



CONTRIBUTION TO GENERAL COMMENT ON CHILDREN'S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT

Dear Mr. or Mrs. Secretary,

This document presents the comments of the Data Privacy Brasil Research Association, a non-profit organization based in São Paulo (Brazil), to the draft general comment of the Committee on the Right of the Child.

We salute the Committee for the work conducted since 2019. Brazil has had a long tradition of protecting children's rights since the Federal Constitution of 1988. In addition to the Statute of Children and Adolescents (ECA), the debate on children's rights in the online environment has been addressed through legislative innovations such as the Marco Civil da Internet (2014) and the General Data Protection Law. Our comments are based on this experience.

We make ourselves available to the Committee for any clarification on the comments.

Sincerely,

Rafael A. F. Zanatta, Bruno Bioni & Julia Mendonça



1. About Data Privacy Brazil Research Association

The Data Privacy Brazil Research Association is a non-profit civil society organization located in the state of São Paulo, Brazil, that produces research and advocacy actions at the intersection of technologies, data use and fundamental rights. The main objectives are to develop data protection strategic research projects, mobilizing knowledge that can help regulators, judges and legal professionals to deal with complex issues that require deep knowledge about how socio-technical systems affect fundamental rights.

The organization has been carrying out relevant researches and projects involving the axis of children and adolescent's data protection, gathering several Brazilian academics and scholars to discuss the main impacts of the new Brazilian General Personal Data Protection Law (Federal Law n. 13.709 from 2018)¹ in the regulation of childhood data processing - developed by the Privacy Observatory Project²-, through a Webinar³, occurred in October/2020. Furthermore, we produced an episode of the podcast *Dadocracia* regarding the risks involving children and adolescent data treatment⁴ and an essay⁵ discussing what would be the most appropriate legal bases for the mentioned data treatment.

Through the aforementioned developed projects, as well as from the contributions below, the Data Privacy Brazil Research Association intends to contribute to a new approach to the Convention on the Rights of Children, of which Brazil is a Signatory, within a perspective of the digital environment, contributing to the construction of a data protection culture, especially putting the best interests of the child as a primary consideration.

¹ BRAZIL. Federal Law n. 13.709/18 from 2018. Provides for the protection of personal data. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm

² THE Privacy Observatory is a project directed for monitoring, retrieving and analyzing debates on the topic of privacy and protection of personal data in Brazil. Available at: <https://observatorioprivacidade.com.br/>

³ PRIVACY, Data. LGPD and children and adolescents: from legal bases to children's rights. 2020. (2h:04min:50sec) Available at: <https://www.youtube.com/watch?v=IVoTVprmEJY&t=6820s>.

⁴ DADOCRACIA #31 Episode. Don't buy Batom: The risk of children and adolescents data treatment. Available: <https://dataprivacy.com.br/dadocracia-episodio-31-nao-compre-batom-o-risco-dos-dados-de-criancas-e-adolescentes/>

⁵BIONI, Bruno; FAVARO, Iasmine; Rielli, Mariana. Can data processing of children and adolescents be legal?. Observatório Data Privacy Brasil, São Paulo. 2020. Available at: <https://observatorioprivacidade.com.br/2020/10/19/o-tratamento-de-dados-de-criancas-e-adolescentes-pode-ser-legal/>

2. Contributions from Data Privacy Brazil:

Section
V. General measures of implementation by States E. Data collection and research

Selected paragraph from the General Comment
31. Data collection and research are vitally important as a means of mapping and understanding the implications of the digital environment for children’s rights, and for evaluating its impact on children, and the effectiveness of State interventions. States should ensure the production of robust, comprehensive data that is adequately resourced. Such data and research, including research conducted with and by children, should inform regulation, policy and practice and should be in the public domain
Contribution from Data Privacy Brazil
Research carried out with children, even if they are intended to subsidize the State’s intervention, must undergo an evaluation by an Ethics Committee, which must assess the risks that exist for children and techniques for anonymizing data before its publication in the public domain.

