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YES, WE CAN…AND WE MUST! CHANGING THE NARRATIVE OF CHILDREN'S RIGHTS PROTECTION IN THE DIGITAL ENVIRONMENT THROUGH A CHILD-CENTERED APPROACH. THE LESSON FROM THE U.K. CHILDREN'S CODE

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Abstract

In the face of empirical data confirming that children and young people spend a great deal of time online, today's reality delivers an equally alarming result: the Internet was not conceived and designed with the idea that users could also be minors. This represents a serious shortcoming that could, however, be remedied where a genuinely child-centered approach is chosen, that is, an approach based on the founding principles of the UN Convention on the Rights of the Child (CRC): the best interests, the evolving capacities and the right to be heard. Together with the essential contribution and role played by family, institutions and stakeholders, the narrative on the protection of children online could take on a different and more appropriate direction, focusing on the fundamental dimension of the *promotion* of children's rights and their agency.

The UK Children's Code represents, in this regard, a concrete model to look at with extreme interest. Its circulation, influence and success – with different nuances - proves, in fact, that one of the key elements in this topic is represented by the *empowerment* – both of the single minor and of the collectivity – in order to maintain and preserve what makes and builds our identity: human dignity.

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Keywords

U.K. Children's Code – Empowerment – Convention on the Rights of the Child (CRC) – design discourse – Human Dignity

1. Introduction

Among the global challenges of our time, the protection of children in the digital environment represents one of the most urgent and complex tasks ever addressed in the present time, from a legal, social, economic and ethical point of view. According to recent data collected in research conducted by UNICEF, in fact, one-third of online users in Europe are under the age of 18 and numbers are destined to increase

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in the coming years, in consideration of the long-term effects resulting from the Covid-19 pandemic[1].

At the same time, it is a fact that the Internet "was not designed with kids in mind"[2]. The result is right in front of our eyes with countless new episodes where minors are daily victims of a distorted use of the web[3]. It should be noted, however, that in the last few years the awareness by the international institutions – in particular the European ones – and by the civil society as well, has increased evidently, leading to a series of initiatives launched to promote greater protection for minors and a better understanding of their rights[4]. In addition to representatives of institutions - national and international - a number of debaters were involved such as, among others,

[1] See, "Child rights and the 2030 Agenda for Sustainable Development in the context of the COVID-19 pandemic", in https://www.ohchr.org/sites/default/files/Documents/Issues/Children/ChildRights_2030Agenda.pdf.

[2] See, European Digital Rights, Age against the machine: the race to make online spaces age-appropriate, in https://edri.org/our-work/age-against-the-machine-the-race-to-make-online-spaces-age-appropriate/, September 4, 2024.

[3] See, National Society for the Prevention of Cruelty to Children (NSPCC), in collaboration with leading experts in academia on online child protection, published in November 2023, which outlines and exposes evidence on the risks and dangers present online for children and that emerged during the period 2017-2023 in the UK. The report focuses on the dissemination and use of child pornography as well as, more generally, the distorted use by platforms of the design features of websites frequented by children. Consider, among others, so-called dark patterns. The report can be found at https://learning.nspcc.org.uk/media/ezjg0pjb/online-risks-children-evidence-review-main-report.pdf; J. Bryce, S. Livingstone, J. Davidson, B. Hall, J. Smith, *Online risks to children: evidence review*, November 2023.

[4] Among the numerous ones, see EU Kids Online. This is an international research network whose goal is to improve the degree of knowledge and awareness among European children about opportunities, risks and safety in the digital environment. Through the use of a multidisciplinary approach, the project aims to map the online experience of children and parents, in constant dialogue with national and European policymakers and stakeholders. On this point, see D. Smahel, H. Machackova, G. Mascheroni, L. Dedkova, E. Staksrud, K. Ólafsson, S. Livingstone, U. Hasebrink, EU Kids Online 2020: Survey results from 19 countries. EU Kids Online, at https://www.lse.ac.uk/media-and-communications/research/research-projects/eu-kids-online/eu-kids-online-2020. Similarly, also in the European context, in May 2021 as part of the Better Internet for Kids initiative, a guide was published regarding best practices identified in some member states, Children's rights in the digital environment: moving from theory to practice, available at https://www.betterinternetforkids.eu/documents/167024/200055/Best-practice+guideline+-+Childrens+rights+in+the+digital+environment+-+May+2021++v2+FINAL+CC+BY.pdf/f947d4f9-4ec4-49ae-5e2e-b6e9402c5fa2?t=1624532196598. Most recently, on September 24, 2024, the United Nations approved the Global Digital Compact, in which fundamental rights are also reaffirmed in the digital dimension, with special attention given to children's rights. The overriding goal of the Global Digital Compact is to "strengthen legal and policy frameworks to protect the rights of the child in the digital space," in https://www.un.org/sites/un2.un.org/files/sotf-the-pact-for-the-future.pdf.

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organizations in defense of children, representatives of the academic world and, in part, also the digital industry (so-called stakeholders).

The core issue regarding the empowerment of children in the digital environment necessary implies a series of considerations about: parental responsibility, institutions' involvement, stakeholders' role and, mainly, the minors' voices.

While all these elements are specifically regulated in the Convention on the Rights of the Child (CRC) – which represents at present the most ratified international convention in the matter of children's rights and the legal framework of reference[5] – nevertheless, neither the international community and the others actors involved, seem to take the CRC into serious and concrete consideration when it comes to implement actual policies in favor of the minors' empowerment.

Moreover, the evident contrast between the law in the books and the law in action[6] - that is between the established rule and the operational rule[7] - is particularly sharp in the matter of the digital dimension. Even though the CRC Committee has clearly pointed out that children's rights fully apply also in the digital environment, resistances and oppositions of various nature make the goal of protecting and promoting children's rights very difficult to achieve[8].

This article explores the benefits of adopting a child-centered approach in addressing the topic here presented, through the concrete example of the U.K. Age –

[5] The Convention on the Rights of the Child (CRC) was approved by the United Nations General Assembly in New York on November 20, 1989, and entered into force on September 2, 1990. To date, it is the international document that has received the highest number of ratifications by states, with the sole exception of the United States of America.

[6] J.L. Halperin, *Law in books and law in action: the problem of legal change*, 64 Me. L. Rev. 2011, p. 45; R. Pound, *Law in books and law in action*, 44 Am. L. Rev. 1910, p. 12; D. Nelken, *Law in action or living law? Back to the beginning in sociology of law* 1, 42 Legal studies 1984, pp. 157-174.

