



15 May 2019

### **Submission on the Concept note for a General Comment on children's rights in relation to the digital environment addressing in particular**

- How can States better realise their obligations to children's rights in relation to the digital environment?
- Is the realisation of children's rights in the digital environment necessary to realise children's rights in other environments?
- How can children's views and experiences be expressed and taken into account when formulating policies and practices which affect their access to, and use of, digital technologies?

## **The Grand Digital Challenge**

We are in the midst of digital transformation. Profound re-imagining and re-figuring of the ways in which we transact our lives, interact with governments and organisations, access services, connect with and contribute to the families, communities and societies to which we belong, driven by the capacities and capabilities of digital and networked information and communication technologies.

There is however a real danger that we are also entering an age of increasing information asymmetries where, despite ubiquitous access to digital and networking technologies and rhetoric around participation, power and control over information is being consolidated into a smaller and smaller number of state and private actors. The current machine learning explosion, fuelled by cries of 'data is the new oil,' has the potential to further exacerbate this situation. If control is blithely handed over to increasingly complex and opaque algorithms without adequate consideration of inherent biases and without appropriate attention to the mechanisms by which they need to account for decisions, actions and their consequences, there is a real danger of cementing systemic and enduring disadvantage and disenfranchisement. This has given rise to the critical interrogation of emerging technologies in areas like AI, software design and HCI and raising questions about fairness, equity, accountabilities and rights in data driven processes and systems, and the contexts that shape and structure them.

Others would argue of the potential for new digital and networked information technologies to be an enfranchising and emancipatory force, and are interested in exploring the ways in which digital disruption could be harnessed to address chronic disadvantage, tackle social injustices, promote increased participation in government and support social inclusion in shifting power imbalances in societal structures. There is growing interest in ensuring that digital transformations tackle grand societal challenges in smarter, agile, more open, transparent and inclusive ways – a societal design

challenge, which cuts across disciplines, professions, government agencies, organisations and communities.

## Digital Rights in Alternative Care Systems

Much of the discussion about the rights of children in the digital environment seems to be focused on the *discretionary* use of digital systems by children and/or families. In this submission the emphasis is on the need for a General Comment on Children's Rights in Relation to The Digital Environment to also address the representation and enactment of children's rights in *non-discretionary systems*. These are systems in which children and their families have little choice over participation and so it is vital that they also embed and embody children's digital rights in their design and implementation.

A further emphasis of this submission is on the digital rights of children and young people in Alternative Care environments. This represents a particularly pointed example of the far reaching impacts of non-discretionary systems on children's digital information and recordkeeping rights, and the challenges in ensuring that they act in the best interests of the child at all times, given the inherent dichotomies [1]. As noted in the UN Guidelines for the Alternative Care of Children, 'rigorous assessment, planning and review' underpins decision-making on Alternative Care, and that 'it should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians' [2]. Furthermore 'all concerned should be provided with the necessary information on which to base their opinion' [2].

Children and young people in Alternative Care situations therefore have little to no discretion around participation in the child protection and welfare systems which document the intimate, sensitive and personal details of their lives. A multitude of inquiries in Australia [3]–[8] and in other countries – Ireland, UK, Sweden, Canada, Norway, Iceland, Denmark, Germany, South Africa [9] have detailed the lifelong consequences of a lack of participation and agency in and over records of childhood Alternative Care experiences. A lack of agency in recordkeeping has been shown to deny children, young people and the adults they become their fundamental human rights to identity, memory, privacy and accountability [10].

Many national standards for Alternative Care identify the rights of children and young people to have access to a complete and accurate history of their time in Care, the plans for their future, their health, education and other important official records, their family and community connections, memories of key events, and other records which support and nurture their sense of identity, security, and connectedness with the world. They also emphasise the need for children and young people to participate in the decision-making that impacts on their lives, which therefore must include the formation and use of this increasingly digital archive. Despite increasingly extensive policy layers reflecting the emphasis in Alternative Care standards on child-centred approaches, there is also continuing evidence of barriers to their translation into practice. For example surveys of Care experienced children and young people by CREATE Foundation, Australia's national body representing the voices of children and young people with out-of-home care experiences, continue to show a lack of participation in case and cultural planning processes and access to information and records [11].

