the Child, 2021; Lansdown, 2022, pp. 14-15). Considering the procedural guarantees discussed below in Comment 25 conjoined to those from the ambit of Article 2, the procedural element related to ensuring a safe digital environment appears to exist as fully formed.

Developmental rights, as outlined in Article 6 of the Convention, should be perceived as an intrinsic entitlement of the child, encompassing a holistic outlook on their physical, mental, spiritual, moral, and psychological growth (Lansdown, 2022, pp. 16). In correlation with Article 6, the child's developmental rights are reinforced directly through various articles within the Convention. For instance, Article 18 addresses familial settings and alternative care responsibilities, while Article 23 pertains to disability rights, emphasizing the importance of accessible education, healthcare, rehabilitation services, vocational training, and recreational opportunities. Article 27 upholds welfare rights, Article 29 focuses on

educational objectives, and Article 32 introduces protective measures against exploitation. Additionally, the interpretation of several other articles (24, 28, 33, 34, 35, and 36) indirectly supports the child's developmental rights despite lacking explicit references in wording. The Convention, fundamentally, safeguards the overarching principle of 'child development'. While the Committee's elucidation on the nature of developmental rights may not always be definitive, acknowledging the increasing role of the digital sphere in children's development (UN Committee on the Rights of the Child, 2021) is crucial for our point. Accordingly, the digital environment intersects with all Convention articles relating to child development, necessitating that State Parties implement measures to shield children from online risks such as inappropriate content, contacts, conduct, and contract risks (UN Committee on the Rights of the Child, 2021, pp. n.d). Thus, it is imperative for States to ensure a safe digital environment for the well-being and development of children.

The concept of prioritizing the best interest of the child, as outlined in Article 3 of the Convention, unequivocally emphasizes the entitlement to a safe digital environment. Yet, the principle of prioritizing the child's best interests could potentially impose constraints on this particular entitlement. It is conceivable that in certain scenarios, the entitlement to a safe digital environment may clash with the freedom of expression, as stipulated under Article 13 of the Convention. The role of prioritizing the child's best interests would then be to effectively manage such conflicts, separating legitimate protection of the right to a safe digital environment from improper acts such as censorship. This management is largely facilitated by the procedural nature of the principle, requiring decision-making processes to consider both the positive and negative ramifications on the child, elucidating how the principle was factored in and weighed against competing considerations like the right to a safe digital environment or freedom of expression. Furthermore, the substantive and interpretative aspects of the principle are also instrumental. The substantive aspect strives to achieve the best outcomes for the child (Eekelaar, 2015, pp. 100), asserting that assessing the child's best interests is paramount. The interpretative aspect clarifies that while the best interest principle is not the sole factor, it is of utmost importance. Even in circumstances where it competes with other Convention provisions, the best interest principle remains a primary consideration (Tobin, 2011, pp. 287) in addressing conflicts between the right to a safe digital environment and freedom of expression during decision-making (European Court of Human Rights, 2008).

3. A quest for children's right to a safe digital environment in secondary legislation

4.1. Universal level

Various publications have delved into the realm of Child Safety Online, such as "Global challenges and strategies" (Innocenti Publications, 2012, pp. 3-7) in 2012, "Children, ICT and Development: Capturing the potential, meeting the challenges" (Kleine et al., 2014, pp. 9-16) in 2014, and "Global Kids Online, Research Synthesis 2015–2016: Summary" (Global Kids Online, 2016, pp. 12-18) in 2016. In 2018, UNICEF released a Policy guide on children and digital connectivity (Guide) (Lansdown & Vaghri, 2022, pp. –) that emphasizes the interconnected nature of policies concerning access, connectivity, skills, literacies, safety, and privacy. The Guide stresses the importance of not only the right to access the digital world (participation right) but also the right to do so in a safe environment (protection right). Among the situations addressed in the Guide, special attention is given to instances where technology is used to facilitate child abuse or exploitation, regardless of whether children are actively using it (UNICEF, 2018). Ensuring a safe digital environment is identified as a

fundamental principle essential for promoting safe participation both online and offline, as well as for maximizing the benefits of digital tools and platforms.

