



## RESEARCH ARTICLE

## Protecting Children's Rights in the Age of Digitalisation - Legal Implications for the Best Interests of the Child

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ARTICLE INFO	ABSTRACT
Received: Jul 24, 2024	<p>This study examines the relationship between the digitalization of society and the protection of children's rights, focusing on the legal implications of the best interests of the child principle in the age of digital technologies. As digital environments become increasingly central to children's lives, they present unique opportunities and challenges that necessitate a reevaluation of legal frameworks to ensure children's safety, privacy, and freedom. The article discusses the incorporation of the best interest principle in various national and international legal systems, highlighting the importance of adapting these frameworks to address the evolving digital landscape. Through an analysis of legislation and policy measures across different jurisdictions, the study explores how the principle is applied to balance children's rights to access digital technologies with the need to protect them from potential harms. It argues for a multi-stakeholder approach that includes governments, legal experts, digital service providers, and the children themselves, emphasizing the need for policies that are both protective and empowering. The inclusion of children's voices in the policymaking process is advocated as essential for developing effective and relevant protections. The article concludes by calling for continued collaboration and innovation in creating a digital world that prioritizes and respects the best interests of the child, ensuring a safe and beneficial digital environment for all children.</p>
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### INTRODUCTION

As we navigate the 21st century, the rapid advancement of technology continues to redefine the way we work and interact within various sectors. Predictions abound that numerous facets of human activity will either be replaced or significantly augmented by emerging technologies. While most human activities have historically evolved due to advancements, the current wave of technological innovation is poised to have a profound impact on areas that have largely remained untouched by previous technological shifts. One such area is the field of law, where technology is already making significant inroads. The practice of law is undergoing a transformation, with artificial intelligence (AI) playing an increasingly prominent role. This technological evolution has the potential to reshape the field of law. As AI continues to permeate numerous sectors, its implications for children's rights have become increasingly significant and complex.

The digital environment, primarily developed by technology companies and digital service providers, often prioritizes commercial and adult user interests. This focus frequently overlooks the specific

needs and safety of children. For instance, many social media platforms and online gaming environments are designed to maximize user engagement and data collection without implementing robust protections against cyberbullying, privacy violations, or exposure to harmful content for young users. An example of this oversight is the lack of stringent age verification mechanisms on popular platforms, which allows children to access content that is inappropriate for their age group. It is therefore clear that the digital environment was not inherently designed with children in mind. Nevertheless, it has become an integral part of children's daily lives, influencing their education, social interactions, and overall development in profound ways. Since the adoption of the United Nations Convention on the Rights of the Child (UN CRC) in 1989, our world has undergone profound transformations, significantly altering the living environments of children. The rapid advancements in technology and the rise of the digital age have introduced new dimensions to children's experiences, necessitating a reevaluation of existing guidelines to ensure their continued relevance and effectiveness.

The digital revolution has reshaped society in manifold ways, permeating every aspect of daily life, including education, social interactions, and entertainment. For children, this means growing up in an environment vastly different from that of previous generations, with unique benefits and risks. As digitalization becomes increasingly ubiquitous, it is imperative to scrutinize and update the legal and ethical frameworks that govern children's rights, ensuring they are adequately protected in this new landscape.

The digital environment has increasingly virtualized children's experiences, to the point where virtually every aspect of life has a digital counterpart. In today's world, it is difficult to envision any activity that does not have a parallel existence online. This profound integration of the digital realm into daily life presents unique and complex challenges, especially when it comes to safeguarding children's rights. The global community, which is still in the process of fully adapting children's rights to the conditions that existed even before the adoption of the United Nations Convention on the Rights of the Child, now finds itself grappling with new dilemmas brought about by the pervasive influence of digital technologies. As we continue to navigate these uncharted waters, it becomes clear that existing frameworks for protecting children's rights may not be entirely equipped to address the issues posed by the digital world. This situation underscores the need for a dynamic and responsive approach to children's rights that considers the ongoing transformations in the ways children interact with the world around them.

The UN CRC, a cornerstone of international human rights law, provides a comprehensive framework for the protection and promotion of children's rights. However, the application of these principles in the context of digitalization presents novel challenges that must be addressed. Issues such as data privacy, online safety, digital literacy, and the impact of artificial intelligence on children's development and well-being require careful consideration and proactive regulation. In light of these changes, it is essential to critically examine the guidelines established by the UN CRC and other relevant legal instruments. This involves assessing their adequacy in addressing the contemporary realities faced by children and identifying areas where adaptations or new measures are necessary. By doing so, we can ensure that the rights of children are upheld and their best interests are prioritized, even as society continues to evolve in the digital age.