[7] Comparative law makes extensive use of this methodological approach. See, P.G. Monateri, *Morfologia, Storia e Comparazione. La nascita dei "sistemi" e la modernità politica*, in *Diritto: storia e comparazione. Nuovi propositi per un binomio antico*, Frankfurt, 2018, 267-290; R. Scarciglia, *L'Oggetto Della Comparazione Giuridica (Objects and Legal Comparison)*, in R. Scarciglia (edited by), *Introduzione al diritto pubblico comparato*, Bologna, 1966, pp. 47-68; G. Ajani – B. Pasa – D. Francavilla. *Diritto comparato: lezioni e materiali,* Torino, 2018; A. Somma, *Giochi senza frontiere: Diritto comparato e tradizione giuridica*, 37:109 *Boletín mexicano de derecho comparado*, 2004, pp. 169-205.

[8] See, General Comment n. 25, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation, CRC/C/GC/25, 2 March, 2021, "Children's rights in relation to the digital environment".

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Appropriate Design Code, better known as the U.K. Children's Code[9]. The paper analyses the structure of the Code showing its strict connection with the CRC, also underlining how the way the Code's drafting process was developed and defined, contributed to its success. It then advances the argument that adopting a child-centered perspective means fully respecting the roles and prerogatives of all the actors involved, ultimately conveying to the empowerment of the minors and, therefore, of the whole collectivity.

2. The U.K. Children's Code in the prism of the CRC and of the design discourse

The U.K. Children's Code is a code of conduct, consisting of 15 standards, mainly aimed at digital platforms offering online services targeting minors, which came into effect in September 2020 in the United Kingdom, drafted by the Information Commissioner's Office (ICO), the UK's independent data protection authority. The ICO is competent in "upholding information rights in the public interest, promoting openness by public bodies and data privacy for individuals and empowering people through information"[10].

The Children's Code is a statute and, therefore, in the system of the English legal sources, it is part of the so-called legislation, or "the law created by the competent organs of the state and condensed into precepts expressed in written formulas"[11] .

[9] See, the U.K. Age Appropriate Design Code, known as Children'd Code, enacted by the Information Commissioner Office in 2020, https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/introduction-to-the-childrens-code/. See, infra, par. 2.

[10] https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-plan/.

[11] G. Criscuoli, *Introduzione allo studio del diritto inglese: le fonti*, 2014, Torino, p. 411 ff. Although they are not as numerous as sources of judicial origin, as the A. notes, legislative sources also play a function "of primary importance, not only because of the original normative content they can have, but especially because of the sometimes decisive impact they can have on the life of the normative principles of case law." On the role statutes have occupied and still occupy in the hierarchy of English sources, see also, among others, T. Plucknett, *A Concise History of the Common Law*, 5th ed., Boston, 1956; M.S. Arnolds, *Statutes as Judgements: The Natural Law Theory of Parliamentary Activity in Medieval England*, 126 U. Pa. L. Rev., 1977, p. 329; C.K. Allen, *Law in the Making*, 7th ed., Oxford, 1964: U. Mattei. E. Ariano, *The common law model*, Turin, 2018, p. 233 ff.

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With specific reference to the expression 'code,' a clarification should be made: indeed, this is not the same concept as the 'code' typical of civil law systems. As it is well known, in fact, there is no use in English law of the code in the same way as a general system of norms. However, just as in Italy not all law is codified, even in England some specific issues have been the object of a specific regulation, such as in the case of the UK Age-Appropriate Design Code[12].

The Children's Code, therefore, will work as a reference for the courts - as, indeed, specified by the Code itself in the Executive Summary - when it comes to the protection and promotion of the rights of the child online, in a position, however, that is interstitial and of specialty with respect to common law in general.

As legal scholars remarked, "Despite the enormous amount of legislation produced, the most important part of our law remains common law [...]. Statutes are nothing more than addenda and errata to the book of common law and would have no meaning except in reference to common law [...]"[13].

The Code is aimed at all companies offering online services (information society services - ISS) to which, potentially, minors could also have access (likely to be accessed), such as video games, entertainment applications, smart toys, etc. As expressly stated, the ultimate goal is to ensure protection for under-age users through proper design of the systems underlying the services offered and appropriate use of the data entered and circulating on the network.

[12] More generally, this can be traced to that activity of collection and arrangement which, technically, is called consolidation. On the distinction between codification and consolidation, see G. Criscuoli, cit., p. 16 ss., who points out, among the most typical aspects of the difference between these two techniques, that whereby "consolidation does not affect the binding value of judgments issued prior to the act of consolidation, as opposed to codification, which, on the other hand, eliminates the binding effect to judgments related to reformed rules."

[13] W. Geldart, *Elements of English Law*, 1975, 8o ed., p.2. Geldart's words are also mentioned by A. Guarneri, *Lineamenti di diritto comparato*, 2022, p. 348. F. Pollock wrote «The best and most rational portion of English law is in the judge made law», *The Law Quarterly Review*, 1893, p. 106. On the historical relationship between common law and statutes, see also, C.K. Allen, *Law in the Making*, 7th ed., Oxford, 1964, *passim*, and more recently, A. Miranda, *Smoke gets in Euro-eyes: fusione e fissione del diritto comunitario*, in Liber Amicorum Luigi Moccia, edited by E. Calzolaio, R. Torino, L. Vagni, Roma TrE press, Roma, 2021, p. 389 ss.

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More generally, the Code stems from the need to protect minors *within* the digital dimension, and not, instead, from the need to prevent them *from* accessing it[14].

As previously mentioned, it consists of 15 standards, which are not merely technical requirements, but parameters to be used to design an adequate protection of the minors' data. The standards are: best interests, data protection impact assessments, age-appropriate application, transparency, detrimental use of data, policies and community standards, default settings, data minimization, data sharing, geo location, parental controls, profiling, nudge techniques (also known as dark patterns), connected toys and devices, online tools[15].

In order to understand how a standard works, it is worth to analyze, as an example, the one related to the default settings in order to realize how each standard is the result of the balance between the enhancement of the child, the parental responsibility, the (preventive) control of the company offering the service, and the (eventual) later control of the sanctioning authority.

Standard number 7 on default settings imposes an obligation on the company offering the service, to define and guarantee - from the beginning - the most restrictive level of privacy, unless it can be demonstrated that a different, lower-level approach is necessary in order to pursue the best interests of the minor.

In the case, for example, of a video game, minors will start using the product without the need for a change, on their part, to obtain a more restrictive level of privacy (so that their data will not, for example, be used by third parties) because the platform has already done so, in this respect. Rather, and with an entirely reversed perspective, minors may be given the opportunity to change the default choice, for a less restrictive level, provided that, as clarified in the Code itself, they are put in a position to exercise their rights consciously, and are provided with all the information they need to

[14]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/about-this-code/#code1.

[15] For the specific of each standard, 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/code-standards/.

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understand what the consequences of any change in these settings are, in terms of the use and circulation of their data[16].

As it becomes quite clear, there is a strong connection between the standards and the CRC, connection also underlined by the same Executive Summary of the Code, when it explicitly declares that the Code is "rooted in the United Nation Convention on the rights of the child". As a matter of fact, the entire structure of the Code responds to the logic that is proper to the Convention, namely that of the protection of the child as a *subject* fully entitled to rights, who is recognized, depending on the maturity and on the context, a progressive acquisition of autonomy in the decisions that affect him or her, according to the principle of the evolving capacities.

