

São Paulo, November 13th, 2020.

Dear Members of the Committee on the Rights of the Child,

Hereby we respectfully address our comments based on the draft of the General Comment on Children's Rights in relation to the Digital Environment, in response to the Committee's invitation¹.

[Alana Institute](#) is a Brazilian non-profit civil society organization that invests in programs that seek to guarantee conditions for the full experience of childhood, created in 1994. Its mission is to "honor children". Among our initiatives is the [Child and Consumerism](#) program, which advocates against the consumerist culture and children's commercial exploitation, promoting the Children's Rights-by-Design standard for the digital environment.

Firstly, we congratulate the Committee on the published draft, which covers very important and current issues on the promotion of children's rights in the digital environment. Yet, we present this contribution believing that there is still a main theme that should be addressed by the General Comment: the responsibility of private social welfare institutions on protecting children's rights, as foreseen in Article 3, para. 1, of the Convention on the Rights of the Child - which includes digital product and service providers, as the Internet and technologies are in today's world a basic human right to the best welfare of children.

Particularly, we understand the establishment of this responsibility in the text of the General Comment, alongside with other provisions that will be further specified, are vital instruments for the protection of children from commercial exploitation, mainly from marketing strategies and digital child labor.

Ultimately, another initiative the **Alana Institute** holds is the **Juvenile Justice** project, which aims to assure the rights of children in conflict with the law, advocating for a sensitive, accessible and friendly juvenile justice system for children. Therefore, we also present this contribution seeking to draw attention to this vulnerable group, whose interaction with technologies and the digital environment shall be specifically and properly guaranteed.

Yours sincerely,

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I. Digital business enterprises as private social welfare institutions bound by the Convention on the Rights of the Child and this General Comment

Article 3, para. 1 of the Convention on the Rights of the Child foresees the direct horizontal effect of children's rights in relations between private social welfare institutions, category which includes 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, these private actors, besides States, are bound directly by the text of the Convention itself - and thus should also explicitly be so by the text of the General Comment on Children's Rights in Relation to the Digital Environment.

As stated by the Committee's General Comment n. 16, the Article 3, para. 1, provision "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".

Now, digital information and communications technologies, the Internet, its platforms, applications and connected devices in general, perform a major role in everyone's and in children's daily lives. They are services directly provided to children and, ultimately, they also represent a key welfare service for children, as a means of enabling them to express themselves and fulfil their human rights. Private actors who develop, implement or are involved with children's interactions with the digital environment are thus bound by the Convention on the Rights of the Child and, generally, by this respectful Committee on the Rights of the Child.

An effective model of children's rights' governance should incorporate human rights international mechanisms to monitor business practices. So we recommend:

Inclusions after paragraph 39:

Ultimately, business enterprises that directly or indirectly impact on children's rights in the digital environment play the role of social welfare private institutions, thus shall acknowledge being bound by the Convention on the Rights of the Child and this General Comment and act for fulfilling their duty to protect and promote children's best interests.

Inclusion of chapter after paragraph 50: General Measures of implementation by private institutions

General measures of implementation by private institutions (art. 3, para. 1)

XX. The realization of children's rights in the digital environment demands efforts from private social welfare institutions, as foreseen in the Convention - particularly, business enterprises who develop, implement or are directly or indirectly involved with children's interactions with the digital environment. In the development of policies and measures, these actors shall be primarily guided by the children's best interest and their rights provisioned in the CRC, oriented by the children's rights-by-design standard.

A. Governing measures

XX. Private institutions, particularly business administrators and managers, while governing their companies have the duty to incorporate the Convention and this General Comment's framework for children's rights as an intersectoral internal policy.

XX. They shall thus integrate the Convention provisions into all appropriate corporate policies and management processes, primarily considering children's rights and best interests, integrating due diligence on this regard in the company culture, teams and goals, including in the designing and developing of products and services. They shall take an interdisciplinary approach in order to achieve this, taking into account not only the opinion of users (children and families), but also the perspectives of specialists, such as psychologists, neuroscientists, health care specialists, educators, and children's rights experts.

XX. In addition, to avoid discrimination, private institutions shall seek the universal adoption of the best technology and policy available, adopting the best policies and technologies available for children's rights and best interests protection in all jurisdictions that their products and services are available

XX. At last, private institutions shall enforce and be accountable for their own publish terms, policies and community standards, especially regarding privacy policies and age verification and restriction.

B. Developing a product or service

XX. All actors responsible for researching, developing and approving any digital product or service targeted to, that might be used by or that might impact children must observe the Convention and this General Comment.

