

BOOK REVIEW**MINDING MINORS WANDERING THE WEB:
REGULATING ONLINE CHILD SAFETY**

Simone van der Hof, Bibi van den Berg and Bart Schermer (eds)

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One click of the link brings you to a new source of information. Typing queries in a search engine produces instant results. Mobile applications, social networking and gaming sites enable you to connect with an audience anytime and anywhere. The Internet and new communication services has its own intuitive logic – “information wants to be free” and “permissionless innovation”. The digital landscape has been inextricably interwoven into the everyday lives of children. Online child safety rules and norms are in collision with the values celebrated by Silicon Valley – “sharing is good”, “wisdom of the crowds”, and “visibility is authenticity”. While risks encountered by children in their daily lives are not new, the digital environment and new technologies modulate the way risks can impact their mental health and well-being. What is also new is the ease with which previous cultural constraints or physical barriers to minimising children’s exposure to illegal or inappropriate content (“content risks”) are being eroded, victimisation by peers (“conduct risks”) can be readily publicised to a wider audience with irreversibly and harmful consequences and adults can now contact children for sexual purposes (“contact risks”) without parental oversight.

There is more. As businesses seek to leverage the economic potential of children for their goods and services, privacy and marketing to children, the law is increasingly been regarded as lagging behind and failing to protect children’s privacy and their personal data. The question of how law and policy can be made more responsive is presently being considered by the House of Lords Communications Committee.¹ Anyone wishing to gain a better understanding of the critical regulatory and policy challenges will find in *Minding Minors Wandering the Web: Regulating Online Child Safety*, an impressive collection of contributions that confront the perennial *content*, *conduct* and *contact* risks that face children in the digital environment. This collection comprises five parts and begins with an opening chapter by Bibi van den Berg. She provides a concise overview of the subject area and expert summaries of each contribution.

Part I offers three perspectives. Sonia Livingstone and Brian O’Neill, in their chapter “Children’s Rights Online: Challenges, Dilemmas and Emerging Directions”, argue for a renewed effort by all governance bodies at the international and domestic levels to place children’s interests at the focal point of policymaking and for regulatory initiatives to be

¹ House of Lords Communications Committee, “Children and the Internet Inquiry”, available at <http://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/parliament-2015/children-and-the-internet/> (accessed 21 Aug 16).

underpinned by empirical evidence. Livingstone and O'Neill also identify practical problems that continue to "impede effective Internet governance" (p. 29). Conceptual, jurisdictional and technological challenges, they suggest, should be brought within the remit of a multi-stakeholder group with oversight to ensure transparency and accountability for policymaking (pp. 29-32). Adam Thierer urges caution in policy responses to technological risks and in particular, those encountered by children. The chapter, "A Framework for Responding to Online Safety Risks", can be regarded as an essay that argues for the pursuit of optimal responses to existing and emerging risks. Thierer makes a strong case for a "light touch" pro-innovation approach and points policymakers towards building into the governance framework, incentives for industry to put children's interests first, and awareness raising initiatives (pp. 56-63). Some might be sceptical. Concerns about corporate capture of online child safety rulemaking would probably be seen by many as requiring governments and policymakers to build into the regulatory framework a stronger sense of obligation towards children. Bibi van den Berg's chapter, "Colouring Inside the Lines: Using Technology to Regulate Children's Behaviour Online", reflects on the use of technology to enhance children's rights. The chapter sets out three examples where design of technological tools in spaces inhabited by children could be used to construct a space that anticipates risky behaviour and unexpected risks (pp. 74-81). Van den Berg does acknowledge, however, that technological solutions are not fool-proof, that not all children are vulnerable, and that many may have developed resilience and risk management strategies (pp. 81-83).