As it is well known, indeed, the CRC formally establishes the transition from a paternalistic conception, traditionally oriented towards the idea of the minor as an "object" of law, to a vision in which, on the contrary, as mentioned, the minor becomes a full "subject" of law. This change in perspective, specifically, is achieved, on the one hand, through the recognition of the individual traditional freedoms in terms of fundamental rights, granted to every human being by international treaties and here adapted to the specific situation of minors; on the other hand, through the introduction of a series of "new" rights closely linked to the peculiarities of the condition of minors, both within and outside the family unit.

Thus, with regard to the first aspect, the provisions of Articles 13 to 17 recognize the child's right to freedom of expression and thought, as well as freedom of religion, association, and the right to privacy. The Convention also emphasizes the right of access to information and the need for minors to have a variety of information

[16] "You can also use privacy settings to support the exercise of children's data protection rights (such as the rights to object to or restrict processing). And they can give children and parents confidence in their interactions with your online service, and help them explore the implications of allowing you to use their personal data in different ways". 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/7-default-settings/.

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sources at both the national and international levels, especially those aimed at promoting their physical and spiritual well-being[17].

The rights concerning the second aspect are more specific. They are aimed at protecting minors in certain situations (such as removal from their parents against their will, unless such removal is not in the best interests of the child)[18], to ensure the principle of parental responsibility in the education and upbringing of the child[19], and finally to protect the child from all forms of violence, throughout the period of custody by one or both parents or the legal representative[20].

The Convention on the Rights of the Child, therefore, has opted for a reversal of the traditional view of minors as individuals, incapable of providing for themselves and, consequently, perpetually dependent on the decisions of others, elevating minors from a context of immobility and subjugation to a dynamic context in which, on the contrary, they can become protagonists of their own choices.

It is indeed in this perspective that Appendix B of the Code concretely refers to the principle of the evolving capacities. As a matter of fact, it expressly provides for the so-called *developmental stages*, indications addressed to online operators, that have the precise intent of guiding companies that offer services to minors, in the application of the standards themselves, according to the age ranges of the users they address.

[17] Artt. 13, 14, 15, 16 and 17 of the CRC about: freedom of expression, freedom of thought and conscience, religion, privacy, access to information and material from a diversity of national and international sources.

[18] See, art. 9 (1): "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence".

[19] See, art. 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".

[20] Art. 20 (1): "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

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Specifically, the Code identifies five age ranges: the pre-literate and early literacy (up to 5 years of age); that corresponding to the primary school years (6 to 9 years of age); the so-called transition years (10 to 12 years of age); early adolescence (13 to 15 years of age); and the so-called approaching adulthood (16 to 17 years of age). These are, however, indicative ranges since, as it says, "Children are individuals, and age ranges are not a perfect guide to the interests, needs and evolving capacity of an individual child. However, you can use age ranges as a guide to skills and behaviors a child might be expected to display at each stage of their development"[21].

The Code's link to the Convention is further confirmed when it recalls firmly and explicitly the role of parents and family members in general, as well as the role of institutions.

As a matter of fact, the Code expressly states that the standards represent a support and help for parents to clarify and, possibly, solve a number of issues that arise whenever a child uses a digital tool such as, for example, in the so-called by default settings concerning privacy. Similarly, the standards also address the need for institutions to comply with the requirements of the Data Protection Act (DPA) of 2018[22], which in turn transposes the European GDPR, and in particular from Recital No. 38.

Furthermore, the Code reinforces the so-called participatory rights[23] - that characterize the entire Convention - in the digital dimension, where it recognizes

[21]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/3-age-appropriate-application/ .

[22] https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted. The Data Protection Act, which was finally approved on May 23, 2018, implements the European General Data Protection Regulation (GDPR). It is an updated version of the previous 1998 legislation, specifically drafted to address the challenges of the digital age. In particular, the new version focuses on the protection of so-called sensitive data and their greater protection, such as, among others, race, ethnic background, political opinions, religious beliefs, trade union membership, genetics, biometrics, health, sex life, or orientation.

[23] The use of the expression "participatory rights" can be ascribed to the Committee on the Rights of the Child, which has the task to monitor and promote the implementation of the Convention on the Rights of the Child in the legislation of member states. In particular, see Concluding observations Spain UN Doc. CRC/C/15/Add.28, 1995; Nicaragua UN Doc. CRC/C/15/Add.36, 1995; Germany U.N. Doc. CRC/C/15/Add.43, 1995, available on the official website of the United Nations. For a multidisciplinary analysis of participation rights, see A.B. Smith, *Interpreting and supporting participation rights: Contribution from socio-*

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freedom of expression, thought, and religion; of privacy; of association; of access to information in the mass media (of course in the terms in which the Code operates); of gaming and entertainment (again, dropped into digital reality); of protection from economic, sexual, or other exploitation, as well as pertaining to the web . The key elements of the relationship between the standards and the UN Convention are, therefore, to be found in the *evolving capacities* of the child, the central role of the family and the equally indispensable role of institutions and stakeholders[24].

In this perspective, another aspect which played a fundamental role in the success of the Code, pertains to the modalities chosen for the drafting of the Code itself. As a matter of fact, it is the result of a shared action between institutions, third sector organizations and representatives of the digital industry. It all started from the nongovernmental organization *5RightsFoundation*, founded by Baroness Beeban Keedron, a successful film producer and member of the House of Lords, in collaboration with academics and various stakeholders, who, in 2018, launched a strong campaign aimed at verifying, in concrete terms, the state of the art regarding the use, by minors, of digital tools and, at the same time, the (possible) measures taken by platforms for the access to the online contents by minors themselves.

The survey, part of an ongoing project, highlighted the real impact of the digital dimension on minors, particularly in the aftermath of the COVID 19 pandemic, under different profiles including, the relationships within the family unit, between the minors themselves inside and outside the school context, between the individual minor and the digital tool in relation to the use of social networks. The data collected shows a high level of datafication in the daily lives of children, and the substantial

cultural theory, in 10 The International Journal of Children's Rights, 2002, 1, 74. See, also E. Munro, *Empowering looked-after children*, in 6 Child and family social work, 2002, 1, 74. More recently, see

[24] M. Couzens, *Autonomy rights versus Parental Autonomy*, in AA.VV., The U.N. Children's Rights Convention: Theory meets Practice. Proceedings of the International Interdisciplinary Conference on Children's Rights, Intersentia, Oxford, 2007, pp. 420 ss. 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/about-this-code/.

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absence of measures aimed at effective protection in accordance with the principles set out in the UN Convention on the Rights of the Child[25].

These findings represented the starting point for undertaking intensive lobbying - by 5Rights, child protection associations and representatives of the major digital industries, vis-à-vis Parliament - which led to the goal of drafting and approving, the Code.

