ABOUT THIS DISCUSSION PAPER SERIES

As more children around the world spend more time on the Internet in more ways, it becomes increasingly essential to appreciate what children's rights mean in a digital environment. While there is now a widely accepted public imperative to protect children from harm, abuse and violence online, there has been comparatively little consideration of how to empower children as active digital rights-holders. At the same time, the rapidly expanding power and reach of the ICT sector have thrust communications and technology companies into key policy debates on the risks and opportunities children encounter online. This series of discussion papers seeks to explore the relationship between children's rights, business and the Internet in greater detail. The discussion papers address central themes, including children's rights to privacy, freedom of expression, information, education and non-discrimination. While the issues presented are by no means exhaustive, it is hoped that these discussion papers will contribute to broadening the conversation on children's rights and business in a digital world.

5. What are the risks to children that age assurance tools might help to mitigate online, and what is the evidence for the harms caused by those risks?

It is important to establish the risks to children that age assurance tools might help to mitigate online, in order to assess whether the use of such tools is necessary and justified in order to pursue the legitimate aim of upholding children's rights, as defined in the CRC.[98]

Under the International Covenant on Civil and Political Rights (ICCPR), both children and adults have rights to protection against arbitrary and unlawful interference with their privacy and correspondence, and to freedom of expression. Any encroachment on ICCPR rights must first be to pursue a legitimate aim, and must also be deemed necessary and proportionate to meet that objective. Any restrictions on ICCPR rights must be the least intrusive instrument available among those that might achieve the desired result.[99] Accordingly, children should not be age-gated out of any online environment, or have their access to content or aspects of an online service limited, without solid evidence that this is necessary.

It is not possible to eliminate risk or harm entirely for children either offline or online. Evidence suggests that children's exposure to a certain degree of risk, according to their evolving capacity, helps them to build resilience and to prepare for the adult world once they reach the age of 18.[100] However, while frameworks for understanding children's online risks exist,[101] there is little regulation or consensus regarding what is actually harmful to children online around the world, or any definition of what is and is not appropriate for children in different contexts by way of content, play or social environments online.

In the UK Government's VoCO study, participating platforms said that their efforts to protect children online were limited by the lack of a consistent definition of threats or potential harms to children online, or any agreement on the risk level posed by specific service features. They said they would need agreement on the likelihood

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98   See further letter from the-then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, to the UK government, commenting on the UK Digital Economy Bill's mandated use of age verification tools by pornography websites, 9 January 2017.

99   Ibid.

100   Livingstone, S., 'More online risks to children, but not necessarily more harm: EU Kids Online 2020 survey', LSE Blog, 11 February 2020.

101   Livingstone, Sonia and M. Stoilova, *The 4Cs: Classifying Online Risk to Children,* 2021.

of the threat posed to children in given scenarios and on the best options for risk mitigation, to create a level playing field and to be confident that they were using the most appropriate age assurance tool to mitigate risks.[102]

It is difficult to set precise ages in relation to children's general use of the Internet at which content or conduct becomes suitable for individual children because children mature at different rates. Moreover, some children have special educational needs that affect their cognitive skills, yet still wish to socialize online with their peers. Children have the right to be protected online from sexual exploitation and abuse and from violence, but this must be balanced with their rights to privacy, freedom of expression, participation, play and access to information. Any use of age assurance tools must ensure that all of these rights are protected and promoted for children online.

Legislative and technological responses to risks and harms should be proportionate to both their prevalence and impact,[103] and generally based on evidence. In many countries, offline products and services, such as alcohol, tobacco, gambling and film content, came to be age restricted in law through public and parliamentary debate related to research and evidence and broad public agreement.[104] However, in the online context, age restrictions can currently be applied through decisions made by private companies, often for reasons related to compliance with data protection regulations, rather than on the

basis of robust evidence related to harmful content or conduct.

This paper looks at online gambling and pornography, because these sites are almost universally restricted for children to access, and at social media and gaming apps, because these platforms set out age restrictions for children's access in their terms and conditions. It also considers the use of age assurance tools to address the harms caused by children being depicted in child sex abuse materials online, as a means of flagging content that features children, thereby enabling its removal and the rescue of child victims following human review.

5.1 GAMBLING

What do policymakers say?

According to the International Association of Gaming Regulators, the legal age for participation in gambling activities aligns with the age of majority in most jurisdictions. Therefore, globally, the average (modal) legal age to gamble is 18 across all markets.[105]

What is the evidence of risk and harm?

There is evidence to suggest that people who gamble earlier in life are more likely to become problem gamblers in adulthood, and problem gambling is associated with low self-esteem, poor school performance and increased risk of other addictions.[106]

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102   GCHQ, DDCMS and Home Office, *Verification of Children Online Phase 2 Report,* November 2020.

103   Baines, V., 'On Online Harms and Folk Devils: Careful Now', *Medium,* 24 June 2020.

104   Nash, Victoria et al., Effective age verification techniques, 2013.

105   International Association of Gaming Regulators, 'Gaming Regulation – Global Developments 2018-19 (Markets)'.

106   Sellgren, C., 'Child gambling a "growing problem" – study', BBC News, 15 October 2019; Parent Zone, 'Gambling and children – a problem?', (undated).

is unlikely that they would prevent children from accessing pornography completely. Therefore, if the goal is to prevent children from viewing pornography online in any form, it is not clear that preventing children from visiting commercial pornography websites through age verification would be a successful strategy.

At a baseline, age assurance tools could be more suited to ensure that younger children are not able to access commercial websites intended for adults, while mitigating broader privacy concerns. This could be done by checking whether the child in question appears to be within a range of 14–18, which could be effective in excluding young children. However, it is possible that this would cause children to seek out pornography elsewhere, such as on social media and to share it with friends on messaging apps, than preventing them from accessing it altogether. However, there is still an argument to be made that mandating the use of age verification or assurance in law could contribute to changing social norms around children accessing pornography, and hold the companies producing pornography more accountable for deploying the same restrictions online as is the norm offline in many contexts.

In the case of pornography accessed via social media, even if the platforms employed age assurance tools to tailor the user experience to the age of the user, it is unclear whether age assurance would protect child users of social media from bots designed to direct them to pornography sites.

From a rights perspective, extreme care would be needed to avoid excluding children from sexual and reproductive health information online: sexuality education, including resources for LGBTQ education, may be categorized as pornography in some contexts. Finally, it is questionable whether age assurance tools are an appropriate response to pornography that depicts extreme violence or violence against women, both of which can arguably be considered harmful for viewers of all ages.

5.3 ONLINE GAMING

What do policymakers say?

Age assurance tools to access games are only mandated by law in China. In 2011, the US Supreme Court struck down a law requiring ratings for video games and making it illegal to sell certain games to people aged under 18.[138] The Court found that video games deserve the same level of protection of freedom of speech as exists for books and films. It compared the violence depicted in games to Grimm's Fairy Tales, which are broadly thought of as acceptable to children despite containing lots of violence.

What is the evidence of risk and harm?

There has not been any conclusive research connecting games that contain significant violent content with aggressive responses in players either in general,[139] or specifically in relation to under-18s.[140] Games can also include adult themes or semi-pornographic

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138   Brown v. Entertainment Merchants Association, 564 U.S. 786 (2011).
139   Pinsent Masons, Video games and age restrictions – the US and UK, 1 April 2018.
140   Nash, Victoria et al., *Effective age verification techniques,* 2013.