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Children's Rights and the Cinematic Experience in the
Digital Age: addressing regulatory challenges
Jacopo Fortuna and Nicoletta Patti

CHILDREN'S RIGHTS AND THE CINEMATIC EXPERIENCE IN THE DIGITAL AGE: ADDRESSING REGULATORY CHALLENGES *

Jacopo Fortuna and Nicoletta Patti **

Abstract

Digitization has profoundly reshaped minors' cinematic experience, transforming both their modes of participation in artistic and cultural products and their pathways of content access. Once a privileged physical space for socialization and collective sharing, cinema is now embedded in a digital ecosystem dominated by streaming platforms and social media—an environment where consumption is individual, transmedial, and shaped by algorithmic logics. This shift entails the risk of homogenized cultural choices and increasingly passive viewing behaviours among young audiences. The article explores the evolution of children's cinematic experience within the contemporary regulatory and digital landscape, analyzing the contractual terms, policies, and operational logics of major Video-on-Demand platforms.

Particular attention is devoted to algorithmic recommendation systems, behavioural profiling mechanisms, and forms of targeted advertising which – while offering personalized viewing experiences – tend to erode cultural diversity and compromise both privacy protection and the critical development of minors.

After examining the international and European legal framework on children's rights in relation to the cinematic experience, the article focuses on the role of the Digital Services Act (DSA) in regulating the relationship between cinema and minors. It highlights the persistent protection gaps affecting Video-on-Demand services, which currently fall outside the DSA's material scope. The argument advanced is that an integrated approach is required—one grounded in the principles of *privacy by design*, *age-appropriate transparency*, and the prohibition of *dark patterns*—to ensure a genuinely child-friendly audiovisual ecosystem.

Finally, the article calls for a comprehensive rethinking of public policies and digital-governance models aimed not only at safeguarding minors but also at actively promoting their rights, recognizing them as autonomous individuals and active participants in cultural and artistic life in the digital age.

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Keywords

Child protection – Video-on-Demand (VoD) platforms – Parental control – DSA – Algorithmic recommendation systems

1. Introduction: Children and Cinema in the Digital Age.

Children and adolescents constitute a significant portion of the audience for the products of the film industry¹. However, this quantitative centrality does not automatically translate into a qualitatively adequate approach to their rights, interests²

* While the authors contributed equally to the conception of this paper, and jointly wrote the introduction (par. 1), paragraphs 6 and 7.1 and the conclusions (par. 8), Jacopo Fortuna authored paragraphs 2, 5, whereas Nicoletta Patti authored paragraphs 3, 4, 7.

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¹ <https://www.obs.coe.int/en/web/observatoire/industry/children>.

² On the topic of vulnerability and vulnerable users, including children, see D. Amram, *Standards to Face Children and Patients Digital Vulnerabilities*, in *The New Shapes of Digital Vulnerability in European Private Law*, ed. by C. Crea and A. De Franceschi, 2024, p. 439 ff.; Id., *La transizione digitale delle vulnerabilità e il sistema delle responsabilità*, in *Rivista italiana di medicina legale*, 2023, p. 1 ff.; Id., *Children (in the Digital Environment)*, in *Elgar Encyclopedia of Law and Data Science*, ed. by G. Comandé, 2022, p. 64 ff.; A. Pera, S. Rigazio, *Let the Children Play. Smart Toys and Child Vulnerability*, in C. Crea, A. De Franceschi (ed. by), *The New Shapes of Digital Vulnerability in European Private Law*, Elgar, 2024, pp. 413-437; N. Patti, V. Punzo, R. Romano, *Child vulnerabilities in the digital environment: comparative insights and operational guidelines*, in *Opinio Juris in Comparatione*, 2/2025, pp. 3 - 7; R. Chambers, *Editorial Introduction: Vulnerability, Coping and Policy*, in *IDS Bulletin*, vol. 20, 1989, pp. 1 ff.; J. Fortuna, *Minors' digital vulnerability in the EU and the US: a comparison between the Digital Services Act and the Kids Online Safety and Privacy Act*, in *Comparative Law Review*, 2025, pp. 115 – 135; Id., *Il nuovo ruolo dei genitori nella tutela della vulnerabilità digitale dei minori: spunti di comparazione giuridica tra UE, USA, Italia e Australia*, in *Rivista di Diritto Comparato*, 2025, (forthcoming); F. Luna, *Elucidating the Concept of Vulnerability: Layers Not Labels*,

and developmental needs. On the contrary, precisely because of their inherent condition of vulnerability, minors are exposed to specific risks within an audiovisual ecosystem undergoing profound transformation³, an ecosystem increasingly shaped by algorithmic logics, individualized consumption models, and opaque market dynamics. In this context, it becomes particularly urgent to examine the normative, technological, and cultural conditions that may enable the development of a truly *child-friendly* cinematic environment, in the fullest and most substantive sense of the term.

The digitalisation of media has profoundly redefined the cinematic experience of minors, altering not only the modalities of access to content but also the forms of interaction and meaning-making⁴. Cinemas, once privileged spaces for cultural socialisation and collective viewing, have been progressively complemented, and in part supplanted, by domestic, mobile and individualised viewing experiences, facilitated by streaming platforms and the widespread availability of audiovisual content through social media. In such a scenario, the aesthetic dimension becomes intertwined with the digital, the boundaries between entertainment and art are blurred and the curation of content shifts from human programmers to algorithmic recommendation systems.

This transformation acquires even greater significance when read through a historical lens. The 2011 report *Audiovisual Media for Children in Europe*, published by the European Audiovisual Observatory⁵, offered a portrayal of the sector that was still strongly anchored in traditional television and film. It emphasised key concerns such as the limited cross-border circulation of European productions, the market

in *International Journal of Feminist Approaches to Bioethics*, vol. 2, n. 1, 2009, pp. 121-139. On the concept of vulnerability within the EU, see G. Malgieri, *Vulnerability*, in *Elgar Encyclopedia of Law and Data Science*, ed. by G. Comandé, 2022, p. 363 ff.

³ Cf. M. Guštin, *Challenges of Protecting Children's Rights in the Digital Environment*, in *ECLIC*, 2022, p. 453 ff.; S. P. Hammond, G. Polizzi, C. Duddy, Y. Bennett-Grant, K. Bartholomew, *Children's, parents' and educators' understandings and experiences of digital resilience: A systematic review and meta-ethnography*, in *New Media & Society*, 2024.

⁴ On this topic, see the following paragraphs.

⁵ Available at <https://rm.coe.int/audiovisual-media-for-children-in-europe/168078996f>.

dominance of U.S. content, and the marginal presence of nationally produced animation in children's programming. At that time, the main regulatory challenges revolved around public support policies, territorial distribution, and programming quotas.

Today, by contrast, the core issue is no longer content *availability*, but rather its *visibility*, *selection*, and *mediation*. Content aimed at children is now proposed within opaque and highly personalised digital environments, through recommendation systems which, despite offering tailored experiences, tend to reinforce cultural standardisation, polarisation and repetitiveness⁶. This gives rise to a concrete risk of narrowing the narrative and imaginative spectrum accessible to minors, with significant implications for their cultural literacy, aesthetic development and critical understanding of mediated representations.

At the same time, a profound hybridisation is taking place between audiovisual consumption and social media practices. Video-on-demand platforms are no longer merely passive archives of cinematographic works, as they are immersed in interactive ecosystems where viewing is intertwined with the participatory dynamics typical of social media: likes, comments, shares, remixes, short-form reactions, and viral diffusion. The cinematic experience becomes fragmented and reassembled through transmedia logics, where meaning is generated through fast, often ephemeral and performative interactions. This marks a significant departure from the dialogic, reflective, and collective nature of traditional cinematic consumption.

In parallel, the regulatory framework has also evolved. While public debate and legal regulation once focused primarily on tools such as national quotas, public funding and media pluralism, today's concerns have shifted toward algorithmic transparency, data-driven personalisation, behavioural profiling, and commercial surveillance⁷. The

⁶ See par. 4.

⁷ Cf. <https://www.obs.coe.int/en/web/observatoire/-/algorithmic-transparency-and-accountability-of-digital-services> ; V. Verdoodt, E. Lievens, A. Chatzinikolaou, *The EU Approach to Safeguard Children's Rights on Video-Sharing Platforms: Jigsaw or Maze?*, In *Media and Communication*, Vol. 11, Issue 4, 2023, pp. 151–163 available at <https://doi.org/10.17645/mac.v11i4.7059>; E. Leijten, S. van der Hof, *Dissecting the Commercial Profiling of Children: A Proposed Taxonomy and Assessment of the*

digitalisation of cinema thus does not simply entail a technological transition, but a deep reconfiguration of the relationship between children, culture, and technology. This demands the development of new regulatory and governance models capable of reconciling protection with empowerment, and safeguarding with cultural participation, ensuring both freedom of access and the right to cultural diversity.

From a legal standpoint, the primary normative reference on the relationship between children and artistic products (including, therefore, cinematographic products) is Article 31 of the United Nations Convention on the Rights of the Child (CRC)⁸, which enshrines every child's right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate freely in cultural and artistic life⁹. This recognition entails that children must have access to cultural, artistic and audiovisual content that is age-appropriate and responsive to their needs and interests: the quality of such content must align with the objectives outlined in international and European policy strategies. States are therefore obliged not only to protect children from materials that may be detrimental to their physical, mental, or moral development, but also to promote and support the production of content that fosters children's cultural expression and creativity.

This right finds a parallel in Article 22 of the Charter of Fundamental Rights of the European Union¹⁰, which promotes cultural diversity and equitable access to content. However, in the current digital environment, the effective realisation of such rights faces considerable structural obstacles: closed ecosystems, profit-driven engagement

GDPR, DSA and AI Act in Light of the Precautionary Principle. Available at SSRN: <https://ssrn.com/abstract=5055046> or <http://dx.doi.org/10.2139/ssrn.5055046>.

⁸ Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁹ Regarding this article, see also the following paragraph.

¹⁰ Charter of Fundamental Rights of the European Union, Art. 22: "Cultural, religious and linguistic diversity. The Union shall respect cultural, religious and linguistic diversity".

logics, lack of transparency in content curation, and the absence of harmonised standards for the protection of minors across platforms.

In this context, the cinematic experience in the digital age emerges as an ambivalent frontier. On the one hand, it offers extraordinary opportunities for access, creativity, and cultural agency; on the other, it risks fostering passive, homogenised, and commercially-driven forms of consumption. Consequently, public policies and regulatory frameworks - including cooperation among institutions, digital platforms, schools, and families¹¹ - must respond not only to the imperative of protecting minors, but more fundamentally, to the need to actively promote their cultural rights, recognising them as autonomous and competent individuals capable of participating fully in cultural life.

Against this backdrop, the present contribution aims to critically examine the evolution of children's cinematic experience in the European digital context. It seeks to interweave the international and European legal frameworks with an analysis of the strategies adopted by streaming platforms and the regulatory gaps that continue to hinder effective protection. The objective is twofold: first, to identify the structural risks that undermine children's rights in digitised audiovisual environments; and second, to propose legal and policy measures for the construction of a more inclusive, pluralistic, and child-centred cinematic ecosystem—one that meaningfully integrates protection, participation, and cultural diversity.

To set up an EU competitive and child-friendly film industry, the rights of the child shall be enhanced and promoted by institutional and private stakeholders. To this end, a preliminary step involves analysing the international frameworks established by the UN Convention on the Rights of the Child, alongside the EU Strategy on the Rights of the Child (2021)¹² and the Council of Europe Strategy for the Rights of the

¹¹ On the educational role of parents, see G. Di Rosa, *I termini giuridici della funzione educativa nell'attuale quadro delle relazioni tra genitori e figli*, in *Actualidad Jurídica Iberoamericana* N° 17 bis, 2022, p. 806 ff.

¹² https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en#documents.

Child (2022–2027)¹³, in order to understand how these instruments inform and guide policy development within the film industry.

It is therefore useful to first proceed with a brief analysis of the general legal framework for the protection of minors and then identify the specific relevant provisions relating to the relationship between minors and cinema.

2. Legal Framework on Children's Rights and the Cinematic Experience: United Nations Convention on the Rights of the Child and European Strategies.

In outlining a framework for the protection and promotion of children's rights in the digital environment¹⁴-specifically in relation to contemporary cinematic experiences-it is essential to recall the legal and programmatic instruments that, over the past decades, have profoundly reshaped the concept of childhood and the role of children in society. First and foremost, the United Nations Convention on the Rights of the Child (CRC), adopted in 1989¹⁵, marks a turning point in the legal recognition of children as full rights-holders, endowed with intrinsic dignity and capable of forming and expressing their own views¹⁶. Far from considering children as merely passive

¹³ <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>.