The concept of the best interests of the child, a key principle in international and domestic legal frameworks, is now being challenged and reshaped by the digital era. This paper aims to explore the legal implications of AI on children's rights, focusing particularly on how to safeguard the best interests of the child in an increasingly digitalized world.

Children are uniquely vulnerable to the effects of digitalization. From data privacy concerns and exposure to harmful content to the use of AI in educational and social services, the digital environment presents both opportunities and risks for children's development and well-being. International instruments such as the United Nations Convention on the Rights of the Child underscore the necessity of protecting children's rights in all circumstances, including the digital realm. However, the application of these principles to AI technologies raises new legal and ethical questions. The integration of AI into child-centric domains—such as education, healthcare, and social services—promises enhanced efficiency and personalized experiences. Yet, these advancements come with potential threats, including biases in AI algorithms, the erosion of privacy, and the lack of adequate regulatory frameworks. Ensuring that AI systems operate in a manner that upholds the best interests of the child requires a delicate balance between innovation and protection. This paper will delve into the intersection of AI and children's rights, examining the current legal frameworks and identifying gaps that need to be addressed to protect children's best interests. Ultimately, this research aims to contribute to the ongoing discourse on children's rights in the context of digitalisation, proposing legal and policy recommendations to navigate this evolving landscape.

## **THE BEST INTEREST OF THE CHILD PRINCIPLE**

Before delving into the intersection of the Best Interest of the Child principle and digitalization, it is crucial to understand the foundational aspects of this principle: its origins, its content, and its application. This section will examine the best interest principle in its current form to lay a foundation for the analysis of the principle in light of new technological advancements in the next section.

The term "best interest of the child" is widely recognized, yet its precise definition remains elusive and somewhat ambiguous. This fundamental concept, crucial within the field of child protection, has a long-standing history in legal and social discourse. However, its significance was substantially amplified when it was formally embedded in the United Nations Convention on the Rights of the Child.<sup>i</sup> Despite its pervasive use, there remains a lack of clarity about what exactly constitutes the best interest in varying contexts, underscoring the need for a more defined and operational understanding in both legal and practical applications. This concept, while essential, suffers from a degree of indeterminacy that challenges its effective implementation, especially as new societal and technological issues arise.

The Convention on the Rights of the Child (UN CRC) is more than just a list of children's rights. While it certainly outlines these rights in detail, its impact is much broader. The UN CRC has introduced a significant shift in how children are viewed legally and socially. In earlier times, as seen in documents like the Geneva Declaration of 1924<sup>ii</sup> and the Declaration on the Rights of the Child of 1959,<sup>iii</sup> children were mainly seen as beings who needed protection and care — they were more like objects of concern than individuals with their own rights.

However, since the UN CRC was adopted in 1989, this perspective has changed dramatically. Children are now recognized as individuals with their own rights. This is not merely a symbolic change. The UN CRC, which has been ratified by nearly every country in the world, legally enforces this view by establishing clear principles and rights for children. This broad acceptance underscores the strength and seriousness of the UN CRC's approach, firmly placing children as rights-holders in the international legal landscape. This evolution marks a critical advancement in how we understand and protect children's rights globally.

The new legal status of children as active rights-holders is primarily grounded in two interconnected articles of the Convention on the Rights of the Child - Article 3, which focuses on the best interests of the child, and Article 12, which emphasizes the child's right to express opinions on all matters affecting them. Together, these articles not only uphold the right of children to have a say in decisions impacting their lives but also ensure that their best interests are always considered in such decisions. These articles serve dual roles within the UN CRC. They are recognized as two of the four foundational principles of the Convention, underscoring their importance to the overall framework. However, they are also distinct rights in their own right:

1. The right for a child's best interests to be assessed in any decision or action that affects them. (Article 3)
2. The right for a child to be heard, ensuring that their opinions are not only expressed but also given due consideration. (Article 12)

This dual recognition emphasizes not just the procedural aspect of involving children in decisions that affect them but also the substantive right of having their best interests as a primary consideration. This approach represents a significant shift towards acknowledging and respecting children as individuals with agency and rights, aligning legal practices with the evolving understanding of children's roles within society. These rights, as outlined in Articles 3 and 12 of the Convention on the Rights of the Child, are granted not only to individual children but also collectively to all children defined by their age, as those under 18.