3. The impact of the Code: concrete results

The most immediate objection that could be made, and in fact is very often made, is that little or nothing has changed or will be able to change for minors accessing the net, despite the intentions and interventions put in place by the states or the international organizations. In this respect, it is useful to recall the report, published in May 2024 and compiled by 5Rights in collaboration with the London School of Economics (LSE) and the association Digital Futures for Children, entitled "Impact of regulation on children's digital lives," which analyzes the changes made by some digital platforms, mainly in Europe and U.K, in the period between 2017 and 2024, in the direction outlined by the Code[26].

The report is the result of an investigation that involved an initial phase of data collection, through requests made directly to the platforms to provide the data; a second phase of reprocessing, referring to both the type of change and the period in which it was made.

The report focuses on the UK and European context and specifically considers the impact that the UK Age Appropriate Design Code, in particular, and to a much lesser extent the Digital Services Act, have had in terms of protecting minors in relation to privacy, security, and data protection.

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[25] Research Report, Impact of regulation on children's digital lives, May 2024, https://eprints.lse.ac.uk/123522/1/Impact_of_regulation_on_children_DFC_Research_report_May_2024.pdf.

[26] Impact of regulation on children's digital lives, Research report, May 2024. V. https://eprints.lse.ac.uk/123522/1/Impact_of_regulation_on_children_DFC_Research_report_May_2024.pdf.

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It should also be noted that the document also considers a series of other non-EU regulatory measures; however, as highlighted in the report itself, the data show that the majority of changes made by platforms occurred following the approval of the UK Code and, to a lesser extent, the EU directive[27].

The most relevant changes seem to be concentrated in the 'by default' category, where there are the highest number of changes, made in 2021, to coincide with the Code's entry into force.

For example, Instagram (part of the Meta group) changed the initial setting of under-16 accounts from 'public' to 'private' as pre-defined; Google disabled, again as pre-defined, the application related to the history tracking feature.

Other changes affected, again in the by default category, the very management of the account on the platform: for example, Tik Tok disabled automatic notifications after 9 and 10 p.m. for minor users, and set 60 minutes per day as the maximum limit of video exposure for minors.

Changes are likewise recorded in the area of advertising, where, for example, Tik Tok provides a set of disclosures for users between 16 and 17 years old with regard to the operation of advertisement alerts, while it has disabled, by default, personalized alerts for all minor users.

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In terms of security, the Tik Tok platform also shows that it is among the most active. In fact, for users under the age of 16, the option to send private messages with stranger users has been disabled, by default, while Instagram places an alert -

[27] Ofcom's *Children and parents: Media use and attitudes report* (2023) (www. ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-and-parents-media-use-and-attitudes-report-2023); Pew Centre's *Teens, social media and technology 2023* (https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/); and YPulse's 'These are European Gen Z's top social media platforms' (www.ypulse.com/article/2023/06/13/ we-these-are-european-gen-zs-top-social-media-platforms).

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"suspicious behavior" - next to the account of adult users for whom there is unusual interaction activity with accounts of underage users.

Another example worth mentioning is concerning a British platform offering online games with 60 million users, called Poki.

In early 2023, an investigation conducted by the 5Rights Foundation revealed that, despite being accessed by millions of users in the UK, many of whom were under the age of six, the Poki platform continued to commit a series of violations: it tracked children's activities by default; it geolocated and monitored users without their consent; it shared children's data with third parties, often for "unspecified purposes"; it used 'nudge techniques' (dark patterns), manipulating children and inducing them to reduce their privacy settings. Children's profiles, their precise geolocation, and detailed information about their gaming practices and habits were shared directly with more than 300 external companies, advertising and marketing companies, analytics companies, and data brokers located in the United Kingdom, the United States, and China.

Following a formal communication sent by 5Rights in March 2023, and eight months of subsequent consultations, the platform radically revised the design of its system to comply with the Age Appropriate Design Code.

The changes made include: changing the default settings to ensure the highest level of privacy; limiting cookies; replacing profiling-based advertising with contextual ads; disabling the geolocation feature; and revising the privacy policy to make it more understandable and accessible. It is worth noting that the company has decided to implement these measures for *all users*, without distinction between adults and minors, as required by standard no. 3 on age-appropriate application.

While we are aware that a key role has also been played by investigations and, at times, sanctions imposed by the relevant national privacy authorities, nevertheless, the emerging data appear comforting and seem to confirm that the path indicated by the UK Code is appropriate.

A further observation should be made with regard to the fact that the examples given- although they constitute a huge step forward, rarely represent the rule and, above all,

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do not imply that all 15 standards are complied with and applied simultaneously by all the actors involved.

On this point, it should be remembered that one of the distinguishing traits of the Code, is precisely the fact that it has envisaged and constructed a mechanism that does not end with mere compliance with the standards by the companies, but provides for the active involvement, at the same time, of the child and the family, as well as, more generally, of the institutions. This ensures that all these actors contribute to its implementation, each for their own role and responsibility, so that the goal is achieved.

In this way, that much-feared "digital tsunami" Stefano Rodotà was talking about, is averted and, instead, a personal protection network is implemented, which, however, needs the involvement of all stakeholders[28] .

4. Imitation and circulation of the Code: does it work?

The affirmation of the UK Age-Appropriate Design Code in the United Kingdom has sparked particular interest also overseas, both in Europe and in North America. In fact, since 2021, there has been a significant spread of the British Code, along with scattered instances - mainly in Europe and the US - of imitation, prompting some brief considerations on the circulation, imitation, and reception of models.

Without any claim to delve into a topic that has been addressed by leading scholars[29], one wonders whether – in fact – the hypothesis of the English Code could fall within

[28] S. Rodotà, *Il Diritto di avere diritti*, Bari, 2014, p. 337, who underlines how data, particularly personal data, are "attratti nell'orbita onnivora del sistema delle imprese e degli organismi di sicurezza".

[29] A. Watson, *Legal transplants: an approach to comparative law*, Edinburgh, 1974; Id., *Law and legal change*, 38 Camb. L. J., 1978, p. 313.; Id., *TwoTier Law, an approach to law making*, Int. & Comp. L. Q., 1978, p. 552; Id., *Legal change: sources of law and legal culture*, 131 Un. of Pennsylvania L. Rev., 1983, p. 1121. On some critics to Alan Watson's work, see O. Kahn-Freund, *Book Review, Legal Transplants*, 91 L.Q.R., 1975, p. 292; W. Twining, *Diffusion of law: a global perspective*, Journal of Legal Pluralism, 2004, p. 49; Id., *General jurisprudence: understanding law from a global perspective*, London, 2009; P.G. Monateri, *The 'Weak Law': Contaminations and Legal Cultures (Borrowing of Legal and Political Forms*), 2008, on line https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1300298. On formants and circulation of models, R. Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, I, *The American Journal of Comparative Law,* 1991, pp. 39, e 34 and II, p. 343; R. Sacco, A. Gambaro, *Sistemi Giuridici Comparati*, Torino, 1996, 4; R. Sacco, Circolazione e mutazione dei modelli giuridici, Digesto civ., II, Utet, Torino, 365.

