

Contribution on the upcoming country visit to Germany (14 – 25 October 2024) by the Special Rapporteur on the sale and sexual exploitation of children

1. Children's rights in the digital environment

With the Convention on the Rights of the Child (CRC)¹, the United Nations enacted fundamental human rights for minors on 20 November 1989. Article 34 CRC obliges the state parties to 'protect children from all forms of sexual exploitation and sexual abuse'. Article 17 CRC emphasises the importance of children's access to the media and encourages in lit e. the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.

In its General Comment No. 25², the United Nations Committee on the Rights of the Child demands states to equally realise children's rights to protection, provision and participation in the digital environment. The Committee members point out that the digital environment is of enormous importance for young people and their development. Against this backdrop, in particular they emphasise the need to protect children and young people from risks associated with contact, conduct and content, but also sexual exploitation and sexual abuse, and oblige the state parties to take appropriate measures to ensure the safety of children and youth online. When developing respective regulations and measures, children should be involved and their perspectives taken into account in order to fulfil the best interests of the child.

2. Media usage by children and young people in Germany

Young people are growing up in a digitalised world. According to the KIM Study 2022³, almost all children in Germany aged from of six to 13 (99 per cent) live in households with access to the internet. Almost every second child in this age group has their own smartphone (girls 43 per cent, boys 45 per cent). While more than one in three 6 and 7-year-olds are online (38 per cent), almost all children in the 12 to 13 age group are online (99 per cent).

According to the JIM Study 2023⁴, with increasing age it can be assumed that almost all young people (96 per cent) have their own smartphone. In addition, almost three quarters of young people aged 12 to 19 can call a computer/laptop their own. With extensive access to devices, both media usage times and the variety of media usage increase with age. On average, the young people surveyed spent 224 minutes online every day. All three apps mentioned as most relevant for them allow for communication with known and unknown persons.

3. Sexualised violence and sexual content online

When using digital media and online services, children also encounter content that they do not want to be confronted with. Five per cent of 6 to 13-year-olds report content for which they consider themselves too young, three per cent report content unpleasant to them and four per cent report depictions they felt anxious about. The majority of the images perceived as unpleasant were sexualised

¹ United Nations (1989): Convention on the Rights of the Child. <https://childrens-rights.digital/hintergrund/UNKRK.cfm> [20.09.2024]

² United Nations (2021): General comment No. 25 (2021) on children's rights in relation to the digital environment. <https://childrens-rights.digital/hintergrund/index.cfm/aus.11/key.1721/StartAt.11/page.2> [20.09.2024]

³ MPFS (2023). KIM-Studie 2022. https://www.mpfs.de/fileadmin/files/Studien/KIM/2022/KIM-Studie2022_website_final.pdf [20.09.2024]

⁴ MPFS (2023): JIM Studie 2023. https://www.mpfs.de/fileadmin/files/Studien/JIM/2022/JIM_2023_web_final_kor.pdf [20.09.2024]

and/or pornographic content (55%). Six per cent of the children also reported that they had already made uncomfortable acquaintances, half of these children even more than once.⁵

The probability of receiving unwanted content increases with age. Almost one in four young people aged between 12 and 19 (23 per cent) reported having been unintentionally confronted with pornographic content. Sexual harassment online also plays a role in this age group. 30 per cent of young people report such experiences (36 per cent of girls, 24 per cent of boys), while six per cent experience sexual harassment online on a regular basis (daily/several times a week).⁶

In this context, international studies indicate that children are increasingly younger when they encounter sexual harassment for the first time. While today's 20-year-olds stated they had had such an experience for the first time at the age of 13.4, for today's 18-year-olds this was already the case at the age of 12.7. Two thirds of those surveyed had experienced sexualised violence directly on their smartphone using a communication service.⁷ It has also been proven that depictions of sexualised abuse of children are easily accessible online and spread very quickly on the internet. The most common ways of consuming, sharing and disseminating images of sexualised violence against children are standard internet browsers, social media platforms and communication services.⁸

4. Legislative framework and national mechanisms of cooperation

a. Youth Protection Act

With the amendment of the Youth Protection Act 2021, the federal legislator has expanded the protection aims with regard to the digital environment. In addition to the previous objectives of protecting children from media that impair their development and are harmful to children, the new legislation was amended in regard of the protection of personal integrity of children and with regard to guidance on media use and media education, as well as protection from risks potentially occurring from interaction with other users (so-called interaction risks).

