

**Essay by Hannah Smethurst, Runner-up**

The biggest issue currently affecting children in Scotland is the rapid advancement of technology and the lack of both safeguarding measures and understanding from those in charge of children's welfare. This is not simply a concern of personal security or the rise in anxiety and depression as a result of increasingly editorialised views into the lives of peers.<sup>1</sup> Instead, the concern is that personal data, especially that of children, can enable companies to infer sensitive attributes such as sexuality and race.<sup>2</sup> Protections around the gathering and use of this data are insufficient at best.

This is particularly concerning given the growing pattern of Internet addiction and oversharing by children and young people. Many parents struggle to control their child's screen time, with some 9-to-11-year olds messaging as late as midnight,<sup>3</sup> and 60% of 9-to-16-year-old Europeans averaging an hour and a half online per day.<sup>4</sup> While adults comfortably straddle the divide between on- and offline, children expect the same rights in both worlds as their friendships flow seamlessly between.<sup>567</sup>

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<sup>1</sup> Ferranti, S., "How Screen Addiction Is Damaging Kids' Brains" (Vice, 2016); available at <[https://www.vice.com/en\\_ca/article/5gqb5d/how-screen-addiction-is-ruining-the-brains-of-children](https://www.vice.com/en_ca/article/5gqb5d/how-screen-addiction-is-ruining-the-brains-of-children)> last accessed 10 September 2018.

<sup>2</sup> Kosinski, M; Stillwell, D, Graepel, T. "Private traits and attributes are predictable from digital records of human behaviour" (2013) 110 (15) *Proceedings Nat'l Academy Sci Early Ed* 5802.

<sup>3</sup> Ofcom, "Children and parents: media use and attitudes report" (November 2016); available at <[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0034/93976/Children-Parents-Media-Use-Attitudes-Report-2016.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0034/93976/Children-Parents-Media-Use-Attitudes-Report-2016.pdf)>.

<sup>4</sup> Livingstone, S. "e-Youth: (Future) Policy Implications: Reflections on Online Risk, Harm and Vulnerability" Paper presented at e-Youth: Balancing Between Opportunities and Risks, 27–28 May 2010, UCSIA and MIOS University of Antwerp, Antwerp, Belgium.

<sup>5</sup> Select Committee on Communications, *Growing Up with the Internet* (2016-17, HL 130).

<sup>6</sup> Coleman, S., Pothong, K., Vallejos, E.P., Koene, A., "The Internet in Our Own Terms: How Children and Young People Deliberated About Their Digital Rights" (2017) at 44; available at <<http://casma.wp.horizon.ac.uk/wp-content/uploads/2016/08/Internet-On-Our-Own-Terms.pdf>>

<sup>7</sup> House of Lords Paper 130, 21 March 2017; available at <<https://publications.parliament.uk/pa/ld201617/ldselect/ldcomuni/130/13002.htm>>

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Social Networking Sites have therefore “become an integral communication platform in the lives of many children.”<sup>8</sup> The lack of emotional intimacy<sup>9</sup> on these sites can lead people – especially young teenagers – to share increasingly specific details of their life in order to elicit a response from their peers. Children’s naivety and vulnerability, “limited capacity for self-regulation, and susceptibility to peer pressure”<sup>10</sup> puts them at a heightened risk of disclosing personal information. This information ranges from personal photographs to sensitive data. Some young people are starting to realise the danger that posting too much information online can bring and attempting to have much of their internet presence removed<sup>11</sup>, but it is often too little too late, and they often experience difficulty finding and using tools to restrict the use of their personal data<sup>12</sup>. While children have a right to access information and communicate, including on the Internet, they also require age-appropriate protection, care, and guidance.<sup>13</sup> Despite the measures implemented by the General Data Protection Regulation (“GDPR”)<sup>14</sup> in May this year, children remain largely unprotected. Article 40 encourages the creation of codes of conduct, with specific attention on activities involving children, and Article 8 declares that children under 16 cannot consent to their personal data being used. Unfortunately, these protections appear to have missed the mark of safeguarding children quite substantially.

