
Children and the digital environment: the difficulty of balancing rights under a holistic approach

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Children and the digital environment

The difficulty of balancing rights under a holistic approach

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INTRODUCTION

Social media has started to shape the world, and at the same time children's presence in the digital environment has continued to grow, which has led to the discussion, because of the negative impacts, whether children's use should be restricted, or even prohibited¹. In recent years, it is also the case that several states, such as Sweden, France, Australia and the U.S.A. have introduced legislation aimed at restricting or even prohibiting children's access to social media, with the stated aim to protect the child, e.g. blanket age-based exclusion for children wanting to use social media, as well as parental controls².

¹ The work on this paper has been carried out within the framework of the academic network the e-Délib project, Democracy and Freedoms in the Digital Era: Toward a Legal E-Democracy. I am deeply thankful for the opportunity to take part in this project and to be given the chance to take part in this inspiring academic setting. To begin with I would like to express my sincere gratitude to my supervisor, Patricia Jonason, for her guidance and insightful feedback throughout this work. I would also like to extend my special thanks to Eva Fromholz, who, in her own time, has devoted an extraordinary amount of effort to supervising and guiding me in this subject. Her invaluable advice, thoughtful input, and willingness to act as a sounding board on numerous occasions have been deeply appreciated and meaningful. Lastly, I would like to mention that certain parts of this paper, particularly the descriptions of the Convention on the Rights of the Child, are based on texts that have previously been published in Swedish, see: MONEMI, Sara (2019), *En komparativrättslig studie om utredningsskyldigheten i barnärenden vid prövning om uppehållstillstånd i Sverige och Norge – Särskilt om barnets rätt att komma till tals*. Institutionen för samhällsvetenskaper, Södertörns högskola. Monemi, Sara (2022), *Barn som persona non grata – Om barnperspektiv i utlänningslagens vandelsbestämmelse och undantag från denna*. Teologiska Institutionen, Uppsala universitet. Fromholz, Eva, Monemi, Sara (2023). *Barnkonventionen vid medling*. Fromholz, Eva, Wallin, Lottie (red). *Medling vid konflikter som rör barn och unga – i familjen i skolan och vid brott*. Norstedts Juridik, Stockholm, 29–63.

² Online Safety Act 2021, No. 76, 2021, following amendments to the Online Safety Act 2021: November 2024. AA, Europe, "French National Assembly passes bill to ban social media for children aged under 15", <https://www.aa.com.tr/en/europe/french-national-assembly-passes-bill-to-ban-social-media-for-children-aged-under-15/3811708>, recently retrieved: January 2026, recently updated: 28.01.2026. *Kids Off Social Media Act*, S. 4213, 118th Cong. (2023-2024), see: Congress.gov.

- 2 The United Nations Convention³ on the Rights of the Child recognizes the child as being holder of their own rights, considering that they are particularly vulnerable and therefore in need of special protection. As much as the child⁴ needs to be protected, the child also has a right to grow and develop as an autonomous individual⁵. The perception of children being vulnerable, and in need of protection from adults, has been challenged by *inter alia* Martha Fineman, challenging this underlying and dichotomous understanding of children as vulnerable in contrast to adults. Instead, she refers to vulnerability as “universal vulnerability”, meaning that the state of being vulnerable does not only refer to some groups but that being vulnerable is a fundamental human trait which everyone beholds. Vulnerability is, and should be, universal and constant, according to Fineman⁶.
- 3 Restriction or prohibition of social media may aim to protect the child from exploitation, exposure to harmful content, mental health issues, among other things – which is in line with Article 3 (best interests of the child) of the Convention on the Rights of the Child, including their need for *inter alia* protection from various forms of harm, violence and abuse, that they might be exposed to on social media. On the other hand, doing so would also limit the child's right to participation, information and expression, as well as the right to form their own person and identity – as protected under Articles 12 (respect for the views of the child), 13 (right to information and freedom of expression), 16 (right to privacy), and 17 (access to appropriate information). These latter rights are also essential in the digital environment, since social media often functions as a platform for participation, information and expression as well as identity formation and the exercise of autonomy⁷.
- 4 The two opposites – protection from and participation in – create a fundamental legal tension, which is something that could be understood in the light of Gregor Noll's theory of conflict levels in legal reasoning. According to Noll, legal conflicts can be categorized into three levels of increasing complexity. The first level involves legal technical conflicts which are relatively straightforward and can be resolved through traditional legal tools, such as rules for conflict resolution between different

³ Convention on the Rights of the Child, New York, 20 November 1989, UN Doc. A/Res/44/25.

⁴ Who qualifies as a child is, in Western culture, generally determined by age. According to Article 1 of the Convention on the Rights of the Child, a child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.

⁵ HUNT, F. 1994, pp. 343 ff.; Bridgeman and Monk 2000, p. 5. Children are instead perceived, according to Bridgeman and Monk, in terms of absence, and consequently as vulnerable and in need of protection. Provisions for the protection of children have also been expressed in other key human rights instruments. At the European level, for example, reference is made to the principles of the best interests of the child and respect for the child's views in the Charter of Fundamental Rights of the European Union, OJ C 364/391, 26 October 2012, pp. 391–407, Article 24. Protection of children's rights is also provided in Article 3.3 of the Treaty on European Union (consolidated version). Against this background, since 2010, there has also been a provision for the protection of children in Chapter 1, Section 2, fifth paragraph of the Swedish Instrument of Government (1974:152), RF.

⁶ FINEMAN, M. A. (2008). “The Vulnerable Subject: Anchoring Equality in the Human Condition”. *Yale Journal of Law & Feminism*.