The new concept of personal integrity of children is understood by experts of children's rights in the digital environment as a comprehensive approach covering the protection of physical and psychological integrity as well as personal data. In particular, the age-appropriate and future-open development as well as the informational and sexual self-determination of minors must be ensured. The abuse of inexperience and age, economic exploitation and commercial or other inadequate processing and dissemination of user data are, conversely, in contradiction to the protection of personal integrity.⁹

According to the conceptual understanding, the aim is to protect young people in their sexual development from unwanted interference by third parties. It must also be assumed that this protection objective is linked to the possibility of consensual sexual exploration in the digital environment, which should also be read in line with paragraph 118 of General Comment No. 25.

⁵ MPFS (2023). KIM-Studie 2022. https://www.mpfs.de/fileadmin/files/Studien/KIM/2022/KIM-Studie2022_website_final.pdf [20.09.2024]

⁶ MPFS (2023): JIM Studie 2023. https://www.mpfs.de/fileadmin/files/Studien/JIM/2022/JIM_2023_web_final_kor.pdf [20.09.2024]

⁷ WeProtect Global Alliance (2023): Estimates of childhood exposure to online sexual harms and their risk factors. A global study of childhood experiences of 18 to 20 years old. <https://childrens-rights.digital/hintergrund/index.cfm/topic.279/key.1778> [20.09.2024]

⁸ Suojellaan Lapsia, Protect Children ry. (2024): Tech Platforms Used by Online Child Sexual Abuse Offenders: Research Report with Actionable Recommendations for the Tech Industry. <https://childrens-rights.digital/hintergrund/index.cfm/topic.279/key.1795> [20.09.2024]

⁹ Krause, Torsten/Kretschmann, Yola/Yacob, Aaron (2022): On the Concept of Personal Integrity in the German Protection of Minors. <https://childrens-rights.digital/hintergrund/index.cfm/aus.11/key.1798/StartAt.1/page.1> [20.09.2024]

b. Penal Code

The German Penal Code criminalises the creation, possession and distribution of child and youth pornographic material. With the recent amendment of Section 184b (1) phrase 1 and (3) of the Penal Code, the legislator has nevertheless opened up the possibility of criminal proceedings being stopped with impunity if adult accused persons for non-paedo-criminal reasons (e.g. preservation of evidence) have respective material available that is to be prosecuted under Section 184b and its creation, possession and dissemination punished. The same also applies to juvenile accused persons who engage in consensual sexting without infringing the rights of third parties.

The Digital Opportunities Foundation generally supports the recent reform of the legislator. It is understandable and necessary to give law enforcement authorities and courts the opportunity to stop proceedings against adult accused persons if it can be clearly proven that the person in question is not acting out of paedo-criminal intentions. We also welcome the amendment with regard to juvenile accused persons who engage in consensual sexting and do not infringe the rights of third parties. However, the mere downgrading of such acts by young people to an offence does not correspond to the intention of paragraph 118 of General Comment No. 25, which expressly calls for the consensual exchange of sexual content between peers not to be criminalised. As a result, consensual sexting should be legalised in principle.

Provided that sexting is mostly consensual within existing relationships and/or between sexual partners, this can initially be considered unproblematic behaviour. Nevertheless, sexting, as with the analogue initiation of relationships and sexuality, can lead to breaches of consensus, for example if there is no consent to the sending of such texts and images or if they are shared with third parties. Such violations of consent must be named, addressed, prevented and, if necessary, prosecuted. This requires education, information and awareness raising. Safer sexting messages and campaigns are helpful in this context. (see also 5d).