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the phenomenon whereby, in sectors that present very similar issues and problems to be resolved. The acquisition of models already tested in other contexts would facilitate a 'virtuous' process of reforms[30] and, in a certain way, could convince national and international actors to adopt such similar models[31]; thus also achieve a certain level of 'spontaneous harmonization' of protection standards and fundamental principles[32], obviously on the condition that the phenomenon is framed taking into account the historical and evolutionary differences and the context of the individual systems and, therefore, their legal traditions.

As it has been observed, in fact, '*the circulation and imitation of the model does not depend so much on the intrinsic qualities of the legal system or the model being imitated, but rather on the strategies and problems of the system that is imitating*'[33].

In this regard, the drafting of the English Code has certainly helped to rekindle the interest of the international community and, consequently, of national legislators, on the matter of child protection in the digital world, offering a new perspective to address the issue, considering, on the one hand, the concrete profile that characterizes

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On the dialogue between Sacco and Watson, see S. Ferreri, *Assonanze transoceaniche. Tendenze a confronto*, in 1, Quadrimestre, rivista di diritto privato, 1993, p. 179; U. Mattei, *Why the wind changed. Intellectual leadership in western law*, 42, Am. J. Comp. Law, 1994, p. 195; A. Watson, *From legal transplants to legal formants*, 43 *American Law Journal of Comparative Law*, 1995, 3, 469; P.G. Monateri, *Black Gaius*, 51 *Hastings L.J.*, 2000, p. 510; M. Graziadei, *Comparative Law, Transplants, and Receptions*, in M. Reimann e R. Zimmermann (edited by), The Oxford Handbook of Comparative Law, 2. ed., Oxford, 2019, p. 442 ss; AA.VV., *Esperienze giuridiche in dialogo. Il ruolo della comparazione*, M. Graziadei and A. Somma (eds), Roma, 2024, passim.

[30] A. Dondi, *Comparazione oggi. Brevi (e molto limitate) impressioni dal côté processuale*, in A. Somma, V. Zeno-Zencovich (edited by), Comparazione e diritto positivo. Un dialogo tra saperi giuridici, Roma, 2020, p. 333 ss.

[31] M. Graziadei, *Legal Transplants and the Frontiers of Legal Knowledge*, in Theoretical Inquiries in Law, 2009, (10) 2, p. 693. See, also, in the matter of environmental protection, B. Pozzo, *Modelli notevoli e circolazione dei modelli giuridici tra in campo ambientale: tra imitazione e innovazione*, in Studi in Onore di Antonio Gambaro. Un giurista di successo, Milano, 2017, p. 351.

[32] G. Benacchio, *Diritto privato della Unione Europea*, Milano, 2016, p. 131 ss, regarding the phenomenon of the circulation of rules and legal models in Europe. Specifically in the European legal context, the Author underlines that this analysis represents a very useful tool in order to understand the role exercised by the so called 'competition among models' in the legislative process. See, also, A. Plaia, (edited by), *La competizione tra ordinamenti giuridici. Mutuo riconoscimento e scelta della norma più favorevole nello spazio giuridico europeo*, Milano, 2007; A. Zoppini, *La concorrenza tra ordinamenti giuridici*, Roma, 2004.

[33] A. Miranda, *Trapianti giuridici, circolazione dei modelli e persistenza della norma: l'insegnamento di Alan Watson*, in A. Miranda, *Diritto e tradizione. Circolazione, decodificazione e persistenza delle norme giuridiche*, Palermo, 2004, p.17.

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the standards and, on the other, the involvement of the many actors directly affected by this issue. If we look at what has happened since the Code was issued in the United Kingdom, we can see a series of related or influenced initiatives, such as the approval of similar Codes in the state of California and other US states, as well as in the Netherlands, the publication of the UN General Comment n. 25 specifically referring to the rights of children in the digital dimension – directly inspired by the English Code – together with similar initiatives by the EU institutions on the subject.

On the other hand, despite the general agreement on the rationale and intentions of the original English model, an overview of these initiatives also reveals a series of differences and difficulties related, among other things, to environmental, political, and cultural factors which, to varying degrees, affect the reception of the Code model.

It is the case of the California Age-Appropriate Design Code (CAADC), approved on September 15th 2022 by the state Assembly. The CAADC is inspired by the UK Age-Appropriate Design Code and is primarily aimed at all companies that offer online services that are likely to be accessed and used by minors.

This is the first piece of legislation in the United States that is directly inspired by the *by design* approach; it shares the general structure of the UK Children's Code, from which it borrows the indication of the standards in a similar way, but at the same time differs from it in some respects.

The analysis of the Californian legislation must necessarily take into account two areas of investigation: the first with respect to the federal legislation on the privacy of minors currently in force; the second with respect to the British Code. Both are significant in order to fully understand the main characteristics of the CAADC.

Regarding the federal legislation, the Children's Online Privacy Protection Act (COPPA) which regulates the protection of the privacy of minors, has been recently amended after an intense debate in Parliament, aimed at strengthening the protection of minors in relation to the introduction of new technologies. In this regard, a number of proposals for reforming COPPA – known and ultimately conveyed in the amendments known as COPPA 2.0 – have been put forward, starting in 2023, which

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aim to extend the protection of minors online, particularly concerning the processing of their data by digital platforms[34].

At the same time, another bill has been introduced (but still not passed into legislation) — the Kids Online Safety Act (KOSA) — which requires digital platforms to exercise a so-called duty of care, i.e., the obligation to implement a series of reasonable measures, mainly in terms of protecting minor users from the now very frequent phenomenon of cyberbullying. Moreover, it has to be observed that at the moment this paper is written, a comprehensive package has been introduced to the Senate – namely KOSPA (Kids Online Safety and privacy Act)[35] which includes both KOSA and COPPA 2.0. The bill, tough, languished for quite some time in the House of Representatives, due to the reservations of the Republican party and has not been approved yet. The main debate being around the notion of 'duty of care' and the recipients of this duty, also in consideration of the numerous 'interventions' by the actual administration aimed – *de facto* – at diminishing the duty of the (big tech) companies to protect minors online.

In the meantime, it is worth noting that, with regard to the subjective scope of application, while the text of the federal legislation previously in force (COPPA) considered only persons under the age of 13 to be minors, a limit also provided for in the European General Data Protection Regulation (GDPR), the new COPPA 2.0 (but not the KOSA proposal neither the KOSPA) adopts – albeit limited to the case of targeted advertising – a broader concept of a minor, even if not yet in line with that provided for by the UN Convention and the English Children's Code – *i.e.*, an individual under the age of 18 – which in turn is also provided for by the text of the California Code.

