



EU Kids Online - November 28, 2013

Response to Draft Council of Europe [Guide on Human Rights for Internet Users](#)

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General Comments

EU Kids Online welcomes the opportunity to provide feedback on this draft Guide on the Rights of Internet Users.

The Guide is useful and valuable and will help to raise awareness about rights in an online context. The aim to highlight the existence of such rights and, in particular, to provide guidance when users experience difficulty is much needed. The identification of rights specifically pertaining to children and young people is also welcome and matches equivalent efforts to map the rights of the child as outlined in conventions such as the UNCRC to the online world.

The classification of rights under distinct headings of Access, Freedom of Expression and Information, Assembly, Association and Participation etc. offers an effective way of presenting fundamental human rights. It underlines the fact that the ECHR and equivalent international standards apply online as well as in the offline world.

While the Guide makes a positive contribution in identifying rights of internet users, it is, perhaps understandably, less clear on their manner of implementation. Only in some instances does it specify whose responsibility it is to ensure that rights are recognized, supported or appropriately provided for. A shortcoming in the Guide as it stands is information or advice when something goes wrong and when users encounter problems in the exercise of their rights and freedoms. Greater specificity regarding roles and responsibilities of different actors towards holders of rights – government, industry, citizens themselves – is also needed so that users may have a clearer understanding of what to expect and to whom they seek redress where problems are identified.

The Guide does state that it does not establish new human rights or fundamental freedoms and relies on existing standards and conventions. However, we feel more

could be done to extend their application to the online environment through examples, more specific references to online factors and through reference to cases of multiple or even competing rights where they occur online.

With regard to the section addressed to Children and Young People, it is important to clarify the intended meanings of 'child' or 'young person' as for instance defined in the UNCRC as any person under 18, or young person as between ages of 15 and 24. While protection, provision and participation rights are all referred to in general terms, their relevance could be strengthened through use of examples. Participation rights also will be of particular interest to children as users and greater emphasis could be placed on the diverse ways in which this can be supported.

Comments on the text

Introduction

"All Council of Europe member states have a duty to respect, protect and fulfil the rights and freedoms contained therein"

- Here it would be helpful to know which is the key authority in each country to turn to, or a site where they are all listed. Given the complex manner in which the internet is regulated and the multi-stakeholder basis on which responsibility is distributed, this is not an easy issue to address. However, it is relevant in this context to underline the responsibilities of governments and public authorities in member states in seeking to guarantee human rights online.

Access and non-discrimination

"You should have the greatest possible access to content, applications and services using the devices of your choice"

- What is the limitation implied in 'possible'? Clarify whether this refers to technical, economic, national, regional, geographical restrictions.
- What about the responsibilities of member states to ensure equality of access and countering digital divides.

"You should therefore not be disconnected from the Internet against your will except when it is decided by a court"

- The right to not be disconnected is weak. "...decided by a court" is a protection against arbitrary treatment from a service provider, but no protection is given against injunctions from commercial and/or governmental entities, applied through said courts.
- Similarly, "...the greatest access possible" is value-less without a definition of "possible". Financial? Legal? Moral?

"You should expect specific measures from public authorities"

- Neither the measures or the public authorities are identified. Vague references such as this will render the document less useful to target users. Clarifying who the relevant public authorities are, whether through examples or through description of generic functions, would be an important contribution this Guide could make.

“In your interactions with public authorities etc”

- This is very positive support to ensure that there should be no discrimination even among peers/users. However, how could this realistically ever be enforced?
- Whatever about the responsibilities of public authorities and industry providers in promoting values of non-discrimination through publicly verifiable statements of commitments, the policing of peer-to-peer interaction is both unrealistic and undesirable. Surely, the responsibility is on service providers to outline clear and appropriate terms of service, and to identify consequences of violation of such terms. The responsibility therefore rests with users in upholding and respecting the rights of others.