Despite the adoption of the UN CRC by the United Nations 35 years ago, numerous questions persist about the real-world impact of these rights. Specifically, it remains unclear how this recognition of children as rights-holders has influenced national legislation, relevant legal frameworks, and various other contexts. There is ongoing debate and inquiry into whether these rights are fully integrated and respected at the national level, and how these legal principles are applied in practical settings affecting children. The effectiveness of the UN CRC in bringing about substantive change in the treatment and rights of children across different countries continues to be a critical area of research and discussion.

When we delve into the concept of what's best for children in legal terms, it's clear that the phrase "best interest" is relatively new to our legal systems. Previously, the focus was on "the well-being of the child," but this has evolved into what we now know as the "best interest" principle, which is articulated in Article 3 of the Convention on the Rights of the Child. This marks it as a thoroughly modern concept within legal discussions—a concept that, despite its importance, has not been fully explored in academic circles yet. The definition of "best interest" is still somewhat unclear and can be applied in many different ways, making it a flexible yet complex tool in legal contexts. It is particularly useful when addressing specific legal challenges or when being refined and expanded through court decisions.

The term best interest of the child encapsulates the overall well-being of a child and is a dynamic concept shaped by various individual and environmental factors. These factors include the child's age, gender, level of maturity, personal experiences, and the presence or absence of parental care. Additional considerations such as the quality of relationships between the child and their family or caregivers, the child's physical and psychosocial conditions, and their security and protection from risks also play crucial roles in determining what constitutes their best interests.

Although the United Nations Convention on the Rights of the Child does not provide a specific definition of the best interest of the child, this concept is crucial for interpreting and applying the UN

CRC and other related international legal standards. Guidance from the Committee on the Rights of the Child further clarifies this principle, describing it as a measure designed to guarantee *"both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child."*<sup>iv</sup> This interpretation highlights that the child's best interests should guide all actions and decisions affecting them, ensuring that these decisions foster their overall development and enable them to fully realize their rights under the UN CRC. In practice, this means that the application of the best interests principle must be tailored to each child's unique situation, ensuring that their individual needs and rights are at the forefront of any decision made in their regard.

The principle of best interests is universally applicable to all children, irrespective of their nationality, immigration status, including asylum seekers, refugees, or statelessness, and regardless of whether children are accompanied by family members or are unaccompanied or separated. This wide-ranging application underscores the principle's importance not only in personal circumstances but also in broader actions such as the drafting of legislation, policy-making, and resource allocation by states. It mandates that public institutions consider the best interests of the child in all actions that could impact them, thereby embedding children's welfare deeply within the core of societal structures and legal frameworks – including those addressing digitalisation.

## **THE BEST INTEREST PRINCIPLE IN THE ERA OF DIGITALISATION**

No demographic has been more profoundly impacted by the communications revolution ushered in by the internet age than children. In wealthier nations, online communication has become a fundamental part of children's lives from a very young age. Meanwhile, many less affluent countries, especially larger emerging economies, are rapidly embracing these technologies. For better or worse, the internet is poised to become an integral part of the personal development and social existence of nearly all children globally. This integration offers numerous advantages, such as enhanced access to information, increased opportunities for self-expression, expanded awareness, and significantly broader possibilities for social interaction. However, it also brings with it several well-documented risks, including the potential for exploitation and abuse by adults, cyberbullying from peers, and the dangers of excessive use.

In response to these rapid technological advances, policymaking has largely been reactive and disjointed. Often, policies are formulated without direct input from children or without a thorough assessment of how such policies impact them, overlooking the children's fundamental rights. In particular, policies designed to shield children from online dangers, while well-intentioned, have sometimes inadvertently restricted their access to the digital benefits rightfully theirs, alongside adults.

This section introduces a child rights perspective to these challenges, arguing that the obligation to protect children and the realization of their rights in the digital world are not contradictory. Indeed, there is no necessity to isolate children from the digital world as a means of protection. By fostering digital literacy and advocating for informed consent, a rights-based approach can harmoniously balance the protection of children with their freedom to explore and utilize the internet.

While the specific implications of the digital age for children's rights, as outlined in the Convention on the Rights of the Child, are still being detailed, it is evident that the digital revolution touches upon all rights enshrined in the Convention. This underscores the need for a comprehensive, rights-focused strategy to ensure that children's interactions with digital technologies are safe, informed, and enriching.

Millions of children worldwide live in conditions marked by conflict and deprivation, where their rights to a safe and secure childhood—one in which they can thrive—are often not upheld. In a world that is increasingly governed by digital interactions, which influence the economic, cultural, social, and political fabrics of society, it is both **critical and urgent to design digital technologies that consider and prioritize children's rights.**

This chapter of the study aims to contribute to the ongoing discussions about how the digital environment can best serve the interests of children. As legislation and regulation aimed at protecting children and their rights continue to evolve both nationally and internationally, it becomes increasingly crucial for state authorities and corporations that invoke the language of children's rights to strictly adhere to the United Nations Convention on the Rights of the Child and its accompanying general comments, particularly General Comment No. 25, which focuses on children in the digital environment.

