

NEW CONTRIBUTION TO GENERAL COMMENT ON CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT

About the Alana Institute

The Alana Institute [www.alana.org.br/en] is a Brazilian non-profit civil society organization that seeks to safeguard the necessary conditions for the integral experience of childhood, through advocacy for the enforcement of children's rights in Brazil and worldwide. Founded in 1994 and supported by an endowment fund since 2013, the Alana Institute’s mission is to “honor children”.

On the relationship between children and the digital environment, the Alana Institute develops three programs that address different phenomena of the same topic: Child and Consumerism [www.criancaconsumo.org.br], which develops actions to lessen the impact of consumerism on childhood, especially regarding the regulation of marketing to kids; Absolute Priority [www.prioridadeabsoluta.org.br], seeking the fulfillment of children's rights in access to justice, climate justice, public budget and in the new information and communication technologies; and Child and Nature [www.criancaenatureza.org.br], which seeks to guarantee children's access to outdoor and natural spaces.

In this document, there will be presented suggestions for changes and additions to the first draft of new general comment (GC) on children’s rights in relation to the digital environment, divided in the following topics: (I) the Children’s Rights by Design standard; (II) advertising aimed at children, (III) artistic child labor, (IV) sensationalist police media shows, (V) personal data protection, and (VI) impacts of information and communication technologies on health and education.

I. The strengthening and development of the Children’s-Rights-by-Design standard.

Although the first draft of the GC briefly mentions the concept “child-rights-by-design” as general measures of implementation by States, it is very important for this concept to be developed and seen as structural of the whole logic of the new GC, including private actors in the debate and considering the horizontal effect of children’s rights in private relations¹.

Suggestions for inclusion:

- New objective on item III, paragraph 7 (pg. 3): “(e) To promote the adoption of the children’s rights-by-design (CRbD) standard by the States and private actors in all policies, services and products, as well as the methods, algorithms and tools needed to endow autonomous agents with the ability to reason about decisions concerning children.”;

¹ The CRC, in an extremely innovative text for an international treaty under public international law, foresees the **direct horizontal effect of children's rights in relations between private actors**, including business enterprises that directly or indirectly by action or omission impact children and their rights with their products, services or actions in their communities. Specifically, private institutions are bound directly by the text of the Convention itself. Companies and corporations must primarily consider the best interests of the child in their actions and impacts, as provided in its art. 3, 1: “All actions concerning children, whether carried out by public or private welfare institutions, courts, administrative authorities or legislative bodies, must primarily consider the best interests of the child”. Thus, it is understood that the Convention itself can be invoked to ensure that business enterprises undertake children’s rights due diligence and do not contribute to the violation of children's rights. In this fields, Committee’s General Comment 16 is also relevant: it states that provided that the best interests of the child shall be a primary consideration for the State and it must guarantee that business activities are restricted when they pose a threat to child rights. Therefore, it is mandatory to recognize horizontal effects of children's rights under the Convention on the Rights of the Child.

- New item “C. Children’s Rights-by-Design standard” on item IV (pg. 3):

“C. Children’s Rights-by-Design Standard

Following the provision of Article 3, 1, of the Convention, all the decisions made by the States or by private actors, such as business enterprises in the digital environment, should always consider the children’s evolving capacities, the primary consideration of their best interests and the promotion and protection of their rights. The children’s rights-by-design (CRbD) standard impacts on all your activities, actions or omissions, for example regarding the collection and processing of personal data by public or private databases, applications or platforms, digital marketing or propaganda direct to children, behavioral manipulation strategies and algorithmic decisions.

It should also be highlighted that the duty to respect and ensure that in all actions concerning children the rights set forth in the CRC and the primary consideration of the best interest of the child, according to Article 3 from the CRC, is shared among all: by public or private agents and institutions, especially considering the horizontal effect of children’s rights in private relations.

The Convention on the Rights of the Child foresees the direct horizontal effect of children’s rights in relations between private actors, including companies that directly or indirectly impact children and their rights with their products, services or actions in the communities.

Specifically, private institutions are bound directly by the text of the Convention itself. Companies and corporations must primarily consider the best interests of the child in their actions and impacts, as provided in its art. 3, 1: “All actions concerning children, whether carried out by public or private welfare institutions, courts, administrative authorities or legislative bodies, must primarily consider the best interests of the child”.

Thus, it is understood that the Convention itself can be invoked to ensure that business enterprises undertake children’s rights due diligence and do not contribute to the violation of children’s rights. In this sense, Committee’s General Comment 16² is also relevant: “Article 3, paragraph 1, is also directly applicable to business enterprises that function as private or public social welfare bodies by providing any form of direct services for children, (...)”. Therefore, it is mandatory to recognize horizontal effects of children’s rights under the CRC.

Given the relevance of business enterprises to the digital experiences of children, it is essential that all digital products and services for, used by or that impact children be designed taking into account their rights and all the logic of children’s rights international protection system, guaranteed by the CRC.

That means that in all decisions on the development of these digital products and services, as well as the methods, algorithms and tools needed to endow autonomous agents with the ability to reason about decisions concerning children, must remain within the given children’s rights fundamentals and provisions by the CRC.”;

- Introduction of the concept CRbD in other parts of the GC to strengthen its holistic and structural character.

II. The regulation of advertising and marketing targeted at children in the digital environment.

“There is on a lot on YouTube, also before the video starts playing, there is advertisement (girl, public school, Brasilia); “Anywhere on the computer has advertising. (boy) A lot! (girl, private school, Brasilia) A lot! (boy) Wow! (boy) Lots of. (various, private school, Fortaleza); “I don’t like it. (boy) It disturbs even the movies, in the best parts ... (girl) I go into settings on Google and Google doesn’t take it away. It’s horrible, because in the best part of movies and series it’s horrible, because it ends in no time, right. (girl) Many. (girl, public school, Sao Paulo); Yes. (Several, private school, Sao Paulo) Only when it makes me angry then I change. (girl) Moderator: And on YouTube is there advertising? Have. (several) There are soooo much! (boy, public school, Rio Branco).”³

² CRC/C/GC/16 (“Business Sector”).