The primary legal instrument that effectively links children's entitlement to a safe digital environment with universal human rights law is the General Comment No. 25 (2021) by the UN Committee on the Rights of the Child, focusing on children's rights within the digital sphere (the Comment 25) (UN Committee on the Rights of the Child, 2021). This document aims to clarify how states should implement the Convention in the context of the digital environment and offers guidance on legislative, policy, and other measures to ensure full compliance with their obligations under the Convention and its Optional Protocols. By recognizing the opportunities, risks, and challenges in upholding and fulfilling children's rights online, the Comment 25 mainly aims to elaborate on the procedural aspect of ensuring a safe digital environment by extending traditional rights to the digital landscape (UN Committee on the Rights of the Child, 2021). This procedural aspect will be briefly explored following a discussion on the substantive element.

The Comment No. 25 is a valuable resource that sheds light on children's entitlement to a safe online space and can be viewed from varying perspectives. The narrow interpretation of this right includes protection from various forms of harm such as physical or mental violence, neglect, exploitation, cyberbullying, and information manipulation: manifested in the form of 'physical or mental violence, injury or abuse, neglect or maltreatment, exploitation and abuse, including sexual exploitation and abuse, child trafficking, gender-based violence, cyberaggression, cyberattacks and information warfare' (UN Committee on the Rights of the Child, 2021). To fully grasp the importance of this concept, it is advised to consider it in the context of General Comment No. 13 (2011) by the UN Committee on the Rights of the Child (UN Committee on the Rights of the Child, 2011), focusing on freedom from violence for children. This perspective defines violence broadly as 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse', to cover all forms of harm to children as listed in article 19, paragraph 1 of the Convention (UN Committee on the Rights of the Child, 2011). General Comment No. 13 emphasizes the risks that children face as users of digital technologies, categorizing these risks into contact risks threatening the children as recipients of information; content risks threatening the children when interacting to others; conduct risks where the children are involved as actors in harmful or illegal activities. It stresses the need for a protective environment in the digital sphere (UN Committee on the Rights of the Child, 2011) while also acknowledging the positive impact that technology can have in ensuring child safety. State parties are not only required to respond to instances of harm but are also obligated to prevent all forms of violence against children, (Sandberg 2018, 20) extending these protections to the digital sphere as well. To fulfill these obligations, states must implement social support programs, educational initiatives, and preventive measures tailored to safeguard vulnerable groups of children.

So we can conclude that narrowly taken, substantive element of the right to a safe digital environment safeguards children from cyber harm. Comparable to the notion of 'cyberaggression' from Comment 25 Comment 13 consists notion of 'cyberbullying' as a form of psychological bullying and hazing by adults or other children, including via ICTs such as mobile phones and the Internet (UN Committee on the Rights of the Child, 2011). A broader interpretation of the substantive element essentially is arising from the holistic understanding of children's rights. In this regard the right to a safe digital environment is a prerequisite for the exercise of following human rights for children online:

- (1) civil and political rights (Article 13-freedom of expression; Article 14-freedom of thought, belief and religion; Article 15-freedom of association; Article 16-right to privacy; and Article 17-access to information);
- (2) cultural rights (Article 28-right to education; Article 29-goals of education; Article 30-children from minority or indigenous groups; Article 31-leisure, play and culture); and
- (3) economic and social rights (Article 32-child labour; Article 33-drug abuse; Article 34-sexual exploitation; Article 35-abduction, sale and trafficking; and Article 36-other forms of exploitation).

In this line, the Comment 25. recognizes importance of the meaningful access to digital technologies for children in order to realize the full range of their rights (Lansdown, 2022, pp. 18). Taken in conjunction with the principles of the Convention as they were contextualized and extended to digital environment in Comment 25 (UN Committee on the Rights of the Child, 2011), it might be considered that all of this actually amounts robust substantive element of children's right to a safe digital environment.