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<sup>8</sup> McCullagh, K., “The General Data Protection Regulation: A Partial Success for Children on Social Network Sites?” in Brautigam, T., Meittinen, S., “Data Protection: Privacy and European Regulation in The Digital Age” (2016)

<sup>9</sup> Hoge, E., Bickham, D., Cantor, J., “Digital Media, Anxiety, and Depression in Children” (2017) 140(2) American Academy of Pediatrics 77

<sup>10</sup> O’Keeffe, G. S., Clarke-Pearson, K., “The Impact of Social Media on Children, Adolescents, and Families” (2011) 127(4) American Academy of Pediatrics 800, 800

<sup>11</sup> The Local, “Woman sues parents for sharing embarrassing childhood photos” (The Local, 2016); available at <<http://www.thelocal.at/20160914/woman-sues-parents-for-sharing-embarrassing-childhood-photos-on-facebook>>

<sup>12</sup> Livingstone, S., Haddon, L., Gorzig, A., Olafsson, K. “Risks and Safety on the Internet: The perspective of European children”; available at <[http://www.lse.ac.uk/media%40lse/research/EUKidsOnline/EU%20Kids%20II%20\(2009-11\)/EUKidsOnlineIIReports/D4FullFindings.pdf](http://www.lse.ac.uk/media%40lse/research/EUKidsOnline/EU%20Kids%20II%20(2009-11)/EUKidsOnlineIIReports/D4FullFindings.pdf)>

<sup>13</sup> 5 Rights Initiative, available at <<http://5rightsframework.com/>>

<sup>14</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

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First, the obligation is on Member States to “promote public awareness and understanding”<sup>15</sup> of risks and rights online. The House of Lords recommended<sup>16</sup> that digital literacy be enshrined as the fourth pillar of a child’s education, and the post of ‘Children’s Digital Champion’ be created to closely monitor these implementations.<sup>17</sup> However, the UK government passed much of this responsibility onto providers and awarding organisations,<sup>18</sup> insisting that the existing Digital Minister was sufficient.<sup>19</sup> Unfortunately, as many adults believe their children understand the internet better than they do, it appears unlikely they would be able to educate them to any useful degree.<sup>20</sup>

Secondly, while Article 8 attempts to safeguard children’s data online while allowing them to fully experience the Internet, these protections only apply to Information Society Services (“ISS”) which are aimed directly at children.<sup>21</sup> There are very few websites, especially those used by children, which are specifically aimed at them. Despite an estimated 7.5m registered Facebook users under 13,<sup>22</sup> and 87% of 12-15-year-olds on YouTube,<sup>23</sup> neither site is *aimed* at children. This not only means that they are unprotected by the GDPR, they are also exposed to content inappropriate for their age, which many parents are unable to filter out. A key

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<sup>15</sup> Article 57 GDPR.

<sup>16</sup> House of Lords Paper 130, 21 March 2017; available at <<https://publications.parliament.uk/pa/ld201617/ldselect/ldcomuni/130/13002.htm>>.

<sup>17</sup> Ibid.

<sup>18</sup> Government Response to House of Lords’ Select Committee (October 2017), available at <<http://www.parliament.uk/documents/lords-committees/communications/children-internet/governmentresponsegrowingupwiththeinternet.pdf>>.

<sup>19</sup> Ibid.

<sup>20</sup> Ofcom, “Adults’ media use and attitudes” (June 2017), available at <[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0020/102755/adults-media-use-attitudes-2017.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0020/102755/adults-media-use-attitudes-2017.pdf)>

<sup>21</sup> Article 8(1).

<sup>22</sup> Consumer Reports, “7.5 Million Facebook Users are Under the Age of 13, Violating the Site’s Terms” (Consumer Reports, 2011) <<https://www.consumerreports.org/media-room/press-releases/2011/05/cr-survey-75-million-facebook-users-are-under-the-age-of-13-violating-the-sites-terms/>> last accessed 22 September 2018.