⁷ Committee on the Rights of the Child, *General Comment No. 25 (2021): Children's rights in relation to the digital environment*, CRC/C/GC/25.

regulations or interpretative principles⁸. For instance, determining which national legal framework applies or clarifying how a specific legal provision should be interpreted.

- 5 The second level consists of more complex normative conflicts, where two legal rights or norms clash – both carrying legitimate legal weight. These conflicts require more evaluative reasoning, often employing principles like proportionality (weighing competing interests) or coherence (seeking consistency within the legal framework)⁹. An example would be balancing the right to freedom of expression with the right to privacy.
- 6 Finally, Noll defines the third level as meta-legal, where rights of equal legal and moral value come into conflict, and that cannot be resolved through legal methodology alone. This is the most profound and value-laden level of legal reasoning, often reflecting deeper ideological or ethical tensions¹⁰. An example could be the conflict between the right to protection because of state-imposed security measures and the right to political participation, protesting those very measures, where there is no clear legal hierarchy between the two. In such cases, legal reasoning must often give way to broader political or moral deliberation.
- 7 It can, on the one hand, be argued that the tension between the child's right to protection and the child's right to autonomy in the digital environment can be referred to as a meta-legal conflict. Hence, it may be questioned whether the conflict between protection for the child and the child's autonomy, as well as protection for society where the rights of the child may be in conflict with the interests of society – can be resolved solely through traditional legal reasoning or proportionality assessments. Instead, it would demand to be addressed through normative judgments that are typically rooted in political and ethical commitments.
- 8 It may, on the other hand, be argued that this conflict often can be solved through proportionality assessments, highlighting that this tension cannot be regarded as, or confined to, a single level of conflict. Depending on the context of the situation, conflicts between protection and autonomy may even be resolved at the first level, through technical or doctrinal legal reasoning, e.g. by determining the applicability of specific protective legislation or age-based regulatory rules. However, it is common that such tensions are addressed at the second level through proportionality assessments, where competing interests – such as protection from harm and respect for personal integrity, privacy, or freedom of expression – are weighed against one another. Hence, conflicts arising in the contexts of children and the digital environment—between protection for the child and the child's autonomy, as well as protection for society – exist in all of Noll's levels¹¹. The way they are addressed may, however, vary across the three levels, depending on the regulatory context and the legal framework applied and

⁸ NOLL, Gregor, *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, Martinus Nijhoff Publishers, The Hague/Boston/London 2000, pp. 63 f.

⁹ *Ibid.*, pp. 64 f.

¹⁰ *Ibid.*, pp. 65 ff.

¹¹ These examples of conflicts will be further discussed in the concluding section, highlighting how all levels may be relevant depending on the specific question at hand.

the scope of the state's margin of appreciation¹². Hence, in the context of international law, states are afforded a margin of appreciation, as reflected *inter alia* in the jurisprudence of the European Court of Human Rights¹³.

- 9 These conflicts must be seen in connection with the understanding that the child is not merely an object of protection, but also a holder of rights – an individual with agency, evolving capacities, and a voice that must be taken seriously in legal and social as well as policy decision-making¹⁴, even when the child's interests may collide with other interests. Also, the Committee on the Rights of the Child has emphasized in their General Comment No. 25 that all children's rights apply to full extent in the digital environment and that limitations concerning these rights must be lawful, proportionate and necessary in a democratic society. This means that, by excluding the child from social media based on age, there is a risk of disrupting the legal balance between protection and participation¹⁵. This challenges not only the reach of legal reasoning but also its foundational concepts – pushing the boundaries of how law defines rights, agency, and protection in the context of the digital era¹⁶. However, these are considerations that also apply to adults, just as Fineman has observed with regard to vulnerability¹⁷. Also, in relation to adults we must make such assessments, whether to permit or prohibit, restrict or allow, with regard to the protection of the individual or of society. Hence, these conflicts also apply in relation to adults.
- 10 In the light of these conflicts, blanket age-based exclusions from social media risk disrupting the legal balance between protection and participation. Questions arise not only about the limits of

¹² Examples from coercive care in Sweden are illustrative for the complexity in these cases, e.g. The Care of Young Persons (Special Provisions) Act (1990:52), The Care of Abusers (Special Provisions) Act (1988:870) and The Compulsory Mental Care Act (1991:1128). It has been noted by the American legal scholars WEXLER D. & WINICK B., who at the end of the 1980s founded the legal-philosophical movement of therapeutic jurisprudence as a reaction to the fact that practical law enforcement regarding mentally ill did not work as intended, that the basis for this compulsory legislation that was considered to rest on the aim of safeguarding the human rights of these individuals, upon closer analysis showed that this motive had been displaced by an ambition to protect the surrounding community from the mentally ill. See FROMHOLZ, EVA, JACOBSSON, MARITHA (2018). *Humanjuridik. 131 Tidsskrift for Rettsvitenskap*, 104–123, p. 108, with further references.

¹³ From the case law of the European Court of Human Rights, see primarily *Handyside v. United Kingdom*, Judgment of 7th December 1976. For a description of the margin of appreciation doctrine in European human rights law, see e.g. Frantziou, Eleni (2014). *The margin of appreciation doctrine in European human rights law*. UCL Policy briefing – October 2014, London's global university, pp. 1–3.

¹⁴ LANSDOWN G., *The Evolving Capacities of the Child* (UNICEF Innocenti Research Centre 2005) (noting that the CRC's evolving capacities principle recognises children as active agents entitled to increasing autonomy); see also: Committee on the Rights of the Child, *Statement on CRC Article 5* (Oct. 2023), paras. 9–10 (emphasising evolving capacities as central to recognising children's status as independent rights-holders).