Comment 25, as observed, lays out detailed requirements for establishing standards related to procedural assurances of a child's entitlement to a safe digital space. Procedural standards, in essence, aim to bridge gaps and resolve conflicts between the rights of various involved parties. Following this principle, the fifth chapter of Comment 25, entitled 'General measures of implementation by States parties', explores a wide array of actions - legislative, administrative, and precautionary - necessary for upholding children's rights and ensuring their safety in the digital sphere. The chapter specifically addresses children's rights within the business sector, matters of commercial advertising and marketing, as well as access to justice and remedies in the digital realm (UN Committee on the Rights of the Child, 2011). State parties are urged, as part of these general measures, to align or revise their laws according to international human rights norms to 'ensure that the digital environment is compatible with the rights set out in the Convention and the Optional Protocols thereto' (UN Committee on the Rights of the Child, 2011). National child protection policies should encompass safeguards against risks and behaviors falling under the concerned right's substantive aspect, with due consideration to the requirements of disadvantaged or vulnerable children, and the provision of effective online protection mechanisms 'in all settings where children access the digital environment, which includes the home, educational settings, cybercafés, youth centers, libraries and health and alternative care settings' (UN Committee on the Rights of the Child, 2011).

When it comes to children's rights and the business sector, it is the responsibility of States parties to guarantee that businesses uphold children's rights and address and rectify any violations of their rights in the digital realm (UN Committee on the Rights of the Child, 2011). In order to achieve this goal, States parties are required to implement a wide range of actions and initiatives, which encompass the creation, supervision, execution, and assessment of laws, rules, and policies (UN Committee on the Rights of the Child, 2011). Additionally, they must take necessary measures to prevent, investigate, and penalize instances where businesses infringe upon children's rights (UN Committee on the Rights of the Child, 2011), as States parties serve as the main guardians of protecting children from rights violations by business entities, including safeguarding them from all forms of violence in the digital environment (UN Committee on the Rights of the Child, 2011). The key sections pertinent to the procedural aspect of ensuring children's right to a safe digital environment may be located within the segment focusing on access to justice and remedies online (UN Committee on the Rights of the Child, 2011). Here, the document highlights the obstacles children encounter when seeking justice in the digital sphere, the essential features and kinds of redress

mechanisms, the responsibilities towards child victims, appropriate compensatory measures, and the stipulations related to conducting investigations and initiating legal proceedings.

The protection of third-party rights and interests, particularly concerning the freedom of expression, is the main focus of the described measures. It is important to highlight that such measures are generally viewed unfavorably from a human rights standpoint. It is recognized that restrictions on freedom of expression should be limited, applied on a case-by-case basis, and subject to stringent criteria to be considered lawful. These views were also shared by the Special Rapporteur on the promotion and defense of the right to freedom of opinion and expression in his 2011 Report. The report addressed various issues concerning individuals' right to access, share, and exchange information and ideas online (Human Rights Council, 2011). Among the concerns raised was the imposition of overly restrictive measures by states, which often do not align with the standards outlined in Article 19, paragraph 3, of the International Covenant on Civil and Political Rights. Nevertheless, the Special Rapporteur acknowledged that safeguarding children from inappropriate online content is a valid reason for implementing restrictions. He also highlighted that the prevention of child pornography is a clear exception where blocking measures can be deemed necessary and justified. This suggests a broader scope for states—considered duty-bearers—to take action in creating a safe and ethical digital space for children.

4.2. European Regional Level

European region is leading when it comes to normative activities in respect to the protection of the rights in digital environment. The ePrivacy Directive (2002/58/EC) (European Parliament, 2002) serves as the foundation for governing privacy and electronic communications, encompassing areas such as the confidentiality of communications, cookies, and direct marketing. Following this directive, latter normative activities could be tracked through the following instruments. The Digital Services Act (DSA) (European Commission, 2022) was introduced by the EU in 2020. The primary goal of the DSA is to oversee digital services, particularly online platforms, with a focus on ensuring transparency, accountability, and user rights. Key concerns addressed by the DSA include content moderation, algorithm transparency, and user safety. In addition, the Digital Markets Act (DMA) (European Commission, 2022), also put forth in 2020, targets major online platforms with significant market influence. The DMA aims to bolster fair competition, prevent unfair practices, and enhance consumer choice.