³ Children’s opinions about access to marketing and advertising on digital environments collected by research published by the Ministry of Justice of Brazil and done by Federal University of Ceará – GRIM – Research Group on the relations between Childhood, Youth and Media. See: Research Group on the relations between Childhood, Youth and Media - GRIM. Publicidade infantil em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do

The General Comment first draft addresses the topic of advertising and marketing targeted at children in items C, F and H of topic VII - Children's rights to be realized in a digital world. However, it is considered necessary to deepen and strengthen this issue, including in relation to the responsibility of States for the development or enforcement of laws in order to curb abusive and illegal commercial practices aimed at children, especially for those under 12 years old.

Researches and studies suggest that children up to 6-8 years old do not differentiate between advertising and content, nor do they have the necessary judgement to distinguish fiction from reality and, until they are 12, do not understand the persuasive nature of advertising⁴⁵, making them easily influenced by this type of commercial strategy. In the face of the digitalization of means of communication and the increased access to the internet, children's programs and commercials frequently invite their audience to visit their websites, social networks, and channels on video platforms on the internet.

Besides, to expose children to advertising content directed at them often contributes towards intensifying problems that jeopardize child development such as: obesity and chronic non-communicable diseases (NCDs), family stress, violence, early binge drinking, unsustainable consumption behaviors, gender stereotypes and precocious eroticism, materialistic values and others.⁶

In this regard, it is worth to mention some results of the research 'The Impacts of Banning Advertising Directed at Children in Brazil', developed by the Economist Intelligence Unit – EIU⁷. By considering a scenario where, due to the prohibition of directing publicity to children, the marketing sector changes its strategies and starts announcing to adults, researchers concluded that decrease on marketing revenues is only temporary. Moreover, important social benefits have been identified and are related to a physically and psychologically healthier population with positive economic results ranging from \$61 to \$76 billion after 15 years of the ban.

Brazilian children are among the top-ranking media users and consumers in the world. A recent research conducted by TIC Kids Online⁸ concluded that 86% of children between 10 and 17 years of age have access to the Internet, and 75% of them accessed the Internet more than once a day, 67% of them use the Internet for communication and social networks.

There are still substantial gaps between lower- and higher-income children in home computer access and high-speed home internet access, but these gaps are much smaller than they have been in the past. In some contexts, children from lower-income homes and with lower parent education consume more screen media each day than those from higher-income homes and parents with higher education⁹.

Because the child is the major user of digital communication platforms, it is the favorite target of all manner of marketing communications, which decisively influence up to 80% of the purchase decisions in the household¹⁰.

We thus perceive an expansion of marketing communications via ICT, even though television continues to be the main advertising platform. In Brazil, TV is still a major source of media

Ceará, 2016, p. 52. Available at: https://www.defesadoconsumidor.gov.br/images/manuais/publicidade_infantil.pdf. Viewed on: 30.10.2019.

⁴ Report by Professor Yves de la Taille on PL 5921/2001 developed by request of the Federal Psychology Council, 'Advertising Aimed at Children - Psychological Considerations' Available at: https://site.cfp.org.br/wp-content/uploads/2008/10/cartilha_publicidade_infantil.pdf. Viewed on 16.10.2019.

⁵ Children and television advertising – Swedish Consumer Agency Erling Bjurström, sociologist hired by the Swedish Government in 1994-95. Available at: <http://criancaconsumo.org.br/wp-content/uploads/1994/02/Children-and-television-advertising.pdf>. Viewed on: 16.10.2019.

⁶ Consumismo infantil - um problema de todos [Child consumerism - Everyone's problem]. Available at: <http://criancaconsumo.org.br/consumismo-infantil/>. Viewed on: 16.10.2019.

⁷ The Economist Intelligence Unit Limited - EIU. The impacts of banning advertising directed at children in Brazil, 2017. Available at: http://criancaconsumo.org.br/wp-content/uploads/2014/02/TheEconomist_EN.pdf. Viewed on 16.10.2019.

⁸ TIC Kids Online Brasil. Research on the Use of the Internet by children and adolescents in Brazil, 2018. Available at: <https://www.cetic.br/pesquisa/kids-online/indicadores>. Viewed on: 16.10.2019.

⁹ Fact Sheet | The Common Sense Census: Media Use By Kids Age Zero To Eight, 2017. Exploring the Digital Divide. Available at: https://www.common sense media.org/sites/default/files/uploads/research/0-8census_digitaldivide_release.pdf. Viewed on: 16.10.2019.

¹⁰ A research developed by TNS/InterScience shows that Brazilian children influence up to 80% of the family's purchase choices. See: InterScience, Information and Applied Technology. Como atrair o consumidor infantil, atender expectativas dos pais e ainda, ampliar as vendas [How to attract the child consumers attention, reach parents expectations and still increase sales], 2003. Available at: <http://www.interscience.com.br/site2006/index.asp>. Packaged facts. Viewed on 16.10.2019. For further information on the topic, see: Lloyd, Susan. 'The Kids Market: Myths and Realities (1st edition)'. Journal of Consumer Marketing, Vol. 17 No. 7, 2000, pp. 627-637. Available at: <https://www.emerald.com/insight/content/doi/10.1108/jcm.2000.17.7.627.1/full/html>. Viewed on: 30.10.2019.

consumption for the child population. Children's exposure to the television is on average five hours and twenty-two minutes per day¹¹. Furthermore, the 360 degree marketing strategy is steadily growing, that is, a combination of the TV medium with all other information and communication technologies (ICT) to advertise a product or service. For example, the children's TV channel Cartoon Network, which boasts the highest Pay-TV audience share in Brazil, in step with the TV, Internet and mobile convergence trend exhibits on its site a wide range of games featuring its program characters, as well as commercials on toys and Smartphone applications and a social network page that has more than 1.2 million followers.