In our view, it is questionable to argue against sexting per se. It can be assumed that assaultive behaviour cannot be addressed, dealt with and clarified, as those affected may tacitly accept it. In addition, the Digital Opportunities Foundation believes that care should be taken to ensure that in the case of violations of the personal sphere or more serious assaults, it is not the person who has been harmed who is deemed responsible, but rather that the person causing the harm is confronted. In this context, we also encourage the continuation and expansion of information and counselling services to promote the competent use of digital media as well as services to avoid or reduce interaction risks for children, young people, parents and other caregivers as well as professionals.

The concept of abuse is criticised in specialist circles. On the one hand, the term goes hand in hand with an objectification of the child, who is consequently no longer perceived as a subject. On the other hand, it also implies that there could be a permissible use of a child. Instead of the term abuse, the term (sexual) violence is therefore often used. This term makes it clear that it is an unauthorised assault that disregards the rights of the child and will have negative consequences for the child. The term pornography should also be rejected in connection with sexual violence against children. Against this background, the Digital Opportunities Foundation recommends examining and adapting the designation of criminal offences in this context.

c. Act to strengthen structures against sexual violence against children and young people

In summer 2024, the Federal Government passed a law to secure and strengthen the existing structures for preventing and combating sexual violence against children at and through the Independent Commissioner for Child Sexual Abuse. This law is also accompanied by greater consideration of the views and interests of those affected and more research in this area. In light of

the findings described above regarding the importance of the digital environment for children and young people, the Digital Opportunities Foundation welcomes the proposed law in general and supports the concerns it pursues.

With regard to the designated official title of the Independent Commissioner against Sexual Abuse¹⁰ of Children and Adolescents, with reference to the Luxembourg Guidelines on the use of terminology in connection with sexual violence against children, we advocate that the terminology of child abuse be omitted from the official title of the Commissioner and that the wording of title be guided by the aforementioned guidelines. In addition, the law could be used to provide the existing official title with a more positive connotation. Instead of *against abuse*, it could read in favour of *protection of/against*.

- d. National Council against Sexual Violence against Children and Adolescents and Alliance against Sexual Violence on the Internet

Since 2019, the Independent Commissioner has established the National Council against Sexual Violence against Children and Adolescents. Around 300 organisations and people from civil society, academia, politics and law enforcement work together in this forum. Thanks to its diverse perspectives, the National Council is able to provide important impetus and promote (expert) dialogue. In addition, the Alliance against Sexual Violence on the Internet was founded on 3 July 2023 together with the Federal Agency for Child and Youth Protection in the Media. Both structures must be further developed for the future and utilised in the best interests of the child.

5. Prevention and intervention measures
 - a. Paths of escalation of sexual harassment

Sexual harassment often starts on digital services and platforms that one wouldn't assume as risky in the first place. An apparently harmless ad on a classified advertisement platform, f. e. a teenager searching for a holiday job may result in an offer to model and then escalate into sextortion. So called paths of escalation¹¹ demonstrate where sexual harassment may start and where it may end in heinous crimes against minors. The paths are also meant to help parents and educational professionals understand that in contrast to "stranger danger" the risk of abuse and exploitation is present in the digital everyday life of children and young people.

- b. Everyday Depictions of Children in sexualised contexts

Innocent everyday depictions of children are increasingly spread via digital services where they are available not only for the private circle but also in the public domain. Parents and other family members as well as children themselves share their images across various platforms from where they can easily be transposed into a sexualised context. This happens f. e. by putting the images on certain platforms for pornographic content and by adding vulgarities or commenting in sexualised slang. Linking up depictions with sexualised elements enables the perception of a child as a sexual object. In order to simplify categorization and assist with assessment of the potential sexualisation of everyday depictions the competence centre jugendschutz.net developed a grid that systematically records the characteristics of such imagery. Based on these findings the I-KiZ Centre for Child Protection on the Internet published a Table of Criteria for Everyday Depictions in a Sexualising Context¹².

¹⁰ In the German language the term Missbrauch [misuse] is provided.

