

# **An open letter to policy makers, data protection authorities, and providers worldwide, regarding rapid technology adoption for educational aims**

***We believe that every child has the right to a safe, open, and inclusive education, free from commercial exploitation, that enables their full and free development into adulthood and promotes human flourishing.***

As an estimated 90% of the world's student population are affected by school closures<sup>1</sup> in the COVID-19 pandemic, technology is playing a vital role worldwide. Some tools enable the delivery of essential information, connecting school communities outside the classroom. Others provide national platforms<sup>2</sup> for sharing educational materials, or offer alternative means and modes of Assistive Technology and augmented communications, supporting the rights of those with disabilities.<sup>3</sup>

However the rushed adoption of technology around the world, to deliver emergency remote instruction, risks undermining learners' and children's rights at an unprecedented speed and scale. We urge organisations and education authorities to procure and recommend only those technologies which openly demonstrate that they uphold children's rights, and call on States Parties to offer a secure online space for all children to access knowledge without commercial interference.

## **Recognise the Rights of the Child**

Sustainable Development Goal 4,<sup>4</sup> adopted by all United Nations Member States in 2015, provides a shared blueprint to ensure inclusive and equitable education opportunities for all, without discrimination.<sup>5</sup> Article 24 of the UN Convention on the Rights of Persons with Disabilities, and the UN Convention on the Rights of the Child<sup>6</sup>, ratified by over 197 State Parties worldwide, already offer a robust framework for protecting children's rights that should be applied by all parties in the rapid adoption of online learning technologies during the COVID-19 crisis.

Children's rights include non-discrimination (Article 2 UNCRC), that the child's best interests shall be a primary consideration in all things (Article 3 UNCRC and Article 24 of the Charter of Fundamental Rights of the EU (CFREU)<sup>7</sup>), freedom to full development of their personhood and character (Article 6 UNCRC), rights to privacy and reputation, and protection from arbitrary or unlawful interference with family, home or correspondence (Article 16 UNCRC and Article 8 of the European Convention on Human Rights (ECHR), Article 7 CFREU), data protection (Article 8 CFREU), freedom of expression (Article 13 UNCRC, Article 10 ECHR, Article 11 CFREU) and freedom of thought (Article 14 UNCRC, Article 9 ECHR, Article 10 CFREU). Children have rights to rest, leisure and play (Article 31 UNCRC) and health (Article 24 UNCRC). And the education of the child shall be directed, according to Article 29<sup>8</sup>, to the development of the child's personality, talents, mental and physical abilities to their fullest potential with respect for human rights, fundamental freedoms and principles. Children are also entitled to protection from economic exploitation under Article 32 of the UNCRC<sup>9</sup>.

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<sup>1</sup> UNESCO COVID-19 Educational Disruption and Response

<https://en.unesco.org/themes/education-emergencies/coronavirus-school-closures>

<sup>2</sup> UNESCO list of National learning platforms and tools (accessed March 28, 2020)

<https://web.archive.org/web/20200325181822/https://en.unesco.org/themes/education-emergencies/coronavirus-school-closures/nationalresponses>

<sup>3</sup> UN Convention on the Rights of Persons with Disabilities (UNCPRD) Article 24

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

<sup>4</sup> The SDGs build on decades of work by countries and the UN <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>5</sup> Discrimination by age, ethnicity, gender, language, race, religion, political or other opinion, national origin, as well as the characteristics of persons with disabilities, special educational needs, migrants, and indigenous peoples.

<sup>6</sup> The UN Convention on the Rights of the Child (1990) <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>7</sup> Charter of Fundamental Rights of the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>8</sup> UNICEF aims of education <https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/>

<sup>9</sup> Van der Hof, S et al (forthcoming 2020) The International Journal of Children's Rights.

## To protect these critical rights for children, we call on

1. **Data protection authorities** to co-operate globally to publish guidelines, monitor practice and enforce compliance of e-learning platforms,<sup>10</sup> children's apps and other edTech.
2. **Policymakers** to consider the impacts of the current use of e-learning, and to conduct and publish children's rights, equality and data protection impact assessments. Recommend and adopt only platforms and resources for schools that adhere to the obligations to respect, protect and fulfil the rights of the child in the digital environment<sup>11</sup> and UN General Comment No.16 (2013)<sup>12</sup> regarding the business sector impact on children's and students' rights. Publish any decisions about new national level product or service adoptions, and commit to review practices, and their impacts with civil society including the most affected and marginalised communities, once the emergency situation has ended.
3. **Providers** to not exploit students' participation in compulsory education for commercial gain, in particular at this time when consent cannot be considered freely given. To adhere to best practice consistent with the rule of law, and with suitable safeguards for students' security and privacy, including accessible and inclusive curriculum needs, encryption and data protection by-default-and-design; avoiding profiling, dark patterns or interference from opaque nudge techniques, and behavioural and emotional analytics. To be fully transparent about processing personal data, automated decision making, and the sources and assumptions made in any training data, used in tools that employ artificial intelligence<sup>13</sup>.
4. **Educators** to procure and recommend resources where children can learn untouched by monitoring, profiling, data mining, marketing, or manipulation for commercial exploitation.

## Why this matters now and for every child's future

A child's human dignity<sup>14</sup> and their journey into adulthood is, in part, shaped by their digital experience and their digital footprint created from it. The effects of such tracking, profiling, data distribution and commercial targeting may be lasting, and impede the full and free development of a child—in particular where children are influenced by those who see them only as consumers, where data are discriminatory or stigmatising, used to manipulate their mood<sup>15</sup>, and where personal data are reused without consent, in further and higher education, or for employment, identity or insurance screening.

