Children’s Rights to Privacy and Data Protection around the World:
Challenges in the Digital Realm

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Why Regulate This?

Privacy from:
- Parents
- Peers
- Public actors (e.g. government)
- Commercial actors

The average parent shares almost 1,500 images of their child online before their 5th birthday

Source: https://parentzone.org.uk
<table>
<thead>
<tr>
<th>Country</th>
<th>The United States</th>
<th>Europe. CoE and EU</th>
<th>Brazil</th>
<th>Uruguay</th>
<th>Ghana</th>
<th>South Africa</th>
<th>The Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution (conventions, primary law)</td>
<td>No general privacy protection; 4th Amendment: privacy of the person against unreasonable searches</td>
<td>Art. 8 ECHR 1950 Convention (108) for the Protection of Individuals with regard to Automatic Processing of Personal Data 1981 Arts. 7, 8 CFREU 2000</td>
<td>Right to privacy &amp; right to secrecy of correspondence</td>
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<td>Right to privacy &amp; right to privacy of communications &amp; special provisions on children</td>
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Children's Online Privacy Protection Act (COPPA)

- Requirements for operators of websites or online services directed at children under 13 years

- Requirements for operators that have actual knowledge that they are collecting personal information online from a child under 13 years

- Younger than 13: verifiable parental consent needed

Conditions applicable to child’s consent in relation to information society services:

1. Consent is the ground for processing
2. Information society services are being directly offered to a child
3. Processing of the personal data of a child shall be lawful where the child is at least 16 years old

Where the child is below the age of 16 years, processing shall be lawful if parental consent (authorisation) is obtained

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

Source: https://www.betterinternetforkids.eu/web/portal/practice/awareness/detail?articleId=3017751
South America

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<td>Internet Bill of Rights 2014</td>
<td>Law on the Protection of Personal Data 2008</td>
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<tr>
<td>Draft Bill for the Protection of Personal Data 2015 (not yet in force)</td>
<td>European Commission adequacy decision</td>
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<td>Statute of the Child and Adolescent 1990</td>
<td>Accession to CoE Convention 108</td>
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No specific protection for children’s privacy in Uruguay

European Commission Finds Uruguay’s Data Protection Law Provides Adequate Safeguards

COUNCIL OF EUROPE

Personal data protection: Uruguay becomes first non-European state to accede to “Convention 108”
### Africa

**Processing of special personal data prohibited**

37. (1) Unless otherwise provided by this Act, a person shall not process personal data which relates to:
   - a child who is under parental control in accordance with the law, or
   - the religious or philosophical beliefs, ethnic origin, race, trade union membership, political opinions, health, sexual life or criminal behavior of an individual.

(2) A data controller may process special personal data in accordance with this Act where:
   - processing is necessary, or
   - the data subject consents to the processing.

(3) The processing of special personal data is necessary where it is for the exercise or performance of a right or an obligation conferred or imposed by law on an employer.

(4) Special personal data shall not be processed unless the processing is necessary for the protection of the vital interests of the data subject where:
   - it is impossible for consent to be given by or on behalf of the data subject,
   - the data controller cannot reasonably be expected to obtain the consent of the data subject, or
   - consent by or on behalf of the data subject has been unreasonably withheld.

(5) Special personal data shall not be processed unless the processing is carried out for the protection of the legitimate activities of a body or association which:
   - is established for non-profit purposes,
   - exists for political, philosophical, religious or trade union purposes;
   - relates to individuals who are members of the body or association or have regular contact with the body or association in connection with its purposes, and
   - does not involve disclosure of the personal data to a third party without the consent of the data subject.

(6) The processing of special personal data shall be presumed to be necessary where it is required:
   - for the purpose of or in connection with a legal proceeding,
   - to obtain legal advice,
   - for the establishment, exercise or defence of legal rights,
   - in the course of the administration of justice, or
   - for medical purposes and the processing is:
     - undertaken by a health professional, and
     - pursuant to a duty of confidentiality between patient and health professional.

(7) In this section, “medical purposes” includes the purposes of preventive medicine, medical diagnosis, medical research, provision of care and treatment and the management of healthcare services by a medical or dental practitioner or a legally recognised traditional healer.

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<td>Children’s Act 1998</td>
<td>Protection of Personal Information Act 2013</td>
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<td>Data Protection Act 2012</td>
<td>Data Protection Act 2012, art. 37: child data – special personal data</td>
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<td>Part C of the Protection of Personal Information Act – children</td>
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**Best interest of the child – Constitution**

**Same rights as adults – Constitution**
Southeast Asia

Data Privacy Act: “data subject” – individual – child?
Key Challenges Related to the Child’s Right to Privacy and Data Protection in the Digital Realm

- fragmented landscape
- parental or child consent?
- what is a child?
- parental, commercial, state surveillance
- protection participation and provisions rights
- holistic child rights perspective
- need for harmonisation
- “datafied” child

The Case for a UNCRC General Comment on Children’s Rights and Digital Media

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