

The best interests of children in the digital world

The Digital Futures Commission is working to put children's interests at the centre of the design of the digital world. That's our mission. But what are children's interests? We draw on the UN Convention on the Rights of the Child (UNCRC), which requires that "in all actions concerning children... the best interests of the child shall be a primary consideration" (article 3, para.1). This is easier to say than to deliver, however. Sonia Livingstone talked to international children's rights consultant Gerison Lansdown to unpack the idea of children's "best interests," including in relation to the digital environment.

Sonia: We have been investigating the potential of child rights impact assessment and learned that the concept of the child's best interests can be contentious. Can you explain why?

Gerison: The problem is that "best interests" can be used by adults to overrule almost anything that children say or want or feel, because adults think it's in children's best interests. Consequently, the UN Committee on the Rights of the Child has insisted on two things. First, to determine the best interests of the child, you need, wherever possible, to take account of what the child's views are about their own best interests. Second, the very definition of best interests must be interpreted within the context of the realisation of children's rights. For example, you can't argue that it's in my child's best interests for me to beat the child as a form of discipline, because that would be a fundamental violation of the child's rights.

Sonia: Do children know their best interests?

Gerison: No, not necessarily. Because it isn't a concept that most children would engage with. But the Committee argues that you can't determine best interests without hearing from children, given UNCRC article 12 (the right to be heard). If children are able and competent to express a view, a decision has to be informed by that, though ultimately it may not go along with what children say.

Sonia: I think it's really helpful to say that you cannot determine best interests without consulting children, but that's not the same as making the decision that children want.

Gerison: No. Because children don't have the autonomy to take responsibility, to automatically determine the outcome.

Sonia: So, thinking of the digital world, if children want X of a digital space and adults want Y, is the idea that the child's best interests win over the adults'?

Gerison: Well, their best interests should be a primary consideration, though there would be other considerations which need to be taken into account. In some situations, the best interests of the child will need to address a tension will between their different rights – for example, right to freedom of association and right to protection. In others, it will be between the best interests of the child and the best interests of other groups.



Image credit: D. Goehring

Sonia: There's no sense in which children's rights trump adults' rights?

Gerison: No, there isn't. Adults, and states in particular, have an overriding responsibility to protect children's rights. And so often, one has to balance attention between competing rights. In this situation, though obviously depending on the context, I would argue that if exercising adults' freedom of expression places children at a risk of severe harm, then the children's interests should predominate and influence the outcome. Because the loss to the adults is less than the loss to the children.

Sonia: In thinking about that loss, we've found that another puzzle is the relationship between rights and wellbeing.

Gerison: The thing about rights is that they are entitlements, and they are accountable. There are clear responsibilities for their implementation. Generally speaking, I would say that if you ensure the realisation of children's rights, that would necessarily lead to better wellbeing. Wellbeing is part of the outcome associated with the implementation and realisation of children's rights. But wellbeing is a set of descriptors, really, about the state of children's lives, rather than a set of standards or norms against which you assess what actions are needed in order to achieve change. In and of themselves, they don't place any demands on governments to act.

Sonia: As part of our work on guidance for innovators of digital products and services, we're reviewing the potential of child rights impact assessment (CRIA) in the digital environment. Where do best interests fit in?

Gerison: Very often, CRIAs are a way of embedding children's best interests at the collective level. Take social media, for example. How would you apply best interests? You can't possibly apply individual best interests because you're talking about millions of children all over the world. There's no way in which you could make a judgment in relation to how each of those individual children are going to be impacted by this experience. So, you have to do it at a collective level. The tension might be between children's privacy and adult freedom of expression. You might consider, in respect of a particular online activity, that the loss of privacy or safety would be so significant that you would have to

justify prioritising those rights, because the potential harm would be greater than the potential benefits, say of freedom of expression or association for others. Undertaking a CRIA, would enable you to use the best interests principle to provide the framing within which you'd seek to balance those different rights.

Sonia: Can you explain the distinction between individual and collective best interests?

Gerison: Well, traditionally, most legal systems have a concept of the best interests of an individual child. This supersedes what would be fair to the parent, for example in a custody case. Also, redress and remedy work most effectively at the individual level. However, the Committee interprets best interests as also applying to children as a constituency or group.

In the context of a child rights impact assessment, you are largely thinking about children as a constituency rather than children as individuals, because you're looking at broad policy matters that impact on children's daily lives. Crucially, if you ignore the collective, then you completely ignore children in policy making – their experience, views, preferences, the impact the policy is having on them. But you need a more qualified approach to take account of other needs within the community. Also, it would be very difficult to seek specific redress in relation to best interests determined collectively, although it is not impossible. For instance, say a school made a decision to exclude a child which took no account of their best interests, then the child could seek redress against the decision. But the fact is that the school has to consider the best interests of the individual child and of the children within the school as a whole.



Image credit: anonymous

On the other hand, say you had a child friendly city which introduced a policy that took no account of children's best interests. Maybe they decided to sell off a playground for commercial development, completely denying the children the space and the opportunity to play. Since that would be in breach of the principles of the child-friendly city, in theory children and their advocates could try and seek some remedy from the council.

Sonia: You've offered lots of food for thought. It's interesting that the idea of best interests applies both individually and collectively, but somewhat differently. Also, that the child's right to be heard is a vital part of decisions taken that affect them, but it is their best interests that are paramount. Last, that conducting child rights impact assessments is a great way to realise children's rights collectively, but provision for individual voice and redress will always be needed as well. Such thinking is not yet embedded in the design of the digital world but that's what we're working on.

You can read more of our blog posts here, and follow our work by joining our mailing list. We'll soon publish more on children's rights and the digital environment.

Gerison Lansdown is an international children's rights consultant and advocate who has published and lectured widely on the subject of children's rights, and previously founded and directed the Children's Rights Alliance for England. She was actively involved in the drafting of the Convention on the Rights of Persons with Disabilities, is an Honorary Fellow of UNICEF-UK, an associate of the International Institute for Child Rights and Development in Victoria, Canada and co-director of CRED-PRO, an international initiative to develop child rights educational programmes for professionals working with children.



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