Software introduced without adequate due diligence and staff or families' training with regard to privacy and security settings can compromise safety, exposing children in virtual classrooms to advertising and manipulative content,<sup>16</sup> racist, pornographic, violent, or other inappropriate material.<sup>17</sup>

Children are disadvantaged by the power imbalance between them and school authorities<sup>18</sup> under

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<sup>10</sup> Resolution on e-learning platforms adopted by the 40th International Conference of Data Protection and Privacy Commissioners (ICDPPC) (2018) [https://edps.europa.eu/sites/edp/files/publication/icdppc-40th\\_dewg-resolution\\_adopted\\_en\\_0.pdf](https://edps.europa.eu/sites/edp/files/publication/icdppc-40th_dewg-resolution_adopted_en_0.pdf)

<sup>11</sup> In accordance with the Council of Europe Guidelines on Children in the Digital Environment Recommendation CM/Rec(2018)7 <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

<sup>12</sup> 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 [https://www.unicef.org/csr/css/CRC\\_General\\_Comment\\_ENGLISH\\_26112013.pdf](https://www.unicef.org/csr/css/CRC_General_Comment_ENGLISH_26112013.pdf)

<sup>13</sup> Federal Court Rules 'Big Data' Discrimination Studies Do Not Violate Federal Anti-Hacking Law (2020)

<https://www.aclu.org/press-releases/federal-court-rules-big-data-discrimination-studies-do-not-violate-federal-anti>

<sup>14</sup> The Committee on the Rights of the Child set out in 2001 that education must be provided in a way that respects the inherent dignity of the child

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx)

<sup>15</sup> Facebook's flawed emotion experiment: Antisocial research on social network users (Shaw, 2015)

<https://journals.sagepub.com/doi/full/10.1177/1747016115579535>

<sup>16</sup> Kids are being bombarded with online ads (sometimes graphic)—in school. Time to STOP online ads to students? Missouri education watchdog (2018)

<https://missourieducationwatchdog.com/kids-are-being-bombarded-with-online-ads-sometimes-graphic-in-school-time-to-stop-online-ads-to-students/>

<sup>17</sup> New York Attorney General Looks Into Zoom's Privacy Practices

(March 30, 2020) <https://www.nytimes.com/2020/03/30/technology/new-york-attorney-general-zoom-privacy.html>

<sup>18</sup> Facial recognition in school renders Sweden's first GDPR fine (2019)

[https://edpb.europa.eu/news/national-news/2019/facial-recognition-school-renders-swedens-first-gdpr-fine\\_en](https://edpb.europa.eu/news/national-news/2019/facial-recognition-school-renders-swedens-first-gdpr-fine_en)

normal circumstances. But this imbalance is only made worse in the current circumstances, as some States Parties choose to impose surveillance, and allow commercial companies into children's home life without consent.<sup>19</sup> Others take the view that 'tracking student data without parental consent is not only illegal, it is dangerous.'<sup>20</sup> Companies must not misuse the additional power that the current situation conveys on them, to further their commodification and use of children's personal data, for their own purposes and to extract profit.

**Privacy is not only a right, it is integral to the development and adoption of responsible online tools, for the good of society, and for keeping children safe<sup>21</sup>. We can and we must make fairer, safer and more transparent choices for our children's future in the design and use of technology in education.**

General comment No. 5 on the implementation of the UNCRC emphasises that "*implementation of the Convention is a cooperative exercise for the States of the world*"<sup>22</sup> and includes the obligation to ensure that non-State service providers also operate in accordance with its provisions, thus creating indirect obligations on such actors.

**We call on every country to commit to action, and to require all actors in education to uphold children's and family rights, including their protection, participation and privacy; to build and procure trustworthy tools; and to turn a rights' respecting vision of education into reality.**

*April 16, 2020*

Defend digital me  
Campaign for a Commercial-Free Childhood  
5Rights Foundation  
Access Now  
Aspiration  
Badass Teachers Association  
Berkeley Media Studies Group  
Biometrics-in-Schools  
Bolo Bhi  
CRIN (Child Rights International Network)  
Consumer Action  
Consumer Federation of America  
Corporate Accountability  
Digital Rights Foundation  
EDRi (European Digital Rights)  
Educadigital Institute - Open Education Initiative  
Electronic Frontiers Australia (EFA) Inc.  
EPIC (Electronic Privacy Information Center)  
Instituto Alana  
IPANDETEC (El Instituto Panameño de Derecho y Nuevas Tecnologías)  
New Dream  
Obligation, Inc.  
Open Rights Group

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<sup>19</sup> The Welsh Government Hwb (March 23, 2020) 'Previously, these services have only been made available where learners or their parents/carers had given consent, from Monday 23 March 2020, schools will no longer rely on consent.' <https://hwb.gov.wales/news/article/76979aea-3819-42e9-9c10-121e907ef922>

<sup>20</sup> Google sued by New Mexico attorney general for collecting student data through Chromebooks

(Feb 2020) The Verge <https://www.theverge.com/2020/2/20/21145698/google-student-privacy-lawsuit-education-schools-chromebooks-new-mexico-balderas>

<sup>21</sup> \$610K settlement in School Webcam Spy Case (2010) Robbins v Lower Merion <https://www.cbsnews.com/news/610k-settlement-in-school-webcam-spy-case>

<sup>22</sup> General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.

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Parent Coalition for Student Privacy

Parents Across America

Parents Together

P.E.A.C.E. (Peace Educators Allied For Children Everywhere)

Privacy International

Privacy Salon

Public Citizen

Public Knowledge

TEDIC (The Association of Technology, Education, Development, Research, Communication)

TRUCE (Teachers Resisting Unhealthy Childhood Entertainment)

Women Leading in AI Network