

Ethical challenges of the digital world access to the pornography of girls, boys and adolescents from the vision of their human rights

Abstract

This Article addresses the situation of vulnerability in which our children and adolescents find themselves in order to try to ensure them a happy childhood and protect them from access to inappropriate content in the digital world based on the best interests of children protected in various international treaties, specifically in the Convention on the Rights of the Child, seeking a joint responsibility.

Keywords: best interests of the child

Volume 9 Issue 1 - 2021

Myrna Elia Garcia Barrera¹
University of Monterrey, Mexico

Correspondence: Myrna Elia Garcia Barrera, University of Monterrey, Mexico, Email myrgarcia@hotmail.com

Received: June 07, 2021 | **Published:** June 29, 2021

Introduction, justification and objectives

All children and adolescents have the right to physical and psychological integrity and to protection against all forms of violence. Unfortunately, violence, as a social problem, is acquiring different dimensions and is present in all settings.¹ Added to that, the lack of supervision or neglect of fathers, mothers or whoever exercises. Parents all authority or guardianship of children and adolescents, so I transcribe the following newspaper article,² FAMILY 21 / Jesus Amaya. (24-02-2019). In recent dates I have received a considerable number of mails about the use of pornography in children under 10 years old.

- i. Teacher, I have my children's cell phones and tablets well under control, but even 9-year-old children know the passwords to delete the history on their devices so that their parents don't realize that they have been watching pornography".
- ii. I am very worried, teacher. From fifth grade on, they already have an iPhone 10 cell phone. Sixth grade kids are sending pornography to their third, fourth and fifth grade classmates on WhatsApp. From the age of 9 and not from the age of 10 they already see heavy pornography."

Two weeks ago I was consulted by a mom with her 8-year-old on because they discovered that he was watching pornography on his iPad. When I asked him if he was going on porn sites and why he answered yes and said, "Teacher, I wanted to see how girls lose their virginity." I when I was 8 years old just wanted to play with my carts. I consider pornography the most addictive drug in existence. Studies a firm that, with only 15 minutes of watching it, dopamine (brain neurotransmitter that produces pleasure) is maintained in the brain for about 4 hours. This means that by watching porn the brain receives a high level of satisfaction and this state of pleasure lasts in the nervous system longer than cocaine or alcohol.

A 9 or 10-year-old boy who exposes his brain to stronger criticism has a high risk of turning it into an addiction by the age of 17. I have a question to parents: Why do kids under 10 years old have a cell phone or a tablet? Is it a pressure of why others do and their children don't? Don't we want to confront them because they are pressuring to have it? Do they know what we are exposing them to?

Now facing the pandemic by COVID-19³ children and adolescents have spent more time at home connected to the Internet, a medium that provides them with great opportunities to find information, continue with their educational activities and stay in touch with their loved ones. In Mexico, 50% of children between 6 and 11 years old are Internet or computer users, and in the case of adolescents between 12 and 17 years old, between 80 and 94% use the Internet or a computer. Unfortunately, the Internet also poses risks for children and adolescents. According to national surveys, 25% of adolescents between the ages of 12 and 17 have experienced some form of cyber bullying in Mexico. In addition, federal authorities have also warned of a considerable increase in digital crimes, internet violence and child pornography trafficking during the months of confinement. Children and adolescents are particularly exposed to online violence, which can have serious consequences on their development, mental health and personal integrity.

Duty of parents to preserve the right of children and adolescents to satisfy their needs and to physical and mental health

Article 1.1 of the American Convention not only establishes the general obligations of respect and guarantee, but also a clause that provides that persons must enjoy and exercise "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition, the rights enshrined in said covenant or in the convention itself."⁴ In other words, every person is born free and equal in dignity and rights. There are many voices that point out and agree on the creation of a coalition of international associations and organizations, as soon as possible, to alert and support those governments that are committed to adopt specific measures for their protection and guarantee that all of us are born free and equal in dignity and rights. In Mexico, family legal cases are resolved in accordance with the Political Constitution of the United Mexican States, the laws that regulate them, Human Rights, International Treaties, Covenants and International Conventions to which Mexico is a party in order to generate agreements that guarantee the protection of individuals without distinction of sex, race, ethnic origin, or religion.