The imperative to integrate children's rights into the digital domain demands that all stakeholders, including policymakers, technology designers, and service providers, recognize and implement solutions that do not merely protect children from harm, but also enhance their access to digital resources. Such approaches should not only seek to prevent risks but should also empower children by improving their digital literacy, safeguarding their data, and ensuring that digital content is both accessible and appropriate.

#### **GENERAL COMMENT NO. 25 AND THE BEST INTEREST PRINCIPLE**

During its 86th session, the Committee on the Rights of the Child formalized General Comment No. 25 (2021),<sup>v</sup> focusing on the integration of children's rights within the digital environment. In an effort to center children's perspectives and experiences within the framework of General Comment 25, the Committee on the Rights of the Child orchestrated an extensive international consultation involving 709 children from 27 different countries. This widespread engagement underscores the commitment to understanding and incorporating the direct insights of children from diverse backgrounds and regions.

In General Comment No. 25, the Committee delineates the responsibilities of State parties regarding the application of the Convention on the Rights of the Child in the context of the digital world. It provides detailed guidance on the necessary legislative, policy, and other measures that States should adopt to ensure they fulfill their obligations under the Convention and its Optional Protocols. The guidance aims to navigate the complex balance of opportunities, risks, and challenges associated with the digital environment, ensuring that all aspects of children's rights are promoted, respected, protected, and fulfilled. General Comment No. 25 serves as a pivotal resource for policymakers, highlighting the importance of adapting to technological advancements and integrating child rights considerations into the development and regulation of digital technologies. This approach is vital for creating a digital environment that truly supports the growth, education, and wellbeing of all children, safeguarding their rights in an increasingly digitalized world.

General Comment No. 25 offers pragmatic guidance on how to appropriately balance children's rights to provision, protection, and participation in the digital realm. For the countless children worldwide, who currently have regular and reliable access to digital technologies and the internet, along with those who will soon join the online community, this General Comment represents a crucial step towards ensuring that their rights are not only acknowledged but actively respected, protected, and fulfilled.

The journey towards the adoption of General Comment No. 25 can be traced back to a few significant milestones. In 2014, the recognition of the need to address children's rights within the digital context gained momentum when the UN Committee on the Rights of the Child dedicated a Day of General Discussion to the topic of Children and Digital Media.<sup>vi</sup> This discussion marked a foundational step in highlighting the critical nature of this issue. Progress continued into 2017 when the Children's Commissioner for England advocated for a UN CRC General Comment on Children's Rights and Digital Media. Supported by prominent child rights activists, this proposal received the backing of the UN Committee in early 2018.

Central to the drafting process was the activation of children's right to participate in decision-making processes that affect their lives. In an effort to ensure that General Comment No. 25 was reflective of actual children's experiences, a comprehensive and globally inclusive consultation was undertaken. From May to September 2019, organizations worldwide facilitated 69 workshops, engaging with 709 children and young people.<sup>vii</sup> These workshops were designed to gather insights into how digital technologies impact children's rights from both positive and negative perspectives. Special attention was given to include children from the global South and those with diverse needs, ensuring that the voices of typically underrepresented groups were heard. This extensive consultation underscored the commitment to a participatory approach in policymaking, aiming to craft a document that truly resonates with and addresses the diverse realities faced by children in the digital age.

Undoubtedly, as the most comprehensively endorsed human rights treaty in history, the United Nations Convention on the Rights of the Child plays a pivotal role in ensuring that states and other duty bearers commit to and actualize children's rights. However, what the feedback from children during the consultation process for General Comment No. 25 underscores is that children's rights transcend the realm of abstract legal debates conducted in secluded environments. Instead, these rights are dynamic entities that evolve and are continually shaped through the interactions between the opportunities and limitations inherent in the varied environments where children live and develop. In essence, children's rights are realized in how effectively children are empowered to reach their full potential.

By leveraging children's insights, all stakeholders can work collaboratively to ensure that the application of the UN CRC, guided by the principles outlined in General Comment No. 25, makes the digital environment a space that fulfills what children need, and rightfully deserve. This approach emphasizes the importance of integrating children's voices and experiences into the formulation and implementation of policies that not only protect them but also enhance their digital interactions.