The new COPPA 2.0 amendments, in fact, sets the limit at 16 years of age, with a view to also including the adolescent age group that was previously excluded. Moreover, the new name of COPPA 2.0, namely the Children and Teens' Online Privacy Protection Act, would seem to confirm this choice.

[34] On June 23, 2025 the amendments went into effect, while the Federal Trade Commission finalised them in April 2025. The compliance deadline for companies is April, 2026. See the FTC official web page.

[35] See, https://www.congress.gov/bill/118th-congress/senate-bill/2073.

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Another important issue that will have to be addressed, and which is likely to be the subject of heated debate, especially between more conservative and more progressive groups, is that of parental consent.

While the federal texts both of COPPA and of COPPA 2.0 are based precisely on the latter, *i.e.*, the necessary authorization of parents for minors to use online services (with poor results, however), the Californian text, adopting the rationale of its British counterpart, which in turn refers to the principles of the UN Convention on the Rights of the Child, embraces a different idea of 'protection', aiming at pursuing the best interests of minors through a series of requirements intended primarily for commercial operators and only secondarily for family members, with a view to gradually empowering all those involved.

With respect to the analysis of the British Code, it is necessary to reflect on the general structure of the two codes of conduct and, in particular, on the premise from which each of them originates and develops.

While the British Code, as previously mentioned, is based on and refers to the principles and rights contained in the UN Convention on the Rights of the Child (it is rooted in the UN Convention), the CAADC is a separate piece of legislation that, in general terms, refers to the best interests of the child. The CAADC obviously lacks any link to the Convention, given that the United States is the only country in the world that has never ratified it. This shortcoming gives rise to two considerations.

On the one hand, it indicates that the CAADC lacks the foundation and set of principles which, when interpreted as a whole, represent some of the key elements for a new and different conception of the child, which underpins the Convention itself and which play an important role, as seen in the English case, in the implementation of the standards contained in the Code. The notion of best interests, as regulated by Article 3 of the Convention, is, in fact, a tool that must be coordinated with the rest of the provisions in order to affirm the other principles, including that of evolving capacities.

On the other hand, it prompts reflection on the interpretation of the concept of best interest in the US legal framework. In this regard, it should be noted that this principle became established in American family law during the 19th century, in the context of

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custody cases in divorces. Outside its original scope — in which it has been repeatedly criticized for its vagueness — it has found effective recognition in state legislation, especially in matters of adoption, but not the same clarity in the jurisprudence of the Supreme Court, which has shown a fluctuating orientation on several occasions[36].

In fact, in 2015, in the well-known case of *Hobergefell v. Hodges*[37], the judges recognized the right to marriage for same-sex couples, also in consideration of the need to safeguard the best interests of minors within the family unit, at the same time, in a series of other cases, the Court gave priority to the concrete assessment of the best interests of the child over other absolute legal presumptions, *i.e.*, it considered that the best interests must in any case be weighed and considered in relation to other responsibilities, primarily those of parents and public authorities[38].

In this respect, it is once again necessary to 'read' the issue taking into account the context in which it arises and, certainly, in the case of the United States, the constitutional balance between federal and state power in matters of family relations has a considerable impact on the limits and connotations of this principle.

In relation to the concept of 'best interests', it is therefore appropriate to refer to the report drawn up by the 5Rights Foundation (the association that promoted the UK Children's Code) and the London School of Economics, published in March 2024[39],

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[36] L.M. Kohn, *Tracing the foundations of the of the best interests of the child standard in American jurisprudence*, in *Journal of Law and Family Studies*, 2008, p. 358 ss.; C. Breen, *The Standard of the best interests of the child: a western tradition in international and comparative law*, The Hague, 2002.

[37] *Hobergefell v. Hodges*, 35 S.Ct. 2584 (2015) in https://supreme.justia.com/cases/federal/us/576/14-556/case.pdf.

[38] *Flores v. Reno*, 507 US 292 (1993), in https://supreme.justia.com/ cases/federal/us/507/292/case.pdf, in the matter of foreign unaccompanied minors, it was stated that "a venerable phrase familiar from divorce proceedings», is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion – much less the sole *constitutional* criterion – for other, less narrowly channeled judgments involving children, where their interests conflict in varying degrees with the interests of others. […] So long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves. […] The best interest of the child is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities».

[39] S. Livingstone, N. Cantwell, D. Özkul, G. Shekhawat, B. Kidron, *The best interest of the child in the digital environment*, March 2024, in https://www.digital-futures-for-children.net/best-interests.

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entitled 'The best interests of the child in the digital environment', which clarifies the scope and meaning of this expression, which is often abused and misused by companies offering online services to minors.

The research, in fact, reiterates that the continuous development of legislation and regulations on the protection of children's rights, both nationally and internationally, must be matched by equal caution and attention on the part of states and commercial operators in the use of the 'language' of children's rights. In other words, it is not enough to include the expression 'best interests' in order to have fulfilled and effectively followed through on the pursuit of the best interests and protection of the child. The reference to best interests, as well as to other rights, implies, as has been expressly and repeatedly stated, a reference to the entire Convention and, therefore, to the principles on which it is based.

A key passage concerns the United States: the report acknowledges that most tech companies are based in this country, the only one that has not ratified the UN Convention on the Rights of the Child.

However, the US remains a signatory to the Convention, which means that it is still obliged not to act in contravention of it. This becomes particularly important when one considers that the digital services offered by US companies have an impact on the lives of minors all over the world, or almost all over the world.

In this sense, the CAADC seems to have taken on board the message contained in the report, effectively placing itself at the forefront of both the federal Children's Online Privacy Protection Act (COPPA and the amendments) and the failure of the U.S. to ratify the CRC. The CAADC has clearly chosen the British Code as its model: the structure, the identification of standards, and even the name of the code of conduct are direct imitations. Curiously, however, the CAADC refers at the outset to the UN Convention in relation to the need to protect minors in all aspects of their lives.

However, as has been repeatedly pointed out, the federal government's failure to transpose the directive means that for this legal system, of reference to a context – that in which the Convention matured and developed – which represents a more complex and composite reality, made up of legal, cultural, and social elements, of a

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sensitivity built up over time by the doctrine and the jurisprudence, which have evolved and cannot be replaced simply by inserting the expression 'best interests.' One need only think of the General Comments drafted annually by the UN, which have, from the outset, addressed issues that are crucial to the affirmation of children's rights.

This overview would seem to reveal a tension between the concept of best interest, which has become established over the years, particularly in the case law of the Supreme Court, and that expressed in both the Californian Code and the English Code. In the case of the Code approved in California, in particular, there is a clear need and, at the same time, a difficulty for the state legislator to reconcile the British view, which considers this principle as 'paramount', in line with the UN Convention, with the more 'relativized' view expressed by the courts, as mentioned above. The outcome is not yet clear, as it will be the judges who determine its limits and content.