Article 4 of the Constitution establishes: “Men and women are equal before the law. It shall protect the organization and development of the family. Everyone has the right to decide freely, responsibly and in an informed manner on the number and spacing of his or her children. Every person has the right to health protection. The law will define the bases and modalities for access to health services and will establish the concurrence of the Federation and the federative entities in matters of general health, in accordance with the provisions of section XVI of article 73 of this constitution. Every family has the right to enjoy decent and dignified housing. The law will establish the necessary instruments and support to achieve this objective. It is the duty of parents to preserve the right of minor children and adolescents to the satisfaction of their needs and to physical and mental health. The law shall determine the support for the protection of children, to be provided by public institutions.” When taking into consideration the provisions of Article 4 of the Constitution, it is important to highlight some important concepts to be analyzed, according to the National Human Rights Commission:

- iii. The family: Dynamic organizations that adapt to the demographic, social, economic and cultural changes that continuously occur in society.
- iv. The duty of fathers and mothers, or those exercising parental authority, to provide on equal terms: food, education, values, decide the place of residence, etc.
- v. The duty of parents to preserve the rights of children and adolescents: to respect and fulfill their rights and not to exercise any type of violence against any family member.
- vi. The role of the State in determining support to ensure the protection of children and adolescents: when conflicts or disagreements arise due to partial or total non-compliance with obligations, family members should request the competent authorities to seek psychological support, counseling or legal representation to ensure their protection.
- vii. The fact that there is no harmonized application in the national legal order, and that the defense of the best interests of the child cannot be ensured in cases of parental alienation, may generate exclusions to the full fulfillment of the state’s function.

However, it is not only necessary to analyze the above guidelines, but also to question what happens when these duties and rights are not protected in daily life, when parents dissolve the marriage bond that formed a family and initiate the legal process in which, in general, the most affected are the children and adolescents involved and their protection cannot be guaranteed by the State. The General Law of Children and Adolescent sin Mexico establishes in Article13, Section V, the right of children to have a family and to live with both parents. While the International Treaty Convention on the Rights of the Child refers to the importance of generating an identity for children and adolescents that allows them a healthy life in favorable conditions for their development, highlighting the importance of living with both parents even in case of separation, unless it would be contrary to the best interests of the child.

However, the use of ICT nowadays and the access to power struggles, revenge and other problems, towards one of the spouses, economic and alimony issues, as well as sometimes even mistrust and feelings of disaffection, among others, cause the spouses to forget that, although the marriage bond has been dissolved, the parent-child relationship must be protected and safeguarded in the strictest legal sense. Forth is reason it is important to avoid behaviors in which one

of the parents transforms the conscience of the children in order to prevent, hinder, distort, and destroy the emotional ties with the other parent, even achieving in some cases the loss of parental rights.

Best interest of children, as a principle of the convention on the rights of the child

Article 4th, 6th and 7th paragraphs, of the Political Constitution of the United Mexican States establishes that: “In all decisions and actions of the State, the principle of the best interest of children shall be sure and complied with, fully guaranteeing their rights. Children have the right to the satisfaction of their needs for food, health, education and healthy recreation for their integral development. This principle shall guide the design, implementation, monitoring and evaluation of public policies aimed at children. Ascendants, guardians and custodians have the obligation to preserve and enforce compliance with these rights and principles.” It should also be considered that, if children and adolescents are not persons equal to adults, in relation to their cognitive, emotional and moral development, giving them the same treatment in a judicial proceeding means placing them in an unequal situation in the exercise of their rights of access to justice or to participate. Thus, specialized attention to children and adolescents is also a condition for guaranteeing equal access to their rights.⁵

Of the international treaties ratified by the Mexican State, the Convention on the Rights of the Child is the most relevant specific instrument. It recognizes a broad catalog of rights of children and adolescents, including the right not to be discriminated against, the right to life, to identity, tonationality, to not be separated from their parents, to freedom of expression, thought, conscience and religion, to be heard in all proceedings affecting them, to freedom of association, to protection of privacy, to access to information, to the enjoyment of the highest attainable standard of health, to the highest attainable standard of physical and mental health, and to the protection of the rights of the child, to the protection of privacy, to access to information, to the enjoyment of the highest attainable standard of health, to social security, to a standard of living adequate for his physical, mental, spiritual, moral and social development, to education, to leisure and play, to be protected against exploitation, among others. The Convention also establishes the special obligations that States have in relation to children. “In all decisions and actions of the State, the principle of the best interest of children shall be sure and complied with, fully guaranteeing their rights. Children have the right to the satisfaction of their needs for food, health, education and healthy recreation for their integral development. This principle shall guide the design, implementation, monitoring and evaluation of public policies aimed at children”. The General Law on the Rights of Children and Adolescents (LGDNNA) recognizes their status as right sholders. Articles2, second and third paragraphs; 17and18 provide that the best interests of children must be considered as per amount. It is a principle of the Convention on the Rights of the Child (CRC), whose application seeks the greatest satisfaction of each and every one of the needs of children and adolescents. Its application requires adopting a rights-based approach that guarantees respect for and protection of their dignity and physical, psychological, moral and spiritual integrity. The best interests of the child must be the primary consideration in making decisions regarding children and adolescents, “therefore, more importance must be given to what is best for the child”. Children and adolescents are in the process of formation and development, due to their particular characteristics they depend on the persons responsible for their care for the realization of their rights; however, this circumstance can come to limit their possibilities to defend their interests.⁶

Co responsibility of internet service providers

The solution to this problem is the joint responsibility of parents and the various Internet service providers, identifying us as “content intermediaries”, we use a generic expression to include the various participants in the stages of communication, other than the emission or provision and reception. In the case of online communications, there is a series of technological elements of different types and with different functions, carried out by different operators in different latitudes, who will then be intermediaries.