¹⁵ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, para. 3–4, 58–60.

¹⁶ See: *Legal Challenges in the New Digital Age*, ed. Ana Mercedes López Rodríguez, Michael D. GREEN & Maria LUBOMIRA KUBICA (Brill 2021).

¹⁷ FINEMAN, M. A. (2008), "The Vulnerable Subject: Anchoring Equality in the Human Condition", *Yale Journal of Law & Feminism*. This is e.g. apparent concerning the above-mentioned legislation concerning coercive care in Sweden, The Care of Young Persons (Special Provisions) Act (1990:52) in relation to children, The Care of Abusers (Special Provisions) Act (1988:870) and The Compulsory Mental Care Act (1991:1128) in relation to adults.

proportionality but also about the foundational assumptions underpinning legal conceptions of rights, agency, and protection in the digital era – questions that are further shaped by the above-mentioned state’s margin of appreciation in balancing individual rights versus the interests of society.

- 11 This dilemma can also be understood in the light of “The Paradox of Protection”, a feminist legal theory which critically reflects on how protective measures – especially those targeting vulnerable groups such as women or, in this case, children – can unintentionally reinforce dependency, passivity or exclusion. Originally developed in gender equality discourse, this paradox highlights how protection, when applied excessively or uncritically framed, risks stripping the subject of agency and voice¹⁸. Applied in the child rights context, particularly within the digital environment, this means that restrictions justified by vulnerability may in fact contribute to infantilizing children and denying them the very autonomy they are entitled to under the Convention. Thus, the paradox of protection calls for a critical reassessment of protective legal measures – are they truly in the best interest of the child – or even in the best interests of society – or do they reinforce an outdated understanding of the child as a passive object rather than an autonomous rights-holder?
- 12 It should be noted that this paper is not intended to be normative in the sense that I want to clarify boundaries for how this tension should or could be solved, but rather to highlight and problematize the balancing of protection and autonomy within current legal and normative approaches that reflect the child as a rights-holder with agency, voice, and identity in the context of the digital environment, as well as in need of protection. The paper delves into how protection and participation are, and can be balanced within, the digital environment. Rather than offering a definitive solution, as that would inflict a political or moral deliberation, the purpose is to investigate how legal reasoning navigates this complex issue; protecting the child does not necessarily mean that protection is always directed primarily at the child but rather, in some cases, protection takes the form of, e.g. legislation aimed at safeguarding society from potential harm caused by children, preventing children from being e.g. recruited into criminal networks or radicalization that could lead to acts of violence. Thus far, children are also important actors in society, contributing to either “the common good” or “the common bad” – something that puts the question of protection and autonomy in a new light, reinforcing the question, when does protection become a restriction and for what purpose, and when might such restrictions fail to be proportionate?
- 13 This paper draws primarily on the Convention on the Rights of the Child and the General Comments of the Committee on the Rights of the Child as well as UNICEF’s Implementation Handbook¹⁹ for the Convention on the rights of the Child to explore how the Convention conceptualizes the child as both vulnerable and autonomous in the digital environment. It is the interpretative framework and

¹⁸ QUARLES VAN UFFORD, S. “The Protection Paradox: A Study of Children’s Rights to Participation and Protection Against Violence in Swedish Child Welfare Practice” (2023), *The International Journal of Children’s Rights*, pp. 756–780.

¹⁹ UNICEF, *Implementation Handbook for the Convention on the Rights of The Child* (2007), XIX (“UNICEF, Implementation Handbook”), 2007.

the “margin of appreciation” that the description of these sources aim to highlight – what these central sources say about the “balancing” involved, and what is left for states to assess.

- 14 Following this introductory section, in the second section of this paper, the Convention on the Rights of the Child, which serves as the main legal framework, is described, including the central principles of the Convention, namely the best interests of the child (Article 3), the child’s right to participation (Article 12), freedom of expression (Article 13), privacy (Article 16), and access to information (Article 17), and how they are to be applied in digital environments. In the third section the balancing of the child’s protection and autonomy is highlighted and problematized. Finally, the fourth section contains a concluding discussion and my final remarks.

I. THE CONVENTION ON THE RIGHTS OF THE CHILD

- 15 The Convention on the Rights of the Child is the central convention aiming to promote and protect children’s rights, although there are also other rights specifically created to target children within the United Nations system, the Council of Europe, and the European Union²⁰. Thus, it is important to highlight that children are also covered by the general rights that apply to all groups of individuals, *inter alia* the UN Universal Declaration of Human Rights, the UN Convention on Civil and Political Rights, the UN Convention on Economic, Social and Cultural Rights, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union, but as described it is the Convention on the Rights of the Child that is the main focus of this paper.
- 16 The Convention was adopted by the United Nations General Assembly in 1989 and entered into force in 1990 and is the first legally binding international instrument on the Rights of the Child which establishes the framework for both recognition and protection of children’s rights. The Convention affirms that children are independent rights-holders with their own entitlements – including the right to express their views and to have their best interests taken into account in all decisions affecting them.
- 17 The Convention contains both substantive rights (Articles 1–41) and procedural provisions (Articles 42–54). Four of the articles in the Convention are considered to be general principles of importance for the implementation of the entire Convention, according to the Committee²¹ on the Rights of the Child: Article 2 (no discrimination), Article 3 (the best interests of the child), Article 6 (life, survival, and development), and Article 12 (respect for children’s views), all of them of interest for this paper,

²⁰ At a European level, there are e.g. reference to the principles of the best interests of the child and respect for the child’s views in the Charter of Fundamental Rights of the European Union, EUT C 364/391, 26.10.2012, pp. 391–407, article 24. Protection for the rights of the child is also found in article 3.3 in the Treaty on the Functioning of the European Union (consolidated version).