Other differences between the English Code and the CAADC concern the processing of children's data and the data protection impact assessment, which in the case of the English Code are influenced by the requirements of the GDPR, in the matter of possible harms to rights and freedoms, while in the Californian text are generally referred to as 'material detrimental'.

In light of the above, when comparing the federal legislation on the one hand and the English model on the other, from a more general point of view, it is clear that, unlike the English Code, the Californian text is part of a regulatory and institutional context which seems more complex in certain respects. This is not only because of the presence of the federal level of legislation on the subject but also, and above all, because of the difficulty of balancing the protection of minors with other constitutionally protected freedoms. In particular, as far as we are concerned here, freedom of expression, which, as is well known, is protected at the constitutional level by the First Amendment, emerges in this specific case in its 'multi-directional' nature. The difficulty lies precisely in finding a balance between freedom of expression and self-determination of minors, freedom of expression of platforms and their users, and the duty of control and possible intervention by public authorities.

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In the specific case of the California Age-Appropriate Design Code, it should be noted that in September 2023, the Federal District Court for the Northern District of California issued a preliminary injunction suspending the Code, as it was deemed contrary to and detrimental to the First Amendment. In turn, the California Attorney General filed an appeal arguing that the content of the law concerns the protection of minors online and does not infringe on freedom of expression or, even less so, free enterprise. Meanwhile, academics, politicians, representatives of child protection organizations, and attorneys general (bipartisan) have filed a document in support of the CAADC text (amicus brief)[40], taking a clear stance in favor of the Code. To date, the decision of the 9th Circuit is pending.

A detail that should not be overlooked in this case is that the district court's injunction was issued in response to an appeal filed by Net Choice[41], a national association that brings together some of the most influential online platforms. To get an idea of the organizations represented, among them are TikTok, Amazon, Meta, Yahoo, Google, and Airbnb, to name just the best known. As is easy to imagine, the interests protected and pursued by Net Choice are certainly different (if not in conflict) with those set out in the CAADC.

In this regard, there is another significant difference with the English Code. As has been mentioned before, the latter is the result of a shared process – from the outset and throughout the drafting process itself – between numerous and diverse stakeholders, including representatives of the digital industry. This does not mean that the conflicts in terms of interests pursued have been completely resolved, but certainly the involvement of all stakeholders from the outset has made it possible to better understand their respective positions and demands.

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[40] V. Amicus Brief, https://accountabletech.org/statements/broad-group-of-advocates-and-experts-file-amicus-briefs-countering-big-techs-attack-on-landmark-california-law-protecting-kids-online/?cn-reloaded=1. See, also, the remarks by Daniel Solove, one of the leading experts in privacy, https:// teachprivacy.com/first-amendment-expansionism-and-californias-age-appropriate-design-code/.

[41] *NetChoice, LLC, v. Rob Bonta*, Attorney General of the State of California. Order Granting motion for preliminary injunction. V. https://storage.courtlistener.com/recap/gov.uscourts.cand.406140/gov.uscourts.cand.406140.74.0.pdf#page=2.

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In this respect, the provisions of the Children's Advisory Panel (CAP)[42] and periodic monitoring by the UK Information Commissioner's Office have proved particularly appropriate, as they help to create a more collaborative climate and, above all, ensure that the actual recipients of the regulation are involved in the regulatory process. Perhaps a similar strategy could have been implemented in the case of the Californian legislation.

However, the setback experienced by the CAADC has not discouraged other states, which, following California's example, are approving very similar codes. Following California's legislative initiative, other state assemblies have begun a similar process, approving texts more or less inspired by the California Age-Appropriate Design Code. Each of these has highlighted different aspects in their final or pending versions. An emblematic example of what has been said previously, is offered by the state of Utah, where the legislator's choice is characterized by an approach that is opposite to the British and Californian ones.

In fact, the state government has opted for so-called 'parental consent': this means that minors under the age of 18 must obtain parental authorization to use any social media. The initiative has raised more than one concern: firstly, because there is already federal legislation (the Children's Online Privacy Protection Act – COPPA) which, as mentioned, requires parental consent, and which has not produced the desired effects (given the amendments); secondly, because this choice confirms the evident desire to move away from the English Code model, which, as mentioned, is based on the idea of gradually recognizing a growing level of autonomy for minors. In this way, any decision is left to the parents, effectively nullifying the original idea behind the Code.

From this point of view, the distinctly conservative cultural tradition that characterizes this state's approach to family law, including parent-child relationships, probably plays a role. As is well known, the state of Utah is traditionally linked to the religious

[42] Starting with the first draft of the UK Children's Code drawn up in 2019, the Children's Advisory Panel (CAP) was established to coordinate the various 'souls' of the Code: minors, families, non-governmental organizations, and representatives of the digital industry. For example, UKIE, the association that brings together online game providers, is part of this panel. By holding regular sessions, the aim is to create and maintain genuine engagement and ensure that the Code is a successful outcome. See https://ico.org.uk/about-the-ico/what-we-do/background-to-the-children-s-code/children-s-advisory-panel-cap/.

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doctrine of the Mormon group, a clear example of the hegemony of religious tradition as a model of social organization[43].

In the case of Vermont and Minnesota, instead, the choice has been to align, generally, to the CAADC and, therefore, to the UK Code[44].

One consideration that can be drawn from the above is that the English Code model is certainly circulating in the United States, albeit with different methods, nuances, and applications. The failure of the US to ratify the UN Convention plays a role in these different modes of reception, but it must be said that, in the case of the North American states, the framework of approved regulations shows a strong dependence on cultural factors, traditions, and, in particular, the role (*rectius* influence) of various stakeholders, as the Net Choice case has clearly highlighted.

While this paper does not focus specifically on the international and the European initiatives on this matter, that require an investigation *ad hoc*, it is of course worth remembering that the UK Code's influence is clearly evident in the General Comment n. 25 issued by the CRC Committee. Without going into details, it is very well known that this Comment is the result of a series of consultations among different groups of actors among which the 5Rights Foundation. Useless to say that the vision embedded by this association played a significant role in the drafting process of the Comment[45].

Among the EU initiatives, the BIK+ strategy and of course the project for a European Age-Appropriate Design Code, represent an important step by EU institutions in the desired direction, as already seen in the British and US experiences, of protecting and promoting children's rights in the digital world.

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[43] The reference here is to the very well-known classification in legal families by U. Mattei and P. Monateri, *Introduzione breve al diritto comparato*, Padova, 1997.

[44] V. https://mgaleg.maryland.gov/2024RS/bills/hb/hb0603T.pdf; https://www.house.mn.gov/comm/docs/2hIcmA4QN0K9KVMGRvzBpw.pdf.

[45] «The Comment is a culmination of three years of work during which 5Rights Foundation, supported the Committee on the Rights of the Child», in https://5rightsfoundation.com/our-work/childrens-rights/uncrc-general-comment.html.

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Presumably, the EU Code should be supported by the rules contained in the GDPR and the principles contained in the UN Convention. Given that all EU member states have ratified it, this should – hopefully – be the legal framework of reference.