As Alternative Care systems move into the digital realm there is a real danger of encoding, enshrining and amplifying existing exclusions, biases and discrimination [12], without attending to the recordkeeping and information rights explicitly and implicitly embedded in children and other human rights charters [13]. Alternative Care recordkeeping systems can exemplify the 'problematic tendency of existing frameworks to prioritize protection over participation, rather than finding better ways of resolving ... [the] conflicts among rights ... [that] inevitably arise' [14, p. 490]. This is

despite recognition that active participation and proactive provision of rights are a protective factor [15].

In Alternative Care environments the increased surveillance capabilities of both discretionary and non-discretionary systems have the potential to be utilised both for and against the best interests of the child. While increased abilities to monitor online activities and capacities for seamless sharing of digital data and information might help to identify risks to children and young people, they may also infringe on rights to privacy and confidentiality with consequent impacts on the development of self-identity, and connection to family and community. The ability to establish identity as an individual human being, as well as having agency and control over personal and sensitive information, goes to the core of fundamental human rights to autonomy and self-determination [16], [17].

Existing reactive governance mechanisms – retrospective file audits and inquiries by Children’s Commissioners/Guardians or other oversight bodies in response to complaints, catastrophic failings or other systemic concerns – often fall short of ensuring those rights. It is therefore vital that mechanisms to identify, protect and monitor these rights be designed and equipped to efficiently and effectively operate in digital environments [18]. The potential for digital and networking technologies to address the current power asymmetries in information and recordkeeping systems for Alternative Care could herald a new paradigm of rights-based practice in the sector. A Concept Note for a General Comment on Children’s Rights in Relation to the Digital Environment in highlighting the need for the digital enablement of the mechanisms for monitoring and regulation children’s rights in both discretionary and non-discretionary digital environments, could be a spur for such innovation.

## Archives and the Rights of the Child Research Program

Recordkeeping and its governance is a significant issue for the Alternative Care sector, which affects the social, emotional and psychological health and wellbeing of Care experienced children, young people and adults. Those with Care experiences often speak of having to fight for their rights, or of having strong advocates making sure that their best interests are at the forefront of decision-making, in a fractured, fragmented and under-resourced system. Quality recordkeeping is one of the rights they should be accorded as a matter of course. It should also be part of making Alternative Care systems more efficient and effective in safeguarding children and young people.

The *Archives and the Rights of the Child Research Program* is a transdisciplinary research agenda to investigate how multiple and lifelong rights in records and recordkeeping can be recognised, respected and enacted in Alternative Care systems utilising digital and networking technologies [19]. It brings together researcher from a range of academic, community and organisational contexts, and from a variety of disciplinary perspectives to tackle this complex problem using participatory research and design methodologies (see <https://rights-records.it.monash.edu/research-development-agenda/>). It is an example of giving voice and agency to those with Care experiences in research to address their recordkeeping needs.

The program incorporates a range of interconnected and complementary research projects, including an Australian Research Council Future Fellowship, *Connecting the Disconnected: Co-Designing Integrated and Inclusive Recordkeeping and Archival Networks* (2015-2018), doctoral research on *Transforming Archival Systems Design for Interoperability* (2014-2017) and *Early Childhood Recordkeeping Literacy* (2014-2020), the Australian Research Council Discovery Project, *Rights in Records by Design: Transforming Recordkeeping Systems for Children in Out-of-home Care* (2017-2019), and *The Imagined Archive for Childhood Out-of-Home Care* (2017-2018). The research agenda embodied in these projects is linked to the 2017 *Setting the Record Straight for the Rights of the Child National Summit* that brought together stakeholder communities to develop a ten-year

research, development and action agenda to transform recordkeeping and archiving for childhood Alternate Care around recognizing, respecting and enacting multiple rights in records [20], [21].

In the *Rights in Record by Design Project* we are currently researching a world first Charter of Recordkeeping Rights for Childhood Alternative Care and its translation into a recordkeeping rights engine – a technical demonstrator of how recordkeeping rights in Alternative Care systems could be dynamically enacted, negotiated and monitored. This research is part of imagining future digital systems for Alternative Care capable of real-time, proactive and transparent accountability to the principles of provision, protection and participation in the best interests of the child enshrined in the Convention on the Rights of the Child.

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