¹⁴ Cf. C. Djeffal, *Children's Rights by Design and Internet Governance: Revisiting General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, in *Laws*, 11, 84, 2022, <https://doi.org/10.3390/laws11060084>; UNICEF, D. Özkul, S. Vosloo, B. Bagdasaryan, *Best Interests of the Child in Relation to the Digital Environment*, working paper, February 2025, https://www.unicef.org/innocenti/reports/best-interests-child-relation-digital-environment?utm_source=chatgpt.com; M. Guštin, *Challenges of Protecting Children's Rights in the Digital Environment*, in *ECLIC*, 2022, p. 453 ff.;

¹⁵ Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁶ C. Djeffal, *Children's Rights by Design and Internet Governance: Revisiting General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, in *Laws*, 11, 84, 2022, cit., <https://doi.org/10.3390/laws11060084>;

objects of care or tutelage, the CRC introduces a legal paradigm in which children are active protagonists of their personal and social lives. The Convention enshrines not only the right to protection but also civil, political, cultural and participatory rights. These include the right to be heard in all matters affecting the child (Article 12), freedom of expression (Article 13), freedom of thought, conscience and religion (Article 14) and freedom of association (Article 15)¹⁷. The recognition of the child's evolving capacities, discernment, and active role in the construction of his or her identity¹⁸ is thus central to the Convention's architecture.

These provisions are accompanied by further rights, such as the right to life and development (Article 6), to name and identity (Article 7), to family relations (Article 8), to health (Article 24), to education (Article 28), and to participation in cultural and

¹⁷ See CRC, Art. 12: "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law"; Art. 13: "1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals"; Art. 14: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others". Art. 15: "1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".

¹⁸ C. Hällgren, A. Björk, *Young people's identities in digital worlds*, in *International Journal of Information and Learning Technology*, 2022; K. Hamming, *A Dangerous Inheritance: A Child's Digital Identity*, in *Seattle University Law Review*, n. 43, 2020;

artistic life (Article 31)¹⁹. At the core of the Convention lies the principle of the best interests of the child (Article 3), which must guide all decisions concerning children, whether by public or private institutions, administrative bodies, courts, or legislative authorities²⁰.

The film industry plays a strategic role in the realization of the right to cultural participation enshrined in Article 31 CRC²¹, not only because of its impact on the

¹⁹ Regarding this article, see also the previous paragraph.

²⁰ United Nations Convention on the Rights of the Child, New York, November 20, 1989, Art. 3, para. 1: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"; Article 24 of the Charter of Fundamental Rights of the European Union ("Charter of Nice") follows in the footsteps of Article 3, establishing that in all actions relating to children, whether taken by public authorities or private institutions, the best interests of the child must be a primary consideration. See also Australian Online Safety Amendment (Social Media Minimum Age) Bill 2024, Explanatory memorandum, p. 10: "Human rights implications 4. The Bill engages the following rights: The principle that the best interests of a child shall be a primary consideration in actions concerning children in Article 3 of the Convention on the Rights of a Child (CRC)". On the best interests of the child, see also L. Lenti, «*Best interests of the child*» o «*best interests of children*»?, in *Nuova giur. comm.*, 2010, p. 157 ff.; *Idem*, *Note critiche in tema di interesse del minore*, in *Riv. dir. civ.*, 2016, p. 86 ff. V. Scalisi, *Il superiore interesse del minore, ovvero il fatto come diritto*, in *Riv. dir. civ.*, 2018, n° 2, p. 405 ff.; E. Lamarque, *Prima i bambini. Il principio dei best interests of the child nella prospettiva costituzionale*, FrancoAngeli, Milan, 2016; E. Lamarque, *Pesare le parole. Il principio dei best interests of the child come principio del miglior interesse del minore*, in *Famiglia e dir.*, 2023, p. 365 ff. U.C. Basset, *The Best Interests of the Child: The New Challenges of a Vague Concept*, in M. Bianca (ed.), *The Best Interests of the Child*, 2020; With regard to the evolution of the best interests of the child, it has recently been observed that analyzing the principle in question from a more general, systematic perspective, it can be seen that the concept of 'best interests of the child' encompasses not only interests understood as legal situations of a lower rank, but also the rights of the child itself, such as freedom, health, education, and training. In fact, the best interest of the child now stands as a general clause whose content is not defined in an unambiguous and abstract way, but must be completed from time to time in its concrete meaning by the interpreter: thus L. Vizzoni, *I "minori digitali" tra doveri educativi e tutele*, cit., p. 36.

²¹ CRC, Art. 31: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity". See S. McNeill, *Article 31 of the CRC - The Right to Play, Rest and Leisure: A Forgotten Right for Children?*, in *King's Student L. Rev.*, 10, 2, 2019; P. David, *Article 31: The right to leisure, play and culture*, Martinus Nijhoff Publishers, 2006.

collective imagination, but also because of the opportunities it offers in terms of access and active involvement of children.

Article 31 reflects the awareness that play, leisure, and cultural participation are essential components of a child's harmonious development, from cognitive, emotional, and social standpoints. Recreational, artistic, and cultural activities contribute to identity formation, emotional expression, socialisation, and non-formal learning. The second paragraph of Article 31 commits State Parties to "respect and promote the right of the child to participate fully in cultural and artistic life and to encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity". This wording is particularly significant, as it excludes any passive approach to cultural enjoyment and instead affirms the right to active and full participation, even in the cinematic experience. Such a right must be guaranteed without discrimination of any kind and in accordance with the principle of the best interests of the child (Article 3 CRC).

Cinema can be a powerful tool for promoting cultural pluralism, the representation of minorities²² and linguistic diversity. It is therefore crucial to promote the creation and dissemination of film content for children that upholds their rights, ensures accessibility, and reflects diverse social realities. Moreover, children's active involvement in film workshops, school projects, and festivals fosters their critical thinking and film literacy, while simultaneously nurturing their creativity. Indeed, for example the EU supports such initiatives through the Creative Europe MEDIA program²³, which funds inclusive and educational projects. These activities respond

²² D. Popa, F. Nechita, Y. Liu, S. Wei Lee Chin, *Linking Positive Psychology and Intercultural Competence by Movies: Evidence From Brunei and Romania*, in *Frontiers in Psychology*, 2021, 19;12:750904, doi: 10.3389/fpsyg.2021.750904. PMID: 34737717; PMCID: PMC8562382; E. D. Romero, J. Bobkina, *Including diversity through cinema-based affective literacy practices: A case study with EFL/ESL pre-service teachers*, in *Innovation in Language Learning and Teaching*, 17(4), 2023, pp. 859–871. <https://doi.org/10.1080/17501229.2023.2168007>; D. Bamman, R. Samberg, R.J. So, N. Zhou, *Measuring diversity in Hollywood through the large-scale computational analysis of film*, in *Proc. Natl. Acad.* 2024, 121(46):e2409770121, doi: 10.1073/pnas.2409770121. Epub 2024 Nov 4. PMID: 39495931; PMCID: PMC11573682.

²³ <https://culture.ec.europa.eu/creative-europe/creative-europe-media-strand>; <https://digital-strategy.ec.europa.eu/en/policies/creative-europe-media>.

to the EU's strategic objective of normalizing the participation of minors and creating a child-friendly cultural environment.

In the European context, this shift has been embraced and further developed through comprehensive policy strategies aimed at making children's rights effective in contemporary societies. Among the most significant instruments are the already mentioned Council of Europe Strategy for the Rights of the Child (2022–2027) and the European Union Strategy on the Rights of the Child (2021), both grounded in the CRC and designed to respond to the complex interplay of protection, autonomy, and participation in the lives of children and adolescents.

The Council of Europe Strategy, entitled *Children's Rights in Action: From Continuous Implementation to Joint Innovation*²⁴, articulates a coherent vision for the promotion and realization of children's rights across the 46 member states. It is based on six strategic priorities: freedom from violence, equal opportunities and inclusion, child-friendly justice, child participation, safe access to technology, and children's rights in crisis situations²⁵. Each area is addressed through an integrated and participatory methodology, seeking to overcome fragmented interventions and foster systemic change. Notably, the Strategy was co-designed through a wide consultation process involving more than 220 children across ten countries²⁶, whose suggestions were included in the final text under the heading *What children suggest*²⁷. This process reflects

²⁴ On this topic, see also Council of Europe Strategy for the Rights of the Child (2022-2027). First implementation report of the Council of Europe Strategy for the Rights of the Child, January 2024, available at https://rm.coe.int/cdenf-2023-27-final-first-implementation-report-2022-2023-1680ae0ef3?utm_source=chatgpt.com; Mid-Term Review Conference for the Strategy for the Rights of the Child (2022-2027), Conference report, <https://rm.coe.int/report-mtr-en-/1680b6655a>

²⁵ Cf. <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>.

²⁶ E. Kovács-Szépvölgyi, D. A. Tóth and R. Kelemen, *From Voice to Action: Upholding Children's Right to Participation in Shaping Policies and Laws for Digital Safety and Well-Being*, in *Societies* 2025, 15(9), p. 8; <https://doi.org/10.3390/soc15090243>;

²⁷ <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>, pp. 6-7.

a clear epistemological and political shift: from designing policies *for* children to co-constructing policies *with* children.

The EU Strategy on the Rights of the Child²⁸ takes a similar holistic approach, addressing both structural challenges and emerging risks through six interconnected priority areas. Indeed, it promotes children's participation in democratic life, with a focus on the use of digital tools for expression and consultation and strengthens efforts to prevent and combat all forms of violence, including online abuse and cyberbullying. The strategy also emphasizes the importance of creating inclusive societies by addressing child poverty and discrimination, while promoting safe and inclusive digital environments. Furthermore, it aims to ensure access to child-friendly justice and to promote the protection and promotion of children's rights worldwide, with a particular focus on emergency contexts²⁹. The Strategy is the result of a consultation involving more than 10,000 children and youth³⁰ and offers a programmatic roadmap for EU institutions and Member States, even though it is not legally binding. The Commission has committed to developing monitoring and evaluation tools to assess the progress of implementation.

For what is most relevant to our purposes, even within the EU Strategy on the Rights of the Child, cultural and artistic participation is listed among the rights for the well-being and development of children, including the audiovisual sector³¹. The strategy

²⁸ About this topic, cf. B. M. Sacur, E. Diogo, *The EU Strategy on the Rights of the Child and the European Child Guarantee—Evidence-Based Recommendations for Alternative Care*, in *MDPI Children*, 2021, 8, 1181. <https://doi.org/10.3390/children8121181>; A. Dunhill, M. Schuurman, E. P. Tormen, *The EU Strategy on the Rights of the Child: What does this mean for the EU and Germany?*, in *Eurochild*, 2021, https://eurochild.org/uploads/2021/06/Eurochilds-Article_-_The-EU-Strategy-on-the-Rights-of-the-child_15.06.pdf

²⁹ Cf. European Union Strategy on the Rights of the Child (2021), https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en#documents.

³⁰ European Union Strategy on the Rights of the Child (2021), https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en#documents, p.3.

³¹ European Union Strategy on the Rights of the Child (2021), pp. 1-2.

highlights the importance of safe and inclusive digital environments, with regard to the enjoyment of audiovisual online content³², and promotes the meaningful participation of children in decision-making processes, including in the creation of cultural content³³. Furthermore, it aims to protect children against harmful content, aggressive advertising, or misinformation, in line with European media rules³⁴. Key actions include promoting environments that encourage artistic expression, play, and creativity, particularly for children at risk of social exclusion, such as Roma children, migrants, or children with disabilities³⁵. By recognizing children's right to culture and their active role in its production, the Strategy indirectly recognizes the role of minors in the film industry, finally calling for greater investment in equitable access to culture, including through the establishment of ad hoc bodies³⁶.

Despite efforts to establish a favorable regulatory framework, the effective implementation of the right to cultural participation continues to encounter significant obstacles, primarily stemming from socio-economic inequalities. Many children, in fact, lack access to cinemas, theatres, museums, or extracurricular

³² European Union Strategy on the Rights of the Child (2021), p. 15: “Children play, create, learn, interact and express themselves in an online and connected environment, from a very young age” and p. 17.

³³ European Union Strategy on the Rights of the Child (2021), p. 4: “The EU needs to promote and improve the inclusive and systemic participation of children at the local, national and EU levels[...]" and “The Commission will [...] ensure the right of the child to be heard and listened to... promote meaningful and inclusive participation of children in the policy-making process”.

³⁴ European Union Strategy on the Rights of the Child (2021), p. 16–17, “Children’s online presence increases their exposure to harmful or illegal content [...] The revised Audiovisual Media Services Directive has strengthened the protection of children from harmful content and inappropriate commercial communications [...] The Code of Practice on Disinformation will establish a co-regulatory regime tailored for tackling the risks linked to the spread of disinformation”.

³⁵ European Union Strategy on the Rights of the Child (2021), pp. 6 –10.

