Children's rights in the digital age

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In the couple of decades since internet use has become commonplace in everyday life, especially in the global North, a growing body of research has examined the meanings, practices and consequences of people's engagement with an ever-new array of digital media. Within this context of social, technological and regulatory change, the position of children has been sometimes prominent – with them being celebrated as creative pioneers of the digital age or worried about for their vulnerability. But mostly they are rendered invisible, the discursive blurring of 'the population' with 'adults' obscuring the specific conditions, concerns and rights of children in the digital age. The age-blind nature of most academic and policy discourses on media and human rights parallels their neglect of gender, ethnicity, disability, religion or region yet it generates little sense of injustice or effort towards redress.

Children constitute an estimated one-third of the world's population, and, significantly, one-third of the world's internet users (Livingstone, Carr and Byrne 2015).¹ In the global North, long the locus of debates over the internet and rights, four in five people are online but only around one in five people are under 18, making for many more adults than children online. But the global North constitutes only around one-sixth of the world's population, and we have reached a crucial tipping point: two-thirds of the world's nearly 3 billion internet users live in the global South, where at least one third of the population is under 18, and that's where the next billion internet users live too. Moreover, as society increasingly embeds digital networks and services into its fundamental infrastructure, the rights of non-users in a digital age also matter.

To understand how children's rights in particular are being reconfigured in and through digital networks and services, we must address a series of problems and paradoxes. This chapter examines these in order to evaluate current research, policy and practice in relation to children's rights in the digital age. I argue that to understand children's rights in the digital age, it is time to adopt a more global focus, and to understand the rights of internet users globally it is time to include a child-centred focus.

Definitional challenges - child, rights, digital

¹ According to UNICEF (2014), nearly one third (30%) of the world's population is aged under 18: this figure is lower in the global North and higher in the least developed countries. According to the International Telecommunications Union (ITU, 2015), over one third (43%) of the world's population is online. In Livingstone et al. (2015), noting first that no reliable statistics exist on the proportion of internet users aged under 18, we analysed such ITU data as exists to infer that children worldwide go online in a similar proportion to adults (albeit less at the younger and more at the older end of the age span 0–17). On this basis we estimate that one in three children are now online, and that one in three internet users is a child.

In this chapter I will use the following definitions, while recognising their complexities:

- (i) By 'child', I follow the United Nations (UN) Convention on the Rights of the Child (CRC) in defining "a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger" (UN 1989; see also Holzscheiter 2010). This upper limit can be contentious in countries where the legal age for marriage or sexual consent is much lower than 18, or when society (often via parents) seeks to protect teenagers from certain forms of sexual, identity or political expression. While the lower age limit (birth) is not generally controversial, as the age of first internet use drops, the challenge grows of supporting the rights of those too young to exercise informed and digitally literate decision-making in an (online) ecology largely designed for adults.
- (ii) By 'rights', my focus is on fundamental human rights as these apply to everybody. I take the UN CRC as my framework, since (a) it spells out that human rights (e.g. to freedom of expression, assembly and privacy) also apply to children, a point commonly overlooked; (b) it calls for specific child-focused mechanisms to ensure that these rights are respected and not infringed (over and above those human rights instruments designed primarily for adults who can, for instance, bear full responsibility for their actions or seek independent redress); and (c) it includes rights that apply especially or only to children (such as the right to development, play and a caring upbringing). Note that the CRC is addressed primarily to states, notwithstanding that these already struggle to underpin rights in relation to the transnationally networked and heavily commercial internet.
- (iii) In focusing on 'the digital,' the point is not to endorse a technologically determinist account of social change; after all, digital media have been invented, designed, produced, marketed and appropriated by people (Lievrouw and Livingstone 2006). Nor is it to claim that society is radically transformed by the digital, bearing no relation to previous periods. Nor even that the digital constitutes the most important change in today's society. Rather, what matters here is the recognition that society is becoming dependent on interactive, networked, remixable and ubiquitous media, as once-optional technologies used by the privileged few become part of the taken-for-granted infrastructure for all levels of society, from the domestic to the global (Star and Bowker 2006).

