The eQUALITY PROJECT

Fact Sheet: Children's Right to Privacy (March 2021)

Children's Privacy in the Networked Environment
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(with research assistance from Vanessa Ford)

Almost every aspect of a child's life – school, communications, entertainment, etc. – is now in some way connected to or affected by our digitally networked environment. Given this, it is not surprising that children and young people repeatedly report living an almost seamlessly integrated online/offline existence (see e.g. Steeves, 2012). This seamless integration presents a significant threat to children's privacy as technology companies structure online interactions to encourage children to share as much data as possible in order to profile them for profit-making purposes.

MYTH BUSTER 1: Children Don't Care About Privacy.

FICTION: Children's intense engagement with digitally networked technologies means they don't care about their privacy.

FACT: Children and young people repeatedly report that privacy is a primary concern for them. Younger children (under 12) are typically content to share more of their online experiences with their parents, but they seek privacy from the broader online community. Teens report that they want privacy online from both strangers and the adults in their social circle so they can explore the adult world and go about the business of "growing up". But children of all ages agree that their privacy is compromised online (see e.g. Steeves, 2015) ; they have little choice but to "agree" to unreasonable uses of their data because engaging with the digitally networked environment is now so closely linked with full social, political, economic, and cultural participation (see e.g. UNICEF's 2017 *Children in a Digital World Study*).

BOTTOM LINE: Children should have privacy rights, because they are rightsholders under international law.

Children's International Human Right to Privacy

Children's international civil, political, economic, social and cultural rights are enshrined in the UN Convention on the Rights of the Child (CRC) to which Canada is a signatory. Article 16 of the CRC specifically protects children's privacy:

1. **No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.**
2. **The child has the right to the protection of the law against such interference or attacks.**

Further, the UN Committee on the Rights of the Child has stated that every child, without exception, has the right to "freely express their views on all matters and decisions that affect them, and to have those views taken into account at all levels of society" (UN, OHCHR, n.d.). Thus, children's views relating to privacy *must* be centred in, among other things, *all* policy decisions relating to the digitally networked environment that trades on their data (for further information, see UN Gen Comment 25).

Children's Right to Privacy and Canadian Law

As a signatory to the CRC, Canada is required to respect and protect children's right to privacy. Children's right to privacy is covered by various pieces of federal, provincial and territorial legislation. The most important are the various privacy acts that regulate what companies can and cannot do with personal data. Although children are not specifically mentioned, they have the same rights as adults. Moreover, Canadian courts have recognized those rights in contexts relating to technology-facilitated violence like impersonation (see e.g. AB v. Bragg) and voyeurism (see e.g. R v. Jarvis).

MYTH BUSTER 2: Children Don't Take Steps to Protect Their Privacy.

FICTION: Children don't know how to and don't take steps to protect their privacy.

FACT: While it is important to provide as much information as possible to children about what others (especially corporations) are doing with their data *and* about their right to privacy, research shows that children and young people already use a variety of techniques to try to protect their privacy (see e.g. Heath in *eGirls, eCitizens*, *To Share or Not to Share*, *Defamation Law in the Age of the Internet*). The techniques they use include:
- managing their privacy and security settings
- deleting comments or requesting others to delete them
- de-activating accounts
- using pseudonyms
- curating the content they post on different platforms depending on who their intended audience is
- seeking friends' permission before posting images of them.

BOTTOM LINE: Children are able to implement strategies to protect their privacy.

MYTH BUSTER 3: The Best Way to Protect Children and Young People Online is to Control and Monitor Them.

FICTION: Because children and young people face unspecified dangers online, adults must place them under surveillance in order to protect them.

FACT: Increased surveillance and blaming young people for oversharing and/or being naïve may quell adults' fears, but for children and young people, surveillance is a problem not a solution. These approaches undermine children and young people's relationship with adults by implicitly suggesting that children and young people are not trustworthy (see e.g. Steeves, 2015). Moreover, the very fact that children's and young people's online interactions and self-representations are widely monitored and scrutinized already opens them up to harsh judgment and conflict (see e.g. Bailey & Steeves, 2016). More productive ways of protecting children and young people include:

- encouraging policymakers to:
  - directly include children and young people in policymaking processes
  - create "no-go" zones that specifically prohibit corporate collection of children and young people's data in certain situations
  - regulate corporate practices and policies that:
    - compromise children and young people's own privacy-protecting strategies
    - make it difficult to take down privacy-invasive attacks
    - work to normalize surveillance in schools through education technologies
- providing more support for targets of online attacks
- addressing underlying problems like discrimination and prejudice that make young people from marginalized communities especially vulnerable

BOTTOM LINE: The best way to protect children and young people online is to control and monitor corporate practices and to address structural problems.

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