In January 2022, the European Parliament adopted amendments to the proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Service Act). Proposal for regulation Recital 3 addresses the obligations of the providers of intermediary services to enable Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in a safe, predictable and trusted online environment. This Recital was amended by incorporation of the rights of the children enshrined in Article 24 of the Charter and in the United Nations Convention on the Rights of the Child (UNCRC), pointing that the application of these rights to the digital world was formally settled out in the aforementioned the General comment 25. The notion of 'a safe, predictable and trusted online environment' was further elaborated in Recital 12 which defines the concept of 'illegal content'.

Both, Recital 12 and the amendment to it are safeguarding the children in an online environment against activities that are illegal offline. Herein, the concept of 'illegal content' underlines the substantive element of the children's right to a safe digital environment that was previously defined within 'content risks' of the A safe lines. Procedural elements of the children's right to a safe digital environment can be found in Recital 46 and the amendment to

it that refers to action against illegal content (European Parliament, 2012). Another aspect of the procedural element could be found in Recital 57 and its amendment that addresses system risks categorized in the group of risks associated with the misuse of service for the dissemination and amplification of illegal content; the group of risks that concerns the actual and foreseeable impact of the service on the exercise of fundamental rights; the group of risks negatively affecting public order, protection of privacy and fight fraudulent and deceptive commercial practices; and the group of risks associated to negative effects on the protection of public health.

Significant instrument in this context is the European Digital Rights and Principles (European Commission, 2022). This initiative by the EU proposes a framework of digital rights and principles that align with EU values and promote a sustainable, human-centric approach to digital transformation. These principles complement existing rights like data protection, ePrivacy, and the Charter of Fundamental Rights, emphasizing themes such as prioritizing individuals in the digital sphere, guaranteeing online freedom of choice, and fostering a sustainable digital future. In the first Chapter, the Declaration introduces a safe and secure digital environment as a paramount determinant of the actions of all digital actors. The reference to safety in a digital setting was made across the text in the context of working conditions, interactions with algorithms and artificial intelligence systems, a fair online environment, and participation in the digital public space. Furthermore, in line with one of the guiding principles 'Protecting and empowering children in the online space' from the 2030 Digital Compass (European Commission, 2021), the Declaration dedicates its whole 5th Chapter to a protected, safe, and secure online environment especially referring to the online safety of children and young people. According to the Declaration, children do have the right to be protected from all crimes, committed via or facilitated through digital technologies as well as against harmful and illegal content, exploitation, manipulation and abuse online. It could be considered that all of this clearly constitutes the body of the children's right to a safe digital environment even if it is not phrased like that in the text.

Further elements of children's right to a safe digital environment could be allocated to the EU's General Data Protection Regulation (GDPR) (European Union, 2016) which entered force in May 2018 and presents one of the most crucial and influential legal frameworks. With a specific focus on safeguarding children's personal data, GDPR has become a potential additional resource for ensuring children's entitlement to a safe digital space. This regulation addresses various aspects such as the processing and movement of personal data, fundamental rights protection, and specifically, the right to personal data protection. Numerous studies have explored the correlation between GDPR and children's rights (Malgieri & Niklas, 2020, 4-6), although this particular aspect will not be elaborated on here.

Considerations about children's safety in a digital environment are consistently held in forthcoming regulations. Expansive advancements in artificial intelligence (AI) have led to thorough regulatory efforts at the EU level that specifically address relevant AI domains. The upcoming Artificial Intelligence Act (European Union, 2024.), proposed by the European Commission in April 2021, adopts a risk-centered approach to the supervision of AI applications. Within this framework, it outlines specific protective measures to ensure the safe utilization of AI for minors. Alongside obligatory age verification processes, it emphasizes the necessity of explicit consent, indicating that any AI system handling children's personal data must obtain explicit authorization from a parent or guardian. Further measures for children's protection involve transparency requirements that compel AI systems to offer readily understandable information to minors regarding the processing their data.