When we look at the explanatory notes to General Comment No. 25, it is clear that the principle also serves as a key pillar of this Comment. The principle of the best interest of the child is a fundamental guideline that must be at the forefront when making decisions that impact children, particularly within the digital environment. This principle necessitates that when there is a conflict of interests—for instance, between adults' rights to freedom of expression online and children's rights to privacy—the best interests of the child must be considered as a primary concern. States have the responsibility to ensure that children's rights are not overshadowed in such scenarios.

Moreover, the best interest of the child principle is instrumental in resolving conflicts that may arise between different rights of the child themselves. For example, a child's right to freedom of association through online platforms may conflict with their right to be protected from cyberbullying or exploitation. In these complex situations, the principle guides the process to achieve a balance that favors the child's overall well-being.

In determining what constitutes the best interests of a child, it is also vital to incorporate the child's own perspectives wherever possible. Acknowledging children's views not only respects their right to be heard but also ensures that decisions are more tailored to their specific needs and circumstances. By actively involving children in discussions about issues that affect them in the digital realm, policymakers and guardians can make more informed decisions that genuinely reflect the nuanced needs and rights of children. This approach empowers children, giving them a say in the digital landscapes that play a significant role in their development and socialization.

Children should actively participate in discussions determining what constitutes their best interest, especially regarding their digital interactions. While the focus of policymakers and civil society frequently centers on protecting children within the digital environment, it is essential to remember that children possess a broad spectrum of rights. These rights encompass not only protection but also participation, access to information, and freedom of thought. All these rights should be taken into account when crafting policies that affect children's lives online.

Moreover, engaging children in consultations is crucial as they often have definitive and insightful views on how their rights should be represented and respected in their digital worlds. By involving children in these discussions, we acknowledge their capacity to contribute meaningfully to dialogues that affect them directly. This approach not only enriches the decision-making process with fresh perspectives but also empowers children, reinforcing their sense of agency and validating their role as stakeholders in their own rights. It's imperative that such consultations are structured to genuinely influence policy outcomes, ensuring that the digital realm is shaped in a way that truly reflects the needs and rights of its youngest users.

Traditionally, legal frameworks have primarily focused on the concept of the best interests of an individual child, particularly in situations like custody disputes where the interests of a child are prioritized over those of parents. Remedies and redress also typically function most effectively on this individual basis. However, the Committee on the Rights of the Child broadens this concept to encompass children as a group or constituency, especially significant in contexts like child rights impact assessments. In such assessments, particularly within the digital realm, the emphasis shifts towards considering children as a collective group. This approach is necessary when evaluating broad policy decisions that have widespread implications on the day-to-day lives of children. Focusing solely on individual interests might overlook broader impacts, potentially excluding children from the policymaking process entirely—their experiences, views, preferences, and the specific effects policies have on them.

Nevertheless, while a collective approach is essential for inclusive policymaking, it must be balanced with an understanding that the needs within a community are diverse. For instance, in a school setting, while a decision may be made with the collective best interests in mind, it remains crucial to consider how these decisions affect individual students. If a school decides to exclude a child without considering their best interests, the child must have the opportunity to seek redress. This example illustrates that while collective considerations are crucial, they do not negate the necessity of addressing individual needs. The same goes for social media policies for example – applying the principle of individual best interests on a global scale is impractical due to the sheer number of children involved. When policies or digital innovations potentially affect millions of children across various regions and cultures, it becomes impossible to assess and address each child's unique circumstances and potential impact. Therefore, adopting a collective approach is not just necessary; it is the only feasible method.



In dealing with such wide-reaching decisions, focusing on the collective best interests allows for the development of policies that can benefit the greatest number of children while acknowledging the diversity within the child population. This method does not overlook individual needs but rather seeks to create a foundation upon which more specific interventions can be built, if necessary, to address unique situations.

For instance, in the realm of digital education or online safety, policies must be designed to safeguard and benefit all children as a group. From this broader framework, additional measures can be tailored to support subgroups with specific needs, such as children with disabilities or those from underprivileged backgrounds.

This dual focus ensures that policies not only address the broad impacts on all children but also provide avenues for addressing specific grievances, thereby creating a more just and effective legal and policy environment. This approach to assessing the collective best interests and the individual best interests is a key feature of interpreting the best interest principle through the lens of General Comment No. 25.