Even if the majority of these websites and apps were not created and developed with an audience of children under 12 in mind¹², it is true that these digital spaces are occupied freely and indiscriminately by children, in which they are exposed to more publicity content from the brands advertised on TV.

Regarding to the video platform Youtube, the brazilian research called "Youtube Generation", developed by ESPM Media Lab¹³, shows that in 2015, out of the 100 highest-rated YouTube channels, 36 of them addressed content targeted or consumed by children. In addition, 110 children's channels were mapped, totaling 20 billion views. By the end of 2017, an audience of children's content exceeded 115 billion views. Among YouTube Brazil's 100 highest-rated channels, 52 of them deal with content targeted or consumed by children.

It is also quite usual to see children's programs repeatedly invite viewers to access their Internet sites. The main decoy, according to the survey on child consumption and the Internet, are online games. Advergaming is a way advertisers can reach the target child market by offering games and virtual entertainment pegged to a company brand or product and service. A fun environment is thus created in which the child finds entertainment, but this is permeated with references to the brand, either inserted in the name of the games offered, or requiring that the products be purchased in order to access the games or by promoting the use of the characters as mascots.

Within this context, it is no coincidence that the most common form of advertising aimed at children at the moment is developed through *unboxing* videos produced by digital influencers.

Considering the visibility, reach and impact these influencers on children, many companies send them gifts and invite them so they may, surreptitiously, promote the brand's products on their channels and social networks, which are followed by millions of children¹⁴.

The problem is this gray zone that prevents children, and even adults, from determining if a piece of content that cites brands, products and services is advertising, a game, information, or a spontaneous act by the influencer. This happens because, on social networks, the difference between an ad and entertainment is almost unnoticeable, since the act of opening and evaluating products, especially toys, gets mixed in with the rest of the content produced by the influencers, such as challenges, stories and daily activities.

The market, aware of the entertainment digital influencers provide to children, take advantage of this confusion to promote its commercial strategies for the children's segment that watches these channels, with the intention of establishing loyalty, affiliation and the desire to consume what is being

¹¹ Brazilian Institute of Public Opinion and Statistics (Instituto Brasileiro de Opinião Pública e Estatística) - IBOPE. Painel Nacional de Televisão (PNT) [National Television Display], 2015. Available at: <http://criancaconsumo.org.br/noticias/tempo-diario-de-criancas-e-adolescentes-em-frente-a-tv-aumenta-em-10-anos/>. Viewed on: 30.10.2019.

¹² According to their own Terms of Use, Facebook and Instagram are recommended for those over 13 and YouTube is intended for those over 18.

¹³ Luciana Corrêa (org.), ESPM Media Lab. Geração Youtube - Um mapeamento sobre o consumo e a produção de vídeos por crianças de 0 a 12 anos - Brasil - 2005/2016 [Youtube Generation - A mapping of the consumption and the production of videos by kids from 0 to 12 years old - Brazil - 2005/2016], 2016. Available at: http://pesquisasmedialab.espm.br/wp-content/uploads/2016/10/Media-Lab_Luciana_Correa_2016.pdf. Viewed on: 16.10.2019.

¹⁴ The Alana Institute's program 'Children and Consumerism' has already taken action on several issues related to publicity directed to children on YouTube through young digital influencers. See: 'Candide - LOL Surprise (March/2018)'. Available at: <http://criancaconsumo.org.br/acoes/candide-lol-surprise-marco2019/>. Viewed on 30.10.2019. '15 empresas - Canais de Youtubers Mirins: Publicidade na Internet (março/2016) [15 enterprises - Young digital influencer's Youtube Channels: Online publicity (March/2016)]'. Available at: <http://criancaconsumo.org.br/acoes/youtubers-mirins/>. Viewed on: 30.10.2019. 'Mattel - Você Youtuber Escola Monster High (fevereiro/2017) [Mattel - You as Youtuber Monster High School (February/2017)]'. Available at: <http://criancaconsumo.org.br/acoes/mattel-do-brasil-ltda-voce-youtuber-escola-monster-high-fevereiro2017/>. Viewed on: 30.10.2019. 'McDonald's - McLanche Feliz "Hora da aventura" (maio/2015) [McDonald's - Happy Meal "Adventure Time" (May/2015)]'. Available at: <http://criancaconsumo.org.br/acoes/arcos-dourados-comercio-de-alimentos-ltda-mclanche-feliz-hora-da-aventura/>. Viewed on: 30.10.2019.

presented. The companies know that veiled advertising is more subtle and harder to identify for its target audience¹⁵.

To illustrate this advertising strategy aimed at children, developed by a multinational corporation through the use of influencers, could be cited a campaign conducted by Mattel in 2016, in which it established a partnership with a famous Brazilian child youtuber's channel to promote the campaign 'You Monster High Youtuber,' with the intention of promoting its Monster High brand and products¹⁶. As a result of this case, a collective action was proposed by the State of São Paulo Public Prosecutor's Office against Google, so the company may take safety measures and establish guidelines to keep children's advertising out of its YouTube, a platform considered inappropriate for children under the age of 18 by YouTube's own term of use¹⁷. The Public Prosecutor is also investigating 15 other companies for making use of channels and children's profiles on social networks to promote their brands, products, campaigns and services. Among the companies being investigated are Bic, Cartoon Network, Kidzania and McDonald's¹⁸.