With these definitions in mind, this chapter asks: is the digital ecology reconfiguring children's rights and if so, how, and with what implications?

Scoping children's rights in the digital age

A good place to begin is with children's views, since recognition of children's voices on matters that affect them is central to the CRC. A recent multinational consultation with children showed that they are now convinced of an indelible and positive connection between their rights and the internet (Third et al. 2014). Their reasoning can be summarised in four points:

(i) The internet and mobile technologies are becoming a key means by which children exercise their rights to information, education and participation.

- (ii) Consequently, access to the internet and mobile technologies must also be a basic right, a view endorsed by the UN in 2011 (UN General Assembly 2011).
- (iii) Since access is insufficient without media or digital literacy, that too is now fundamental to exercising rights in a digital age.
- (iv) Children expect their voices to be heard in formal and informal processes of deliberation wherever their rights in a digital age are at stake, including in relation to internet governance (Nordic Youth Forum 2012).

For researchers, this opens up a fascinating new agenda that demands new theory, methods and findings (see Cortesi and Gasser 2014; Livingstone and Bulger 2014; van der Hof, van den Berg and Schermer 2014). But for stakeholders concerned with children's rights and/or internet provision and governance, this sets out a problematic agenda new to both sides. Notwithstanding that both the World Wide Web and the UN CRC celebrated their quarter centuries in 2014, many of the key organisations involved (e.g. Council of Europe, UN Committee on the Rights of the Child, Internet Governance Forum) are only now taking steps to address children's rights in the digital age.

The task ahead is challenging. From a child rights point of view, despite considerable optimism over what the internet could offer children, there are concerns that children use online services not targeted toward them, or where site or service providers are unaware of or negligent of their status as minors. Children's data are collected and often sold without informed consent and irrespective of child protection issues or child-friendly mechanisms for redress (Montgomery and Chester 2015). Insofar as children's informational and educational needs are increasingly provided online, stakeholders (states, welfare services, educators, parents) find themselves relying on commercial services providers that deny specific obligations to children, while children may find that vital services are inaccessible to them for reasons of cost or child protection filters (CRIN 2014). Absorbing most attention are sexual risks including exploitation and abuse, themselves longstanding problems offline but now increasingly mediated and possibly amplified by the affordances (anonymity, convenience, connectivity, etc.) of the internet (Palmer 2015).

These challenges concern matters of principle and practice, and I will focus on four – the problem of ensuring rights online as well as offline, of prioritising among potentially clashing rights, of distinguishing opportunities from risks, and of identifying 'the best interests of the child'.

The problem of ensuring rights online as well as offline

Although it is readily proclaimed that rights offline are equally rights online (see, e.g., NETmundial 2014), this is difficult in practice to conceptualise or implement. Consider that though human rights frameworks are age-generic, the CRC ensures they apply to children, but while it may be argued that internet provision and governance also operates in an age-generic way, there is no equivalent of the CRC to ensure it works for children (which, as the Committee on the Rights of the Child recently observed [2014], it does not). Several notable problems exist. One is the problem of age verification: there is, at present, no satisfactory way of knowing who is a child or an adult online (nor, for an internet content or service provider, is there a reliable way of matching a child to a

parent able to give consent on their behalf). Some providers (e.g. Disney) have tried expensive mechanisms, while more (e.g. Facebook) have tried cheaper, but ineffective mechanisms, and most do not try at all (see Montgomery and Chester 2015).

This takes us to the second problem. Children's rights have traditionally been guaranteed by public bodies – think not only of education, health and welfare systems, but also of the town planners who arrange traffic and zoning rules partly to empower and protect children. But the implementation of online rights benefits from few such powerful mediators in "cyberspace". Instead, this relies either on formal legislation (often seen to be too heavy-handed or dated given the pace of technological innovation) or on the social responsibility or self-regulation of those powerful corporations whose commercial services increasingly underpin children's communication, play, learning – and even their exploitation and abuse – in ways that are historically unprecedented. In consequence, it is proving difficult to treat children according to "their best interests" (as the CRC requires, and as some guidelines seek to ensure; see Rutgers 2014).