Both chapters in Part II focus on the assumptions that we tend to make about children's motivations and skill-sets when formulating online child safety policies. In "Safety by Literacy? Rethinking the Role of Digital Skills in Improving Online Safety", Nathalie Sonck and Jos de Haan highlight the considerable variations in actual skill levels among children. They draw on empirical evidence to argue that, paradoxically, children with considerable technical skills are pre-disposed to engaging in risky behaviour or at the very least, more likely to encounter online risks (p. 95-97). The conclusions reached in the chapter have direct policy implications in online child safety policymaking, notably, the need to frame skill levels and contexts and the importance of encouraging appropriate social norms and ethical behaviour in relation to digital information and online interactions. The effect of contextual factors on children and young persons engagement in risky online behaviour from a cross-national and comparative perspective is the focus of Natascha Notten's chapter, "Taking Risks on the World Wide Web: The Impact of Families and Societies on Adolescents' Risky Online Behaviour". Policymakers must acknowledge that children "grow up within a social context" and must therefore take into account the specific culture, characteristics and values of children and the settings inhabited by them (p. 107). This is Natascha's central argument. The four conclusions reached are salient to online child safety policymaking: (i) children situated in more "advantageous" households are less likely to engage in risky behaviour; (ii) parents' active engagement in Internet mediation is invaluable; (iii) an understanding of a child's immediate environment rather than the wider social context should assume a greater role in online safety programs; and (iv) the ubiquity of technology can dilute the likely influence and impact of parental mediation efforts and strategies (pp. 119-120).

The four chapters in Part III concern the nature and value of personal information and the commercial values embedded in affordances. These chapters must now be considered alongside the EU's General Data Protection Regulation (GDPR), which comes into force in May 2018. In "No Child's Play: Online Data Protection for Children", Simone van der Hoff provides a much-needed analysis of the reforms to data protection regulations and initiatives to safeguard children's privacy and personal information. Her conclusion in respect of industry-driven initiatives such as the "Safer Social Networking Principles For the EU" and the "Coalition to make the Internet a better place for kids" is that assessing their effectiveness and impact is extremely difficult (pp. 131-133). Her analysis of what is now Article 8 of the GDPR highlights some interpretational difficulties relating to "verifiable parental consent" and "profiling" when information services are offered to children under age 13 (pp. 134-139). The age threshold has now been raised under Article 8 to children under age 16 but with residual discretion in Member States to lower the age threshold.² Marga M. Groothuis in her chapter, "The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights", analyses the judicial treatment of children's privacy rights under Article 8 of the European Convention on Human Rights. The coverage of the jurisprudence is quite extensive and she concludes that the potential of Article 8 has yet to be fully realised (pp. 151-154).

In "Online Social Networks and Young People's Privacy Protection: The Role of the Right to be Forgotten", Rachele Ciavarella and Cecile De Terwangne focus on a topic that has attracted considerable interest. When children make the transition from childhood to adulthood, the authors argue, it is important that digital footprints from the past should be available for deletion (pp. 163-169). Their observations will now have to be considered alongside the important ruling in the Google Spain case decided by the European Court of Justice.³ Finally, commercial profiling and marketing to children through online games continues to be subjected to media and scholarly comment. Isolde Sprenkels and Irma van der Ploeg explain the regulatory challenges posed by this commercial practice in "Follow the Children! Advergaming and the Enactment of Children's Consumer Identity". The OLA Water Games is an adventure game popular amongst children in the Netherlands. Advergaming comprises elements of interactivity, game and entertainment. Consumer law provides a default rule, but only to the extent of prohibiting unfair or deceptive practices. The authors query whether it is sufficient for policymakers to ask if children can distinguish between brands, advertising and play. Their primary argument is that online predatory marketing practices are transforming the lifeworld of children (pp. 177-183). The OLA Water Games case study is used to illustrate the disturbing disconnect between law and children's autonomy, preference and best interests. As the political ramifications from the result of the

² J Savirimuthu, "EU General Data Protection Regulation Article 8: Has Anyone Consulted the Kids?" (2016) available at <http://blogs.lse.ac.uk/mediapolicyproject/2016/03/01/eu-general-data-protection-regulation-article-8-has-anyone-consulted-the-kids/> (accessed 21 Aug 16).