Regarding the contact and perception of children in relation to commercial messages, it is important to consider the research conducted by the Research Group GRIM – Research Group on between Childhood, Youth and Media Relations, Federal University of Ceará, published in April 2016 by the Ministry of Justice of Brazil¹⁹. The research was the first public and national analysis conducted in Brazil about the large volume of child-directed advertising in various places and media, involving more complex Internet advertising strategies and the confusion between advertising and information made by children.

The study was conducted with 81 children from 9 to 11 years old, in December 2014, in the cities of São Paulo, Fortaleza, Brasília, Rio Branco and Porto Alegre, and sought to identify children's understanding of advertising, their perception of the strategies used and the impacts on their well-being. Based on the data obtained by the research, there is evidence of the great amount of advertising in the physical and virtual environments that the children attend, which provokes a negative evaluation of the children regarding to the excess of advertising, especially when they interrupt their moments of leisure. However, they often fail to identify the message as advertising.

The survey also questioned the children about how they felt about not having what was announced by advertising:

"In public and private schools, when friends have products they want but they don't have, many children report being upset; nurture feelings of anger, envy and inferiority; and even having damnable desires to steal their friends or interrupt the television that shows the product. If the boredom of not having a desired object is understandable and certainly quite common, some of the feelings and desires mentioned above reveal the level of pressure these children are subjected to and how cruel the unfair discourse that associates possession and belonging with the relationship with them, especially in an unequal society like ours."²⁰

The research conclusion is striking: "Consumption, therefore, goes beyond the marketing factor, it has a classificatory role and promotes the inclusion and exclusion of individuals in certain categories and social groups."²¹ It also points out that this persuasive feature may be even more perverse for children ages 8 to 13 who state who they are and to which groups they belong.

¹⁵ Audiência de youtuber 'teen' explode e desafia anunciantes ['Teen' youtuber's audience explodes and challenges advertisers]. Available at: <https://www.dci.com.br/impresso/audiencia-de-youtuber-teen-explode-e-desafia-anunciantes-1.704795/3.297934>. Viewed on: 5.8.2019.

¹⁶ Mattel – Você Youtuber Escola Monster High (fevereiro/2017) [Mattel - You as Youtuber Monster High School (February/2017)] Available at: <http://criancaconsumo.org.br/acoes/mattel-do-brasil-ltda-voce-youtuber-escola-monster-high-fevereiro2017/>. Viewed on: 5.8.2019.

¹⁷ Brazil, State of São Paulo Public Prosecutor's Office. Collective Action against Google. Available at: http://www.mpsp.mp.br/portal/pls/portal/IPORTAL_wwpob_page.show?_docname=2640591.PDF. Viewed on 5.8.2019.

¹⁸ 'Mattel – Você Youtuber Escola Monster High (fevereiro/2017) [Mattel - You as Youtuber Monster High School (February/2017)]' Available at: <http://criancaconsumo.org.br/acoes/mattel-do-brasil-ltda-voce-youtuber-escola-monster-high-fevereiro2017/>. Viewed on 5.8.2019.

¹⁹ Research Group on the relations between Childhood, Youth and Media - GRIM. Publicidade infantil e em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do Ceará, 2016.

²⁰ Research Group on the relations between Childhood, Youth and Media - GRIM. Publicidade infantil em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do Ceará, 2016, pp. 159-160.

²¹ Research Group on the relations between Childhood, Youth and Media - GRIM. Publicidade infantil em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do Ceará, 2016, p. 164.

A recent research conducted by TIC Kids Online²² concluded that 30% of the children between 11 and 17 years old had already been in contact with publicity in games web sites; 52% in social media and 67% in on-line video streaming platforms. 74% of interviewed children reported they were already exposed to products and brands marketing through the internet. Besides, on the same research, half of the kids reported to had been in contact with brands on internet videos showing people buying, presenting or using products. With regards to this children perception on publicity at internet, 80% affirmed they were willing to acquire the marketed products and 71% admitted to feel bad by not being able to afford them.

The role of the State and responsibilities, regulation and coordination of non-State actors

Facing this scenario, in the discussion about the need to protect children from calls to consumption on digital environment, the guarantees indicated by the Convention on the Rights of the Child must be taken into consideration. Article 3 which provides that private agents, like corporations, shall also primordially consider the best interest of the child. Article 6 requires party States to safeguard full childhood development. Article 17, which deals with the relationship between children's rights and the media, states that the media content to which a child is exposed must respect their well-being, as well as their physical and mental health, making clear the importance of the quality of the information and content to which the child is being exposed.

Furthermore, it is worth highlighting the guarantees of non-exploitation and non-violence, established in articles 19 and 36 of the Convention, respectively. Both of these guarantees seek to prevent not only physical but also psychological exploitation and violence. Considering that the child does not have sufficient defences against marketing appeals aimed at them and, therefore, child is more easily manipulated by advertising, it is understood that such practices consist of a subtle form of psychological violence, considering that the child's defence mechanisms are still incipient.

Also, General Comment No. 16 is very relevant. It states that the best interests of the child shall be a primary consideration for the State and it must guarantee that business activities are restricted when they pose a threat to child rights. According to this General Comment, although it recognizes the influence that marketing communications and the media have on children because they are still undergoing development and thus more susceptible to manipulation and takes into consideration the negative impacts of advertising targeted at children, deems that there could be "beneficial" child advertising, that is, advertising that would theoretically have positive impacts by carrying relevant information to children, such as, for example, information on healthy hygiene habits. However, these messages are always pegged to a specific product or service, promoting the idea that these healthy habits can only be developed by using these particular products. It is also necessary to be aware of the fact that, independently of the content of the advertisement – even though it encourages good habits – it still violates the rights of the child, since it also carries a consumption appeal targeted at a hyper-vulnerable individual, whose best interest, non-exploitation and access to appropriate information to its stage of development are supposed to be guaranteed, as mentioned above. Therefore, based on the international legal framework, only public utility messages would not cause any infringement, since these have no marketing designs. Whenever any commercial addressed to children carries an appeal to consume a given product or service, it is violating their rights.