Freedom of expression and information

This section assumes a knowledge of the nature and substance of the right to freedom of expression on the part of the reader. A preamble explaining the context, nature and possible limitations of such rights would be useful. As it stands, it appears to be a synopsis of Article 10 ECHR. Further application and reference to the internet would make this section more effective.

“You have the right to receive and impart information and ideas of your choice without interference and regardless of frontiers”.

- The use of “frontiers” is unclear. What kind of frontiers? National? Geographical? Technical? Cultural? Legal?

“You are free to create, re-use and distribute content with due regard to the rights of others, including the right to protection of property”.

- The framing of this right may be misleading; the right to protection of property, i.e. copyright may in fact be the pre-eminent right in which case users are not free to re-use and distribute content.

“Restrictions apply to expressions which incite hatred, violence or discrimination.”

- It might be clearer to say, legal restrictions as this isn’t just a matter of custom and practice or terms and conditions.

“Your public authorities have a duty to respect and protect your freedom of expression and your freedom of information.”

- This is a very vague formulation. Which public authorities does this refer to? Is it clear that such public authorities exist?

...Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not broader or maintained for longer than is strictly necessary."

- This sentence is hard to follow and might be taken to refer to "public authorities" rather than the restrictions on freedom.

"Your Internet service provider and your provider of access to online content and services have corporate social responsibilities to protect, respect and remedy your human rights and fundamental freedoms."

- Linking corporate social responsibility and human rights does not make sense in this context. CSR refers to voluntary industry mechanisms and initiatives to support certain points of public interest or value. It is not necessarily a matter of human rights.
- Human rights by contrast are a matter of internationally agreed, binding conventions with formal means of redress where rights are infringed. The intention here may be to invoke CSR practices of ISPs as a means of supporting awareness of rights but is not the basis on which they are protected, respected or remedied.

"You should be informed of possible restrictions so that you are able to take an informed decision as to whether to use the service or not."

- Company Terms of Service here are presented as the principal form in which users are informed about restrictions on possible uses/content and thereby of rights online. Perhaps this might be better phrased as a qualification of service rather than a restriction on rights as it is a matter of defining the requirements and the regulations governing access to and use of a service.
- Rights are not absolute, especially where a number of competing rights may be under consideration. Should an ISP's restriction of service conflict with basic human rights, this is a matter for redress rather than a question of consumer choice.
- Relatedly, terms of service are typically presented in complex, legal language with few concessions to accessibility to all. Informing users, as well as reminding them, after they first sign up to a service should be seen rather as part of industry acting responsibly in recognition of rights of access to the internet.
- This is all the more important when users are children. Such terms of service should, accordingly, be comprehensible by any age of child known to be using the service (irrespective of whether they are the target market).

"You can choose not to disclose your identity online, for instance by using a pseudonym."

- The fundamental issue is one of privacy, protection for one's 'private and family life, home and correspondence' (Article 8 ECHR). A qualification should be added that the protection of anonymity is subject: a) to the terms of service offered by providers, and b) subject to restrictions in accordance with law or 'necessary in a democratic society'.

- Facebook, for instance, does not provide for anonymity with its ‘real name policy’ while other services such as Twitter do. Anonymity is therefore a choice users must make. However, the right to privacy has proved particularly vulnerable even when services guarantee anonymity. The question arises therefore, what exactly does this right guarantee once data is personal is stored or accessed by other third party sources? And similarly, to whom does the user turn should their rights to privacy be infringed?

Assembly, Association and Participation

“You have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in societal groups and assemblies whether or not they are formally recognised by any public authorities.”

- The statement requires qualification as commercial services determine within their own policies which forms of assembly are allowed. Similarly, the qualification of ‘certain restrictions in accordance with law as necessary in a democratic society’ is also probably required.
- The dominance of commercial services and the virtual monopoly held by some services, e.g. Facebook, in some markets places a major constraint on the right to participate. As a public responsibility to provide for participatory rights is implied, this should be further elaborated here as defending a right to participation.