The third problem is that, since the internet is a fundamentally global network, the responsibilities of the state for child rights are increasingly mediated by a system that escapes national jurisdiction, again, to a historically unprecedented degree. Indeed, arguing that the internet is too fast-changing, too international and too complex, states are now outsourcing their responsibilities for child rights (and rights more generally) to a fragile mix of good practice guidelines, haphazard self-regulation, sporadic efforts towards corporate social responsibility and multinational, multistakeholder fora (van der Hof et al. 2014).

The problem of prioritising among potentially clashing rights

The articles of the CRC are commonly classified in terms of the "3 P's":

- (i) Rights to *protection* concern the wide array of threats to children's dignity, survival and development. In the digital age, policy makers should attend to research showing the extent of sexual grooming and sexual exploitation of children online, the creation and distribution of child abuse images, the availability of (diverse, extreme) pornography, and new threats to privacy, identity and reputation posed by personal data exploitation, misuse, tracking by companies, and hostility, hate, bullying and self-harm-related content and conduct from other people online.
- (ii) Rights to *provision* concern the resources necessary for children's survival and their development to their full potential. In the digital age, consider the development and provision of online formal and informal learning resources and curricula, on children's use of the wealth of accessible and specialised information along with education to support the digital literacies to use them well and more casual opportunities for creativity, exploration and entertainment as well as some distinctive provision of content that represents (minority) children's culture and heritage.
- (iii) Rights to *participation* enable children to engage with processes that affect their development and enable them to play an active part in society. In the digital age, policy makers can draw on research on the use of children's peer-to-peer

connections for sharing, networking and collaboration, including the development of user-friendly fora for child/youth voice and expression and child-led initiatives for local and global change.

Stakeholders often turn to research to figure out how to maximise children's online opportunities for provision and participation while minimising the risks that merit protection. And as indicated above, both research and policy are developing the underpinning to support these three categories of child rights. But as yet, no robust way has been found to deal with the not-infrequent clash of competing rights – most often between rights to protection and participation.

As the work of the EU Kids Online network has shown, online risks and opportunities are positively correlated (Livingstone, Haddon and Görzig 2012). This means that efforts to keep children safe online tend to restrict their freedoms, while efforts to promote their freedoms – to explore the web, to make new friends, to get involved in wider networks – bring more risks. In a simple sense, this is obvious: the more we act in the world the more we have good and bad experiences, and using the internet is no different. Indeed, we can sum up a lot of the available research in the idea of the more, the more children go online, the more they do there, the more they gain digital skills, the more online opportunities they enjoy – and the more risk of harm they encounter too.

It is thus the case that the more effort is put into maximising the opportunities of children's internet use, the harder it is also to minimise the risks and vice versa, thereby putting policy for protection at odds with policy for provision and participation. The 2015 draft General Data Protection Directive from the European Commission provided recent illustration of this problem, when it became public that setting the age for verifiable parental consent at 16 directly prioritised child protection (against data exploitation) at the cost of child participation (on social networks etc. from the age of 13). It seems this occurred without recourse to evidence, impact assessment, or a process of consultation with children or relevant child rights organisations.

The problem of distinguishing opportunities over risks

Adding to the difficulty of prioritising among potentially clashing rights is the challenge even of distinguishing them. Consider the arguments over "sexting," where some teenagers have been criminalised for what they and others would consider legitimate sexual expression, as part of an equally vital effort to protect children from being groomed and exploited (Salter, Crofts and Lee 2013).

Online activities can be particularly ambiguous in terms of whether they turn out to be opportunities or risk. Adults do not always see eye to eye with children about what counts as a risk or an opportunity online, and they have little tradition to guide them. Meanwhile, children – often interested in transgressive or "risky opportunities" – are particularly likely to pursue these online, especially insofar as risk-averse societies restrict their offline freedoms. Further, children's online activities depend in part on the design of the interface, and the internet is primarily designed to facilitate usage irrespective of beneficial or harmful outcomes; social networks facilitate new contacts

whether helpmates or paedophiles; search engines suggest new sites whether constructive or pernicious; and so on.