³⁶ Cf. European Union Strategy on the Rights of the Child (2021), p. 6: “One of its main deliverables is the Commission’s proposal for Council recommendation establishing the European Child Guarantee, which complements this Strategy and calls for specific measures for children at risk of poverty or social exclusion. The proposal recommends to Member States that they guarantee access to quality key services for children in need: early childhood education and care, education (including school-based activities), healthcare, nutrition, and housing”.

activities due to high costs or insufficient local facilities. Territorial disparities, especially between urban centers and rural or peripheral areas, further exacerbate these inequalities.³⁷ Furthermore, cultural and linguistic barriers continue to affect foreign, migrant, and refugee children, while media representation of LGBTQIA+ children, children with disabilities, and those belonging to ethnic minorities remains limited³⁸. The EU Strategy seeks to address these critical challenges through systemic measures, including the integration of the cultural dimension into social, educational, and health policies. It also emphasizes the active involvement of children and adolescents in decision-making processes that concern them, by means of dedicated consultations and participatory platforms at local, national, and European levels³⁹.

Both strategies underscore the indivisibility and interdependence of children's rights, reaffirming the need to strengthen both protection and autonomy in response to contemporary challenges, such as the digitalization of everyday life, the persistence of inequalities, and the fragmentation of access to cultural and communicative resources⁴⁰. Particularly significant in this regard are the axes dedicated to digital and cultural inclusion, awareness-raising on safe and responsible technology use, and the promotion of child participation in decision-making processes⁴¹. These priorities are

³⁷ Yuke Meng, Han Li, Menghui Yin, Shanshan Sun, *Urban-Rural Disparities in Art Education Resources in China: Mechanisms and Equity Perspectives*, in *Journal of Current Social Issues Studies*, Vol.1, No.1, 2024, pp. 40-50; S. Rege, *Art Education in Rural vs. Urban Settings in India: A Comparative Study and Analysis*, in *IJSRD*, Vol. 10 Issue 3, 2025, pp. 1-6; L.M. Crispin, M. I. Beck, *Disparities in museum attendance among youth over two decades: an empirical analysis of who attends and how often*, in *Arts Education Policy Review*, 2023, 126(1), pp. 25–37. <https://doi.org/10.1080/10632913.2023.2187499>.

³⁸ J. Aspler, K. D. Harding, M. A. Cascio, *Representation Matters: Race, Gender, Class, and Intersectional Representations of Autistic and Disabled Characters on Television*, in *Studies in Social Justice*, Volume 16, Issue 2, 2022, pp. 323-348, A. L. Snyder, J. A. Bonus, D. P. Cingel, *Representations of LGBTQ+ families in young children's media*, in *Journal of Children and Media*, 17(1), 2023, pp. 154–160, <https://doi.org/10.1080/17482798.2023.2173856>;

³⁹ Cf. European Union Strategy on the Rights of the Child (2021), pp. 6 –10.

⁴⁰ Cf. Council of Europe Strategy for the Rights of the Child (2022–2027) pp. 8-9, 13-15, 18-19 and European Union Strategy on the Rights of the Child (2021), pp. 2, 6-8, 15-17.

⁴¹ Cf. Council of Europe Strategy for the Rights of the Child (2022–2027) pp. 14 -19 e European Union Strategy on the Rights of the Child (2021, pp.15-17, 8-10, 3-5.

not merely instrumental: they reflect a deeper paradigm shift that calls for a rethinking of cultural policies (including those relating to the use of audiovisual content) through a child-centered lens, capable of recognizing minors not only as vulnerable subjects to be safeguarded, but as active agents in the symbolic construction of shared meaning.

The Strategies therefore emphasize that ensuring every child's effective right to culture requires a comprehensive and coordinated approach that brings together institutions, schools, cultural organizations, families, and the third sector. Such integration is essential not only to eliminate all forms of discrimination but also to value children's individual identities, enabling them to become active agents within the cultural domain, and particularly within cinema. Participation in cultural and recreational life must be recognized as a fundamental and enforceable right, rather than as a privilege. This right, enshrined in Article 31 of the UNCRC and promoted by the EU Strategy on the Rights of the Child, must be guaranteed in a universal and accessible manner and cinema, as a central component of the cultural and creative industries, holds the power to educate, inspire, and amplify children's voices. However, this potential can only be fulfilled if cinema is guided by principles of inclusion, diversity, and participatory engagement. Striving toward this objective ultimately contributes to the construction of a fairer, more imaginative, and more compassionate society, one that values the perspectives of younger generations as essential catalysts for cultural renewal and transnational progress.

3. European Regulation on Audiovisual Media and Digital Platforms.

Considering the fundamental contribution that cultural participation and access to high-quality audiovisual content make to children's holistic development, it becomes necessary to examine, in particular, the regulatory framework governing the creation, distribution, and reception of media addressed to young audiences. The full realization of the rights enshrined in the United Nations Convention on the Rights of the Child (CRC) and promoted by European strategies requires, in fact, a regulatory

ecosystem consistent with the principle of the best interests of the child⁴². This principle — open, relational, and inherently context-sensitive — must be filled with substantive meaning in light of the specificities of each case⁴³. In the present domain, it translates into the duty to adopt measures capable of shielding children from harmful content, fostering inclusion, and ensuring safe, stimulating, and culturally enriching digital environments.

Children, as well established, occupy a condition of structural vulnerability, stemming from their status as developing subjects who are particularly receptive to external influences and not yet fully equipped with critical maturity⁴⁴. There thus emerges a clear need for heightened protection, a need firmly acknowledged in both legal doctrine and positive law⁴⁵. The question, therefore, no longer concerns the *an* of

⁴² The concept of the best interests of the child is enshrined in Article 3 of the United Nations Convention on the Rights of the Child (CRC), which provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. On the concept of the best interests of the child, see, non-exhaustively: U.C. Basset, *The Best Interests of the Child: The New Challenges of a Vague Concept*, in M. Bianca (ed.), *The Best Interests of the Child*, 2020, p. 5; E. Lamarque, *Prima i bambini. Il principio dei best interests of the child nella prospettiva costituzionale*, FrancoAngeli, Milan, 2016; J. Zermatten, *The Best Interests of the Child Principle: Literal Analysis and Function*, *The International Journal of Children’s Rights*, 18(4), 2020, pp. 483–499, <https://doi.org/10.1163/157181810X537391>; P. Alston, *The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights*, *International Journal of Law and the Family*, 8 (1994), p. 2; C. Breen, *The Standard of the Best Interests of the Child: A Western Tradition*, *International and Comparative Law*, The Hague, 2002.

⁴³ L. Musselli, *La tutela dei minori tra media audiovisivi e servizi di condivisione video*, in R. Mastroianni, O. Pollicino, M. Bassini (eds.), *Il T.U. dei servizi di media audiovisivi*, Milan, 2024, p. 105; P. Stanzione, *Persone vulnerabili e strumenti di tutela*, Budapest, 11 May 2023, available at garanteprivacy.it.

⁴⁴ See: A. Spangaro, *Minori e mass media: vecchi e nuovi strumenti di tutela*, Milano, 2011; A. Barbera, *Mezzi di comunicazione televisiva e tutela dei minori*, in forumcostituzionale.it; G. De Minico, *Il favor minoris: un orizzonte lontano*, in G.B. Abbamonte, E. Apa, O. Pollicino (a cura di), *La riforma del mercato audiovisivo europeo*, Torino, 2019, pp. 99 ss..

⁴⁵ For a general analysis of child well-being, see: Z. Vagheri, J. Zermatten, G. Lansdown, R. Ruggiero, (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research*, vol 25. Springer, 2022.

protection, but rather the *quomodo*: the concrete modalities through which such protection should materialise within the contemporary media landscape.

In recent years, as outlined above (see par. 1), a profound transformation has reshaped the audiovisual environment, altering not only its economic and technological structure but also the very paradigms of content production, distribution, and consumption. The traditional model of linear broadcasting has been progressively replaced by interactive, *on-demand*, and algorithmically personalized experiences⁴⁶, made possible by the ubiquity of connected and mobile devices. At the same time, the rise of new global operators⁴⁷ and the spread of video-sharing platforms and social media⁴⁸ have driven a shift from a centralized editorial paradigm to a highly disintermediated ecosystem⁴⁹, in which users, including minors, are no longer mere recipients but also active producers of content⁵⁰.

This structural change has necessitated a comprehensive rethinking of media governance models. The 2018 revision of the Audiovisual Media Services Directive (AVMSD) (Directive (EU) 2018/1808, amending Directive 2010/13/EU) was born precisely out of an awareness of this transition, aiming to extend existing safeguards to the evolving digital environment⁵¹. The Directive thus represents the Union's

⁴⁶ For a discussion of algorithmic governance within the on-demand economy, see C. Schubert and M.-T. Hütt, *Economy-on-Demand and the Fairness of Algorithms*, in *European Labour Law Journal*, 10(1), 2019, pp. 3–16.

⁴⁷ Such as Netflix, Amazon Prime Video, and Disney+.

⁴⁸ I.e., YouTube, TikTok, Twitch, Vimeo, Instagram.

⁴⁹ F. Graziadei, *Disintermediazione e responsabilità: dai servizi di media audiovisivi alle piattaforme digitali*, in F. Bruno, V. Lobianco, A. Perrucci, A. Preta (a cura di), *La televisione del futuro. Le prospettive del mercato televisivo nella transizione digitale*, Bologna, 2023, p. 467.

⁵⁰ V. Verdoordt, E. Lievens, A. Chatzinikolaou, *The EU Approach to Safeguard Children's Rights on Video-Sharing Platforms: Jigsaw or Maze?*, cit., pp. 151-163.

⁵¹ Recital 1 of Directive (EU) 2018/1808 amending Directive 2010/13/EU of the European Parliament and of the Council states: “The last substantive amendment to Council Directive 89/552/EEC, subsequently codified by Directive 2010/13/EU of the European Parliament and of the Council, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council. Since then, the audiovisual media services market has evolved

primary legal framework for coordinating the provision of audiovisual media services across Member States and embodies the EU's commitment to building a modern, flexible, and technologically neutral regulatory environment capable of adapting to the evolving patterns of communication and consumption.

Its core objectives include the protection of minors, the promotion of cultural and linguistic diversity, and the enhancement of the competitiveness of the European audiovisual sector. The most significant innovation introduced by the 2018 revision lies in the expansion of the Directive's material scope, which now encompasses not only linear and *on-demand* services but also *video-sharing platforms* (VSPs). These platforms, though not exercising direct editorial responsibility over user-generated content⁵², are nonetheless required to implement effective measures to protect minors from material that could impair their physical, mental, or moral development⁵³. Among these measures are the prohibition of content causing serious harm — such as gratuitous violence or pornography⁵⁴ —, the implementation of age-rating and

significantly and rapidly due to the ongoing convergence of television and internet services. Technical developments have allowed for new types of services and user experiences. Viewing habits, particularly those of younger generations, have changed significantly. While the main TV screen remains an important device for sharing audiovisual experiences, many viewers have moved to other, portable devices to watch audiovisual content. Traditional TV content still accounts for a major share of the average daily viewing time. However, new types of content, such as video clips or user-generated content, have gained an increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established. This convergence of media requires an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness".

⁵² See Recital 47 of Directive (EU) 2018/1808.

⁵³ Recital 20 of Directive (EU) 2018/1808 states: "The appropriate measures for the protection of minors applicable to television broadcasting services should also apply to on-demand audiovisual media services. That should increase the level of protection. The minimum harmonisation approach allows Member States to develop a higher degree of protection for content which may impair the physical, mental or moral development of minors".

⁵⁴ Art. 1, point (10) of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), which inserts Article 6a into Directive 2010/13/EU: "Member States shall take appropriate measures to ensure that audiovisual

parental control systems, the adoption of filtering technologies, reporting mechanisms, and age-verification procedures.

These provisions mark a conceptual turning point: from reactive censorship to a preventive governance of risks, through a *safety-by-design* model that embeds child protection within the very architecture of digital services⁵⁵.

At the same time, the Directive promotes the dissemination of positive content. Article 13 requires on-demand service providers to ensure that at least 30% of their catalogues consist of European works and that these works are given appropriate prominence on their platforms. This measure, far from being merely quantitative, seeks to sustain the production and circulation of culturally diverse narratives, contributing to the construction of a shared and inclusive imaginary that mirrors the plurality of childhood experiences across Europe.

Additional safeguards are established in the field of audiovisual commercial communication. Article 9 prohibits advertising that exploits children's inexperience or credulity, encourages unsafe behaviour or excessive consumption, or perpetuates discriminatory representations. It also bans advertising of tobacco products and imposes strict limitations on alcohol-related advertising directed at minors⁵⁶. Furthermore, particular attention is devoted to the effective protection of children

media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme”.

⁵⁵ This shift towards a *by-design* model of protection is consistent with the broader regulatory approach adopted at the European level for digital services — an approach likewise embodied in the GDPR, the DSA and the AI Act, which will be discussed *infra*.