Section
H. Cooperation with civil society I. The business sector
Selected paragraph from the General Comment
39. In addition to developing legislation, States should require businesses that impact on children’s rights in relation to the digital environment to establish and implement regulatory frameworks, industry codes and terms of services that adhere to the highest standards of ethics, privacy and safety into the design, engineering, development, operation, distribution and marketing of their technological products and services. States should also require businesses to maintain high standards of transparency and

<p>accountability, and encourage them to take measures to innovate in the best interests of children.</p>
<p>Contribution from Data Privacy Brazil</p>
<p>States must monitor that all information related to such procedures is provided in a simple, clear and accessible manner, considering the physical-motor, perceptual, sensory, intellectual and mental characteristics of each specific case, using audiovisual resources if necessary, in order to provide the needful information to the parents or legal guardian and appropriate to the child's understanding</p>

<p>Section</p>
<p>V. General measures of implementation by States J. Commercial advertising and marketing</p>
<p>Selected paragraph from the General Comment</p>
<p>41. States should ensure that advertising and marketing are age appropriate and all forms of commercially driven content are clearly distinguished from other content.</p>
<p>Contribution from Data Privacy Brazil</p>
<p>States should actively monitor the abusive use of educational and lifestyle video contents (e.g. YouTube videos or TikTok videos) that mask advertising by inserting advertising indirectly in the video content. States should encourage that this type of marketing does not exceed 10% of the total time of the videos.</p>

<p>Section</p>
<p>V. General measures of implementation by States J. Commercial advertising and marketing</p>
<p>Selected paragraph from the General Comment</p>
<p>42. States should prohibit by law the targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics.</p>

Neuromarketing of child-directed products, applications and services should also be prohibited.

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States, together with Data Protection Authorities, should audit automated profiling techniques directed to children. States should prohibit by law profiling techniques based on data processing of children. States should enact legislation that allow auditing powers in order to assess profiling techniques directed to children by data controllers.

Section

V. General measures of implementation by States
E. The right to privacy

Selected paragraph from the General Comment

69. Privacy is vital for children’s agency, dignity and safety, and for the exercise of their rights. Threats to children’s privacy may arise from their own activities in the digital environment, ⁶ **as well as from the activities of others, for example by parents’ sharing online the photos or other information of their children, or by caregivers, other family members, peers, educators or strangers.** Threats to children’s privacy may also arise from data collection and processing by public institutions, businesses and other organizations; as well as from criminal activities such as hacking and identity theft.

70. Digital technologies are used to collect data about, inter alia, children’s identities, activities, location, communication, preferences and relationships. Children’s personal data are often processed to offer educational, health and other benefits to children. Certain combinations of personal data, including biometric data can be used to uniquely identify a child. Digital practices such as automated data processing, behavioural targeting, mandatory identity verification, and mass surveillance are becoming routine. Such practices may lead to arbitrary or unlawful interference with children’s right to privacy; they are rarely transparent to children or their parents or caregivers, and may have adverse consequences on children, which may extend to later stages of their lives. **Children are concerned about their privacy and want to better understand how their data is collected and used.**

Contribution from Data Privacy Brazil

Whereas children are concerned about their privacy and want to better understand how their data is collected and used, States should implement public policies that promote awareness of the overexposure practice of children's information, encouraging parents, caregivers, other family members, peers, educators and third-parties to consult the children regarding what and how much information they would like to share in the digital environment

Section

V. General measures of implementation by States
E. The right to privacy

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Contribution from Data Privacy Brazil

States must ensure that the processing of personal data can only occur when the use of data is in the best interests of children. If the best interest is not found, consent should not provide a sufficient legal basis for the processing of personal data. States must demand good faith in the processing of personal data of children and adolescents.