It can even be argued that some degree of risk is itself beneficial, building resilience in children. Here it is pertinent that most research is about risk but not about harm – for instance, studies tend to measure exposure to pornography rather than any actual or long-term harm that may result from such exposure (Livingstone 2013). Indeed, while we know that some risk results in some harm for some children, we do not yet know enough about when and for whom this happens, nor about when some exposure to risk can have positive results. Moreover, just as some exposure to risk may build resilience, it is also possible that some exposure to opportunity can have negative results. Consider the problems of the "one laptop per child" initiative, along with the many others that provide children with mobile devices or Western information resources with little grasp of how these may undermine or disrupt local hierarchies or traditions (Kleine, Hollow, and Poveda 2014, World Bank 2016). Without considerable care in managing the contexts surrounding even well-intentioned interventions, benefits can prove elusive.

The problem of identifying "the best interests of the child" online

The CRC asserts that children's voices should be heard "in all matters that concern them" and that this should be implemented "according to the evolving capacity of the child" and "in the best interests of the child." But just what is in the best interests of the child, and what is their capacity to influence decisions that affect them? These are questions on which research as well as policy is divided and contested. So often the decision is conservative, risk-averse, tending to favour protection over participation. Hence in the global North at least, restrictive approaches to children's internet use in homes and schools are dominant (O'Neill et al. 2013). To be sure, in public fora, there are interesting experiments inviting even relatively young children to participate and express their views meaningfully. But research also shows that in practice, it is often only the already-advantaged who gain such opportunities, and that opportunities for expression and voice are often ineffective and unheard (Lansdown 2014).

The question of participation, especially on a global scale, also points to a more general problem with child rights frameworks. Child rights, like all statements of fundamental rights, are couched in a universal language. This brings considerable rhetorical and normative/legal advantages for policy and practice within and across countries. But children's lives are profoundly shaped by particular, cultural contexts and their meaning is grounded locally. The application of a universal framework in particular contexts can, at the extreme, make rights into wrongs – this representing another paradox – with outsiders trumpeting foreign values as they trample on local meanings and misinterpret or disrupt established community practices, at least in their unintended if not intended consequences (Hanson 2014). The assumption of a universalising framework comes under especial fire when it embodies Western values yet is applied (or imposed) in the global South. Advocating for children's right to express their sexual identity online, or facilitating children's voice and agency when this clashes with familial or community traditions, can pose especially acute problems if

local contexts are not well understood or local agencies and institutions are not carefully engaged in mutual dialogue (Kleine, Hollow and Poveda 2014).²

Let me refer to Isaiah Berlin's (1958) classic distinction between positive and negative freedoms to focus the problem. Children's protection rights represent a case of negative freedom – for example, that children should be free from sexual or violent abuse. Negative freedoms are usually less controversial than positive ones, because they seek to remove harms according to a minimalist approach to rights. But children's provision (and, in fact, participation rights) represents claims for positive freedom. And these can be controversial because they tend to assert a maximalist vision – often implicitly normative, Western, capitalist – of what the good life could or should be. So, the right to education (or play or identity or culture) is easily asserted, but who are we to assert that children should live not only without fear of harm but according to a late-modern vision of participatory democracy or a Western capitalist vision of learning for the information economy?

Thinking ahead

Over a decade ago, the 2003 phase of the World Summit on the Information Society (WSIS 2003) process culminated in the adoption of the Geneva Declaration of Principles and Plan of Action, in which the position of children was expressly recognised:

We are committed to realizing our common vision of the Information Society for ourselves and for future generations. We recognize that young people are the future workforce and leading creators and earliest adopters of ICTs [information and telecommunications technologies]. They must therefore be empowered as learners, developers, contributors, entrepreneurs and decision-makers. We must focus especially on young people who have not yet been able to benefit fully from the opportunities provided by ICTs. We are also committed to ensuring that the development of ICT applications and operation of services respects the rights of children as well as their protection and well-being.

But since then, although children's internet use has been widely celebrated, worried about and planned for, it would be hard to claim that much progress has been made in relation to children's rights in the digital age. In this chapter I have identified several problems that contribute to and help account for this unsatisfactory state of affairs.