XX. The development of these products and services shall be oriented by the data minimization principle, which demands that all children's personal data processing shall be adequate, relevant and not excessive in relation to the purposes for which they are processed, collecting the minimum amount of personal data is needed, storing that data for the minimum amount of time as possible and giving different options of the service related to each data needed to provide it.

XX. These actors shall ensure children's full ownership of their personal data, providing children with online tools to easily access, ratify, erase, restrict or object processing their data.

XX. They shall also provide children with commercial-free digital spaces, meaning that products and services designed for or that may be used by children shall be free from commercial pressures and

profiling or consumer nudge techniques based on personal data, especially from thinly veiled marketing strategies, like untransparent influencer marketing and product placement.

XX. In addition, private institutions shall promote meaningful and non-monetizable digital experiences to children, designing products and services that promote autonomous, playful and educational experiences, preventing the monetization of children's experiences, like the unauthorized digital artistic child labor.

XX. These actors shall use nudge techniques exclusively in the best interest of the child, in transparent and ethical ways, promoting the children's development and digital citizenship.

XX. They shall also apply high safety standards, seeking to safeguard the improper exposure of children's personal data and persistent identifiers. Moreover, they have the duty to prevent and combat known or new child sexual abuse material from being made available to users or accessible on their platforms and services, targeting online grooming, predatory behaviour and ensuring that livestreaming and search mechanism will not expose child sexual exploitation and abuse material and data. Still, they shall have in place processes to immediately remove or block access^[H3] to child sexual abuse data, ensuring also relevant third parties with whom the company has a contractual relationship have similarly robust notice and takedown processes.

XX. Private institutions, notably digital business enterprises, must have high-privacy settings, with profiling and geolocation off by default. In all products and services used by children they shall limit from the beginning biometric data collection.

XX. They shall promote online tools to facilitate parental controls and mediation and seek for design solutions that encourage parents and children to talk frequently about their experience online.

XX. Digital products and services shall also obey children's right to use, play and participate without personal data collection and children's right to rest and disconnect.

C. Providing a product or service

XX. Once the digital product or service is launched, private institutions, notably business enterprises that provide digital products or services that are likely to be accessed by children, shall ensure that its actual functioning is in accordance with the Convention and its framework.

XX. They shall implement a Children's Data protection impact assessments (CDPIA) process to identify and minimize risks to children, containing the description of data processing; the assessment of the necessity, proportionality and compliance of the data processing; the identification and assessment of risks; and the identification of measures to eliminate or mitigate the risks.

XX. Alongside, it is mandatory that private institutions' processing children's data processes is always in children's best interests. These actors shall inhibit any data use process that has been shown to be detrimental to children's wellbeing, such as persuasive design to extend engagement, marketing and behavioral advertising.

XX. Private institutions shall also acknowledge that the indication of an age for the use of a particular service or platform is an important tool for parental mediation and to adapt the usability of a product or a service to a specific age range and developmental stage. However, they shall not use this approach as a validation for the detrimental use of data.

XX. In addition, private institutions shall secure transparency, accessibility and legibility of their personal data processing processes mechanisms, as well as of terms of use and privacy of all products and services. They must provide all the information regarding the use of children's data in a simple, clear and accessible manner, suitable for the understanding of different children and families, including the translation into the different languages and accessibility for people with disabilities with other audiovisual resources when appropriate. Still, privacy tools, settings and remedies should be accessible, meaningful and child-friendly, creating learning opportunities and constant access to these tools during use.

XX. Finally, private institutions shall acknowledge that children's personal data are sensitive and shouldn't be disclosed to third parties, unless a compelling reason is checked and always in the best interests of the child, like for safety reasons.

Digital business enterprises often silently promote discriminatory practices. These practices present in relation to the fact that private transnational businesses often treat digital users from different countries in unequal ways, setting double standards on their policies throughout the world. Usually, children and families from the Global South are not granted access rapidly to new and safer technologies or corporate pledges and policies available to children in European or North-American countries, or even the basic access to terms of use and privacy policies in their own native language. So we recommend:

Inclusions to paragraph 10:

The right to non-discrimination requires that States ensure all children, *even in different countries*, including children of lower income families and children living in rural and remote areas, have equal and effective access to the digital environment in ways that are meaningful for them, *as well as access to the same policy standards of protection by the same companies, services and products.*

II. The children's rights-by-design standard

Neither is the consent standard nor the age verification approach sufficient mechanisms to fulfill children's rights in the digital environment, as they transfer the burden of so almost exclusively to families, often displaying as a *carte blanche* to States or private actors' predatory business models and practices. Not only, but these approaches neglect the unequal power relation between companies and families and the most people's - and even State actors' - inability to understand the complexity and opacity of digital relationships and its business models.