Section

V. General measures of implementation by States E. The right to privacy
Selected paragraph from the General Comment
72. States shall take legislative and other measures to ensure that children’s privacy is respected and protected by all organizations and in all environments that process their data. Such legislation should include strong safeguards, independent oversight and access to remedy. States should encourage the adoption of privacy-by-design, such as end to end encryption, in services that impact on children. States should regularly review such legislation and ensure that procedures and practices prevent deliberate infringements or accidental breaches of children’s privacy. States should ensure that consent to process a child’s data is informed and freely given by the child or, depending on the child’s age and maturity, by the parent or caregiver, and obtained prior to the processing.
Contribution from Data Privacy Brazil
States must ensure that the processing of personal data can only occur when the use of data is in the best interests of children. If the best interest is not found, consent should not provide a sufficient legal basis for the processing of personal data. States must demand good faith in the processing of personal data of children and adolescents. States must ensure that online platforms, applications, gaming platforms and online activities in general do not condition children’s participation to the provision of personal information, beyond what is strictly necessary for the activity.

Section
V. General measures of implementation by States E. The right to privacy
Selected paragraph from the General Comment
74. The data processed should only be accessible to the authority and individuals designated under the law to receive, process and use it in compliance with due process guarantees, and on a case-by-case basis. ⁷ Children’s data gathered for defined purposes, in any setting, shall be protected and exclusive to those purposes and have a clearly defined period of retention. Where information is provided in one setting and can

legitimately benefit the child by use in another setting, for example, school and tertiary education, that use must be transparent, accountable, and subject to the consent of the child, parent or caregiver, as appropriate.

Contribution from Data Privacy Brazil

Where information is provided in one setting and can legitimately benefit the child by use in another setting, **the utilization must be an only once use, without storage**, transparent, accountable, and subject to the consent of the child, parent or caregiver, as appropriate

Section

XI. Education, leisure and cultural activities
A. The right to education

Selected paragraph from the General Comment

112. States should develop evidence-based standards and guidance for schools and other bodies responsible for procuring and using educational technologies and materials to ensure these deliver valuable educational benefits. These standards for digital educational technology should ensure that uses of these technologies enhance children's rights and do not expose children to violence, discrimination, misuse of their personal data, commercial exploitation or other infringements of their rights, including the use of digital technology to document a child's activity and share it with parents without the child's knowledge or consent.

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These standards for digital educational technology should ensure that uses of these technologies enhance children's rights, do not **condition their participation to the provision of personal information, beyond what is strictly necessary for the activity**, and do not expose them to violence, discrimination, misuse of their personal data, commercial exploitation or other infringements of their rights, including the use of digital technology to document a child's activity and share it with parents without the child's knowledge or consent.





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Director of the Data Privacy Brasil Research Association. He holds a master's degree from USP's Faculty of Law and is PhD candidate at USP's Institute of Energy and Environment. Master in law and economics from the University of Turin. Alumni of the Privacy Law and Policy Course at the University of Amsterdam. He was coordinator of the digital rights program at the Brazilian Institute for Consumer Protection (2015-2018), leader of InternetLab projects and researcher at Fundação Getulio Vargas School of Law. For Idec, he was representative of the Committee for the Defense of Telecommunications Users of Anatel and member of the working group on Technology and Consumption of the Ministry of Justice. He actively participated in the construction of the General Data Protection Law (Law 13.709/2018) and in public hearings on the Marco Civil da Internet in the Supreme Federal Court and in the National Congress. He was part of the team at the Pereira Neto Macedo office in São Paulo. He was a professor at Insper. Specialist cited in articles by The Atlantic, BBC, The Guardian, Folha de São Paulo, Estado de São Paulo, Valor Econômico, Jota, EBC and specialized media.



About the Organization

The [Data Privacy Brasil Research Association](https://www.dataprivacybr.org/en/) conducts research and advocacy on the intersection of technologies, use of personal data and fundamental rights. Based in a Ethical Funding and Transparency Policy, the association develops strategic research projects on personal data protection, mobilizing knowledge that can help regulators, judges and law professionals to deal with complex questions that require deep knowledge about how social technical systems affect fundamental rights. The association is a non profit civil society organization incorporated in 2020.

Info: <https://www.dataprivacybr.org/en/>

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