Some readers will protest that these problems matter little since children are first and foremost the responsibility of their parents who surely act to enable and protect their rights, online as well as offline. In many cases, this is fair and indeed, asserted by the CRC (Articles 3 and 18). But here arise yet more problems. Many parents lack the awareness, competence, will, time and resources, or the understanding, to protect and

² The same may be said for research, insofar as it is tempting to sit in the global North designing research for the global South. Instead, we need a partnership approach for cross-national research, marrying rigorous research methods with dialogue to understand and respond to local circumstances and, as a result, a welcome widening of the evidence base (Livingstone and Bulger 2014).

empower their children online. And the less parents are themselves digitally literate, the more they tend to restrict rather than empower their children online. Then, especially in the global South, where most internet users now live, it cannot be safely assumed that children have the benefit of parents or adequate schooling (Livingstone and Byrne 2015). Last, among the children whose rights are most infringed, parents can be as much part of the problem as the solution (Finkelhor et al. 2015). So paradoxically, parents can be good representatives for happy well-resourced children but they can be poor representatives for the children who most need representation. For all these reasons, the CRC calls on states and the expert welfare and legal bodies they appoint to act on their behalf to provide special assistance and protection to the child when parents do not or cannot fulfil their responsibilities.

In responding to this call, it matters that child rights and adult rights online have become discursively entangled so that each seems to threaten to undermine the other. Notably, some institutional and regulatory efforts to protect children from sexual or violent offences online have – deliberately or inadvertently – been used by censorious or surveillant governments to curtail or infringe (adult) rights to freedom of expression (La Rue 2014). So, given justified concern about adult expression and privacy rights online, children have been discursively positioned as a hindrance to adult rights online, with advocates for (adult) internet rights and freedoms often reluctant to acknowledge children's rights to either protection or participation (Livingstone 2011). It is thus unsurprising yet disappointing that in the burgeoning array of internet bills of rights being proposed nationally and internationally, children's rights figure little if at all, especially in terms other than protection from illegal abuse (for a review, see Weber 2015).

In short, it appears that when rights clash, policy makers, academics and the public appear tacitly to agree that child protection should trump child participation and that adult freedom of expression should trump both. Consequently, although providing for children online and encouraging their participation might seem straightforwardly positive goals, in practice it remains more straightforward to argue for addressing children's (negative) rights to protection than to support their positive rights online. This situation is not helped by the fact that, it appears, few policy makers can convincingly elaborate just what would constitute great opportunities and provision for children online. Possibly, as argued in relation to positive and negative freedoms, they sense that to articulate a positive vision would somehow overstep the mark into maximalist prescriptions that impose "our" values on "others"? But while a minimalist approach may be politically circumspect, any resulting vacuum in the digital imaginary (Mansell 2012) will be filled by a market rather than by those acting primarily in children's best interests.

Emerging now on the horizon, as researchers and policy makers begin to think about the coming agenda in terms of the Internet of Things, smart homes and schools, and big data (Foucault Welles, 2016), as further conceptual challenges. Most notably, it is timely to consider whether the design, regulation and use of digital technologies is beginning to reconfigure the very nature of child rights. Some digital media scholars are rethinking the core phenomena (abuse, privacy, identity, expression, education) of human rights frameworks in the digital age (see, e.g., Cohen 2014). From new concepts to new "digital rights" (as in "the right to be forgotten"; Schillings 2015), to asking whether human rights legislation itself needs to be revised, opens up a hazardous path where, according to the law of unintended consequences, the losses may exceed the gains. It may be better to argue, more conservatively, that while the phenomena are always changing, the concepts embedded in legal frameworks are sufficiently abstract as to encompass these changes. This is to say, for instance, what is at stake is not so much new rights (to, say, digital identity or e-learning or protection from online abuse) but, rather, the (longestablished) rights to identity or education or freedom from abuse, albeit now differently instantiated and regulated in a digital age. Whether or not I am right in this view, addressing the coming agenda will, I have argued, require a truly global process of dialogue and deliberation, and this dialogue must include children's voices and experiences too.

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