<sup>23</sup> Ofcom, “Children and parents: media use and attitudes report” (November 2016); available at <[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0034/93976/Children-Parents-Media-Use-Attitudes-Report-2016.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0034/93976/Children-Parents-Media-Use-Attitudes-Report-2016.pdf)>

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example is the recent trend of disturbing video content being targeted at children on YouTube.<sup>24</sup>

Finally, the need for parental consent in order to access those websites that *are* specifically aimed at children, such as those with information for young people, aims to involve parents more in the online actions of their children. However, this relies on a “romanticization of parent-child relationships” and a “laughable” assumption of parental understanding.<sup>25</sup> Parental gatekeeping can be incredibly useful with younger children,<sup>26</sup> but as stated above, parental knowledge means this oversight clearly has its limits. Many parents do not want their children missing out on opportunities<sup>27</sup> so will aid them in the creation of online accounts, believing that they are a good judge of whether their children are mature.<sup>28</sup> This not only bypasses the GDPR, it also exposes many children to inappropriate content.

Furthermore, this parental involvement undermines a child’s right to privacy.<sup>29</sup> The internet provides a “digital lifeline for seeking outside assistance;”<sup>30</sup> to require parental consent endangers children attempting to seek help for abuse or LGBT+ issues.<sup>31</sup> While parental

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<sup>24</sup> Bridle, J. “How Peppa Pig became a video nightmare for children” (The Guardian, 2018) available at <<https://www.theguardian.com/technology/2018/jun/17/peppa-pig-youtube-weird-algorithms-automated-content>> last accessed 15 September 2018.

<sup>25</sup> Boyd, D. “What If Social Media Becomes 16-Plus? New battles concerning age of consent emerge in Europe” (Medium, 2015), <<https://medium.com/bright/what-if-social-media-becomes-16-plus-866557878f7#6rmppea9s>> accessed 3 November 2017.

<sup>26</sup> Livingstone, S. “The General Data Protection Regulation: Practical considerations about age and consent” (LSE Media Policy Project Blog, 2017) <<http://blogs.lse.ac.uk/mediapolicyproject/2016/12/21/the-general-data-protection-regulation-practical-considerations-about-age-and-consent/>> last accessed 3 September 2018.

<sup>27</sup> Weale, S. “Facebook executive accuses UK parents of flouting age restrictions” (The Guardian, 2016) <<https://www.theguardian.com/technology/2016/nov/22/facebook-executive-accuses-uk-parents-flouting-age-restrictions>> last accessed 10 September 2018.

<sup>28</sup> Boyd, D., Hargittai, E., Schultz, J., Palfrey, J. “Why parents help their children lie to Facebook about age: Unintended consequences of the Children’s Online Privacy Protection Act” (2011) 16(11) First Monday 1.

<sup>29</sup> Government Response to House of Lords’ Select Committee (October 2017), available at <<http://www.parliament.uk/documents/lords-committees/communications/children-internet/governmentresponsegrowingupwiththeinternet.pdf>>

<sup>30</sup> UNICEF, “Privacy, Protection of Personal Information and Reputation Rights” Discussion Paper Series: Children’s Rights and Business in a Digital World; available <[https://www.unicef.org/csr/files/UNICEF\\_CRB\\_Digital\\_World\\_Series\\_PRIVACY.pdf](https://www.unicef.org/csr/files/UNICEF_CRB_Digital_World_Series_PRIVACY.pdf)>

<sup>31</sup> Richardson, J. et al “Letter of Concern to the Draft General Data Protection Regulation” (Anti-Bullying Project, 2015) <<http://www.antibullyingpro.com/blog/2015/12/11/letter-expressing-concern-to-the-draft-general-data-protection-regulation-13to16>> last accessed 20 September 2018.

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consent is not necessary for “preventative or counselling services”,<sup>32</sup> it is not clear whether these have to be officially recognised services, as unofficial communities of similar individuals can be a useful resource for young adults.<sup>33</sup>

In conclusion, the Internet is an increasingly integral aspect of children’s lives, but it comes with risks which they need to be protected from, especially those which arise from revealing personal information online. The GDPR takes some vital steps towards heightened protection for children online, but it leaves much to be desired, and has created a false sense that these problems have been solved.

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<sup>32</sup> Recital 38 GDPR; see also UK Data Protection Bill 2017, HL Bill 74.

<sup>33</sup> Pawelczyk, K. “Why a Nuanced Approach is Necessary”, in Cortesi, S., Gasser, U. “Global Perspectives on Youth and Digital Media” (Berkman, 2015).