## **LAW-MAKING FOR THE BEST INTERESTS OF THE CHILD IN THE DIGITAL ENVIRONMENT**

The principle of the best interests of the child as varies significantly across countries, largely influenced by its integration into national legal frameworks. First of all, the principle gradually became a pillar of national family law in many countries of the world, some legislations including it directly in their constitutions. In the past decade however, we can see a trend of incorporating the best interest principle into other areas of legislation and policy-makers understanding, that the best interest principle should guide our regulations in all matters concerning children – and have included the principle as a cornerstone of legislation outside of family law, governing issues such as artificial reproductive technologies, education, juvenile justice, data protection or digitalization. This child-centric approach to legislation is a welcome trend, placing the welfare of children in the forefront of legal regulations.

Some countries explicitly include the best interests of the child within their constitutions. This is the case of **Norway**. The principle of the best interests of the child has been a cornerstone in Norwegian legislation concerning child welfare and parental laws since the 1950s and has also been incorporated into other areas of law over time. With the formal incorporation of the United Nations Convention on the Rights of the Child into Norwegian legislation through the Human Rights Act in 2003,<sup>viii</sup> the UN CRC gained the status of statutory law, thus taking precedence over ordinary legislation. This integration underscores the importance and prioritization of children's rights within the Norwegian legal framework. Finally in 2014, the principle of the best interests of the child was enshrined in the Norwegian Constitution. The specific language of the second subsection of section 104 on children's rights in the Norwegian Constitution states that *"In actions and decisions affecting children, the best interests of the child shall be a primary consideration."* This language not only reaffirms Norway's commitment to upholding children's rights as a fundamental concern in all relevant legal and administrative processes but also sets a clear legal standard that guides how decisions should be made in cases involving children.

The same constitutional level of the best interest principle is also true for **South Africa**. The principle of the best interests of the child has been foundational to South African law, evolving significantly through case law since the early 1900s, particularly within the realms of family law and child welfare proceedings. Initially, this principle was primarily employed in custody disputes and did not have the status of a right. It was through its incorporation into the Bill of Rights within the South African Constitution that it was elevated to the level of a right. This transition was part of South Africa's

broader movement away from apartheid, marked by significant constitutional developments. The drafting of an Interim Constitution, which included a Bill of Rights, was a crucial step in this transition. Enacted in 1993—prior to South Africa's first democratic elections—this Interim Constitution was instrumental while the elected Constitutional Assembly in Parliament worked on drafting a permanent Constitution.<sup>ix</sup> The culmination of this legislative evolution was the final 1996 Constitution, where the best interests clause was enshrined distinctly in section 28(2): "*A child's best interests are of paramount importance in every matter concerning the child.*" The use of the word "paramount" is particularly significant. It underscores a stronger emphasis compared to the language used in the United Nations Convention on the Rights of the Child, which stipulates that the child's best interests should be a primary consideration.

This principle is also a fundamental aspect of child protection policies in various jurisdictions, such as the Irish legal system, the African Union's child protection policy, and in countries like Slovakia and Sweden where the United Nations Convention on the Rights of the Child has been fully incorporated into national law. In these nations, the principle of the child's best interests extends its influence across all legislation and regulations concerning children, ensuring that their rights are a primary consideration in all relevant legal and policy decisions.

In contrast, the application of this principle can take on different forms in other legal contexts. For example, **Australia's** Online Safety Act 2021 specifically references the UN CRC, and mandates regulatory guidelines issued by the eSafety Commissioner.<sup>x</sup> These guidelines require businesses to consider several human rights issues online, including the right to freedom of expression, protection from arbitrary or unlawful privacy infringements, and safeguarding against exploitation, violence, and abuse. Crucially, they also emphasize the necessity to protect and promote the rights and best interests of children, tying these considerations to associated statutory obligations.

In **Brazil**, the concept of the best interest of the child is firmly established in national legislation, prominently featuring in the 1990 Law on Children's Rights. This law underscores the priority of children's welfare in all legal and administrative measures concerning them. Building on this foundational principle, the Brazilian legal framework further integrated these values into data protection practices with the enactment of the General Data Protection Law.<sup>xi</sup> This law explicitly positions the best interests of children and adolescents as a crucial criterion for the processing of their personal data. Specifically, Article 14 of the LGPD states that the processing of personal data belonging to children and adolescents must be conducted in their best interest, in accordance with the stipulations of the article and other pertinent legislation. This provision highlights a significant advancement in the protection of children's digital privacy rights, ensuring that any data handling involving minors is not only compliant with general data protection standards but is also specifically tailored to serve their best interests.