⁵⁶ Art. 1, point (13) (3) of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

from exposure to audiovisual commercial communications related to gambling activities⁵⁷.

In a combined interpretation, these provisions outline a European and international regulatory framework that acknowledges the essential role of media — including cinema and digital platforms — in ensuring not only children's protection, but also their well-being and cultural participation⁵⁸. The resulting obligations rest both upon Member States and upon audiovisual service providers, who are required to integrate child-rights considerations throughout the processes of content production, curation, and distribution.

Yet, the rapid pace of technological innovation continues to raise complex normative and operational challenges.

Persistent difficulties remain in delineating the precise boundaries between audiovisual regulation and the broader regime governing digital services, now recast by the EU Reg. 2022/2065 on Digital Services Act. The latter — as will be further explored in the following sections (see parr. 4 and 5) — appears inapplicable to on-demand platforms, while its provisions fully apply in cases where users themselves create and share content on social networks or video-sharing services. This demarcation line between regulatory regimes calls for further systematic clarification.

Moreover, significant regulatory asymmetries persist between traditional broadcasters and new digital actors, resulting in gaps in accountability. The fast-evolving nature of advertising formats — from influencer marketing to personalised advertising — necessitates constant normative adaptation to prevent manipulation and exploitation of minors.

⁵⁷ See Recitals 29 and 30 of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

⁵⁸ For a comprehensive analysis, see H. Ranaivoson, S. Broughton Micova and T. Raats (eds.), *European Audiovisual Policy in Transition*, London–New York, 2023.

Furthermore, while the AVMSD marks a decisive step towards an integrated, multi-level framework of protection, its effective implementation ultimately depends on national transposition processes. Given the varying degrees of regulatory maturity among Member States, the risk of fragmented and inconsistent application remains substantial⁵⁹. In this respect, the European Audiovisual Observatory plays a crucial role in monitoring regulatory developments and supporting evidence-based policymaking.

The persisting asymmetries and interpretative uncertainties call for a more cohesive and participatory governance model – one capable of translating regulatory principles into everyday practices of protection and empowerment. Ultimately, the full effectiveness of the Directive depends not merely on compliance with legal obligations, but on the ability of all stakeholders – institutional and private alike — to promote a genuinely *child-centred* model of governance. This requires the establishment of monitoring and participatory mechanisms that directly involve children themselves, aligning regulatory practice with the rights-based approach advocated by the CRC and the EU Strategy on the Rights of the Child. Only through an integrated, dynamic, and co-responsible governance framework can the audiovisual environment evolve into a truly inclusive space — one that protects, empowers, and authentically represents young audiences.

4. Risks of Addiction, Manipulation and Algorithmic Influence: Regulatory Foundations and Emerging Gaps.

If the AVMSD primarily governs the content dimension of audiovisual media, a complementary layer of protection concerns the design and architecture of the digital environments through which such content circulates. In this sphere, the focus shifts from *what* children watch to *how* they are guided, nudged, or influenced in their media consumption. The regulatory question thus moves from content regulation to the

⁵⁹ L. Musselli, *La tutela dei minori tra media audiovisivi e servizi di condivisione video*, cit., pp. 104 ss.

governance of the interfaces, algorithms, and recommendation systems that mediate children's audiovisual experiences online⁶⁰.

In this sense, the cinematic and audiovisual experience of minors within the digital ecosystem extends far beyond passive content consumption. It increasingly intertwines with dynamics of interaction, personalization, and algorithmic recommendation that, if not properly regulated, may pose serious risks to the physical and psychological well-being and decisional autonomy of underage users. Social networks, in particular, expose minors to short clips, trailers, and fragments of films that may be inappropriate for their age, subtly influencing their viewing preferences and cultural consumption patterns. Among the most prominent risks are addiction to audiovisual content, exposure to manipulative design mechanisms, and the distorting influence of opaque algorithmic systems.

One of the main vectors of influence is the use of recommendation algorithms, which select and promote content based on users' browsing data and inferred preferences. For minors, such systems – when lacking transparency or ethical design principles – can generate repetitive and polarised exposure, narrowing cultural horizons and fostering compulsive viewing habits. In some cases, the recommended content may offer little educational or cultural value or even reinforce addictive behaviours such as binge-watching and engagement with viral trends⁶¹.

Particularly concerning is the pervasive use of *dark patterns* in digital interfaces: deceptive design strategies intended to manipulate user behavior and steer individuals

⁶⁰ V. Verdoordt, E. Lievens, A. Chatzinikolaou, *The EU Approach to Safeguard Children's Rights on Video-Sharing Platforms: Jigsaw or Maze?*, cit., pp. 151-163.

⁶¹ For a perspective addressing the risks of addiction associated with personalised recommendation systems, see: K. Uludag, *Personalised Video Recommendation System and its Potential Role as a Trigger of Addiction*, in *Scientific Studies on Social and Political Psychology*, 29(2), 2023, pp. 44–46; A. Tripathi, T.S. Ashwin and R.M.R. Guddeti, *Emoware: A Context-Aware Framework for Personalized Video Recommendation Using Affective Video Sequences*, *IEEE Access*, 7, 2019; T. Kollmer, A. Eckhardt, *Dark Patterns. Conceptualization and Future Research Directions*, in *Business & Information Systems Engineering*, 65(2), 2023, pp. 201–208.

toward unintended or commercially advantageous choices⁶². Typical examples include autoplay systems, pop-ups prompting content sharing, fake countdown timers, convoluted unsubscribe procedures, or interface layouts that obscure options for declining data processing. Such practices are especially harmful to minors who, by virtue of their age, cognitive development, and limited digital literacy,⁶³ are disproportionately vulnerable to manipulation and behavioral conditioning.

The autoplay function, for instance, automatically queues and launches the next video without requiring any affirmative choice. For younger audiences, whose impulse-control and time-management skills are still developing, autoplay effectively removes the moment of pause that would enable reflection, thereby facilitating prolonged and passive viewing. Similarly, infinite scroll designs—where content continuously loads as the user swipes—eliminate natural stopping cues and create a seemingly endless stream of stimuli. In addition, ambiguous consent banners or interfaces that visually highlight “accept all” options while obscuring privacy-protective choices can nudge minors toward sharing more data than they would otherwise intend. These persuasive design techniques exploit cognitive immaturity and limit the child’s capacity to exercise informed and autonomous choices in the digital environment, transforming viewing into a frictionless, and often compulsive, behavioural loop.

These risks do not arise solely from the content itself but, more profoundly, from the modalities through which such content is framed, recommended, and consumed. Unless appropriately regulated, the digital environment may foster passive and conditioned behaviors that compromise children’s autonomy and critical development. A child-rights-based approach therefore requires recognizing minors not merely as consumers, but as developing individuals entitled to the right to

⁶² M. Leiser, C. Santos, *Dark Patterns, Enforcement, and the Emerging Digital Design Acquis. Manipulation Beneath the Interface*, 2023, pp. 1–31.

⁶³ On the need to promote digital literacy as a tool to mitigate the effects of children’s vulnerability in general in the digital environment, reference may be made to: N. Patti, V. Punzo, R. Romano, *Child Vulnerabilities in the Digital Environment: Comparative Insights and Operational Guidelines*, cit., *passim*, and specifically pp. 45 ff.

cognitive self-determination and to protection from undue manipulation⁶⁴, rights increasingly viewed as integral components of “digital human dignity”.

Aware of these challenges, the European legislator has progressively developed a complex and interlocking regulatory framework designed to ensure safer, more transparent, and fairer digital environments for minors. The Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), the Regulation (EU) 2022/2065, known as the Digital Services Act (DSA), and the EU Regulation 2024/1689 on AI (Artificial Intelligence Act - AI Act) all converge in acknowledging age, cognitive development, and decision-making capacity as key dimensions of vulnerability that require special protection.

Article 22 of the GDPR⁶⁵ prohibits automated decision-making producing significant effects on individuals, while Recital 38 explicitly calls for enhanced safeguards for vulnerable data subjects, including children. Article 5(1)(b) of the AI Act prohibits the use of AI systems that exploit age-related vulnerabilities, notably those designed to distort or unduly influence the behaviour of children and adolescents.

However, the DSA⁶⁶ represents the cornerstone of the new European regulatory architecture for online platforms. Recitals 81 and 83 explicitly recognise that the design and functioning of digital services can significantly affect the physical, mental, and moral development of minors. Articles 34 and 35 impose on *Very Large Online Platforms* (VLOPs) – those reaching at least 45 million monthly active users in the EU – a duty to conduct annual assessments of the systemic risks associated with minors’

⁶⁴ See above, par. 1.

⁶⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679>.

⁶⁶ Regulation (EU) 2022/2065 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4625430>.

use of their services⁶⁷. Such risks include those related to excessive use, persuasive design, addictive recommendation loops, and profiling for commercial purposes. These assessments must be followed by proportionate and effective mitigation measures, which may include modifications to user interfaces, algorithmic recommendation systems, and advertising mechanisms.

The DSA also embodies a co-regulatory logic, entrusting private platforms with proactive duties of care while preserving public oversight through transparency reporting, audits, and supervision by national Digital Services Coordinators. Article 28 further prohibits profiling for advertising purposes when it concerns minors, while Article 25 bans the deployment of *dark patterns*: manipulative design practices that undermine user autonomy and informed choice⁶⁸. Although these prohibitions formally apply to all users, they are particularly relevant for minors, who are more susceptible to opaque interfaces and persuasive behavioural cues.

Taken as a whole, the European approach marks a paradigmatic shift: from reactive censorship to *ex ante* responsibility in the design of digital services, grounded in a *fairness-by-design* principle. Regulation thus moves upstream, embedding protection into the very architecture of online environments rather than relying solely on *ex post* content moderation.

Nevertheless, the effectiveness of this framework crucially depends on the subjective scope of application of the DSA. The obligations outlined above apply certainly to online platforms that host user-generated content and enable interaction among users. Accordingly, platforms where audiovisual material is continuously created, shared, and accessed by minors – unquestionably fall within the scope of the Regulation and are bound by its transparency, risk-assessment, and child-protection obligations.

⁶⁷ For a comment, see: D. Amram, Children (in the digital environment), in Elgar Encyclopaedia of Law and Data Science, G. Comandé (dir.), Elgar, 2022, pp. 64 ff.

⁶⁸ See also European Parliament, *Regulating Dark Patterns in the EU: Towards Digital Fairness, At a Glance – Digital Issues in Focus*, 2025, available at: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/767191/EPRS_ATA\(2025\)767191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/767191/EPRS_ATA(2025)767191_EN.pdf).

By contrast, services representing one of the primary gateways to audiovisual content for children and adolescents, do not allow users to upload content or interact with one another. As catalogue-based content providers rather than interactive platforms, and given their growing influence in shaping children's audiovisual consumption habits, it is worth considering whether such services fall within the scope of the stricter regime established by the Digital Services Act (*see following section*) and are therefore subject to the obligations previously discussed, including, among others, systemic risk assessments and the prohibition of *dark patterns*.

The issue is far from marginal. The exclusion of these actors, though consistent with the letter of the Regulation, raises significant concerns in terms of regulatory equity, systemic coherence, and, above all, the effective protection of children's rights in the digital environment. The research will therefore address this question more closely, examining the implications of this asymmetry and the extent to which the current European framework can ensure consistent protection for minors across both interactive and non-interactive audiovisual environments.

5. Non-applicability of the Digital Services Act to Streaming Platforms Offering Video-on-Demand (VoD).

As mentioned above, major on-demand streaming services play a central role in shaping how children and adolescents' access, experience, and interpret audiovisual content. These platforms are widely used by younger audiences and strongly influence their cultural consumption patterns. Yet, despite their relevance in the digital ecosystem, such services fall outside the regulatory scope of Regulation (EU) 2022/2065, known as the Digital Services Act (DSA)⁶⁹.

⁶⁹ About the Digital Services Act see, *ex multis*, S. Del Gatto, *Il Digital Services Act: un'introduzione*, in *Giornale di diritto amministrativo*, 6/2023, p. 724 ff.; A. Chander, *When the Digital Services Act Goes Global*, *Berkeley Technology Law Journal* 38, n. 3, 2023, p. 1067 ff.; F. Casolari, *Il Digital Services Act e la costituzionalizzazione dello spazio digitale europeo*, in *Giurisprudenza Italiana*, 2024, p. 462 ff.; C. Irti, *Piattaforme digitali, contratti e protezione dei dati personali*, in *I contratti*, 1/2024, p. 5 ff.; G. Finocchiaro, *Responsabilità delle piattaforme e tutela dei consumatori*, in *Giornale di diritto amministrativo*, 6/2024, p. 730 ff.; G. Pascuzzi, *Il diritto dell'era digitale*, Bologna, 2024, pp. 289-302; M. Husovec, *Principles of the Digital Services Act*, 2024, Oxford; F. Hofmann, B. Raue (ed. by), *Digital Services Act: Article-by-Article Commentary*, Monaco, 2024. In conjunction with the Digital Markets Act (Regulation (EU) 2022/1925

The DSA applies to all providers of “intermediary services” offered to recipients located in the European Union, regardless of the provider’s place of establishment. These intermediary services are classified into three categories: mere conduit, caching, and hosting⁷⁰. A further category, “online platforms”, is defined in Article 3(i) as a

of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828), the DSA aims to build the so-called digital single market; cf. also J. Quinn, *Regulating Big Tech: The Digital Markets Act and the Digital Services Act*, in *Dublin Law and Politics Review* 2, n. Finance Special Issue, 2021, pp. 2-4; M. L. Chiarella, *Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment*, in *Athens Journal of Law (AJL)*, 9, n. 1, 2023, p. 33 ff.

