

Identifying the “best interests of the child” in relation to the digital environment



On Safer Internet Day, which aims to raise awareness of a safer and better internet for all, and especially for children and young people, LSE’s Sonia Livingstone and Didem Özkul explain the ways that children’s rights in the digital environment are being discussed in legislation and commercially.

This Safer Internet Day 2024, expect to hear mention of the “best interests of the child.” This is one of the fundamental principles of the [United Nations Convention on the Rights of the Child](#) (UNCRC), which says:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (art.3, para.1)

The idea of children’s best interests is increasingly highlighted in discussions of children’s rights in relation to the digital environment. As the UN Committee on the Rights of the Child explains in [General comment No. 25](#):

“The digital environment was not originally designed for children, yet it plays a significant role in children’s lives. States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration.” (para. 12)

What does this mean? Multiple stakeholders now refer to the “best interests of the child” – perhaps because it seems a succinct and positive phrase? Or because it

acknowledges [the practicalities of balancing rights in digital contexts](#)? Or even because it refers to rights without using that word? Yet, sometimes it is unclear just what stakeholders mean by the “best interests of the child”, or whether they agree with each other.

Legislative developments

In relation to the digital environment, governments often enact their obligations regarding children’s rights through the regulation of platforms and other digital businesses.

For example, the UK’s [Age Appropriate Design Code](#) requires organisations that “provide online products and services that process personal data and are likely to be accessed by children in the UK” to meet fifteen standards, of which [Standard 1, Best interests of the child](#), specifically regulates the commercial exploitation of children’s personal data. Businesses should:

“Ensure that the best interests of the child are a primary consideration when you process their data. Your commercial interests may not be incompatible with the interests of children, but you need to consider the best interests of the child as a priority where conflicts arise”.

To support businesses in this task, the Information Commissioner’s Office (ICO) has developed its [Best Interests Framework](#). Since the UK’s code is now being [applied or adapted in other countries](#) around the world, this is a potentially influential framework, although ensuring [children’s best interests through data protection](#) is far from straightforward.

The European [Digital Services Act](#) (Regulation (EU) 2022/2065, DSA) also requires businesses to put the children’s best interests at the heart of their provision, now emphasising the design of digital services:

“Providers of very large online platforms and of very large online search engines should take into account the best interests of minors in taking measures such as adapting the design of their service and their online interface, especially when their services are aimed at minors or predominantly used by them.” (para. 89)

DSA also obliges providers of very large online platforms and of very large online search

engines to conduct risk assessments. However, this stops short of requiring use of the [Child Rights Impact Assessment](#), although the UN Committee on the Rights of the Child recommends this mechanism for organisations to ensure they realise children’s rights.

Commercial developments

Meta’s Trust, Transparency and Control (TTC) Labs developed [Meta’s Best Interests of the Child Framework](#) for product developers “which distils the ‘best interests of the child’ into six key considerations:”

1. “Recognize and engage global youth and families using our products
2. “Create safe, age-appropriate environments for youth
3. “Promote youth autonomy while considering the rights and duties of parents and guardians
4. “Prioritize youth well-being and safety over business goals and interests
5. “Support young people’s privacy in product decisions
6. “Empower youth, parents and guardians to understand and exercise their data rights”.

Meta Platforms Ireland Limited [responded](#) to the Coroner’s concerns expressed in the *Regulation 28 Report to Prevent Future Deaths* following the inquest into the death of Molly Russell, by pointing to several internal policies including their Best Interests of the Child Framework. [Current scrutiny of Meta’s treatment](#) of its young users may lead one to question whether the company is delivering as claimed. One might also ask whether not profiling children should be a key consideration? Or whether [Meta’s new parental control tools](#) really honour the promised support for children’s privacy? For instance, these allow parents to:

- “Be notified when their teen chooses to share they’ve reported an account or post, including who was reported and the type of content.
- “View what accounts their teens follow and the accounts that follow them”.

Most important, perhaps, is whether the determination of what is best for any child, or for children collectively, can be left to technology companies? As more and more companies begin to refer to children’s best interests, this is an urgent question.

Digital Futures for Children (DFC)

Now that [we have launched](#) our joint [LSE/5Rights research centre](#) to support an evidence base for advocacy, facilitate dialogue between academics and policymakers and amplify children’s voices within the remit of General comment No. 25, we have decided to investigate what is being said and done about children’s best interests in relation to the digital environment. Our concern is that this principle is being misunderstood or even misused. It sometimes seems that reference to the “best interests of the child” is used as a substitute or shorthand for the full range of children’s rights, possibly obscuring these from proper consideration. Or it may seem to legitimate a “one-size-fits-all” approach, notwithstanding children’s diverse individual, social, and cultural circumstances.

Criticising businesses is one thing; setting out a better path is another. While the UNCRC is clear that the best interests of the child should be a primary consideration, digital service providers may not be sure exactly *how*. The UNCRC calls for [children to be protected from economic exploitation](#) (art. 32) but can digital service providers put the best interests of children above their own business interests? How should such an approach be implemented while designing technologies that children are likely to access and use? Can claims about “best interests” legitimate trading one right for another in an effort to find a commercial or regulatory “solution”? It seems clear to us that further guidance would be welcome.

What’s next?

We will soon publish our analysis of the best interests of the child in relation to the digital environment. We have found some resources particularly helpful:

- Hof S. van der, Lievens E., Milkaite I., Verdoodt V., Hannema T., & Liefwaard T. (2020). [The Child’s Right to Protection against Economic Exploitation in the Digital World](#), *International Journal of Children’s Rights*, 28(4), 833-859.
- Information Commissioner’s Office (2022). [The full best interests framework and UNCRC](#).
- Lansdown, G., & Livingstone, S. (2021). [The best interests of children in the digital world](#). *Digital Futures Commission – 5Rights Foundation*.

- UN Committee on the Rights of the Child. (2013). [*General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)*](#)
- (2008). [*UNHCR Guidelines on Determining the Best Interests of the Child*](#).

We would like to [hear your thoughts](#) and suggestions, as we continue this work.

This post represents the views of the authors and not the position of the Media@LSE blog, nor of the London School of Economics and Political Science.