Within the Council of Europe relevant instrument is the Recommendation from 2018 of the Committee of Ministers to Member States on Guidelines to respect, protect, and fulfil

the rights of the Child in the Digital Environment (Council of Europe, 2018.). In the part labeled as 'Operational principles and measures to respect, protect and fulfill the rights of the child in the digital environment' expressly recognizes child's the right to protection and safety. Children are endowed with the right to be safeguarded and shielded from all types of violence, exploitation, and abuse in the digital realm. A non-comprehensive compilation of recognized hazards that have the potential to detrimentally impact a child's physical, emotional, and psychological welfare encompasses four categories of transgressions as indicated in Comment 13. Initial category comprises risks associated with direct contact involving sexual offenses and the recruitment of minors for criminal or extremist undertakings. Subsequent category encompasses dangers linked to the dissemination of prejudiced views, racism, sexism, and various forms of violence in the online sphere, alongside promotion and display of mature content. Third category pertains to risks associated with diverse forms of harassment and illicit financial and business operations. Lastly, the fourth category focuses on health hazards stemming from excessive screen time, sleep deprivation, and physical injury. The aforementioned document additionally delves into strategies aimed at mitigating risks in the digital domain and offering protection for children.

4. Conclusions

As we have seen participation rights necessitate to be upheld by protection rights. Following this conceptual framework the right to a safe digital environment as a protection right seems inseparable from the established participation right - the right to Internet access. This sufficient evidence of its existence. However, the purpose of this analysis is not solely to assess the validity of the potential assertion of children's entitlement to a safe digital environment. Rather, we intended to delineate its characteristics by analyzing the human-rights-specific process of its formation. In this regard, we have noted that a right to a safe digital environment already has identifiable substantive as well as procedural elements imposing positive as well as negative obligations upon the States.

In general terms, the discussion about the right to a safe digital environment from the perspective of the UN Convention on the Rights of the Child elucidated that it falls within the category of protective rights. As such it is interconnected with various Conventional guarantees outlined throughout different articles. Viewing in this context, the formation of the right to a safe digital environment arises from the freedom of expression as outlined in Article 13 of the Convention, conjoined with access to a variety of information sources as outlined in Article 17 of the Convention. Former guarantees conferred children with the right to Internet access (which tends to become a positive right), while the latter guarantees coupled with the standards for the information brought the positive State's responsibility to shield children from harmful online content. Therefore, according to Article 13, children can be deemed to have the right to a safe digital environment as part of their implicit entitlement to Internet access which, conjoined with Article 17, safeguards them from online content risks. In substantive terms, this right requires content to be child-friendly, and devoid of hate speech, misinformation, discrimination, gender bias, or any other harmful influences. Consequently, the right to a safe digital environment can be viewed as a derivative right aimed at protecting children from content-related risks. Additionally, all Convention articles relating to child development, as outlined in articles 6, 18, 23, 27, 29, and 32 of the Convention necessitate that State Parties implement measures to shield children from inappropriate contact, conduct, and contract risks. In this line, section (e) of Article 17 also poses procedural elements of the right concerned by urging States Parties to implement measures to shield children from harmful materials.

The concept of prioritizing the best interest of the child, as outlined in Article 3 of the Convention, unequivocally emphasizes the entitlement to a safe digital environment. Also, it can serve as a bordering line to the scope of the right to a safe digital environment when conflicting with other rights. Even in circumstances where it competes with other Convention provisions, the best interest principle remains a primary consideration in addressing conflicts between the right to a safe digital environment and freedom of expression during decision-making. This management is largely facilitated by the procedural nature of the principle, requiring decision-making processes to consider both the positive and negative ramifications on the child, elucidating how the principle was factored in and weighed against competing considerations like the right to a safe digital environment or freedom of expression.