⁷⁰ The DSA has a broad scope, covering all providers of intermediation services, including providers of “mere conduit,” “caching” and “hosting” services. See DSA, Art. 4, 5. 6: Article 4, ‘Mere conduit’ “1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted or accessed, on condition that the provider: (a) does not initiate the transmission; (b) does not select the receiver of the transmission; and (c) does not select or modify the information contained in the transmission. 2. The acts of transmission and of provision of access referred to in paragraph 1 shall include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission. [...]” Article 5, ‘Caching’ “1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient or more secure the information's onward transmission to other recipients of the service upon their request, on condition that the provider: (a) does not modify the information; (b) complies with conditions on access to the information; (c) complies with rules regarding the updating of the information, specified in a manner widely recognized and used by industry; [...]” Article 6, Hosting “1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that the provider: (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content”. However, intermediaries falling within the above categories enjoy exemption from liability under certain conditions. In fact, the regulation stipulates that service providers who play a “passive” role with regard to the specific information hosted are exempt from liability for the information provided by a recipient of the service. It should also be noted that Article 8 of the DSA, concerning the absence of general monitoring obligations or active fact-finding, states that intermediary service providers shall not be subject to a general obligation to monitor the information they transmit or store, nor to actively seek facts or circumstances indicating illegal activity. On this aspect, see G. Pascuzzi, *Il diritto dell'era digitale*, Bologna, 2024, cit., pp. 295-296. However, on the

subset of hosting services that, in addition to storing user-generated content, also disseminate it to the public at the user's request⁷¹.

Streaming services, however, operate under a radically different model. They offer video-on-demand (VoD) services that provide professional, pre-selected audiovisual content acquired or produced in-house, made available to users via subscription. These services do not allow users to upload their own content, nor do they provide public spaces for interaction, commentary, or content sharing. In short, they do not qualify as environments for user-generated content, unlike social media platforms.

Given these characteristics, VoD platforms cannot be considered "hosting services" within the meaning of the DSA, as they do not store third-party content. Nor do they meet the definition of "online platforms" under Article 3(i), since they do not disseminate user-generated material. Similarly, they are not involved in mere conduit or caching activities, as they do not passively transmit or temporarily store user data on behalf of recipients.

exemption from liability for intermediaries acting as communication facilitators and on the concept of passivity, see also G. Sartor, *Providers Liability: From the eCommerce Directive to the future. In-Depth Analysis for the IMCO Committee*, 2017, available at [https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/614179/IPOL_IDA\(2017\)614179_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/614179/IPOL_IDA(2017)614179_EN.pdf), pp. 24 and 26: "[...] we must abandon the view that only "passive" intermediaries should be protected, i.e., the view that intermediaries that take a "non-passive", or active role" – by indexing user-generated content, or linking advertising to it, or determining what results will be provided to user queries – should lose their protection from secondary liability. What justifies the exemption from secondary liability is not the passivity of intermediaries, but rather their function as communication enablers. This function would be incompatible with initiating the communications at issue, but may allow or even require playing an active role in creating an environment in which users' communications can be delivered and made accessible".

⁷¹ DSA, Art 3, let. (i): "'online platform' means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation".

As a result, streaming services offering VoD content do not qualify as hosting providers, cannot be classified as online platforms under Article 3(i) DSA and do not engage in mere conduit or caching functions.

Consequently, they are not subject to the enhanced obligations imposed on Very Large Online Platforms (VLOPs), including the duty to assess systemic risks, the prohibition on targeted advertising to minors, or the ban on manipulative interface designs (*dark patterns*)⁷².

This interpretation is confirmed by the *European Audiovisual Observatory*, which notes in *Unravelling the Digital Services Act Package*⁷³ that the DSA and the DMA⁷⁴ apply to video-sharing platforms, but exclude video-on-demand services which are instead subject to the obligations laid down by the Audiovisual Media Services Directive (AVMSD), given their editorial responsibility, a dimension not applicable to intermediary services regulated under the DSA.

Additional clarity can be drawn from the analysis of Terms of Use of platforms⁷⁵ in which the section on “User-Generated Content” refers generally to platform’s suite of services but not to the video streaming services specifically⁷⁶. While the platform’s terms acknowledge the possibility for users to share content such as text, images, audio, or video, these functionalities are not specifically enabled within the streaming environment, which remains a closed, non-interactive space. Importantly, even where user-generated content is permitted across the platform’s broader services, it is subject

⁷² Cf. DSA, Art. 25.

⁷³ European Audiovisual Observatory, *Unravelling the Digital Services Act Package*, p. 3, available at <https://rm.coe.int/iris-special-2021-01en-dsa-package/1680a43e45>.

⁷⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

⁷⁵ For example Disney: https://disneytermsofuse.com/app/uploads/2020/09/disney_gtou_20160331v2_Italian-TOU.pdf.

⁷⁶ See https://disneytermsofuse.com/app/uploads/2020/09/disney_gtou_20160331v2_Italian-TOU.pdf, p. 3 ff.

to age restrictions and strict moderation policies aimed at preventing the dissemination of harmful or offensive material⁷⁷.

Although VoD platforms fall outside the DSA's formal scope, it would be appropriate for the principles underpinning the DSA—particularly those related to child safety⁷⁸, algorithmic transparency, and fairness-by-design—to also extend to closed ecosystems that provide access for passive and non-interactive viewing of movies and video content, given their pervasive role in shaping young people's relationship with media. Indeed, this regulatory asymmetry reveals a clear gap in the European framework for the protection of minors.

Moreover, it is worth reiterating at this point, building on the considerations set out above, that the DSA remains fully applicable in two important contexts. First, when platforms moderate user-generated content that incorporates or builds upon professionally produced cinematographic material (such as video excerpts from streaming services). Second, when minors themselves take on the role of content creators—sharing their own video content inspired by or related to cinema—on platforms. In both cases, the DSA plays a pivotal role in safeguarding young users who are no longer passive consumers, but active participants in the digital cultural sphere.

6. Child Protection in Streaming Services: A Comparative Analysis of Contractual Frameworks and Platform Architecture.

In this context, the following section turns to the contractual dimension, examining how instruments of private governance—namely, the *Terms of Service* and *User Policies* of major platforms—translate the objectives of public regulation into specific

⁷⁷ See the following paragraphs (...) and https://disneytermsofuse.com/app/uploads/2020/09/disney_gtou_20160331v2_Italian-TOU.pdf.

⁷⁸ For an overview of references in the DSA to minors and their protection, allow us to refer you to J. Fortuna, *Minors' Digital Vulnerability in the EU and the US: A Comparison Between The Digital Services Act and The Kids Online Safety and Privacy Act*, in *Comparative Law Review*, 2025, p.115 ff. See, also, L. Vizzoni, *I "minori digitali" tra doveri educativi e tutele*, Bari, 2025, p. 78 ff.

operational duties and practices. This analysis is crucial to determine whether, and to what extent, the obligations arising from the European legal framework are genuinely internalised within the self-regulatory architecture of leading streaming providers, or whether they remain merely declaratory in nature.

From this perspective, a comparative analysis of the child-protection policies adopted by the principal on-demand services becomes particularly significant⁷⁹. The inquiry focuses on the concrete mechanisms through which these platforms implement their duty of care towards underage users-parental-control functionalities, age-based content classification systems, child-oriented interfaces, and other anticipatory design features that embody, to varying degrees, the principle of *responsible design* promoted by the European digital governance framework.

The contractual architecture of major Video-on-Demand (VoD) streaming platforms demonstrates a progressive, though uneven, process of internalising the child-protection principles advanced by European and international digital-governance regimes. Within their terms of use and ancillary policies, these services have gradually translated public regulatory expectations – such as the *duty of care*, *safety by design*, and *age-appropriate design* – into contractual and technical obligations that articulate both the platform's normative posture and the user's sphere of responsibility.

The examination of these clauses reveals a shared grammar of protection, grounded in the dual premise that (i) the contractual relationship is reserved for adult users who assume legal responsibility for the actions of minors accessing the service, and (ii) that such responsibility must be supported by a suite of technological instruments designed to prevent exposure to age-inappropriate or harmful content.

Across the sector, the terms of service converge in assigning contractual capacity exclusively to adults. Subscription is restricted to individuals aged eighteen or older⁸⁰,

⁷⁹ The analyzed Video-on-Demand (VoD) platforms are Disney+, Amazon Prime Video and Netflix.

⁸⁰ See, for example, the *Prime Video Terms of Use*, which stipulate that users under the age of eighteen may access the service only with the consent and supervision of a parent or legal guardian. Although phrased in general terms, this clause explicitly reaffirms the principle of parental responsibility in the child's use of the platform (see Prime Video Help, "Using Prime Video").

while minors may access the service only with the consent and under the supervision of a parent or legal guardian. This formulation serves as both a legal and ethical pivot: it delineates the boundaries of contractual liability while shifting the practical burden of protection from the platform to the domestic sphere. The parent becomes a co-regulator, responsible for configuring the digital environment through the tools provided. In this sense, the household is transformed into a micro-site of governance where public objectives of digital safety are reinserted into private contractual relations.

To enable this shared responsibility, all major providers incorporate a multilayered system of technical safeguards that materialise the principle of *safety by design*. Among these, child-dedicated profiles—variously labelled *Kids* or *Junior*—stand out for their simplified and visually distinct interface restricted to age-appropriate content. Within these environments, advertising and purchasing functions are disabled, account-management settings are inaccessible, and search or recommendation algorithms are filtered to exclude unsuitable titles⁸¹. The underlying design logic is preventive rather than reactive: the protective perimeter is embedded within the interface architecture itself, thereby reducing dependence on parental intervention in each individual viewing act.

Similarly, pursuant to Article 4.1 of the *Netflix Terms of Use*, subscription to the service is reserved for adult users, defined as individuals aged eighteen or older. Users below the age of majority may access the service only under the direct supervision of an adult. Although succinctly drafted, this provision unequivocally places responsibility for minors' use of the service on parents or legal guardians, thereby delineating a model of self-regulation grounded in the principle of familial oversight.

⁸¹ For instance, the *Disney+ Terms of Service* provide that:

“A Subscriber may designate one or more profiles as a Junior Mode profile, which will restrict viewing of certain Content from within that profile. An Extra Member may not set their profile to Junior Mode. [...] If you permit anyone else to use, view or access the Disney+ Service and/or the Content using your Disney+ Service account (including via a profile), you acknowledge that some content offered on the Disney+ Service may not be suitable for children or for some viewers and therefore discretion is advised.”

(*Disney+ website, Help Center*—“Parental Controls”, *Kids Profiles* section, *Disney+ Subscription Terms and Conditions*[valid for Italy, Greece, San Marino, and Vatican City], Art. 1.3(e) “Junior Mode profiles”). Available at: <https://help.disneyplus.com/it/article/disneyplus-kids-profiles>).

A specific weakness, however, emerges from the examination of Prime Video *Terms of Service*: content downloaded through other profiles remains accessible within *Kids* profiles, constituting a potential gap in the platform's protection framework⁸².

Complementarily, all services employ age-based rating systems that regulate access to content through graduated thresholds. Although terminology and granularity differ—ranging from 0+, 6+, 9+, 12+, 14+, 16+, to 18+—the underlying rationale remains consistent: to signal degrees of maturity and sensitivity in a transparent and standardised manner⁸³. These classifications are either determined internally or

⁸² <https://www.primevideo.com/help?nodeId=GD6ARQYPV5H7RYA4>;

⁸³ For example, *Disney+* assigns each title an age-based classification determined either by the platform itself or by a relevant local regulatory authority. The classification system encompasses seven levels: content rated 0+ is suitable for all audiences; 6+ indicates that certain scenes may not be appropriate for children under six; 9+ applies to those under nine; 12+ to viewers under twelve; 14+ to those under fourteen; 16+ to those under sixteen; and 18+ is reserved for adults only, as some scenes may not be suitable for viewers under eighteen.