²¹ The Committee on the Rights of the Child is the United Nations body of independent experts responsible for monitoring the implementation of the Convention on the Rights of the Child by its State Parties.

in particular Articles 3 and 12 as already been described. These articles will therefore be explored more thoroughly below, along with the other central articles described above.

- ¹⁸ The implementation of the Convention is monitored by the Committee on the Rights of the Child. Thus, there is no international court or administration of justice that deals with matters under the Convention. Instead, the Committee plays a key role in supervising compliance by reviewing periodic reports submitted by State Parties under Article 44 in the Convention, and hence issues concluding observations in response to these reports. Furthermore, the Committee also publishes General Comments which, along with *inter alia* recommendations issued in connection with the Committee's days of general discussion, practices from complaint procedures²² and the Committee's jurisprudence, provide authoritative guidance on the interpretation of specific rights and principles in the Convention. The Convention is, however, grounded in the universality, indivisibility, and interdependence of all human rights and must therefore also be interpreted in the light of states' broader international, as well as national, obligations²³.

II. THE CHILD'S RIGHT TO PROTECTION AS WELL AS AUTONOMY

- ¹⁹ The Convention's Article 3 highlights the principle that the best interests of the child must be a primary consideration in all actions concerning the child, whether undertaken by public authorities, courts, administrative bodies or legislative institutions. The principle ensures that the child's rights and well-being should be prioritized in decision-making processes at every level. Furthermore, Article 3 obliges states to provide the protection and care necessary for the child's well-being, considering the rights and duties of parents or legal guardians, as well as requiring that institutions and services responsible for the child's care meet appropriate standards of safety, quality and oversight.
- ²⁰ The child's particular vulnerability in digital environments is a recurring concern addressed by the Committee on the Rights of the Child. In today's digital environment, where children are more present online than ever before, the best interests principle needs to be taken into consideration when it comes to among other things design and regulate digital platforms. The Committee of the Rights of the Child underlines in their General Comment No. 14 that the best interests of the child is a dynamic concept requiring a case-by-case assessment. It also outlines that determining a child's best interests involves evaluating various factors, including the child's views, identity, preservation of the family environment, care, protection and safety, as well as the child's situation of vulnerability²⁴. Furthermore, the Committee has developed its recommendations within the digital environment in

²² Complaint procedures: are not legally binding but play an important role and, according to some doctrine, may develop into customary international law.

²³ UNICEF, *Implementation Handbook for the Convention on the Rights of The Child* (2007), XIX ("UNICEF, Implementation Handbook"), 2007.

²⁴ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, UN Doc. CRC/C/GC/14, paras. 6, 29, 71.

General Comment No. 25, highlighting that the digital environment significantly impacts children's lives, offering opportunities for the realization of their rights but also posing risks of violation or abuse²⁵. In addition, noting that protective digital regulation must consider the child's evolving capacities, the Committee emphasizes the impact of the digital environment on the child's identity, and the child's right to develop autonomy²⁶.

- 21 From a rights-based perspective, such interventions may fall within the scope of Article 17, which obliges States to ensure that children have access to a wide range of sources which provide information promoting their well-being, while also developing guidelines to protect them from harmful content. The Committee also highlights in their General Comment No. 25 that protection in the digital environment includes shielding children from disinformation, hate speech, sexual exploitation and addictive content strategies²⁷. As mentioned above, this could also be a reason to protect society from e.g. criminal recruitment or radicalization that could lead to acts of violence.
- 22 Thus, while children's vulnerability must be addressed, protection cannot be combined with exclusion. A child rights-compliant legal system must pursue regulation that is contextual, evidence-based and respectful of both vulnerability and participation²⁸.
- 23 The Convention, namely, not only protects the child but recognizes the child as a rights-holder with agency and evolving capacities. Article 12 of the Convention highlights that every child who is capable of forming his or her own views has the right to be heard in all matters affecting them and that their views must be given weight in accordance with their age and maturity. Hence, the article establishes the child not only as a passive recipient of protection but as a subject of rights and an agent in their own life. Article 12 applies to all judicial and administrative proceedings, as well as legislative processes and policy-making that impact children. It introduces a dual obligation for states: first, to ensure that children are given the opportunity to express their views freely; and second, that those views are given serious consideration in decisions affecting them²⁹. Article 12 does not depend on age thresholds or legal status. Children of all ages have the right to be heard, with due weight given to their level of maturity and understanding. States are therefore required to actively create conditions that facilitate meaningful child participation in digital decision-making. This includes child-friendly

²⁵ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 3-4.

²⁶ *Ibid*, paras. 12, 16, 17.

²⁷ *Ibid*, paras. 18-21.

²⁸ *Ibid*, paras. 2-4, 14, 18-20, 95-97.

²⁹ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, paras. 2-4, 20, 28-35, 72-74.

communication, digital literacy training, and opportunities to co-design technology or policy alongside adults³⁰.