³ *Case 131/12 Google Spain SL, Google Inc. v Agencia Espanola de Proteccion de Datos (AEPD), Mario Costeja Gonzalez* [2014] ECL I-31 (ECJ).

referendum on UK's membership of the EU are gradually worked out, the impact of the GDPR on consent, collection and use of children's personal and sensitive information will need to be fully understood and grasped. The UN Convention on the Rights of the Child provides a well-established set of standards and norms that can help law to help steer policymakers towards developing principled and sustainable strategies.⁴

Parts IV and V are devoted to longstanding governance challenges – peer victimisation and online sexual solicitation. In “Children and Peer-to-Peer Risks in Social Networks: Regulating, Empowering or a Little Bit of Both?”, Eva Livens addresses the following regulatory dilemma in the context of Belgium: can or should criminal law intervene when a child uses social media or digital communication tools to undermine the mental health and well-being of another child? There are no easy answers as Livens observes in her chapter. Belgian law does provide mechanisms to ensure that instigators of peer victimisation are held to account, but not necessarily through the criminal justice system (pp. 195-199). Janneke M. van der Zwaan, Virginia Dignum, Catholijn M. Jonker and Simone van der Hoff discuss the various types of bullying in their chapter “On Technology Against Cyberbullying”, and conclude that despite the lack of an effective solution, efforts must be made to deploy education and awareness-raising initiatives. Readers will find the references to a number of empirical studies instructive, particularly in articulating the reasons why anti-bullying programs should continue to play an important role in policymaking (pp. 217-224). Sarah Genner's chapter, “Violent Video Games and Cyberbullying: Why Education is Better than Regulation”, raises a separate question: should governments intervene to ensure that children are not exposed to violent video games? Her chapter, which focuses on Switzerland, delves into the problems of politicising child safety concerns and her conclusion, on balance, is right: legal bans on violent video games are ineffective (pp. 235-236). The coverage of cyberbullying concludes with a chapter by Heidi Vandebosch's, “Addressing Cyberbullying Using a Multi-Stakeholder Approach: The Flemish Case”. What is intriguing about this chapter are the questions she asks – why does bullying take place and where does it originate? The seamless ways the online and offline environments weave into bullying, Vandebosch argues, require responses to be contextualised and that integrate stakeholders such as online safety organizations, telecommunication services providers and law enforcement into the governance debate (pp. 250-258).

Part V is devoted to the topic of online sexual solicitation. The two chapters, “Regulating Online Sexual Solicitation: Towards Evidence-Based Policy and Regulation”, and “Protecting Children from the Risk of Harm? A Critical Review of the Law's Response(s) to Online Child Sexual Grooming in England and Wales”, highlight the role and value of research in informing policy debates. In the former chapter, Leontien M van der Knaap and Colette MKC Cuijpers consider the Lanzarote Convention specifically and identify the assumptions policymakers make about children, harm and vulnerability (pp. 268-269). In the

⁴ J Savirimuthu, “Networked Children, Commercial Profiling and The EU Data Protection Reform Agenda: In the Child's Best Interests?” in H Stalford and I Iusmen (eds), *The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions* (Leverkusen and London: Budrich Academic 2015) 221-257.

latter chapter, Jamie-Lee Mooney situates England and Wales' Sexual Offences Act 2003 within its technological and societal context to consider if the evolving nature of sexual solicitation activity ("third party grooming") is covered by the criminal law. Both chapters raise an important issue that is a pervasive theme in all the contributions in this collection: is there any empirical evidence to support the policy and regulatory responses? Are all online interactions motivated by an intention to de-sensitize the child towards sexual activity? Perhaps the broader point that these chapters raise, and could have been explored further, is the role and function of criminal law in this regard.

Minding Minors Wandering the Web: Regulating Online Child Safety makes it clear that how society responds to the risks facing children in the networked environment is important. This collection is also a timely reminder that lawyers have an important role in debates relating to safeguarding children in the online environment: policymakers and regulators must be urged to ensure that standards and norms acceptable to adults and industry should not be imposed on children.

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