Finally, a UNICEF²³ report stresses concerns about the effects of advertising on the physical and mental health of children and recommends that companies revise their practices in order to adopt marketing measures that respect the rights of children and adolescents.

In the context of the discussion on the protection of children's rights against marketing communication addressed to it, it is relevant to consider the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover²⁴. The Special Rapporteur stresses the urgent need for Member States to address changes in the food context that ultimately undermine the exercise of the right of individuals to adequate and nutritious food - a factor underlying the right to health. Among these factors, stands out the advertising unhealthy food, which increases the consumption of unhealthy foods, and

²² TIC Kids Online Brasil. Research on the Use of the Internet by children and adolescents in Brazil, 2018. Available at: <https://www.cetic.br/pesquisa/kids-online/indicadores>. Viewed on: 16.10.2019.

²³ 'The Children's Rights and Business Principles'. Available at: https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf. Viewed on 5.8.2019.

²⁴ A/HRC/26/31 (Human Rights Council). Available at: <https://undocs.org/A/HRC/26/31>. Viewed on: 30.10.2019.

aggravates problems related to obesity. In conclusion, it recommends to “Regulate the marketing, advertisement and promotion of unhealthy foods, particularly to women and children”.

Moreover, in the context of the discussion on the protection of children's rights against marketing communication addressed to it, relevant to consider the Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed²⁵. This report acknowledges the impact advertising and communication on the enjoyment of cultural rights. The document also deals with new forms and techniques of marketing communication, including the use of digital media. In conclusion, the rapporteur understands that the protection of the right of the child needs to be more effective and recommends that legislation, regulations and policies should be adopted by states and authorities. Thus, it recommends to “prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used, with the possible extension of such prohibition to children under 16 years of age, and ban the practice of child brand ambassadors”.

In Brazil, the National Council on the Rights of Children and Adolescents (Conanda) issued the Resolution 163, based on existing federal regulation, which considers that advertising and marketing aimed at children under 12 is abusive accordingly to Consumer's Defence Code and, therefore, illegal.²⁶

communications targeting children under the age of 12 years old.

For these reasons, the Committee considers that the child has the right to be protected from marketing communications aimed at them, including in the digital environment, since it represents a violation of their rights - established by the Convention on the Rights of the Child, as well as in the existing legislation in Brazil.

Suggestions for inclusion:

- New paragraph on item V. General measures of implementation by States (p. 5):

“States should regulate, supervise and hold companies accountable in order to curb the abusive and exploitative practices towards children. Regarding business strategies to target marketing and advertising direct to children, States should prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used, with the possible extension of such prohibition to children under 16 years of age, and ban the practice of child brand ambassadors. Concerning children from 12 to 18 years old, States should prohibit all resort to subliminal and surreptitious methods, including based on personal data, and restrict advertising that is processed implicitly, taking into consideration various factors such as the age and capacity of the persons targeted as well as the amount of advertisements they receive, and provide that the example of countries that have restricted brain-imaging techniques to scientific, medical and judiciary usage be followed.”

- Changes on paragraph 93. on item VII. Children's rights to be realized in a digital world, F. The right to health (p. 18):

“Given childhood obesity and related health problems, States should regulate the food marketing likely to be seen by or targeted directly at children **and prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used.** They should also promote opportunities for children to develop their physical and mental health and their resilience to digitally-mediated harms. Also important, since children should not be unduly burdened with the task of identifying and resisting the elements of persuasive design which might harm them, States should ensure that business enterprises meet their responsibilities to promote and not undermine children's health.”

- Changes on paragraph 75. on item VII. Children's rights to be realized in a digital world, H. The right to culture, leisure and play (p. 21):

“States should provide guidance for all parents advising them of the potential online risks and encouraging dialogue and discussion between parents and children to strengthen protection. (...) In particular, the State must ensure the online environment targeted at younger children is appropriately

²⁵ A/69/286. Available at: <https://undocs.org/A/69/286>. Viewed on: 30.10.2019.

²⁶ Resolution n. 163 Conanda. Available at: <http://www.crianca.mppr.mp.br/pagina-1635.html>

regulated, moderated, resourced and compliant with the laws designed to protect them **and should ensure that business enterprises meet their responsibilities to promote and not undermine children's rights, developing online spaces, services and products free from all forms of marketing and advertising aimed at children.**"

- Changes on paragraph 105. on item VII. Children's rights to be realized in a digital world, I. Protection from economic and other forms of exploitation (p. 22):

"States should implement digital literacy training to support children to recognize and understand the tactics and forms of digital marketing and related practices. States should further implement legislation to regulate the unjust manipulation of children in the digital environment for the economic benefit of commercial actors. This should include such consumer protections as requiring that advertising be clearly marked as such as well as setting minimum standards for age-appropriate advertising on platforms and online services in which children participate. To protect children from exploitative commercial practices, states should **regulate, supervise and hold companies accountable in order to curb the abusive and exploitative practices towards children. Regarding business strategies to target marketing and advertising direct to children, States should prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used.** Thus, states should encourage businesses to **implement the children's-by-design standard, including** privacy-by-design, safety-by-design and ethics-by-design principles."

- New paragraph on item VII. Children's rights to be realized in a digital world, J. Family environment, parenting and alternative care (p. 23):

"Although families are able to be constantly present in the daily lives of children, monitoring the use of digital technologies closely, the commercial pressures and persuasive design technologies exerted by commercial strategies present themselves as real obstacles to the development of positive parenting, contributing to work overload of families, decreased parental dialogue and increased stress between families and children, especially among vulnerable groups. States should share the responsibility for protecting and promoting children in the digital environment, not only with families, but also with business enterprises, which should contribute to the digital environment free of advertising, marketing and all forms of communication. violence, abuse or commercial exploitation, adopting the children's rights-by-design standard."