- 24 General Comment No. 12 elaborates on this article by stating that Article 12 is a foundational principle of the Convention and a substantive right in itself. It emphasises that the right to be heard is not limited to individual cases, such as legal or administrative decisions, but also includes children's right to be consulted in the development and evaluation of laws, policies and services. It also affirms that the views of children must not only be listened to but also have an actual influence on the outcome. The Committee insists that the implementation of Article 12 requires both the creation of formal spaces for participation and the cultivation of an environment that genuinely values children's perspectives³¹.
- 25 General Comment No. 12 also stresses the evolving capacities of the child: while younger children may need more support to express themselves, they are still capable of forming and expressing views, and their contributions must be taken seriously. For older children and adolescents, the expectation is higher: they should be recognized as capable social actors whose perspectives carry substantial weight, especially in matters directly affecting their lives, such as education, health care, family life, and digital participation³².
- 26 This principle applies fully in digital settings. General Comment No. 25 reinforces that the right to be heard and respect for the views of the child fully applies online. It acknowledges that digital technologies offer significant new spaces for children's participation, including through social media, online forums, and digital civic engagement. These tools can empower children to express their opinions, connect with peers, and influence public discourse. Furthermore, the Committee underlines that children must be consulted in the design, implementation, and evaluation of laws, policies, and technologies that regulate their digital environment. States are also required to actively create conditions that facilitate meaningful child participation in digital decision-making. This includes child-friendly communication, digital literacy training, and opportunities to co-design technology or policy alongside adults³³.
- 27 Article 13 in the Convention guarantees the child's right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers and through any media of the child's choice. This provision recognizes children as active agents in communication and social interaction, not merely as passive recipients of information. It encompasses

³⁰ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, paras. 20–21, 28–31, 41–49. Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18–20, 53–54, 107–110.

³¹ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, paras. 18–26.

³² *Ibid.*, paras. 14–17.

³³ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, para. 16, p. 3.

both verbal and non-verbal forms of expression, including through art, writing, digital communication, and online platforms³⁴. Access to information is described as a unique opportunity provided by the digital environment. States are expected to ensure that children have access to diverse, age-appropriate and empowering digital content³⁵. Any restrictions on this access must be lawful, necessary and proportionate, as well as being consistent with Article 13 of the Convention.

- 28 Freedom of expression, as protected by Article 13, complements the right to be heard stated in Article 12, it contributes to the development of the child's identity, autonomy, and civic engagement. The right to freedom of expression also plays a crucial role in children's emotional development and sense of self, particularly in adolescence, when the need for self-expression and social connection becomes central³⁶.
- 29 General Comment No. 12 highlights that freedom of expression is indispensable for the realization of the child's right to be heard. Without the ability to seek and share information, the child's participation in matters affecting them is severely limited. Therefore, ensuring this right requires proactive measures by states to create enabling environments – both offline and online – where children feel safe and empowered to express their thoughts, views, and experiences without fear of censorship or retaliation³⁷.
- 30 Article 16 ensures the child's right to privacy, stating that no child shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. It also obliges states to provide legal protection against such interferences or attacks. This right affirms the child's status as an individual with personal boundaries, dignity, and autonomy, and it plays a foundational role in safeguarding other rights, including the rights to freedom of expression, identity, and protection from harm³⁸.
- 31 In contexts, especially within the digital environment, the meaning and scope of the right to privacy have expanded significantly. As children increasingly engage in online spaces – through social media, gaming platforms, messaging services, and educational tools – their personal data, online behaviours, and communications are often subject to surveillance, profiling, and commercial exploitation. In this

³⁴ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, paras. 22–23. Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18–20, 52–54.

³⁵ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18–20, 52–54.

³⁶ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, paras. 2–4, 22–23, 28–31. Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18–20, 52–54.

³⁷ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, para. 83. Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 8–9, 36–37.

³⁸ Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc. CRC/C/GC/16, paras. 3–5. Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 23–27.

regard, General Comment No. 25 highlights that the right to privacy applies fully to children in the digital environment and places clear obligations on states and private actors to uphold this right with special consideration to the child's vulnerability and evolving capacities³⁹. The Comment emphasizes that children must be protected from data collection practices that are not in their best interests, including intrusive advertising, behavioural tracking, or unnecessary data retention. Moreover, children's right to privacy includes respect for their communications, freedom from surveillance, and protection of their digital identity. It also includes the ability to manage their own information and control how it is shared, particularly as their capacity to understand and assert this right develops with age⁴⁰.

- ³² The UNICEF Implementation Handbook for the Convention similarly stresses that Article 16 must be understood as including not only protection against overt invasions of privacy, but also against more subtle forms of intrusion that may occur through institutional or technological practices. This includes, for example, automatic content moderation that monitors private messages, parental control tools that overly restrict adolescent autonomy, and algorithms that profile children based on their activity. Such measures must be carefully assessed for their necessity, legality, and proportionality⁴¹.
- ³³ Article 17 also plays a critical role in the digital context, emphasizing children's right to access information from diverse and beneficial sources. This right is especially relevant where algorithms and content moderation systems risk narrowing or distorting children's access. According to General Comment No. 25, states must not only block harmful content but actively promote pluralistic and empowering media literacy⁴².
- ³⁴ Together, Articles 12 (the right to participation), 13 (freedom of expression), 16 (the child's right to privacy) and 17 (access to information) affirm a legal framework in which children are recognized as autonomous, communicative and reflective individuals. Social media restrictions based solely on age thresholds or adult-centric assumptions fail to meet these standards. They undermine the child's ability to form identity, exercise citizenship and explore being their own person.
- ³⁵ This brings us to a critical legal concept: the right to one's own person. While not explicitly articulated in the Convention, it is interwoven with rights to privacy, expression and identity. General Comment No. 25 acknowledges that children have a right to construct and manage their digital presence, including how they represent themselves, who sees their information and how they engage socially.

³⁹ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 67–69.

⁴⁰ *Ibid.*, paras. 69, 75.

