



improving the digital environment for children

The Digital Services Act is a reset button

In the past twenty years the internet has changed almost beyond recognition.

When the EU adopted the e-Commerce Directive in 2000 in many Member States children were a very small proportion of internet and mobile or smartphone users. Social media services barely existed. Apps as we now know them were some way off. Tablets you got from the doctor. The technology was still relatively new and poorly understood outside a narrow circle.

Today in the EU [90 million internet users are children](#). That is one in five of all users. Families and children are a major and persistent presence. In 2020 the internet and its associated technologies are consumer products.

In 2000 business asked Governments to “*stay out of our way and let us innovate*”. They got their wish. If problems arose, tech companies assured everyone they would “*do the right thing*”. This was called “*self-regulation*”. It hasn’t worked. Or rather, its successes have been limited and inconsistent.

By giving online businesses an almost unique form of legal protection, the 2000 e-Commerce Directive created a perverse incentive to do nothing. Many did exactly that. Nothing, or not enough. Every tech company says they take children’s rights “*very seriously*”. Yet look where we are.

The terrible things that have happened online to far too many children are *not* an unavoidable price which has to be paid in perpetuity so as to continue enjoying the many benefits of the internet. But to change the paradigm requires a major act of political will. The EU needs to press the reset button. The Digital Services Act will allow it to do just that.

The EU’s record - good but not good enough

The EU has led the world with some of the work it has undertaken around making the internet safer and better for children, but time and again children’s best interests have been overlooked or marginalized in its policy making and legislative processes. This has had highly regrettable consequences, examples of which are provided in a separate note that has been posted [online](#).

No shortage of evidence or ideas

There is no shortage of detailed, evidence-based arguments and ideas about what needs to be done to improve the digital environment for children, to honour and enforce their rights and best interests.

The Council of Europe’s 2018 document “[Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#)” is an excellent point of reference, as is the UN Committee on the

Rights of the Child's [draft](#) for a General Comment on children's rights in relation to the digital environment. The WePROTECT Global Alliance has also provided an [excellent blueprint](#).

Key recommendations

In this short brief the focus is on a small number of key recommendations. They align entirely with President von der Leyen's [ambitions for the Digital Services Act](#), Vice President Šuica's initiative, [“Delivering for children: an EU strategy on the rights of the child”](#) and Commissioner Johansson's Communication on a [“Strategy to combat child sexual abuse and exploitation”](#).

Recommendation 1

A duty of care needs to be made explicit

The EU should create and make explicit that a duty of care to children is owed by any entity providing online services or supplying devices which can connect to the internet.

Among other things the duty of care must establish a positive obligation to use available technical tools proactively to promote and protect children's rights and best interests.

Safety by design and by default must be embedded in law.

In order to preserve legal immunity from civil or criminal liability, being mindful of proportionality, an entity must be able to show they have discharged their duty of care in a timely way.

Recommendation 2

Transparency is essential

To reassure children, parents and the public, an independent, public-interest body must be given the legal powers to set benchmarks and require relevant entities to provide such information as will enable it to determine whether or not they are satisfactorily discharging their duty of care.

Where an entity makes public claims in respect of what it is doing to discharge its duty of care towards children, such claims must be fair and reasonable.

Where claims are found to be unfair or misleading the entity may be directed to amend them.

Recommendation 3

Revisit the GDPR

The EU must direct that the GDPR is re-examined through the lens of children's rights.

Children have not been accorded the priority they need and deserve by the wider privacy community. In part this is explained by the EDPB's and its predecessor's lack of leadership. Among other things this allowed or caused the farcical handling of and decisions about the minimum age of consent to data processing under the GDPR, to the way “legitimate interests” has been manipulated in respect of children, and the travesty which arose in relation to Registries, Registrars and WHOIS.

Recommendation 4

Closely scrutinise the operation of the AVMSD

The potential for the AVMSD to protect children from online content suitable only for adults is threatened by three considerations. Its operation must be kept under close review.

If a single Member State adopts a particular view about what amounts to potentially harmful content for children, every other Member State may be forced to live with it even if the majority of parents, children and others in a particular jurisdiction radically disagree. That is not sustainable.

Moreover, under a regime which insists on a single EU-wide approach, publishers will inevitably “game” the system and migrate to the least restrictive jurisdiction or depart the EU altogether. This will undermine confidence in the EU’s ability to protect children on the internet.

Several of the world’s largest online pornography publishers are, in any event, already domiciled outside of the EU and are therefore outside the scope of the AVMSD.

Member States should be explicitly empowered to limit access to their part of the internet to any non-EU based site which fails to take adequate steps to restrict children’s access to unsuitable content, for example by introducing age verification. It should be possible to require the withdrawal of supporting services from non-compliant sites, in particular payment services and the provision of advertising.

Recommendation 5

Structural changes required

All policy proposals which concern online services or internet-enabled devices must show on the face of the record they have considered how implementation will impact children’s rights and welfare. This applies to policies coming to or emanating from an EU institution, or bodies which the EU funds or otherwise directly supports.

In order to ensure the proper management and co-ordination of this policy across all Directorates and associated external entities, a senior position must be created within the Commission hierarchy, reporting directly to the President. The postholder must have the authority to require no further action is taken until the position of children has been properly addressed. The European Parliament should consider making similar arrangements.

The new European Centre referred to in Commissioner Johansson’s [speech](#) of 9th June 2020 may have a particularly important role to play in bringing together and harnessing the energy of disparate actors concerned with children’s rights and welfare be they from civil society, industry, law enforcement, academia or Governments.

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