Disney+ also publishes a content-subjectivity disclaimer, which states:

“Content tends to elicit varying reactions among different people. You may come across Content that you find offensive, indecent, explicit, or objectionable. Also, content ratings, types, genres, categories, and/or descriptions are provided as suggestions to help with navigation and for informational purposes. We do not guarantee that you will agree with them. You acknowledge these risks and your responsibility for making your own choices regarding what Content is appropriate for your family.”

(*Disney+* website — *Rating Limits*, “Content Rating” section, *Disney+ Subscription Terms and Conditions*, Art. 1.6(b)). By contrast, *Prime Video* also employs age-based classification criteria, with variations depending on the country of access. Amazon generally adopts the following age categories: *Kids*, suitable for all audiences; *Older Kids*, recommended for ages seven and up; *Teens*, for viewers aged thirteen and older; *Young Adults*, for viewers aged sixteen and up; and *Adults*, restricted to viewers aged eighteen and over (*Prime Video Help Center*).

Likewise, *Netflix* organises its content classifications according to audience age suitability. The “*ALL*” category designates content recommended for all viewers, while “*7+*” is suitable for children aged seven and above. The “*10+*” rating applies to audiences aged ten and older, and “*13+*” targets teenage viewers, indicating material appropriate for those aged thirteen and above. For older adolescents, the “*16+*” rating is used, whereas “*18+*” is reserved for adult audiences, signalling content suitable only for viewers aged eighteen and over (*Netflix Help Center*). Games available on the platform are also subject to age-based classification, which varies depending on the

aligned with relevant local regulatory authorities, reflecting cultural variations while maintaining structural coherence.

Some platforms reinforce these ratings with content descriptors flagging potentially sensitive elements such as violence, fear, explicit language, sexual references, or depictions of alcohol and drug use. In several cases, the rating assigned to a single title extends to an entire series, simplifying parental control but risking over-inclusive or, conversely, insufficient categorisations. The cumulative effect of these systems is to promote informational transparency and facilitate mindful mediation by parents or caregivers⁸⁴.

Another layer of contractual protection is provided through PIN-based access control systems, allowing account holders to set numeric locks to prevent unauthorised entry into adult profiles or alteration of parental settings⁸⁵.

Some configurations also require password authentication for the creation or deletion of profiles, thereby closing potential loopholes in account governance. Certain providers go further by introducing exit-protection mechanisms—sometimes labelled *Protected* or *Kid-Proof Exit*—requiring users to complete a simple task or re-enter credentials before leaving the children’s environment⁸⁶. This device exemplifies

operating system and device in use. On Android devices, classifications follow the IARC system—ranging from 3+, 7+, 12+, 16+, to 18+. On iOS devices, the Apple App Store ratings apply, with categories of 4+, 9+, 12+, and 17+. On television and via *Netflix.com*, classifications are organised as All, 7+, 10+, 13+, 16+, and 18+ (Netflix Help Center).

⁸⁴ See: <https://help.netflix.com/en/node/2064>; Cf. <https://help.disneyplus.com/it/article/disneyplus-content-ratings>

⁸⁵ See *Disney+* website — *How to Set a Profile PIN*, section “Setting a Profile PIN” (<https://help.disneyplus.com/it/article/disneyplus-it-it-parental-controls>); *Prime Video Help Center — Parental Controls* (https://www.primevideo.com/help/ref=atv_hp_nd_nav?nodeId=G26NRYUT8ATMMZRB); and *Netflix Help Center — Parental Controls* on *Netflix* (<https://help.netflix.com/en/node/114277>; <https://help.netflix.com/en/node/122551>).

⁸⁶ This functionality is available on *Disney+* but not on *Netflix* or *Prime Video*. See *Disney+* website — *Kid-Proof Exit*, feature description (<https://help.disneyplus.com/it/article/disneyplus-it-it-kids-profiles>). *Disney+* allows users to enable this feature through the mobile app or a supported web browser. To activate it, users must

a tangible application of *protection by default*: it prevents minors from intentionally or accidentally exiting the protected space, embedding defensive logic directly within the user experience. Such mechanisms embody the principle of architectural prevention, transforming protection from an external instruction into an intrinsic property of the interface.

The contractual clauses accompanying these technical systems serve to reinforce their normative dimension. Typical formulations stipulate that parents remain responsible for monitoring minors' use of the service and for ensuring that profile configurations and content settings are appropriate to the child's age. These provisions underline the dual approach of the platform: combining legal disclaimers that limit liability with a structured set of design features enabling users to fulfil their duty of care. The tone is declarative yet operational: it recognises the provider's limited capacity to control individual behaviour while offering the technological means to support responsible use.

Another recurrent feature of these contractual frameworks concerns general standards of user conduct, which prohibit the dissemination of defamatory, harassing, obscene, or otherwise harmful content to minors. The scope of such clauses is broad: it typically extends to user-generated content, comments, and uploads, explicitly excluding material that promotes illegal activities or depicts minors in sexualised contexts⁸⁷. While these provisions often serve to shield providers from third-party

log in to their profile, select *Edit Profile*, toggle *Protected Exit* to “ON”, and enter their password to confirm the change.

⁸⁷ For example, the *Terms of Use* applicable to Italy (and to most *Disney* services) set forth behavioural standards under Article 8. Specifically, users agree not to distribute any material that is: (a) defamatory, offensive, harassing, threatening, or invasive of another person's privacy; (b) fanatical, derogatory, racially offensive, or otherwise objectionable; (c) violent, vulgar, obscene, pornographic, or otherwise sexually explicit; or (d) otherwise harmful to individuals or entities.

The prohibition extends to material that is illegal or that incites or promotes illegal activities, or the discussion of illegal activities with the intent to commit them — including content that constitutes or represents an attempt to engage in child pornography, stalking, sexual assault, fraud, trafficking in obscene or stolen materials, drug trafficking and/or abuse, harassment, theft, or criminal conspiracy. Users are further prohibited from distributing material that infringes or violates third-party rights, including: (a) copyright, patent, trademark, trade secret, or other proprietary or contractual rights; (b)

liability, they also express an ethical orientation consistent with the European Union's broader commitment to the protection of minors in digital media.

Notwithstanding these provisions, the effectiveness of such measures remains intrinsically dependent on the informed and sustained engagement of parents and caregivers, whose role in mediating and supervising children's access to digital media remains indispensable. Some platforms complement behavioural clauses with economic safeguards, disabling purchasing functions within children's profiles or requiring PIN authentication for any transaction. Although primarily aimed at preventing unauthorised spending, these measures also reduce minors' exposure to commercial persuasion and behavioural advertising, aligning contractual design with emerging norms on child-appropriate monetisation. In some cases, advertising availability itself varies by subscription level, with children's profiles exempt from targeted ads regardless of user settings⁸⁸.

Comparative evidence further highlights variations in how these protective mechanisms are integrated and prioritised. Certain providers display a preventive and user-centred orientation, embedding child-specific design within the interface

the right to privacy (in particular, users must not disclose personal information about others without their express consent) or publicity; or (c) confidentiality obligations.

Additionally, users may not post material relating to commercial or business matters, advertise or offer to sell products, services, or other items (whether for profit or not), or solicit others to do so (including solicitations for contributions or donations). They must not upload content containing viruses or other harmful components, or otherwise interfere with, compromise, or damage the Sites or any connected networks, nor obstruct the use or enjoyment of the Sites by others. Content that is antisocial, harmful, or disruptive — including “flaming,” “spamming,” “flooding,” “trolling,” and “griefing,” as these terms are commonly used online — is likewise prohibited, as is any material that falls outside the subject matter or theme assigned to a public forum.

The *Terms of Use* further state that users acknowledge and accept the possibility of being exposed to material submitted by various sources, and that *Disney* is not responsible for the accuracy, usefulness, safety, or intellectual property rights of such content. The platform explicitly disclaims liability for user-generated submissions that may be inaccurate or offensive, while acknowledging the residual risk that users may encounter such material despite compliance mechanisms.

⁸⁸ <https://www.primevideo.com/help?nodeId=GD6ARQYPV5H7RYA4>; https://www.primevideo.com/help/ref=atv_hp_nd_nav?nodeId=G5VD9FKYCXW8RDK9

architecture and limiting users' ability to alter protective thresholds. Others adopt a more reactive and discretionary model, offering flexible settings whose effectiveness depends largely on informed parental engagement. The depth of integration thus varies: some systems incorporate multi-layer authentication (for example, requiring a password to modify age-rating thresholds), while others rely on user discipline to maintain consistent boundaries across devices.

The comparative analysis of child-protection mechanisms implemented by leading platforms reveals a generally advanced yet structurally uneven level of attention to digital safety and age-appropriate design. Providers have progressively incorporated a baseline of protective functionalities—including dedicated child profiles, age-based classification, parental control settings, access PINs, and content warnings addressing potentially harmful material such as violence, coarse language, or sexual content. This convergence around a shared set of safeguards signals a consolidated awareness of the ethical and regulatory expectation that streaming services should embed child protection not as an ancillary feature but as a structural component of their technological and contractual architecture. In this sense, the platforms analyzed collectively exemplify the gradual internalisation—albeit with differing levels of maturity—of the *safety-by-design* and *fairness-by-design* principles emerging from the European digital *acquis*.

Yet a closer examination of their respective configurations reveals notable differences in the depth, coherence, and preventive potential of these mechanisms. At this point, it is useful to give examples of specific platforms: Disney+ stands out for the high degree of integration and usability of its parental-control architecture. It is the only provider combining a simplified, child-oriented interface with a *kid-proof exit*—a function designed to prevent both accidental and deliberate navigation outside the protected environment—thus translating the notion of *protection by default* into a tangible design element. This feature reduces reliance on parental intervention and embeds protection directly into the user experience⁸⁹. Netflix, by contrast, adopts a more flexible but also more reactive model: while it offers a simplified interface and a PIN for profile creation—an effective barrier against circumvention—the absence

⁸⁹ See <https://help.disneyplus.com/it/article/disneyplus-kids-profiles#kid-proof>.

of an exit-protection function leaves monitoring primarily in the hands of parents or guardians⁹⁰. Prime Video, meanwhile, presents a different configuration: although it provides standard parental-control and filtering tools, it lacks both simplified navigation and exit locks, compensating only partially through purchase-block mechanisms oriented more toward economic control than child welfare⁹¹.

These divergences, though technical in appearance, reveal deeper structural and cultural differences in how each platform conceives and operationalises the notion of child protection. Disney+ appears to embody a preventive and user-centred philosophy, embedding safeguards at the architectural level and aiming to shape the child's digital experience within a controlled and pedagogically sensitive environment.

From a policy and governance perspective, this heterogeneity raises complex questions of both regulatory equity and substantive protection. While a core set of safety mechanisms may now be regarded as an industry standard, the quality, coherence, and preventive orientation of these tools vary considerably, resulting in unequal conditions of digital safety and well-being for young users across platforms. This unevenness underscores the need for harmonised standards within the European audiovisual ecosystem—standards capable of ensuring that minimum functionalities are accompanied by mandatory usability thresholds and uniform benchmarks for accessibility, transparency, and age-appropriate design.

Ultimately, comparative evidence suggests that the transition from parental control to child-centred design remains incomplete. A truly effective framework for protecting minors in streaming environments requires not only technical safeguards but also a broader cultural shift in design philosophy—from a reactive logic of user supervision to a proactive ethic of responsibility embedded within the very architecture of digital services.

The comparative evidence also highlights differences in how these protective mechanisms are integrated and prioritised. Some providers display a preventive and

⁹⁰ <https://help.netflix.com/en/node/2064>.

⁹¹ <https://www.primevideo.com/help?nodeId=GD6ARQYPV5H7RYA4>;
https://www.primevideo.com/help/ref=atv_hp_nd_nav?nodeId=GFGQU3WYEG6FSJFJ

user-centred orientation, embedding child-specific design features within the very structure of the interface and limiting users' ability to modify protection thresholds. Others adopt a more reactive and discretionary model, offering flexible settings whose effectiveness depends entirely on the informed engagement of parents or guardians.

7. Parental Control and the Evolving Capacities of the Child: A Rights-Based Approach.

The analysis of the policies adopted by major digital platforms reveals that parental control⁹² represents, within today's media ecosystem, one of the most immediate and pervasive forms of safeguarding minors' access to digital content.⁹³ It constitutes the first layer of protection – domestic, personalised, and relational in nature – within that multilayered framework progressively built by European and international law to safeguard children's rights in the digital environment. It is, therefore, a hybrid instrument, both technical and legal, which materialises the interaction between the family sphere and the regulatory sphere. The institution of parental control stands at the crossroads of private autonomy, parental responsibility and the child's freedom, functioning as a locus of synthesis – but also of tension – between the legal duty to protect and the right of the child to progressive self-determination⁹⁴. Technological

⁹² The importance of employing parental control tools in the audiovisual sector is also emphasised by the 2018 Directive, which, in Recital 20, provides that: "*The minimum harmonisation approach allows Member States to develop a higher degree of protection for content which may impair the physical, mental or moral development of minors. The most harmful content, which may impair the physical, mental or moral development of minors, but is not necessarily a criminal offence, should be subject to the strictest measures such as encryption and effective parental controls, without prejudice to the adoption of stricter measures by Member States*". For an overview of parental control and the role of parents in protecting minors from digital vulnerability, see E. Battelli, *Minori e nuove tecnologie*, in E. Battelli (eds.), *Diritto privato delle persone minori di età. Diritti, tutele, nuove vulnerabilità*, Torino, 2021, p. 111 ff.; J. Fortuna, *Il nuovo ruolo dei genitori nella tutela della vulnerabilità digitale dei minori: spunti di comparazione giuridica tra UE, USA, Italia e Australia*, in *Rivista di Diritto Comparati*, 2025, (forthcoming), cit.