⁴¹ UNICEF, *Implementation Handbook for the Convention on the Rights of The Child* (2007), XIX (UNICEF, *Implementation Handbook* (2007), pp. 110–115.

⁴² Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18, 20, 92–93.

Policies that neglect this dimension of identity formation – through censorship or overregulation – risk stripping children of control over their personal narratives⁴³.

- 36 Children's autonomy in the digital environment is not an abstract concept – it is grounded in international law. States must not merely protect children. They must also empower them, respecting their voices, experiences and individuality in shaping the world they live in. Obligations regarding protection and autonomy under the Convention have motivated an increasing number of States to adopt protective digital legislation.
- 37 Hence in 2023, France enacted a law requiring parental consent for children under 15 to use social media. Also in 2026, France adopted new legislation stipulating that access to social media platforms is restricted to children aged 15 and above⁴⁴. In 2024, Australia introduced a national age minimum of 16 for access to social platforms, placing an active duty on companies to block underage users⁴⁵. In the U.S.A. states (Utah, Florida, and Arkansas) have passed similar restrictions, often justified as necessary to combat online exploitation, algorithmic addiction and mental health deterioration⁴⁶.
- 38 In Sweden, social media has no ban nor restriction concerning children, although the Swedish organization *Children's Rights in Society* [Barnens rätt i samhället, BRIS], reveal in their report from 2025 that nearly one in four children in Sweden have encountered harmful online content such as self-harm videos and misogynistic propaganda. These exposures correlate with increased psychological distress, particularly among girls aged 11–15⁴⁷. Furthermore, Sweden introduced, in 2024, a strict age-based screen time recommendations for children, this being based on response to growing concerns about mental health, sleep and physical activity. The Public Health Agency advises no screen time for children under the age of two, limited hours for older children, as well as having no screens in the bedroom⁴⁸. Also in 2026, the Swedish Government has announced that there will be a national ban in the country regarding pupil's use of mobile phones in primary schools, a ban which enters into force at the beginning of the autumn semester 2026⁴⁹.
- 39 As states implement laws regulating children's access to social media, such as age verification measures or bans, these restrictions must be assessed in the light of the child's best interests. While such measures may aim to protect children from harmful content, addiction or exploitation, they may also

⁴³ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 69–71.

⁴⁴ Loi n°2023-567 du 29 juin 2023, France.

⁴⁵ *Online Safety Amendment Act 2024*, Australia.

⁴⁶ See: *Utah Social Media Regulation Act*, enacted March 2023 (SB 152/HB 311; age verification and restrictions on addictive features, parental controls, etc.). See: Florida social media age verification laws (HB 3/*Online Protection for Minors*). See: e.g., the *Social Media Safety Act*, which creates a legal framework for minors and parents to hold platforms accountable for harms in relation to addictive features.

⁴⁷ BRIS, *Barnrapporten 2025*, pp. 4–5.

⁴⁸ Sweden's Public Health Agency, *New Recommendations on Children's Screen Time* (2024).

⁴⁹ The Swedish Government (Ministry of Education), *A National Ban on Mobile Phones in Compulsory School and After-School Care*, Ds 2025:9.

interfere with other rights enshrined in the Convention, such as the above described right to participation (Article 12), freedom of expression (Article 13), and access to information (Article 17), especially when they ignore the child's agency and evolving capacities. As has also been described, the Committee stresses in General Comment No. 25 that any restrictions must be lawful, proportionate and necessary in a democratic society⁵⁰.

III. A REGULATORY MODEL THAT INTEGRATES “BOTH AND”

- ⁴⁰ The tension between protecting children from digital harm and enabling them to act as autonomous rights-holders poses not only a technical regulatory challenge. As described, it can be argued that the tension between these opposing rights (protection and autonomy) constitute a normative legal conflict of the kind Gregor Noll categorizes as “meta-legal”, i.e. that it cannot be resolved solely through, for example proportionality, and that it instead demands to be addressed through normative judgments that are typically rooted in political and ethical commitments. As described, in Nolls theory of legal reasoning conflicts at this level involve fundamental rights of equal moral and legal value, where resolution cannot be achieved through conventional legal techniques such as proportionality or coherence. The application of the principle of proportionality is, however, also a difficult balancing act, as it is often unclear what is truly proportionate in the given situation. Hence, the assessment of proportionality is not merely a legal technique but also, to a large extent dependent on normative judgments, where the boundaries ultimately depend on political and ethical values, the intentions of the legislature with regard to the margin of appreciation, as well as the interpretations of the national courts and depending on the context of the situation. Likewise, conflicts between protection and autonomy may even be resolved at the first level, through technical or doctrinal legal reasoning.
- ⁴¹ Hand in hand with this, the Convention on the Rights of the Child can be understood as containing an integrated regulatory model that covers both protection and autonomy but also refrains from the detailed description of how to balance the rights protection versus autonomy. Thus, this balance is to be achieved in practice. The task of making concrete proportionality assessments is largely delegated to States Parties, the differing margins of appreciation afforded to States also result in variations in how this balance is struck. This places the regulatory challenge at what may be described as a third level of normativity, where national legislators are required to make explicit political and ethical judgments, irrespective whether the legislation concerns. In some instances, this balancing is carried out through clear legislative rules, while in many others it is regulated more implicit, leaving the assessment to be undertaken by administrative authorities and national courts on a case-by-case basis.
- ⁴² Concerning children's rights in the digital environment within the European Union, in July 2025 the European Commission presented guidelines on the protection of minors under the Digital Service

⁵⁰ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 12, 71, 94.