In **Kenya**, the 2010 constitution significantly underscores the protection of children's rights, with Article 53(2) explicitly stating that the "*best interests of children are paramount in all matters concerning them.*"<sup>xii</sup> This strong constitutional mandate has profoundly influenced subsequent legislation, including the Data Protection Act of 2019. This act, through Section 33(1), specifically prohibits the processing of children's data without the consent of their guardians, emphasizing that any such processing must be conducted in a manner that protects the best interests of the child. This legal provision ensures that children's data privacy is safeguarded, aligning with the overarching constitutional principle that children's welfare must be the primary concern in all legal and policy decisions affecting them. The Data Protection Act's stipulation serves not only to protect children's personal information but also to foster an environment where children's rights are at the forefront of data handling practices.

**Malaysia** ratified the UN CRC in 1995. The best interest principle subsequently became the cornerstone of Malaysian family law. IT mandates that the child's best interests must be a primary consideration in all actions concerning children, including legislative, administrative, and judicial proceedings. In the digital environment, this principle becomes particularly significant due to the unique risks and opportunities that digital technologies present for children. The Child Act of 2001<sup>xiii</sup> is the cornerstone of child protection legislation in Malaysia. It incorporates the BIC principle and provides for the protection, rehabilitation, and care of children. The act encompasses various provisions that can be interpreted to cover digital environments, though it does not explicitly address digital issues. The National Cyber Security Policy (NCSP)<sup>xiv</sup> represents Malaysia's overarching strategy for cybersecurity, designed to be executed in a cohesive and integrated fashion. The primary objective of the NCSP is to safeguard the Critical National Information Infrastructure (CNII) by implementing protection measures that are proportionate to the risks encountered. The NCSP encompasses a wide array of cybersecurity dimensions, with a specific focus on safeguarding children in the digital realm. It delineates several initiatives aimed at mitigating cyber threats and fostering a secure online environment for children. These measures include cyber threat prevention, safe internet use, parental and guardian involvement, cooperation of government bodies, private sector entities, non-governmental organizations, and educational institutions. The NCSP supports the development and enforcement of legal and regulatory frameworks that address emerging cyber threats against children. This includes updating existing laws and introducing new legislation to cover gaps in child protection in the digital space.

In the **UK**, the Age-Appropriate Design Code (AADC) establishes a framework for organizations that offer online products and services likely to be accessed by children. This code mandates adherence to fifteen standards aimed at protecting children's personal data, with Standard 1, titled Best interests of the child, taking precedence. This specific standard obliges businesses to prioritize the welfare of children in all data processing activities. It emphasizes that while commercial interests might not inherently conflict with the interests of children, the best interests of the child must take priority in situations where conflicts do arise. This directive compels companies to critically evaluate how their data processing practices affect children and to adjust these practices to safeguard children's rights and well-being. The requirement to place children's best interests at the forefront of data processing decisions signifies a significant shift towards child-centric digital environments. It ensures that the digital space becomes a safer and more supportive setting for children, reflecting a broader commitment to integrating child welfare considerations into the fabric of digital policy. By implementing these standards, the UK is setting a precedent for how countries can enforce data protection laws that cater specifically to the needs of children, ensuring that their digital interactions are conducted within a secure and rights-respecting framework.

The **European** Digital Services Act (DSA) (Regulation (EU) 2022/2065) represents a significant advancement in the protection of minors in the digital space.<sup>xv</sup> This regulation mandates that businesses prioritize children's best interests in the provision of digital services, with a particular emphasis on the design aspects of these services. Specifically, paragraph 89 of the DSA stipulates that providers of very large online platforms and search engines must consider the best interests of minors when implementing measures such as adapting the design of their services and online interfaces. This requirement is especially pertinent when their platforms or services are targeted at or predominantly used by minors. This focus on design ensures that digital platforms are not only functional and engaging but also safe and suitable for younger users. By requiring adaptations in the design and interface of online services, the DSA aims to create a digital environment that inherently respects and protects the rights and well-being of children. This approach acknowledges the significant role that design plays in user experience and safety, especially for vulnerable populations like minors. The DSA's provisions reflect a growing recognition across Europe that protecting

children online requires proactive measures that integrate child safety from the ground up. This regulation encourages companies to innovate responsibly, ensuring that their technological developments do not jeopardize the safety or well-being of young users. Through such legislative measures, the EU aims to set a high standard for child protection in digital services, promoting best practices that could serve as a model for similar regulations globally.