On the other hand, it should also be remembered that, in the meantime, there have been numerous legislative interventions by EU institutions in the field of digital technology (in the broad sense of the term), from the best-known regulation on artificial intelligence to the approval of the Digital Services Act[46]. All these pay particular attention to the more general protection of fundamental individual rights, with references to the European Charter of Rights, and this is a feature that has generally characterized the process of discussion, drafting, and approval in this specific area[47].

Therefore, the future EU Code of conduct should have the task of providing concrete protection (in the sense intended by the Convention) and, at the same time, promoting the rights of minors online, bringing as much uniformity as possible to a framework which, although rich in valuable initiatives, still appears to be very fragmented and uneven overall. It is worth remembering that The Netherlands has already approved, in 2021, the *Code voor Kinderrechten*[48], expressly referring to the British Children's Code. The Dutch text contains guidelines for companies offering online services that are also accessible to minors, which refer to the principles of the UN Convention and require the adoption of a series of behaviors inspired by the by design approach.

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[46] https://data.consilium.europa.eu/doc/document/PE- 49-2023-INIT/it/pdf, par. 8, 56 and 101.

[47] This is not the place to examine the stages that led to the approval of the final text of the regulation on artificial intelligence, but it should be noted that many of the difficulties encountered concerned precisely the relationship between fundamental rights and artificial intelligence and the limits – if any – that should be set. There have been many recent contributions published on the subject. I will limit myself to citing the reflections of V. Zeno-Zenchovic, *Artificial intelligence, natural stupidity and other legal idiocies*, *MediaLaws*, 2024, in https://www.medialaws.eu/rivista/artificial-intelligence-natural-stupidity-and-other-legal-idiocies/, who reminds us, if we had ever forgotten, that, regardless of all possible considerations about which approach is best for regulating technology, it is always and only human beings who enter data into the machine and decide what data to enter.

[48] https://codevoorkinderrechten.nl/wp-content/uploads/2021/03/20210311_ Code-voor-Kinderrechten_v1-1.pdf.

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More generally, the success of a (possible) European Age-Appropriate Design Code seems to be linked to the ability of EU institutions to create - as it has been the case in the UK since the drafting process - the optimal conditions for the various stakeholders to participate in its drafting. From this perspective, a bottom-up approach, as was the case with the Common Core project[49], would be preferable.

This approach, indeed, aims to identify possible common responses and to exclude, instead, intervention imposed from above, could in fact prove to be more suitable for interpreting the needs of the community context.

Otherwise, the project would remain a dead letter or, worse still, could be relegated - like other initiatives - to a purely stylistic-doctrinal exercise.

[49] Originally, as is well known, the *Common Core* project was inspired by an idea of Rudolph Schlesinger, who conducted research on contracts at Cornell University in 1960. V.R. Schlesinger, *Formation of Contracts: a Study of the Common Core of Legal Systems,* New York, 1969, *passim*. The Common Core of European Private Law initiative, led by professors Mauro Bussani and Ugo Mattei as editors of the project, draws inspiration from this research and, in particular, from the methodology on which it is based: the so-called factual approach. The two editors combine this with Rodolfo Sacco's theory of formants, thus arriving at the so-called 'common core method', whose purpose is 'to unearth the common core of the bulk of European Private Law [...] The search is for what is different and what is already common behind the various private laws of European Union Member States [...] Such a common core is to be revealed in order to obtain at least the main lines of one reliable geographical map of the law of Europe." On this point, see M. Bussani, U. Mattei, The Common Core Approach to European Private Law, in 3 Columbia Journal of European Law, 1997-1998, p. 339; M. Bussani, U. Mattei, Preface: the Context, in Bussani and Mattei, The Common Core of European Private Law, 2002, pp. 1–8. The Common Core project has developed along multiple lines, including that relating to the area of family law. The operational unit that carried out the research in this area applied this methodology to some of the most relevant aspects of family law, such as those relating to the division of assets between partners; *support rights and duties; administration and disposition of joint estate; dissolution of joint estate; dissolution of the relationship; family house.* The questionnaires submitted to the national rapporteurs, in fact, drawing directly on Schlesinger's project, are in no way intended to favor one system over another or, worse still, to hide the differences between the various legal systems, but rather to "map eventual common practical solutions, despite the letter of a civil code or statute's rule could provide differently." In the Common Core perspective, the scenario for the transnational lawyer, who approaches family law of different European legal systems, is that of a traveler compelled to use a number of different State's maps, each one containing (quite often) misleading information. The CC method tries to correct those misleading pieces of information, not forcing the actual diverse reality of the law within one single map to attain uniformity, but presenting a complex situation in a reliable way. A. Pera, *Searching for a common core of family law in Europe*, 1 *Opinio Juris in Comparatione*, 2018, p. 58 ff.

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4. A child centered approach: preserving human dignity as a paramount principle

This brief analysis reveals a fact worth considering: a system where the responsibility for the use of a service or product likely to be accessed by minors is shared between the minors themselves, the family, the institutions, and the company offering the service, it is a system that guarantees not only the protection of minors, but, as we have seen with the Code standards, the promotion of their rights, since it fits fully into the concept of the evolving capacities contained in the CRC. Therefore, this system provides the minor with the tools to deal with the digital dimension, in a conscious and healthy way, in order to benefit from it as much as possible. The premise, let's remember, is to *encourage* aware use, not prohibit it.

From this perspective, therefore, precisely the empowerment we mentioned at the beginning is realized. This approach, authentically based on the principles of the CRC, clearly expresses another fundamental choice: the commitment to protect the *dignity* of the person, a prerequisite for any legal system, even more so considering vulnerable subjects as minors. As a matter of fact, the lesson we can draw from the UK Code is that a child-centered approach can be realized only if, at the same time, we take into consideration the value of human dignity.

This concept, as a matter of fact, in the context of the so-called disruptive technologies, proves to be decisive in preserving the autonomy of the individuals who make up the family unit. As it has been highlighted, *dignity* becomes the guiding principle and the criterion in the relationships between parents and children, between the family and institutions, and even with stakeholders themselves. The protection of human dignity is pragmatically oriented shaping the relationship between the minor and the parents and the duality parental responsibility /control *versus* the self determination of the minor.

In the analysis carried out with reference to the English model, the principle of dignity, in its various forms, certainly represents a recurring, shared, and therefore paramount value. More than any other, dignity is capable of overcoming the undeniable differences between the legal systems, since it is, on closer inspection, a value common to the Western legal tradition and which, therefore, from the point of view of the circulation of models, could also facilitate the acceptance of similar solutions in a future perspective of spontaneous harmonization.

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Only doing so, we will truly protect the *person*, made of – as Stefano Rodotà reminded us of – a "corpo elettronico" and of a "corpo fisico": two faces of the same medal, complementary, but without the first prevailing on the other[50].

[50] S. Rodotà, cit., 2014.

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