Alternatively, the children's rights-by-design standard arises, demanding that all actors in the digital environment, including States and private institutions who provide digital platforms, apps, connected devices accessed by children - even if not primarily targeted to them -, as well as methods, algorithms and tools needed to endow autonomous agents with the ability to reason about decisions concerning children or that may impact them, consider children's evolving capacities and are set in order to maximize children's rights and best interests, from the moment they are conceived and designed up to their execution and implementation phase.

Inclusions to and after paragraphs 13-14:

13. (...) Therefore, this principle has a special importance in relation to the digital environment. States shall *adopt the children's rights-by-design standard*, ensuring that in all decision-making regarding the provision, regulation, design, *development, implementation, execution* and management of the digital environment, *services and products, as well as the methods, algorithms and tools needed to endow autonomous agents with the ability to reason about decisions* that may impact children's rights, the best interests of the child *and children's evolving capacities* shall be *the* primary consideration, *moreover above commercial purposes*.

14. (...) States shall ensure transparency in assessment of the best interests of the child and *the children's rights-by-design standard and* demonstrate what criteria have been applied.

XX. The best interests of the child and the children's rights-by-design standard shall also be primary considerations to all private social welfare institutions, including business enterprises that provide digital services and products that directly or indirectly, by action or omission, impact children and their rights, as accessing and navigating the digital environment is a basic human right, to the best welfare of children.

Inclusion to paragraph 43:

43. Where parental consent is required to process children's personal data, States should require that efforts are made to verify that consent is informed, meaningful and given by the actual parent or caregiver of the child. *The obtainment of parental or caregiver consent, however, does not exempt private institutions from following the children's rights-by-design standard, aiming always and with primary consideration for children's best interests.*

Inclusions to paragraph 72:

72. (...) States should encourage the adoption of privacy-by-design *[addition] and children's rights-by-design*, such as end to end encryption, in services that impact on children. (...) States should ensure that consent to process a child's data is informed and freely given by the child or, depending on the child's age and maturity, by the parent or caregiver, and obtained prior to the processing. *Consent, however, shall not exempt States and private institutions from respecting, fulfilling and promoting children's rights and best interests.*

III. Children economic exploitation in the digital environment: commercial advertising and marketing and digital artistic child labor

The draft of the General Comment addresses commercial advertising and marketing in item J of topic V, optimally establishing the prohibition of targeted ads to children of any age on the basis of their digital record, as well as neuromarketing. We fully agree this provision and sustain it shall not be reviewed, as it represents an urgent and vital protection for children's rights and against children commercial exploitation, from ages 0 to 18.

Yet, we still consider it necessary to extend the provision of item J to recognize the lack of ethics and fairness and thus determine the (i) ban on all types of commercial practices and marketing communication in the digital environment that are not directly driven by data or digital record aimed at children under 13 years old and (ii) establish mandatory guiding principles for those aimed at children between 13 and 18 years old.

Researches and studies suggest that children up to 6-8 years old do not differentiate advertising from content, nor do they have the necessary judgement to distinguish fiction from reality and, until they are 13, do not understand the persuasive nature of advertising, what means they are vulnerable and easily influenced by this type of commercial strategy.

Children from ages 13 to 18, in different proportions, are also harmfully affected by these practices – in particular and less direct ways than younger children. These adolescents are also going through a developmental stage and have not yet completely developed all the appropriate biopsychic tools to respond to consumption pressures.

However, once all children are online, or have accessed connected devices, advertising commercial content appears in different forms, that vary from mechanical ads inserted in popular social media platforms - the majority of them not created and developed for an audience of children under 13 years old, but extensively and indiscriminately accessed by them -, to thinly veiled strategies such as unboxing videos created by digital influencers, usually sponsored by brands who send them gifts and invitations to surreptitiously promote their products and services.

Exposing children to advertising content that directly targets them, in this sense, may contribute towards intensifying problems that jeopardize children's full development, such as obesity and chronic non-communicable diseases (NCDs). There is also evidence that links commercial advertising practices aimed at children to family stress, violence, early binge drinking, unsustainable consumption behaviors, gender and race stereotypes and precocious eroticism, materialistic values and others.

Rephrasing of and inclusions after paragraph 41:

41. States should ensure that advertising, marketing *and all forms of commercial strategies* are

clearly distinguished from other content.

XX. States shall recognize the harms that advertising targeted to children under 13 years old causes, developing and enforcing laws and regulation that prohibit the practice. Alongside, private institutions should not aim any kind of commercial communication or advertising to children under 13 years old, providing children commercial free digital spaces and non-monetizable digital experiences, as extensions of children's rights to culture, leisure and play and access to information.