Several countries around the world, including those in diverse regions such as **Chile, China, Ghana, India, Uganda, and Zimbabwe**, have integrated special provisions for children into their data protection laws.<sup>xvi</sup> These provisions often reference the 'best interests of the child,' aligning these nations with a global movement towards enhancing child safety in digital spaces. However, the implementation of these rights often hinges on a single mechanism—parental consent. While this method ostensibly aims to safeguard children by involving parents in decisions about their digital engagement, it does not necessarily guarantee that children's best interests are being served in practice. The reliance on parental consent as the primary method of protecting children's digital rights raises several concerns. Firstly, it presumes a uniformity in childhood experiences and family dynamics that simply does not exist across different socio-economic and cultural contexts. This uniform approach may not adequately reflect the diverse needs and realities of all children. Additionally, such a system can inadvertently grant excessive control to parents over their children's digital lives, potentially restricting children's access to beneficial digital resources and limiting their opportunities for learning, expression, and socialization. In some cases, this could even exacerbate existing vulnerabilities by reinforcing power imbalances within the family structure, thus making children more susceptible to other forms of control or abuse. Given these complexities, it becomes clear that while parental consent is an important aspect of protecting children online, it should not be the sole mechanism.

As legal frameworks governing the digital environment continue to evolve, the principle of the best interests of the child is increasingly being adopted as a central tenet. This shift towards a rights-based approach in the digital sphere is garnering widespread support, influencing not just legislators but other key stakeholders, including digital service providers, to prioritize the best interests of the child in their operations. In light of this trend, it is crucial to establish and follow comprehensive procedural guidelines that assess the best interests of the child. These guidelines should clearly define the responsibilities of all relevant parties—ranging from tech companies to educational content providers—and ensure that the array of children's rights is protected and promoted. Such procedures are essential not only for evaluating current practices but also for guiding the development of new technologies and services within the digital environment.

Moreover, these guidelines should involve thorough assessments that consider various factors such as the potential risks and benefits of digital services to children, the privacy implications of online activities, and the inclusivity of digital content. By embedding such assessments into the operational policies of digital providers, we can ensure a more holistic protection of children's rights.

It is also important that these guidelines promote active collaboration among stakeholders, including legal experts, child welfare advocates, educators, and parents, to foster an environment that truly reflects the diverse needs and rights of children. This collaborative approach will help in creating digital spaces that are not only safe and secure for children but also enriching and empowering, allowing them to explore, learn, and grow in the digital age responsibly and confidently.

Children express a strong desire for access to a digital world that is designed to be less addictive, less harmful, and less economically exploitative. They assert their right to be heard, highlighting the necessity for digital environments that prioritize their health and well-being.

In this context, certain protective rights become particularly critical. These include the right to privacy, especially concerning data processing; the right to life, survival, and development, which includes measures to prevent suicide; the right to protection from abuse and all forms of exploitation; and the right to the highest attainable standard of health, encompassing mental health and psychological well-being. These rights should be upheld in a manner that is lawful and free from arbitrary restrictions, ensuring that children's civil rights and freedoms, such as maintaining contact with significant persons and accessing information, are not unduly infringed.

In the digital realm, children's best interests must always be a primary consideration. Properly assessing these interests helps clarify which rights should take precedence when they conflict. For instance, balancing a child's freedom and agency against their safety, or their privacy against potential health risks, often requires nuanced decision-making where the protection from real harm may need to override other considerations. The procedures for evaluating and determining the best interests of the child are extensively outlined in the General Comments issued by the Committee on the Rights of the Child.

## CONCLUSION

The era of digitalization presents both unprecedented challenges and opportunities for the protection of children's rights. As this article has explored, the principle of the best interests of the child must be central in the design, regulation, and application of digital environments to ensure that these spaces are safe, empowering, and conducive to healthy development. The integration of this principle across various national legal systems and international guidelines demonstrates a growing recognition of the need to adapt our legal frameworks to better protect children in a rapidly evolving digital world.

However, the application of the best interest principle is not without its complexities. Balancing between the rights to privacy, freedom, and protection requires an approach that considers the unique vulnerabilities and needs of children. It is clear that while digital technologies offer incredible opportunities for learning and socialization, they also expose children to new risks that must be carefully managed. The responsibility for protecting children's rights in the digital age is shared among governments, legal institutions, technology companies, and society at large. This collective effort should aim not only to mitigate risks but also to enhance the benefits of digital technologies for children.

Furthermore, ensuring that children's voices are heard in the policymaking process is crucial. Children are not merely passive recipients of adult-made decisions; they are active stakeholders whose insights can lead to more effective and relevant protections. Inclusive approaches that incorporate children's perspectives and experiences will likely result in more child-centered solutions.

Ultimately, the goal is to create a digital world that truly respects and enhances children's rights — a world where the best interest of the child is not only a legal mandate but a guiding light for innovation and development, ensuring that the digital age is a time of safe, enriching, and empowering experiences for all children.

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