Further, the non-discrimination guarantees outlined in Article 2 are relevant for both substantive and procedural aspects of the right to a safe digital environment. Unlike exclusion as a classic form of online discrimination, other direct discriminatory acts are identified as imminent threats to a safe digital environment. In this regard, substantive guarantees within Article 2 focus on mitigating content and contact risks, thus enhancing the safeguarding of the right to a safe digital environment. Non-discrimination requirements emerge as complementary components that broaden the scope of protection within the right to a safe digital environment, addressing various forms of discrimination that children may encounter in the digital sphere. In a procedural sense, it necessitates State parties to provide unhindered and protected access for children in public areas, as well as to invest in policies and programs that enable affordable access to digital technologies for all children within educational environments, communities, and homes.

To gain a deeper comprehension of the right to a safe digital environment, we have examined additional sources. Within this category, we have delved into the secondary source at a global scale along with supplementary sources at the European Union level and within the Council of Europe. The key secondary legal document on children's entitlement to a safe digital space on a universal scale is General Comment No. 25 (2021) by the UN Committee on the Rights of the Child. This publication provides directions on legal frameworks, policies, and other actions to guarantee the upholding of children's online rights. It deals with incidences of technological facilitation of child mistreatment and exploitation. The substantial aspect of a safe digital environment based on this Comment includes shielding against cyberharm in broader sense: cyberbullying, and manipulation of information. It is crucial for the realization of civil, political, cultural, and economic rights. Comment 25 also emphasizes procedural safeguards like access to judicial processes and remedies for children in the digital realm. States bear the responsibility for enacting regulations and undertakings in adherence to international human rights principles to safeguard children against infringements of their rights.

On a European level, the ePrivacy Directive can be seen as a fundamental framework for regulating privacy and electronic communications, covering aspects such as communication confidentiality, cookies, and direct marketing, including provisions for children. The EU introduced two significant legislative acts in 2020, namely the Digital Services Act (DSA) and the Digital Markets Act (DMA). The DSA is designed to supervise digital services with a focus on transparency, accountability, and user privileges, while the DMA targets prominent online platforms to promote fair competition and enhance consumer alternatives. In January 2022, the European Parliament endorsed updates to the regulation for a Single Market for Digital Services, addressing the responsibilities of intermediary service providers to facilitate the enjoyment of fundamental rights in a secure online setting. These updates incorporate children's rights and outline the definition of "illegal content" to shield children online. References to procedural aspects for a secure digital environment for

children can be spotted in a range of considerations and alterations in the regulation. The European Digital Rights and Principles initiative introduces a set of digital rights and principles in alignment with EU values. Prioritizing individuals in the digital realm, ensuring freedom of choice online, and nurturing a sustainable digital future are essential aspects highlighted. Specifically, attention is given to safeguarding and empowering children within the online landscape. Recent progress in artificial intelligence (AI) has prompted the formulation of regulations tailored to AI fields on a European Union scale. The forthcoming Artificial Intelligence Act is geared towards safeguarding minors through the implementation of measures like age verification procedures, explicit consent for managing children's personal information, and transparency standards.

In 2018, the Council of Europe issued recommendations outlining ways to uphold, safeguard, and satisfy children's rights in the digital sphere. A key focus is acknowledging children's entitlement to security and protection, while also identifying potential risks such as sexual misconduct, dissemination of biased opinions, harassment, and health threats. Furthermore, the guidance document explores strategies aimed at averting risks and providing safeguarding measures for children within the digital realm.

Even though the right to a safe digital environment is well founded in established human rights of the child, it still lacks both formal acknowledgment and judicial recognition. Currently, its constitutive elements are emerging in human rights law and achieving a certain level of recognition through an ongoing process. However, it has not yet been fully incorporated into a new treaty text or an optional protocol within an existing human rights agreement, or acknowledged by treaty bodies. For those reasons it could be qualified as a truncated human right, requiring only time or an event to finalize its status.

Conflicts of Interest

The authors declare that there are no conflicts of interest regarding the publication of this paper.

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