By their function, the intermediaries involved in the information exchange process can be classified mainly as follows:

- viii. Access providers, which provide the service that connects to the end user’s computer through cables or wireless signals;
- ix. Transit providers, which allow interaction between the end computer and the access provider with the hosting providers, with no function other than mere conduit. In Chile, access providers and transit providers (together, connection providers) tend to be the same telecommunications companies, all of which are privately owned;
- x. Hosting providers, who have one or more computers with available space or “servers”, with access to transit providers, in order to use them for their own purposes or to make them available to third parties, to keep content accessible through the other providers. We sub distinguish among them:
- xi. Caching or buffer memory providers, i.e., providers of automatic, temporary and transient storage of data for the purpose of facilitating network operation, and
- xii. Hosting providers, this is, commercial providers of information hosting services, for the purposes of the respective customer as content or service provider.
- xiii. Online service providers, which allow users to post content online, such as: blog or news publishing platforms; e-mail services; social networks; image, audio and video hosting services; e-commerce sites; discussion forums, etc.
- xiv. Search and link providers, which make it possible to locate online content, and which in the delivery of such service play the role of intermediaries in that they facilitate access to content provided by third parties through the delivery of links that make it easier to locate them.

From the regulatory point of view, the various operators in the intermediation chain are subject to regulation, by defining them as service providers in broad terms^{7,8} points out, that internet service providers. Internet Service Providers. ISP, or PSI are those who enable the connection between users and the contents incorporated to the internet site. The latter are sub classified into:

- 1) Access providers.
- 2) Lodging providers.
- 3) Network providers.

Application service providers. Localization providers. In such virtue, and on the other hand⁸ points out, that according to Garzón Galván, ISPs will only be driven or maintain and improve internet

services and even invest in their growth, if the legal regime is simple, reliable and does not impose unnecessary and onerous burdens on them, counting on guarantees that they will not be imputed with any liability for activities that they cannot and should not control. The concern is evident, we have to, with practical and easy to control purposes, collaborate with children’s caregivers, so that through tools and training we can prevent children and adolescents from having access to inappropriate content.⁹

Conclusions

First- Children and adolescents are not equal to adults, in relation to their cognitive, emotional and moral development, giving them the same treatment in a judicial procedure means placing them in an unequal situation in the exercise of their rights of access to justice or to participate. In this way, specialized care for children and adolescents is also a condition to guarantee equal conditions in the access to their rights, and to seek the greatest satisfaction of each and every one of the needs, in compliance with the principle of the best interests of the childhood.

Second- The girls, boys and adolescents are in the process of formation and development, due to their particular characteristics they depend on the people responsible for their care to realize their rights; However, this circumstance may limit your possibilities to defend your interests.

Third- We have to, with practical and easy-to-control applications, provided by internet service providers, to collaborate with the caregivers of children and adolescents to provide tools and training to prevent them from having access to inappropriate content.

Acknowledgments

None.

Conflicts of interest

Author declares there is no conflict of interest.

References

1. Romero Cabrera F. *Guide on problematic sexual behaviors and sexually abusive practices*. Chile Ong Paicabi Aldeas Infantiles Sos. Latin America and the Caribbean. 2014.
2. Amaya J. *My 9-year-old son watches porn*. 2019.
3. UNICEF. Mexico. 2021.
4. Steiner C, Uribe P. *American Convention on Human Rights. Comentada*. Mexico, Mexico, Mexico: Suprema Corte de Justicia de la Nación/ Konrad Adenauer Stiftung. 2014.
5. SCJN. Protocol of action for those who impart justice in cases involving children and adolescents. *Protocolos de actuación para quienes imparten justicia*. Mexico. 2012.
6. CNDH. Guidelines for comprehensive attention to victims. Mexico. 2018.
7. Lara J, Vera F. *Responsibility of internet service providers*. Chile. Policy Paper N° 3.
8. Garcíabarrera ME. *Manual de derecho de las nuevas tecnologías*. Mexico: Tirant Lo Blanch. 2018.
9. Christie A. *Psychology and Mind*. Phrases and Reflections.