III. Artistic child labor in the digital environment: video bloggers and digital influencers.

In the context of content production by children on the Internet, the debate about the characterization of the activity developed by child video bloggers and digital influencers as artistic child labor also comes into play.

Artistic child labor is allowed in Brazil²⁷ and other parts of the world and, in the context of digital platforms, child video bloggers, like youtubers, and digital influencers deserve special attention. Broadly speaking, children video bloggers and digital influencers are the ones that publish videos, images and texts on digital environments on a variety of subjects of interest and are viewed, interact and are followed by a growing number of people and fans. As a rule, they maintain profiles or channels on platforms, like YouTube, Facebook, Instagram, Snapchat, TikTok and many others.

²⁷ The Constitution establishes, in its Article 7, item 33, the prohibition of night, dangerous or unhealthy work for minors, and of any type of work for children under 16, except in the condition of apprentice starting at 14 years old. Even so, one type of child labor is authorized by Brazilian law: artistic child labor. This permission is justified by the guarantee to freedom of artistic expression, also safeguarded constitutionally in Article 5, item IX. According to this norm, the Constitution guarantees to all, with no distinction of any nature, the free expression of intellectual, artistic, scientific and communications activities. This provision, added to Convention n. 138 and Recommendation n. 146 of the International Labour Organization (ILO), ratified by Brazil, authorize child labor when its goal is the participation of the child in artistic presentations, in order to harmonize the constitutional provisions of protection from child labor and free artistic expression. We must also emphasize that the Child and Adolescent Statute establishes the need for legal authorization for the child to work.

It is understood that that content produced by children is often monetized by platforms and families, regardless of the existence of a contract and any other legal binding instrument, or even of the restriction of access to the platform or applications, according to their own terms of use, which often restrict access to children under 13.

Artistic child labor can be characterized by (i) habitual, (ii) monetized or rewarded and (iii) performance-oriented with external expectations involvement of children in artistic or entertainment productions. In this sense, many virtual environments, such as applications, platforms and social networks, allow the monetization of children's activities and experiences through regular interaction and rewarding the most valued performance, which has encouraged a large number of families to stimulate their children to become video bloggers and digital influencers in a digital celebrity culture.

In this context, a debate on recognizing the existence of child labor in digital platforms is essential to protect the child from economic exploitation and from performing any work that may be dangerous or interfere with their education, or that may be harmful to their health or their physical, mental, spiritual, moral or social development, in the terms of Article 32 of the Convention on the Rights of the Child, specifically so that, respecting the current limitations and guarantees, performing as a child youtuber does not represent a violation to the child's rights, nor lead to any risks to their development.

Therefore, the practice of child youtubers – especially when it is habitual and monetized – must be considered as artistic child labor, with the appropriate protections stipulated, such as judicial authorization, educational and psychological accompaniment, and working day limits. Moreover, it could be important to mention the Convention No. 138 and the Recommendation No. 146 of the World Trade Organization (WTO), that authorizes child labor when its purpose is the participation of children in artistic representations.

Suggestions for inclusion:

- Inclusion of new paragraphs on item VII. Children's rights to be realized in a digital world, B. The right to freedom of expression, assembly and association (p. 10):

"Many virtual environments, such as applications, platforms and social networks, allow the monetization of children's activities and experiences through regular interaction and rewarding the most valued performance, which has encouraged a large number of families to stimulate their children to become video bloggers and digital influencers in a digital celebrity culture. Recognizing the existence of child labor in digital platforms is essential to protect children from economic exploitation and from performing any work that may be dangerous or interfere with their education, or that may be harmful to their health or their physical, mental, spiritual, moral or social development, in the terms of Article 32 of the Convention on the Rights of the Child, specifically so that, respecting the current limitations and guarantees, performing as a child video blogger or digital influencer does not represent a violation to the child's rights, nor lead to any risks to their development.

States should also regulate and enforce existing laws concerning artistic child labor characterized by habitual, monetized or rewarded and performance-oriented with external expectations involvement of children in artistic or entertainment productions, with the appropriate protections stipulated, such as judicial authorization, educational and psychological accompaniment, and working day limits, as stipulated by the Convention No. 138 and the Recommendation No. 146 of the World Trade Organization."

- Inclusion of new paragraphs on item VII. Children's rights to be realized in a digital world, I. Protection from economic and other forms of exploitation (arts. 21):

"States should also regulate and enforce existing laws concerning artistic child labor characterized by habitual, monetized or rewarded and performance-oriented with external expectations involvement of children in artistic or entertainment productions, with the appropriate protections stipulated, such as judicial authorization, educational and psychological accompaniment, and working day limits, as stipulated by the Convention No. 138 and the Recommendation No. 146 of the World Trade Organization."

- Changes on paragraph 107. on item VII. Children's rights to be realized in a digital world, J. Family environment, parenting and alternative care (p. 23):

“In order that parents are not unduly burdened with the responsibility for managing and mitigating any adverse consequences of children engaging with digital technologies, States should ensure that business enterprises and other actors provide age-appropriate services to children, designed in ways that enable parents and children to make safe and beneficial choices and which do not prioritise commercial interests at the cost of the child’s, **including on activities related to artistic child labor on the digital environment.**”

IV. Violations of adolescents in conflict with the law in the digital environment.

In regards to violations of the rights of children in conflict with the law, it is important to highlight the existence of many radio and television programs dedicated almost exclusively to presenting violations, crimes and police actions in a sensationalistic fashion, making a spectacle of cases of urban violence, in a supposedly journalistic format, with a strong popular appeal, known as *programas policiaescos* (Portuguese), *cronicas rojas* (Spanish) or sensationalist police media shows. The strategy of trying to reach an audience through sensationalism and violence make these programs into frequent violators of human rights, either by inappropriately exposing the image of the victims and the accused, or by violating the rights of the children that are watching or, further still, as a result of the promotion of racism, sexism and homophobia, as well as legitimizing and encouraging institutional violence, such as police violence.