XX. The vulnerability of children between 13 and 18 years old across from digital marketing strategies shall also be recognized by States and thus parametrized by the following mandatory principles and guidelines: the clear identification of the marketing message; respect to children's dignity and intimacy; respect to the developmental phase 13-18-year-olds are going through and special attention and care for their psychological conditions; the prohibition of advertisement that might lead them to feel embarrassed, socially inferior or to be discriminated in any way; and the prohibition of advertisement that might induce them to violent behavior, to engage in illegal or harmful activities or in environmental degradation.

Moreover, in the context of content production by children on the internet, the debate about the characterization of the activity developed by child digital influencers as artistic child labor also deserves emphasis. Broadly speaking, kidfluencers publish videos, images and texts on digital platforms on a variety of subjects and are viewed, interacted with and followed by a growing number of fans.

Artistic child labor is allowed by Convention No. 138 and Recommendation No. 146 of the International Labour Organisation (ILO), which authorize child labor when its purpose is the participation of children in artistic representations, as long as the child's full development is not placed at stake.

Rephrasing and inclusions to paragraph 122:

122. (...) The Committee notes that where children are involved in the production and distribution of content, this may constitute potential for their economic and possibly other forms of exploitation. *States should 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 International Labour Organization, recognizing its performance by children digital influencers. States should also review relevant laws and policies to ensure that children are protected against economic and other forms of exploitation and that their rights with regard to work in the digital environment and related opportunities for remuneration are protected and inform parents and children about protections that apply, and ensure that appropriate enforcement mechanisms are in place. The digital artistic labor shall not be illegally exploited nor used as a means of targeting commercial content to other children, especially those under 13 years old.* States should also inform parents and children about protections that apply, and ensure that appropriate enforcement mechanisms are in place.

IV. The right to rest and to disconnect

A great amount of research and literature shows that there has been a significant decline in the quality and quantity of children's experience with the outside world as over the last few generations, childhood has moved indoors, leaving children aside from the natural world, their neighborhoods and the streets. Many authors refer to how the digital environment and the persuasive design of many digital platforms targeted to or used by children play a significant role in this scenario and the importance of forging the balance between offline and online experiences.

This worldwide trend of switching outdoor and nature time to sedentarism and digital experiences impacts children directly and has profound implications on their healthy development, on their belonging to their communities and families, on their interaction with other children and on how they fulfill their right to culture, leisure and play — as well as on the future of our cities and natural landscapes. Not only, but it also directly affects their right to rest from screen and digital interaction, opposing to the provision of the Convention on the Rights of the Child's Article 31.

Inclusions after paragraphs 116-120:

The right to rest and disconnect (art. 31)

XX. At the same time the digital environment presents significant possibilities for realizing children's rights, its excessive use may also pose real barriers to the fulfillment of other very relevant children's rights, especially to their right to rest, to the enjoyment of outdoor and nature experiences and to face-to-face interpersonal relationships, which are essential for children's development.

XX. States shall thus recognise that the digital world does not substitute the offline world experiences, taking measures for the fulfilment of children's right to rest and disconnect from the digital environment.

XX. States and private institutions shall promote and facilitate children's access to offline spaces, to take breaks during their online time and to balance those with stimulating everyday city experiences such as outside social interaction, chance encounters, playful journeys and discovery. These measures shall be taken in consideration from the design of digital products and services and may include time restriction mechanisms for families and caregivers and the abstinence from persuasive design strategies.

V. Juvenile justice: children in conflict with the law and their right to beneficial interactions with the digital environment (paragraphs 124-126)

Children's access to technologies and to the Internet is a right that shall be granted not only as itself, but also as a means of fulfilment to other fundamental rights such as to a full development, to education and to maintain contact with their families. The equal and proper access to the digital environment shall thus be granted to children in conflict with the law, aiming their resocialization.

Yet, their interaction with digital technologies shall always be granted for their benefit. It shall always present as a fulfilment to their best interests and never as a potential violation to human rights' guarantees such as the due process of law. The practice of video conferences within the framework of juvenile justice shall thus be rejected, as it may hamper children's interactions with their defenders and inhibit the investigation of violent acts that might have been committed against them. Not only, but the practice might also risk children's right to data protection.

Inclusion after paragraph 124:

XX. States shall also grant all children under the juvenile justice system the access to digital technologies and to the Internet in their best interests and shall reject the use of digital technologies in harmful ways that might violate children's human rights and their right to due process of law.

Inclusion in paragraph 125:

125. The digital environment can provide children living in vulnerable situations, including children in armed conflict, internally displaced children, migrant, asylum-seeking and refugee children, unaccompanied children, children in street situations, *children in conflict with the law* and children affected by natural disasters, with access to life-saving information vital for their protection.