⁹³ Mauk, M. (2021). Think of the Parents: Parental Controls in Digital TV and Family Implications. In: Holloway, D., Willson, M., Murcia, K., Archer, C., Stocco, F. (eds) *Young Children's Rights in a Digital World. Children's Well-Being: Indicators and Research*, vol 23, pp. 81 – 92.

⁹⁴ For a comparative analysis of the relationship between parental responsibility and the child's autonomy in the digital environment, see: S. Rigazio, *L'Empowerment del minore nella dimensione digitale*,

tools for monitoring, filtering, or restricting content do not merely express parental power but rather give concrete form to a duty of protection and care grounded in Article 18 of the United Nations Convention on the Rights of the Child (CRC)⁹⁵ and Article 24 of the Charter of Fundamental Rights of the European Union⁹⁶.

However, in both international and European law, the protection of the child increasingly follows the principle of the child's evolving capacities, developed by the UN Committee on the Rights of the Child. According to this principle, every protective measure must be proportionate to the child's maturity and discernment, ensuring that protection does not become an unjustified limitation on freedom of expression, cultural participation, or autonomous learning⁹⁷. In light of this principle,

Modena, 2024, available in open access at: <https://mucchieditore.it/wp-content/uploads/Open-Access/Rigazio-Prospettive-8-DEF-OA.pdf>.

⁹⁵ Article 18: “1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. 3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”.

⁹⁶ Charter of Fundamental Rights of the European Union, Article 24 — *The rights of the child*: “1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests”.

⁹⁷ See Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, Section IV – *Evolving capacities*, paras. 19–21: “19. States parties should respect the evolving capacities of the child as an enabling principle that addresses the process of their gradual acquisition of competencies, understanding and agency. That process has particular significance in the digital environment, where children can engage more independently from supervision by parents and caregivers. The risks and opportunities associated with children's engagement in the digital environment change depending on their age and stage of development. They should be guided by those considerations whenever they are designing measures to protect children in, or facilitate their access to, that environment. The design of age-appropriate measures should be informed by the best and most up-to-date research available, from a range of disciplines. 20. States parties should take into

in our view, parental control should adopt a *default-protective* design: that is, ensuring a high level of automatic protection during the early stages of the child's digital experience, while allowing for a gradual modulation of parental intervention proportionate to the child's cognitive and experiential development. This approach, now consolidated within European law, aims to avoid paternalistic drifts and instead to foster an educational and participatory accompaniment, strengthening the digital awareness and responsibility of the growing individual.

From this perspective, parental control assumes a dual function: *preventive*, insofar as it seeks to avert exposure to harmful or inappropriate content; and *promotional*, insofar as it encourages the conscious and informed exercise of freedom of information and expression online. Its effectiveness, however, remains constrained by two structural factors: on the one hand, the opacity of design choices made by platforms — from persuasive interfaces to recommendation systems driven by predictive and profit-oriented engagement models; on the other, the informational and cognitive asymmetry separating digital service providers from end-users, which often deprives parents of the tools and skills required to configure security settings properly⁹⁸.

Platforms provide age-rating filters, access PINs, viewing limits, or “junior” profiles; yet these functions are rarely activated by default and even less frequently accompanied by clear explanations of content-classification criteria or recommendation-algorithm logics. This lack of transparency significantly reduces

account the changing position of children and their agency in the modern world, children's competence and understanding, which develop unevenly across areas of skill and activity, and the diverse nature of the risks involved. Those considerations must be balanced with the importance of exercising their rights in supported environments and the range of individual experiences and circumstances. States parties should ensure that digital service providers offer services that are appropriate for children's evolving capacities. 21. In accordance with States' duty to render appropriate assistance to parents and caregivers in the performance of their child-rearing responsibilities, States parties should promote awareness among parents and caregivers of the need to respect children's evolving autonomy, capacities and privacy. They should support parents and caregivers in acquiring digital literacy and awareness of the risks to children in order to help them to assist children in the realization of their rights, including to protection, in relation to the digital environment”. For a comment: C. Djeffal, *Children's Rights by Design and Internet Governance: Revisiting General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, cit., pp. 11 ff.

⁹⁸ See parr. *above*.

parents' capacity to exercise effective control and, by reflection, undermines their legal ability to fulfil their protective duties. In practice, platforms delineate the normative boundaries—age restrictions, behavioural prohibitions, and user responsibilities—while users operationalise them through configuration and supervision. This hybrid architecture effectively delegates regulatory functions to end-users under the banner of informed consent and digital literacy. However, it also exposes a critical vulnerability: the level of protection ultimately depends on the parent's awareness, motivation, and technical competence. In this light, the contractual allocation of responsibility can be read as a form of responsibility transfer, whereby the provider's duty of care is discharged through disclosure rather than through substantive oversight.

It is therefore essential to support parents not only through technological tools, but also through education and awareness raising⁹⁹.

To ensure that parental controls are meaningful and child-centred, platforms should: default to protected child profiles with an opt-out rather than opt-in model; provide clear, accessible, and age-appropriate interfaces, including visual cues and plain-language prompts; publish transparent age-classification criteria and offer insights into the factors that drive personalised recommendations; enable granular filtering—age brackets, thematic categories, explicit-content flags—and allow parents to lock or disable autoplay; integrate monitoring dashboards (usage time, viewing history, flagging of sensitive content) and easy-to-use reporting tools; facilitate co-viewing and dialogue, e.g. shared watch-lists, content summaries, and parental guidance notes that prompt discussion.

Parental controls should be seen not as a substitute for parental engagement¹⁰⁰, but as an enabler of it. Children benefit most when technical protections are coupled with

⁹⁹ S. P. Hammond, G. Polizzi, C. Duddy, Y. Bennett-Grant, K. Bartholomew, *Children's, parents' and educators' understandings and experiences of digital resilience: A systematic review and meta-ethnography*, cit., pp. 3018 – 3042.

¹⁰⁰ For an in-depth discussion of the educational role of parents within contemporary parent-child relationships, see G. Di Rosa, *I termini giuridici della funzione educativa nell'attuale quadro delle relazioni tra genitori e figli*, in *Actualidad Jurídica Iberoamericana*, No. 17 bis, 2022, pp. 806 ff.

active co-viewing, critical discussion, and clear household norms. Promoting a critical approach to digital media, from shared viewing practices to open discussions about online content, can improve children's ability to navigate the digital landscape with autonomy and awareness.

In the absence of such a multilayered intervention, the transition from parental control to child-centred design remains incomplete. Genuine compliance with the spirit of *safety-by-design* requires not merely the availability of protective options, but their default activation and consistent usability across contexts. As long as protection depends on voluntary configuration and on a variable level of digital literacy, the actual degree of safety afforded to minors will continue to fluctuate. Achieving a coherent standard of digital well-being therefore demands not only contractual harmonisation, but also the establishment of minimum effectiveness thresholds—parameters ensuring that protective tools are accessible, intuitive, and resistant to circumvention.

Ultimately, protecting children in the digital media environment requires a systemic approach that goes beyond the parental responsibility.

As previously discussed, a significant regulatory asymmetry nonetheless persists: *video-on-demand* services fall outside the DSA's stricter framework, unlike interactive platforms like the social ones. This distinction — based on the structural difference between catalogue-based and intermediary services — raises issues of regulatory equity and systemic coherence, making it desirable to extend to streaming services the same obligation to conduct periodic risk assessments regarding minors, thereby ensuring a uniform level of protection.

In this light, the rationale of the DSA delineates a multilayered *duty of care* model, in which child protection becomes an integral part of the technical and organisational architectures of digital service providers¹⁰¹. Yet the mere availability of parental

¹⁰¹ See, among others, C. Nyamutata, *Childhood in the digital age: a socio-cultural and legal analysis of the UK's proposed virtual legal duty of care*, in *International Journal of Law and Information Technology*, Volume 27, Issue 4, 2019, Pages 311–338; C. Ullrich, *Standards for Duty of Care: Debating Intermediary Liability from a Sectoral Perspective*, in *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, 8(2017), pp. 111 ff.; L. Woods, W. Perrin, *Obliging Platforms to accept a duty of care*, in *Regulating Big Tech*, M. Moore and D. Tambini (eds.), pp. 93 ff.

control tools does not necessarily correspond to their actual accessibility or comprehensibility. The protection of minors cannot, therefore, rely solely on isolated family autonomy or on the exclusive responsibility of platforms: it requires an integrated form of governance capable of overcoming the dichotomy between the private and the technological spheres, while recognising the child as a rights-holder in his or her own right, with progressively evolving entitlements.

Parents must be able to exercise their educational role through tools that are clear, proportionate and adaptable; service providers must ensure transparent and non-manipulative interfaces, in compliance with Articles 25 and 28 DSA; and States must promote digital literacy and oversight mechanisms ensuring the effectiveness of protection. Minors themselves should be enabled to participate in the formulation of policies that affect them. What thus emerges is a model of shared responsibility, founded on the recognition of the child not as a passive object of protection but as an active holder of fundamental rights — including cultural participation, freedom of expression and digital self-determination. In this perspective, parental control is not a restrictive barrier but a form of guided *empowerment*: a family-based regulatory instrument that complements — rather than replaces — public and technological safeguards. Only a dynamic equilibrium, grounded in continuous dialogue among parents, minors, platforms and institutions, can translate the principle of the best interests of the child into an effective system of protection and empowerment in the digital era, where freedom and safety do not stand in opposition but converge within a unified vision of digital childhood citizenship.

A coordinated effort is needed between regulators, the media and technology industries, civil society and educational institutions to establish shared standards, promote digital-media literacy and encourage design models that respect children not only as users, but as rights holders and participants in cultural life. Only by combining these levers can we ensure that children are respected not merely as consumers, but as rights-holders and cultural participants.

7.1. Some Comparative Insights on the Role of Parental Controls in Safeguarding Children Online: UK and Australia.

A central lesson emerging from regulatory experiences beyond Europe is that parental controls can play a valuable role in protecting children online, yet their use must be carefully balanced with children's rights and evolving capacities.

A notable example is the United Kingdom's Age-Appropriate Design Code (the *Children's Code*), issued by the Information Commissioner's Office in 2020¹⁰². The Code establishes a set of design standards for services "likely to be accessed by children," including apps, social networks and, importantly for the present analysis, content-streaming platforms¹⁰³. Anchored in the principle of the child's best interests, the Code places a positive duty on service providers to give primacy to children's rights over purely commercial considerations¹⁰⁴.

Standard 11 specifically addresses parental controls, requiring providers not only to explain such tools in an age-appropriate manner but also to clearly notify children whenever monitoring systems are active¹⁰⁵. This standard reflects a broader approach emphasising that parental controls should assist – but not replace – responsible

¹⁰² See: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/>.

¹⁰³ For a detailed comparative discussion of the UK Age-Appropriate Design Code and its relevance as a potential regulatory benchmark beyond the British context, see S. Rigazio, *L'Empowerment del minore nella dimensione digitale*, Modena, 2024, open access: <https://mucchieditore.it/wp-content/uploads/Open-Access/Rigazio-Prospettive-8-DEF-OA.pdf>.

¹⁰⁴ See standard 1: The best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child" (<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/code-standards/>).

¹⁰⁵ Standard 11: "If you provide parental controls, give the child age appropriate information about this. If your online service allows a parent or carer to monitor their child's online activity or track their location, provide an obvious sign to the child when they are being monitored" (<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/code-standards/>).

platform design and should not serve as a means to shift accountability for children's safety solely onto families¹⁰⁶.

As highlighted in the impact assessment on the Children's Code, expanding parental controls without adequate transparency risks undermining children's autonomy and moving platforms out of compliance. Moreover, it may place undue pressure on parents or strain parent-child relationships, while diverting attention from necessary structural safeguards within the platforms themselves. In this sense, parental controls must operate within a multilayered responsibility framework, aligning with children's developmental stage and their right to be informed and heard, rather than becoming a mechanism of disproportionate surveillance or a substitute for robust platform governance¹⁰⁷.