The rise of digital platforms created new forms of communication, and so in Brazil a strong movement by the State’s own security agents has taken root, in which they seek to publicize routine actions by military police in a fashion very similar to these sensationalist police media shows. As such, these videos, frequently posted on digital platforms, present content that emulates the format of the radio and television programs and, therefore, are also systematic violators of the rights of children and adolescents, especially of those in conflict with the law.

These are actions that often involve the exposure of children and adolescents, be it as victims of the actions or accused as suspects of illegal acts. It is worth pointing out that being on digital platforms means a greater ease in spreading the content, which is often in violation of rights and encouraging violence, and the impact that it can cause. Still, the expansion of mobile devices with cameras has led to a multiplication of recordings made by public security officers and, concurrently, a growth in violations in a decentralized fashion, making it difficult to control, and hindering the work of organizations that defend these individuals.

An example of these violations is the case of policeman approaching a child by asking their age using curse words, which are highlighted in the video’s comments²⁸. The videos, released on channels created by police battalions, especially on the YouTube platform, show events recorded by state agents themselves, in which they show police incidents exposing children during operations. It is important to emphasize that, even with visual effect, it is possible to identify a child, and it is also possible to identify its community, reinforcing the stigma on the more peripheral communities²⁹.

It must be emphasized that the narratives presented in cop and crime contents create stereotypes about entire communities: an example of this is the fact that the regions that appear in the videos are mainly in the urban peripheries, reinforcing a superficial line of discussion about public safety, presenting the lowering of the age of criminal responsibility for children and other expressions of the penal State³⁰ as solutions to the grave issues of public and institutional violence, which in the end violate the rights of the child.

In this sense, the videos published by these channels systematically violate national and international standards. It is important to highlight violations of the Convention on the Rights of the Child, in particular Articles 16, 19 and 36, which stipulate that no children shall be subjected to arbitrary or illegal interference on their private life, no children can be submitted to unlawful attacks on their honor and reputation neither to exploitation or violence.

²⁸ ‘DIA DE POLICIA - CRIANÇA TENTOU PINOTE “ BATEU “. 2019. (18m45s) Available at: <https://www.youtube.com/watch?v=LzLdlCzchw0&t=113s>. Viewed on: 8.6.2019.

²⁹ ‘ROTAM prende menor de apenas 12 durante uma incursão’. 2017. (6m19s) Available at: https://www.youtube.com/watch?v=kMUX6UC_ypM. Viewed on 8.6.2019.

³⁰ The age of criminal responsibility in Brazil is 18, as established by the 1988 Constitution, in article 228, which states that children and adolescents are not imputable and are subject to a special norm. Therefore, Brazil is in alignment with the Convention on the Rights of the Child. However, there are some normative proposals in National Congress to reduce the age of criminal responsibility in Brazil that are gaining more and more traction both in the parliament and in civil society.

Suggestions for inclusion:

- Changes on paragraph 84. on item VII. Children's rights to be realized in a digital world, E. The rights to protection from violence and sexual exploitation (p. 16):

“States should have effective law enforcement and other measures which enable the identification and recovery and rehabilitation of child victims, avoid the secondary victimisation of the child in legal and investigative processes, provide for the swift removal of images, including through bilateral and international collaboration where necessary and offer victim support where needed. **Thus, states should have effective measures to prevent the exposure of the image of children in conflict with the law in the digital environment, especially within sensationalist police media content. The strategy of trying to reach an audience through sensationalism and violence makes these programs into frequent violators of human rights, either by inappropriately exposing the image of the victims and the accused, by violating the rights of the children that are watching or, further still, as a result of the promotion of racism, sexism and homophobia, as well as legitimizing and encouraging institutional violence, such as police violence.**”

V. Protecting children's personal data in the digital environment.

Data protection of children in the digital environment has also been addressed in the General Comment on items B and C of topic VII - Children's rights to be realized in a digital world.

Although many states already have laws that seek to protect the personal data of children, doubts and difficulties persist as to whether these standards can be implemented, especially when related to the collection and processing of personal data by the state itself.

First, because the state itself is a rights violator in collecting and processing personal data of children, which makes it even difficult to maintain an authority guaranteeing independence – one that can issue guidelines and explanations, that can cover gaps in details in principiological laws. Without an independent authority with the technical and financial capacity to educate and monitor, it is not likely that there will be a change in practices by businesses enterprises and the State, an important collector of children's data, especially within public education.

Without a monitoring authority, families, whose children make precocious and intensive use of digital devices and the internet, and have little understanding of the negative impacts resulting from the mass abuse of personal data, will be, even with the approved legislation, left alone to the task of safeguarding the rights of these vulnerable individuals, disrespecting the principle of shared responsibility for this task.

Among the main risks of negative impacts regarding illegal children data usage, it is important to consider: physical, moral and emotional safety due to non-authorized and malicious contact, identity frauds, reduction of social and economic opportunities due to early overexposure and/or algorithmic discrimination, behavioral modulation and opinion manipulation and, finally, commercial exploitation through micro-targeting of advertising and marketing to children.

Beyond the need for expansion in relation to the need for entities to monitor the treatment of data and of the applicable legislation, the expansion of technology companies into schools, calls for a debate by the global community on the need for advances in the regulation of this field, especially considering that studies on big data and discrimination point to a high risk of negative impacts on the most vulnerable specifically in education.