¹¹ SDC (2022): Instrument for Risk Assessment of Sexualized Violence in the Digital Environment. <https://childrens-rights.digital/transfer/assets/9224.pdf> [25.09.2024]

¹² I-KiZ (2016a): Table of Criteria for Everyday Depictions in a Sexualising Context. <https://childrens-rights.digital/hintergrund/index.cfm/topic.324/key.1587> [25.09.2024]

c. Posing Images of Children

The term “Posing Images” was coined to describe staged photos of children suggesting a certain sexual desire of the children themselves. Such imagery is easy to find on the Internet and forms a large part of the grey area of sexual exploitation of children. To differentiate these images clearly from everyday depictions, the competence centre at jugendschutz.net has identified typical features based on the COPINE scale¹³. They outlined typical manifestations and drew up a detailed set of criteria to simplify assessment and to determine whether the depiction of a posing child is in itself sexualised or is being used to satisfy sexual interests. Based on these results the I-KiZ Centre for Child Protection on the Internet published a scheme of Typical Features of Manifestations of Posed Depictions¹⁴.

d. Campaigns and Help

Information and education as well as counselling and support are essential elements in enabling young people to grow up safely with media. We expressly welcome the commitment of the state media authorities to raising young people's awareness of the consensual creation and sharing of sexualised images among young participants with the Safer Sexting campaign¹⁵. Appropriate formats and concepts suitable for young people should also be realised and expanded in the future.

In order to clarify and deal with critical or criminal situations and experiences, children and young people need contact opportunities to which they can turn for advice and support. The funding of such services, e.g. help- and hotlines, is absolutely essential. It is also necessary for young people to be able to access such counselling online without their parents' knowledge. However, the General Data Protection Regulation requires the consent of the holder of parental responsibility to process their children's data. Though, as the (wider) family environment is often part of the crisis or not helpful in overcoming it, there is a need to provide children with counselling and waive the consent of the holders of parental responsibility, as is suggested in recital 38. The Digital Opportunities Foundation is developing a code of conduct according to Art. 40 of the GDPR together with online prevention and counselling services for children to gain legal certainty for the services.

6. Emerging technologies

Virtual worlds and artificial intelligence are the basis of the metaverse. Not a few imagine this next level of digital environment as a land of milk and honey. But this comes along with massive responsibility, for academia, for civil society, for industry and for legislative regulators. We appeal to their responsibility to ensure a safe and secure environment for users of all ages.

The European Commission is continuing to prepare the market environment for virtual worlds and artificial intelligence. In this context the Digital Opportunities Foundation contribute to the process and focussed in particular on the rights and needs of children. Using Livingstone and Stoilova's 4C model, foreseeable and possible developments of opportunities and risks in the categories of content, contact, conduct and contract are highlighted. Due to the expected immersion and the associated pull effect, we point out that children's rights must be considered from the very beginning when shaping and regulating a developing metaverse in order to be able to realise the protection, provision and participation of young people in virtual worlds. These must be structured in such a way that all children can participate equally without experiencing discrimination of any kind and that the child's well-being and best interests are taken into account in the process. In this context, we recommend that the concept of the personal integrity of children, which was newly established as a protection objective in

¹³ Wikipedia (2024): COPINE scale. https://en.wikipedia.org/wiki/COPINE_scale [25.09.2024]

¹⁴ I-KiZ (2016b): Typical Features of Manifestations of Posed Depictions. <https://childrens-rights.digital/hintergrund/index.cfm/topic.324/key.1586> [25.09.2024]

¹⁵ Landesanstalt für Medien NRW (2024): <https://www.safer-sexting.de/> [20.09.2024]

the 2021 German Youth Protection Act, be established for all users of the metaverse and used as a benchmark for regulation.¹⁶

7. About us

The Digital Opportunities Foundation is a non-profit, operational foundation based in Berlin, Germany. Since 2002, they are researching the social impact of digitization and are advocating equal access to the internet and media literacy education for all people. With numerous projects at national and European level, the foundation pursues the goal of digital inclusion, participation and equal opportunities, thus counteracting a digital divide in society.¹⁷

Berlin, 25.09.2024

¹⁶ SDC (2024): Contribution to European Commission's Call „Competition in Virtual Worlds and Generative AI“. <https://childrens-rights.digital/transfer/assets/9378.pdf> [20.09.2024]

¹⁷ Further information at <https://www.digitale-chancen.de/en/foundation> [20.09.2024]