Act (DSA), as well as presenting a prototype of an age-verification app. These measures aim at ensuring that children and young people can appreciate the opportunities that the online world has to offer, such as learning, communication and creativity, as well as at the same time minimizing the risks that they face online, e.g. exposure to harmful behaviours and content. Furthermore, the guidelines on the protection of minors aim to ensure that children and young people savour high levels of privacy, safety and security when it comes to online platforms. Their development relied on an inclusive and extensive consultation period, including with children and young people. The guidelines provide recommendations, among other things, to address cyberbullying, harmful content, unwanted contact from strangers, as well as addictive design⁵¹. The age verification app is user-friendly and aims to protect privacy, setting a 'reference standard' in age verification online. Users will e.g. be allowed to easily prove that they are over 18 years of age when accessing restricted adult content online, while remaining in full control of any other personal information, such as a user's exact age or identity. The age verification app is going to be tested and further customized together with Member States, online platforms and end-users⁵².

- 43 As described, applying Noll's framework to the digital environment, the conflict between protection (Articles 3 and 17) and autonomy (Articles 12, 13, and 16) is not clear to standard balancing. Each side of the conflict is substantial in binding international obligations, and both aim to advance the child's development and dignity. Thus far, as legislative developments in for instance France, Australia and several states in the U.S.A., as well as in Sweden, illustrate how states often have their primary focus on the protective dimension—implementing exclusionary age-based restrictions as default tools for digital governance⁵³.
- 44 This protection-first approach being well-intentioned, risks undermining the holistic perspective promoted by the Convention on the Rights of the Child. Hence, the General Comment No. 25 explicitly warns against overly restrictive frameworks and among other things urges states to adopt rights-based digital policies that are inclusive, participatory and responsive to children's evolving capacities⁵⁴.
- 45 Children's participation is not confined to individual decision-making processes but extends to their capacity to contribute to society in a broader way, including the involvement in both developing and decision-making when it comes to policy. Recognizing children as participants in these processes affirms their role in shaping the communities and societies in which they live. At the same time, the exercise of such participation stresses adequate protection. In Sweden, for example, the question has

⁵¹ European Commission, *Guidelines on the protection of minors under Article 28(1) of Regulation (EU) 2022/2065 (Digital Services Act)*, 14 July 2025, https://commission.europa.eu/news-and-media/news/minimising-risks-children-and-young-people-face-online-2025-07-14_en. See also Article 28(1), Regulation (EU) 2022/2065.

⁵² *Ibid.*

⁵³ See: e.g., Loi n°2023-567; Online Safety Amendment Act 2024; Utah Social Media Regulation Act 2023.

⁵⁴ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 12, 14, 79, 93.

been raised as to whether the digital sphere sufficiently safeguards children, particularly in the light of concerns that online environments may expose children to gang recruitment or radicalization such as white power movement⁵⁵. This highlights the need to balance children's political agency and participation with appropriate protective measures in digital contexts.

- ⁴⁶ The protective principle is particularly compelling when viewed through the eyes of Article 17, which recognises the crucial role of mass media in children's lives. It obliges States Parties to ensure access to information from diverse sources that promote the child's moral, spiritual, social and physical development. Simultaneously, it mandates the regulation of harmful content – such as hate speech, self-harm imagery or exploitative material – to at the same time protect children's well-being.
- ⁴⁷ Furthermore, General Comment No. 25 highlights that Article 17 must be interpreted dynamically in the digital context. States must actively promote children's access to empowering and pluralistic content online while also safeguarding them from psychological, emotional and developmental harm⁵⁶. This requires a regulatory model that integrates both access to and protection from as two interdependent dimensions of the same right.
- ⁴⁸ However, it is essential to recognize that protection must not be achieved at the expense of balancing all other rights – in this case when addressing the interplay between protection and autonomy. Blanket age-bans, overly broad content filters or intrusive parental control mechanisms may contravene other rights – such as privacy (Article 16), participation (Article 12) and freedom of expression (Article 13) – if they fail to account for children's evolving capacities and the proportionality of the restriction. As emphasized in the UNICEF Implementation Handbook, Article 17 demands that protective measures be tailored, lawful and grounded in qualitative standards for both content and delivery⁵⁷.
- ⁴⁹ Moreover, Article 17 imposes a positive obligation to promote media literacy. Children must be equipped with the tools to navigate digital spaces critically, understand content as well as being able to assert their rights in online interactions. This turns the role of the child from passive recipient into being an active digital citizen and aligns protection with empowerment⁵⁸. Here, Article 17 stands as an essential reminder that protection must be balanced with empowerment and that children's rights in the digital environment cannot be upheld through restriction alone. The protective function of law should not eclipse the rights of the child to access, express and develop through digital engagement.

⁵⁵ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12, para. 2-4, 20-21. Brottsförebyggande rådet (Swedish National Council for Crime Prevention), *Kriminellas rekrytering av barn och unga online* (2025).

⁵⁶ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 18-21, 74-76.

⁵⁷ UNICEF, *Implementation Handbook for the Convention on the Rights of The Child* (2007), XIX (UNICEF, Implementation Handbook (2007), pp. 221-230.

⁵⁸ Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, UN Doc. CRC/C/GC/25, paras. 92-94.