Moreover, the Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education establishes that the minimum standards should address the privacy and data protection, ensuring in particular respect for the rule of law and ethical practices with regards to personal data. States must also ensure that no personal, including biometric data, be collected or retained without consent, or be shared with third-parties without express consent and for purposes other than education, including for commercial, immigration, or security purposes.

It is worth noting that, like other countries, a trend of installing increasingly sophisticated security cameras is spreading around Brazilian cities and even schools, without representatives considering the implications in relation to children's rights and their physical and psychological well-being, making it necessary to deepen the debate on this issue, and that advances in the debate on the need for regulation include the special needs of this highly vulnerable group.

This scenario presents violations of the Convention on the Rights of the Child, specifically to Article 16, which guarantees the rights to intimacy and privacy, and to Article 32, which establishes the protection of children and adolescents from economic exploitation.

Suggestions for inclusion:

- Changes on paragraph 51. on item VII. Children's rights to be realized in a digital world, C. The right to privacy (p. 11):

"It is important that States ensure that parents are informed and empowered to support the child's right to privacy **and also guarantee that all information related to personal data collection must be understandable and accessible to families and children, consistent with their evolving capacities.** The Committee notes that many children are concerned about invasions of their privacy online, and yet, some children also report that they have not learned how to protect their personal data online. It is equally important that States ensure that children are informed and empowered to exercise and protect their own right to privacy, in accordance with their evolving capacity. This should involve both educational and awareness-raising efforts, on the one hand, and improved design of privacy-settings and data protection processes, on the other."

- Changes on paragraph 51. on item VII. Children's rights to be realized in a digital world, C. The right to privacy (p. 11):

"States should ensure that children's personal data is processed **always in the best interests of the child** by schools, health systems, community organisations, law enforcement and justice, business enterprises and any other data processing body, including the State itself, in ways that are fair, accurate and secure and with the informed consent of the child and/or their parent or caregiver or in a way clearly specified by law, **safeguarding them from all forms of commercial exploitation or violation of rights.** Every effort should be made to minimize the collection, retention or use of children's personal data for any additional purpose. Further, the right to privacy also entitles adolescents to have access to their records held by educational, health-care, childcare and protection services and justice systems. Such information should only be accessible in compliance with due process guarantees and to individuals authorized by law to receive and use it."

VI. The importance of the offline and outdoor spaces.

"I spend the whole afternoon at the computer. At night there are times when I go into the computer until dawn. (boy, private school, Rio Branco). I spend 90% of my time on the internet. (girl, public school, Sao Paulo). I just practically play all day ... Alone, like that, I close the room and play, play. (boy, private school, Brasilia)."³¹

A great amount of research and literature shows that there is a significant decline in the quality and quantity of children's direct experience with the natural world as over the last few generations, childhood has moved indoors, leaving children disconnected from the natural world. This worldwide trend has profound implications for children's healthy development—and the future of our planet. Therefore there is a widely shared concern about the increasing disconnection of children from nature, and the adverse consequences for both healthy child development ("nature deficit disorder") as well as responsible stewardship for nature and the environment in the future.³² Many authors refer to how the digital environment plays a significant role in this scenario and the importance of forge the balance between offline and online experiences. As the author of *Last Child in the Woods* wrote: "the more high-tech our lives become, the more nature we need"³³.

³¹ Children's opinions about access to marketing and advertising on digital environments collected by research published by the Ministry of Justice of Brazil and done by Federal University of Ceará – GRIM – Research Group on the relations between Childhood, Youth and Media. See: Research Group on the relations between Childhood, Youth and Media - GRIM. Publicidade infantil e em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do Ceará, 2016, p. 23. Available at: https://www.defesadoconsumidor.gov.br/images/manuais/publicidade_infantil.pdf

³² Louv, Richard. *Last Child in the Woods: saving our children from nature-deficit disorder*. Chapel Hill, NC: Algonquin Books, 2006.

³³ Sampson, Scott. *How to raise a wild child*. Boston, MS: Houghton Mifflin Harcourt, 2015.

It is also recognized that an extensive repertory of offline experiences help children to develop what Louv calls the hybrid mind, another way to express the ability to self regulate. Individuals with a hybrid-mind or self-regulated are capable of switching easily back and forth between the digital and the physical world. They are able to interact deftly with both technology and the natural world. The human being were given multiple senses, but our ability to use them is based on experience. We can develop these senses, or they can deteriorate and leave us impoverished. Ultimately, the digital environment will be used to augment, rather than block, human senses.

In this context it should be acknowledged the vital importance of connecting children and nature as part of their everyday lives in meaningful ways, as this tends to be a precursor to their growing up as health and striving adults, with passion and commitment to work actively in support of Earth conservation and with inner skills to develop self-regulation towards the digital environment.

Suggestions for inclusion:

- Inclusion of new paragraph on item IV. The case for a digital environment, B. The role of the State, and responsibilities of non-state actors, item 19 (p. 5):

“At the same time that the digital environment presents profound possibilities for realizing children’s rights, it also represents a real barrier to the fulfillment of another of most children’s rights: the right to connect with nature³⁴. Therefore, the Committee calls on all States to promote and facilitate children’s access to offline spaces, particularly natural areas, since they are an inalienable part of nature. This means not only having the right to a healthy environment, but also having the right to connect with nature and it’s gifts, stimulating their physical and psychological health and their ability to learn and create. Nature experiences in childhood are of fundamental importance for both children and the (future of the) conservation of nature, as well as the protection of the environment, making it urgent that offline experiences, particularly those developed in the outdoor spaces, are considered and realized as one of the strategies that educators and families should take in consideration to promote children self-regulation regarding their digital lives.”

³⁴ IUCN. Child’s right to connect with nature and to a healthy environment. Available at: <https://portals.iucn.org/docs/2012congress/motions/en/M-132-2012-EN.pdf>. Viewed on: 29.10.2019.