In contrast, the Australian approach has aimed to exclude minors from accessing platforms, thereby diminishing the role of parents in the educational function within the digital environment through the Online Safety Amendment (Social Media Minimum Age) Bill 2024¹⁰⁸. In fact, Australia has approved this legislation¹⁰⁹, which

¹⁰⁶ See S. Rigazio, *L'Empowerment del minore nella dimensione digitale*, cit., pp. 138 ff.. Reference may also be made to N. Patti, V. Punzo, R. Romano, *Child Vulnerabilities in the Digital Environment: Comparative Insights and Operational Guidelines*, cit., pp. 12 ff.

¹⁰⁷ J. Mootz, K. Blocker, et al., *UK Age-Appropriate Design Code: Impact Assessment*. Report by the Institute for Digital Media and Child Development / Children & Screens, 2024. Available at: <https://www.childrenandscreens.org/wp-content/uploads/2024/03/Children-and-Screens-UK-AADC-Impact-Assessment.pdf>.

¹⁰⁸ For an overview of the new Australian legislation on online safety for minors (Online Safety Amendment (Social Media Minimum Age) Bill 2024) be allowed to refer to J. Fortuna, *Il nuovo ruolo dei genitori nella tutela della vulnerabilità digitale dei minori: spunti di comparazione giuridica tra UE, USA, Italia e Australia*, in *Rivista di Diritto Comparato*, 2025, (forthcoming), cit.

¹⁰⁹ However, the effects of the application will be postponed by 12 months: Online Safety Amendment (Social Media Minimum Age) Bill 2024, Section 63E, Delayed effect of requirement to take reasonable steps to prevent age-restricted users having accounts (1): "Section 63D takes effect on a day specified in an instrument under subsection (2) of this section. (2) The Minister may, by notifiable instrument, specify a day for the 26 purposes of subsection (1). (3) The specified day must not be later than 12 months after the day this section commences [...]".

deals with the online safety of minors, setting a minimum age for accessing social media and assigning platforms responsibility for the safety of their users¹¹⁰.

In particular, Parliament approved new rules setting the age of 16 for access to social media platforms¹¹¹, imposing a series of obligations on service providers¹¹². Platforms are therefore required to introduce verifiable systems and processes to ensure that people below the minimum age cannot create and/or hold a social media account¹¹³.

Social media platforms are also required to demonstrate that they have identified appropriate and reasonable measures to prevent harm to minors, and must prove that they have introduced effective systems and processes to prevent individuals under the age of 16 from creating personal accounts, with penalties imposed in the event of any violations found¹¹⁴.

¹¹⁰ Online Safety Amendment (Social Media Minimum Age) Bill 2024, Explanatory Memorandum, p. 1. For some insights into the new Australian legislation, see T. Flew, T. Koskie, A. Stepnik, *Digital Policy as Problem Space: Policy Formation, Public Opinion, and Australia's Online Safety Amendment (Social Media Minimum Age) Act 2024*, 2025, available at SSRN: <https://ssrn.com/abstract=5310865> or <http://dx.doi.org/10.2139/ssrn.5310865>.

¹¹¹ Online Safety Amendment (Social Media Minimum Age) Bill 2024, Part 1, Sec. 1 provides for the addition of the following wording to Section 4 of the Online Safety Act 2021: “There are age restrictions for certain social media platforms. A provider of such a platform must take reasonable steps to prevent children who have not reached a minimum age from having accounts”. Section 2 specifies that “age-restricted user means an Australian child who has not reached 16 years”.

¹¹² Online Safety Amendment (Social Media Minimum Age) Bill 2024, Part 4A, Social media minimum age; Division 1, Introduction; 63A Simplified outline of this Part: “Providers of certain kinds of social media platforms must take reasonable steps to prevent children who have not reached a minimum age from having accounts. This requirement takes effect on a day specified by the Minister. There are privacy protections for information collected by social media platforms for the purposes of the minimum age requirement”.

¹¹³ In addition, Section 5 of the Online Safety Amendment (Social Media Minimum Age) Bill 2024, states that: “to formulate, in writing, guidelines for the taking of reasonable steps to prevent age-restricted users having accounts with age-restricted social media platforms”.

¹¹⁴ Cf. <https://www.agendadigitale.eu/cultura-digitale/un-futuro-senza-social-per-i-minori-australia-apre-la-strada-le-mosse-dellitalia/>. See Online Safety Amendment (Social Media Minimum Age) Bill 2024, Division 2, Civil penalty, 63D, Civil penalty for failing to take reasonable steps to prevent age-restricted users having accounts: “A provider of an age-restricted social media platform

What emerges from an analysis of the legislation relating to the role of parents is that Australia has decided to relieve parents of responsibility for assessing their children's online activities, while highlighting the role of platforms in protecting minors. This is based on the awareness that even for those who exercise parental responsibility, it is difficult to assess the dangers of the digital ecosystem, or in any case the consequences of any online activity by their children¹¹⁵.

It is no coincidence that the Explanatory Memorandum to the Online Safety Amendment Bill 2024 states that: "Parents and carers feel unsupported to make evidence-based choices about when their children should be on social media and many are overwhelmed by pressure from their children and other families [...]. Setting a minimum age removes ambiguity about when the 'right' time is for their children to engage on social media and establishes a new social norm"¹¹⁶.

8. Conclusive Remarks.

Building on the foregoing considerations, it emerges how digitalization has profoundly reshaped the ways in which young audiences' access, engage with, and attribute meaning to cinematic experiences. Traditional theatre-based viewing has been increasingly supplanted by domestic, individual, and mobile modes of consumption, facilitated by streaming services and by the circulation of audiovisual content across social media platforms. Within this evolving ecosystem, the cinematic experience becomes intertwined with the digital one, redefining the boundaries

must take reasonable steps to prevent age-restricted users having accounts with the age-restricted social media platform".

¹¹⁵ On the role of private law as a fundamental ally in the educational task of parents in the digital age, see R. Senigaglia, *Il dovere di educare i figli nell'era digitale*, in *Persona e mercato*, 2021, p. 511 ff. and in part. p. 525.

¹¹⁶ Online Safety Amendment (Social Media Minimum Age) Bill 2024, Explanatory Memorandum, p.2. Let us also refer to J. Fortuna, *Il nuovo ruolo dei genitori nella tutela della vulnerabilità digitale dei minori: spunti di comparazione giuridica tra UE, USA, Italia e Australia*, in *Rivista di Diritto Comparati*, 2025, (forthcoming), cit.

between artistic expression, entertainment, and algorithmically mediated consumption.

This transformation entails substantial cultural and legal ramifications. Indeed, within this framework, particular significance is attributed to Article 31 of the United Nations Convention on the Rights of the Child, which acknowledges every child's right to full participation in cultural and artistic life. A similar principle is echoed in the European Union's commitment to fostering cultural diversity and ensuring equitable access to creative content, as enshrined in Article 22 of the Charter of Fundamental Rights of the EU. Nonetheless, the dynamics of film consumption in the digital environment prompt critical reflection on the actual capacity of streaming platforms to safeguard pluralistic access and to nurture aesthetic development—particularly with regard to independent or culturally non-standardized productions.

Digital platforms structure their offerings through algorithmic recommendation systems that, while enabling personalization of the user experience, tend to prioritize mass-market content, leading to phenomena of cultural homogenization and selective visibility. In this scenario, minors risk being exposed to increasingly filtered and standardized content, with a significant impact on their cultural literacy and their ability to explore narratives outside the dominant mainstream.

Furthermore, the main streaming platforms are aware that viewing is becoming a transmedia experience, often mediated by viral dynamics and the engagement logic typical of social networks.

Historically, cinema functioned not only as an artistic medium but also as a public arena for collective dialogue and participation, where shared viewing experiences encouraged reflection, debate, and cultural consolidation. In contemporary contexts, this dialogic role has been partially transferred to social media environments, where cinematic works (or their fragmented excerpts) are discussed, reinterpreted, and amplified. On the one hand, such spaces enable broader, more cross-cutting, and participatory forms of engagement; on the other, the inherently ephemeral, fragmented, and performative character of online interactions tends to diminish the depth of critical discourse, favouring short-form content, instantaneous reactions, and

engagement-oriented dynamics. This transformation is far from neutral, because it reshapes not only modes of consumption but also the very quality and depth of cultural participation.

From a regulatory perspective, this scenario calls for strengthened guarantees of safe, transparent, and culturally meaningful access to content intended for minors.

In summary, the cinematic experience in the digital era represents an ambivalent frontier: on one hand, it offers extraordinary opportunities for access, creativity, and participation; on the other, it exposes minors to potentially passive, homogenizing, and market-driven forms of viewing. In this context, public policies and regulatory models—including cooperation among institutions, platforms, and schools—must address not only the protection of young users, but also the active promotion of their right to culture, as recognized in Article 31 of the aforementioned UN Convention, in its fullest sense. Within the contemporary digital ecosystem, profiling practices and targeted advertising constitute some of the most pervasive and opaque challenges to the protection of children's rights. The systematic collection of behavioural data, the construction of psychometric profiles, and the deployment of predictive algorithms aimed at shaping consumption patterns compromise not only minors' right to privacy but also their cognitive, emotional, and ethical development.

The European regulatory framework has progressively introduced strict safeguards to address these risks. The GDPR sets clear boundaries through its prohibition on automated decision-making producing legal or similarly significant effects (Art. 22) and its call for heightened protections when processing the data of children (Recital 38).

The DSA further strengthens this framework by explicitly banning targeted advertising based on profiling when it concerns minors (Art. 28). However, this prohibition applies only to services that qualify as online platforms under the DSA. As a result, video-on-demand services, which do not host user-generated content or facilitate user interaction, are not subject to Article 28 DSA. In contrast, social platforms which allow content sharing and interaction, are fully bound by this provision.

Notwithstanding significant regulatory progress, profiling practices continue to be widespread in reality. Children are often exposed, often without realizing it, to behavioral tracking, algorithmic personalization, and data aggregation across multiple platforms, processes that remain largely opaque and difficult for younger users to understand. Such mechanisms exploit minors' developmental susceptibilities, subjecting them to commercial pressures and subtly shaping their patterns of digital behaviour.

To address these risks and ensure that children's rights are adequately protected, a combination of regulatory and design-oriented interventions is needed. First, platforms should adopt default settings that ensure a high level of privacy, ensuring that profiling and behavioral tracking are automatically disabled for underage users. Any activation of such features should require explicit and informed parental consent. Equally important is the principle of age-appropriate transparency: digital interfaces and privacy notices must be designed to reflect the cognitive development of minors. This involves the use of clear and accessible language, visual symbols, and layered explanations that make data practices understandable even to younger audiences. In addition, dark patterns, i.e., interface designs that manipulate, pressure, or deceive children into sharing personal data or accepting personalized advertising, should be explicitly prohibited under Article 25 of the Digital Services Act. Particular attention should be paid to exploitative design techniques such as autoplay features, fake countdowns, or misleading consent buttons. In addition, platforms should provide non-personalized recommendation modes, allowing minors to access and explore cultural content without being subject to behavioral profiling or commercial targeting. Finally, independent control and oversight mechanisms are essential. Public institutions and regulatory bodies must be equipped with the necessary authority and resources to assess the functioning of algorithms, identify harmful or discriminatory practices, and ensure compliance with the rules in the best interests of the child.

In the end, protecting children from profiling and targeted advertising needs a big shift from consent-based protection models to preventive ones. Children's rights should be built into the system through regulatory frameworks based on built-in fairness and privacy by default that limit data exploitation and help children develop autonomy. Moreover, advertising (particularly within hybrid entertainment contexts)

ought to be governed not solely as a commercial activity but as a significant vector of influence, necessitating the adoption of clear, proportionate, and enforceable safeguards in all situations involving children.

To operationalise these findings and ensure that children's cinematic experience in the digital environment aligns with international and EU commitments, a coherent set of legal and policy measures emerges from this analysis.

First, streaming services should be required to adopt privacy- and safety-by-design models, ensuring default child-appropriate settings, clear user-interfaces, and transparent content-curation practices. Second, platform accountability must be strengthened through mandatory risk-assessments relating to minors, expanded auditing obligations, and the introduction of independent oversight mechanisms able to scrutinise algorithmic recommendation systems and advertising models. Third, a gradual alignment between the AVMSD and the DSA should be pursued, extending key duties—such as the prohibition of profiling and dark patterns for minors—to VoD streaming services, thereby remedying the current regulatory asymmetry. Complementarily, standards for child-specific interfaces and parental tools should be harmonised at EU level, including mandatory child profiles, exit-protection functions, and granular content controls that respect children's evolving capacities. Finally, policy efforts should prioritise media-literacy programmes and participatory governance structures, empowering children, parents, and educators to actively contribute to shaping safer, fairer, and more culturally diverse digital environments.

Taken together, these measures reinforce a multilayered model of protection and empowerment, where platform design, regulatory oversight, and educational initiatives work in concert to safeguard minors' rights while fostering their active participation in cultural life.