Privacy and data protection

“Your personal data should only be processed when it is laid down by law or you have consented to it (for example, when you agree to the terms and conditions of an Internet service).”

- To better support this right, it would be useful to place renewed emphasis on the responsibility on industry to make their data handling processes as transparent as possible.
- As in the case with terms of service, privacy policies are notoriously legalistic and opaque. Users frequently sign away their privacy rights with little understanding of the way in which their data may be used or shared. While data protection authorities are identified as the appropriate forms of redress where privacy rights are concerned, users should have an expectation that their rights are respected through clear and transparent data handling.
- In education to rights in the workplace, the rights of children and young people in educational institutions should be included.
- The reference to *“Generally, you should be able to exercise control over your personal data”* is a weak formulation. Why *generally*? The lack of clarity on the rights of the user vs. commercial services is a shortcoming of the Guide. While there is continuing legal debate over the feasibility of a ‘right to be

forgotten' a statement in relation to user's rights to ownership over their personal data or content they produce is much needed.

Education and Literacy

"You should have online access to education and to cultural, scientific, scholarly and other content in official languages."

- The term 'official language' needs to be defined. Minority languages are very underserved. Does this mean that rights to access content are infringed? An example to illustrate would help, perhaps drawing the parallel with public service media content.

"As part of Internet and media literacy you should have access to digital education and knowledge in order to exercise your rights and freedoms on the Internet."

- The allocation of responsibility to provide digital literacy education needs to be clarified.
- It would be useful to specify the kinds of skills envisaged, including skills of creating and communicating digital content.
- As well as content, users should also be able to critically analyse "services" online.

Children and young people

Children and Young People need to be defined as, for instance, all persons under the age of 18 for children (UNCRC) and between the ages of 15 and 24 for young people (UN). The rationale and nature of specific rights pertaining to children should be outlined. Equally, the rights of children and young people should not be qualified by any questioning of their maturity. The section should start with "in addition because of your age" - not "in particular because of your age" – as the general rights already described above should be for ALL Internet users regardless of e.g. age (ref. the point on discrimination...)

"You have the right to freely express your views and participate in society, to be heard and to contribute to decision making on matters affecting you". How can this right be made meaningful?

- Opportunities for children's voices to be heard are few and far between. Illustrations of how this might be implemented would give this right greater force.

"You can expect to receive information and training from your teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve your privacy."

- This could be more strongly formulated as having the right to receive education and training about safe use of the internet. “Expectation” in this context is too weak a formulation.
- Industry also has a responsibility to provide educational resources and to raise awareness about safe internet use (c.f. various self-regulatory codes including Statement of Principles of CEO Coalition, the ICT Coalition, Safer Social Networking Principles etc.).

“You should be able to remove or delete such content including its traces (logs, records) within a reasonably short period of time.”

- This right should be also reflected in previous points (for all users) on what you can expect from the ISPs. As it stands now, it is a right without consequences or grounding in the other parts of the text.
- What does ‘short period of time’ mean in this context: a short period of time after posting, or after requesting its take down?
- The right to one’s data and to have it removed on request is also made somewhat complex once it goes beyond the control of the original site where it may be posted. It likewise appears to be a particularly vulnerable right to which no existing authority at present maintains any jurisdiction.

“You can expect clear information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged illegal content.”

- This arguably applies to all users and not just children.
- The facility to report alleged illegal content is a matter of multi stakeholder responsibility with a particular onus on law enforcement to ensure rigorous pursuit of illegal content.
- Reporting in this context refers only to content that is illegal. For children and young people, the ability to report content that is unwanted, potentially harmful and offensive but not illegal is arguably more relevant to their use of the internet. How should such rights be supported and whose responsibility is to provide effective and reliable reporting mechanisms?

“In particular you have the right to education to protect yourself from such threats.”

- Most abuse reported to the IWF concerns children under the age of 10: so parents need this right too, if they are to protect their small children.