- ⁵⁰ Legally, the best interests of the child principle (Article 3) must be applied in the broader context, considering the full constellation of relevant rights. As stated in General Comment No. 14, the best interests principle is not a pretext to limit other rights but eyes through which to harmonize them⁵⁹. Children are not only objects of legal protection – they are also legal subjects with voice, identity and evolving capacity.
- ⁵¹ In this balancing exercise, the role of courts – both national and international – becomes central. Within the margin of appreciation afforded to States Parties, national courts and administrative authorities are often tasked with giving concrete meaning to the Convention’s open-ended standards⁶⁰, while international bodies provide interpretative guidance grounded in the universality and interdependence of rights. As described above, the Convention rests on the assumption that rights are universal, indivisible and mutually reinforcing, a premise that must inform judicial interpretation at all levels.
- ⁵² Conclusively, any regulatory approach to children’s digital lives must transcend the simplistic binary of “safe or free.” Children should not only be seen as vulnerable – they are also capable. They are not only set out to be protected – they are also supposed to be heard. Thus, law and policy must reflect this duality by enabling both safety and voice, shielding and participation as well as limits and growth. By ignoring either side of this equation it would result in falling short of the Convention’s purpose. A rights-based digital framework must therefore be integrative, child-centered and grounded in respect for children’s status as full rights-holders in the digital environment.
- ⁵³ This conclusion must be situated within a broader human rights framework. The Convention is grounded in the *universality*, *indivisibility* and *interdependence* of all human rights and must therefore be interpreted in the light of States’ wider international and national obligations. In addition, this conclusion must be understood through the eyes of the *Paradox of Protection* – a concept that warns of the unintended consequences of well-meaning protective measures. When protection becomes overly dominant or uncritically applied it may silence the very individuals it aims to defend, i.e. the children. In the digital environment, this can translate into children being excluded from platforms central to identity, expression and civic engagement, effectively reinforcing a model of childhood that privileges passivity over agency. Thus, the more we protect, the more we may disempower. A truly rights-based approach must be vigilant of this risk, ensuring that protection enhances rather than erodes the child’s position as an autonomous subject of rights.
- ⁵⁴ In this sense, Martha Fineman’s theory of universal vulnerability provides an important normative perspective. Fineman challenges the notion that only certain groups – such as children – are inherently vulnerable. Instead, she posits that vulnerability is a universal, shared human condition that calls for

⁵⁹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, UN Doc. CRC/C/GC/14, paras. 4–6.

⁶⁰ Committee on the Rights of the Child, *General Comment No. 5 (2003) on general measures of implementation*, UN Doc. CRC/GC/2003/5, paras. 1–2, 24. CRC, arts. 3, 12, 19, 28, 37. *Handyside v. United Kingdom*, Judgment of 7th December 1976. Tobin, J., *The UN Convention on the Rights of the Child: A Commentary* (2019) pp. 47–52.

institutional responsiveness, not paternalistic exclusion. Applying this view to children in digital contexts reframes the issue: the task is not to isolate children from risks but to design systems that acknowledge their evolving capacities, while providing support structures that allow for growth, participation and dignity. At the same time these systems must protect children and raise awareness of all risks they face. This reinforces the need for a legal paradigm that neither overprotects nor underestimates but enables children to safely develop as full legal persons in the digital environment.

RESUME :

Cet article analyse l'articulation entre le droit de l'enfant à la protection et son autonomie dans l'environnement numérique, notamment en matière d'accès aux réseaux sociaux. En s'appuyant sur la Convention des Nations Unies relative aux droits de l'enfant, l'article analyse comment certaines dispositions centrales reconnaissent à la fois la vulnérabilité des enfants, nécessitant une protection particulière, et leur statut de titulaires de droits autonomes, incluant la participation, la liberté d'expression, le respect de la vie privée et l'accès à l'information. Les initiatives législatives récentes dans plusieurs États, telles que les restrictions d'âge concernant l'utilisation des réseaux sociaux, illustrent une tendance croissante à privilégier des mesures protectrices visant à protéger les enfants contre les contenus préjudiciables, l'exploitation et d'autres risques numériques. Cependant, ces mesures peuvent également limiter la participation des enfants et leur capacité à développer leur identité et leur autonomie en ligne. L'article analyse cette tension à la lumière de la théorie des niveaux de conflit juridique de Gregor Noll, selon laquelle les conflits entre protection et autonomie peuvent apparaître aux niveaux technique, normatif et méta-juridique. Il mobilise également la théorie de la vulnérabilité universelle de Martha Fineman ainsi que le concept féministe du « paradoxe de la protection ». L'objectif n'est pas de proposer une solution normative, mais d'examiner comment le droit international des droits de l'enfant conceptualise et encadre cet équilibre dans l'environnement numérique.

SUMMARY:

This article examines the legal tension between the child's right to protection and the child's right to autonomy in the digital environment, particularly in relation to children's access to social media. Drawing on the United Nations Convention on the Rights of the Child, the paper analyses how central provisions frame children both as vulnerable individuals in need of protection and as autonomous rights-holders entitled to participation, expression, privacy and access to information. Recent legislative initiatives in several states, including age-based restrictions on social media, illustrate how governments increasingly emphasise protective measures aimed at shielding children from harmful content, exploitation and digital risks. At the same time, such measures may interfere with children's participatory rights and their ability to form identity and exercise autonomy online. The article explores this tension through the lens of Gregor Noll's theory of levels of legal conflict, arguing that conflicts between protection and autonomy may arise at technical, normative and meta-legal levels. It also draws on Martha Fineman's theory of universal vulnerability and the feminist concept of the "Paradox of Protection" to critically examine how protective measures may unintentionally reinforce dependency or exclusion. Rather than proposing a definitive solution, the article investigates how international child-rights law conceptualises and navigates this balance. It argues that a rights-based regulatory framework must integrate both protection and participation, recognising children as vulnerable yet capable actors within the digital environment.