



Constructing Children's Digital Identity: A Private Law Perspective

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Abstract

We live in a time when technological development has outpaced legal regulations, posing challenges even in seemingly simple situations and phenomena that society finds difficult to manage and monitor. Children's digital identities are increasingly shaped not only by the children themselves but also by external actors, particularly parents, educational institutions, governments, and digital platforms. This article examines the legal and ethical implications of such constructions from a private law perspective, focusing on challenges to children's autonomy, data protection rights, and the evolving capacities of children. Drawing on European and international legal frameworks, it advocates for a child-centered legal approach that recognizes children as rights-holders and safeguards their digital personhood against premature exposure and commodification. The phenomenon of kidfluencers raises critical concerns regarding the best interests of the child, a principle enshrined not only in international legal instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), but also reflected in various domestic legal frameworks.

Keywords: children's rights; evolving capacities; data protection; digital personhood; kidfluencers

1. Introduction

The digital age has fundamentally impacted and reshaped people's approach to information. Nowadays, data of all kinds is more easily accessible, thanks to the development of artificial intelligence. However, what remains most worrying is the ease of access to individuals' private and sensitive data. Digital technologies have advanced more rapidly than any innovation in our history, reaching around 50 percent of the developing world's population in only two decades and transforming societies (United Nations, 2020).

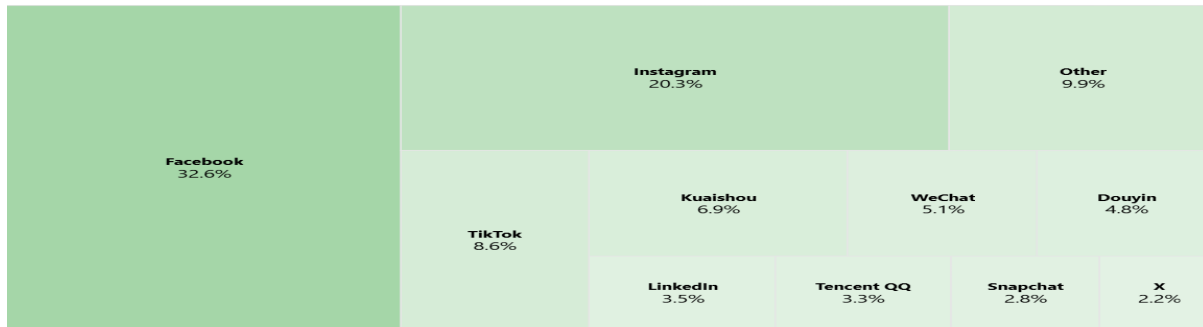


Figure 1: Worldwide 2024. Global brand shares of social networks in 2024

Source: Statista Market Insights

As of July 2025, social media platforms have reached a total of 5.4 billion users globally, with a global penetration rate of 63.9%. Facebook leads the market with 32.6% of users, followed by Instagram with 20.3% (Dixon, 2024). In general, the older the population, the less time the country spends online, because older people tend to spend less time using the internet compared with younger generations (We are social, 2024). The largest users of social media are young people, including minors under the age of 18. The digital environment has become a part of children's everyday lives and interactions. It holds tremendous benefits for children, but there are also risks (OECD, 2021). The digital environment was not originally designed for children, yet it plays a significant role in children's lives (C.R.C., 2021). We are witnessing a growing trend of sharing personal and identifiable information about children of all ages on online platforms. For children, this identity is not only self-constructed but developed mainly by others. This online exposure contributes to shaping a child's digital identity, and the representation of their personal information online is created not only by the children themselves but also by external actors, particularly parents, educational institutions, governments, and digital platforms.

"Sharenting" is a term used to describe parents' actions when they disclose content about their children using social media (Bessant & Schnebke, 2022). The creation of digital content by parents about their child often begins before the child's birth, thereby initiating the establishment of the child's digital identity, which may have potential legal implications regarding privacy and data protection. Parents frequently share online: prenatal images, announcement of baby gender, birth announcements, medical records, child's school performance, behaviors, and talents.

Online posting of children's photos, videos, and stories is increasingly common among parents, typically occurring without the child's explicit consent due to the child's young age (Ferrara et al., 2023). In this era of sharing, it can be mortifying for a child to learn that their entire childhood is documented and shared publicly by their parents (Prakash, 2020).

Building on this foundation, this paper examines various aspects of children's digital identity from the perspective of international and Albanian law. Firstly, it investigates the conceptualization of the youth digital footprint. Secondly, analyzes the legal regulations regarding the right of parents to act on behalf of children, the violation of privacy, as well as the right of the child to be questioned on matters related to him. The article also focuses on the best interests of the child regarding the online exposure of their identity.

It also conducts an in-depth analysis of relevant statistics to detect. In summary, this paper combines these insights to offer a comprehensive perspective on victimological research in Albania, laying the groundwork for informed policies in the evolving landscape of crime and victimhood in the country.

1.1 Methodology

This study uses a qualitative research approach, focusing on doctrinal legal research. This involves a close examination of legal texts, international standards, and current practices related to the formation of children's digital identities. This method is well-suited for examining the rules that govern both national and international human rights, as well as civil and family law, which affect the parent-child relationship online. Along with doctrinal analysis, the article employs the comparative legal method to identify similarities and differences between various laws. It also points out best practices for protecting children's rights in the digital space. Additionally, it employs descriptive and analytical methods to explore the trend of "sharenting" and its impact on children's online identities. The article analyzes relevant literature and statistical data, drawing from academic sources and institutional reports.

2. Consent for Posting Online

Obtaining the child's consent and opinion on matters affecting them is a fundamental principle in family law, as mandated by domestic legislation and international protection of children's rights. In most legal systems, minors are not permitted to act on their own behalf in legal matters. They lack the capacity to act legally till the age of maturity.

According to Albanian law, individuals are deemed incapable of acting legally until they reach the age of 14; upon attaining this age, they are granted a restricted legal capacity (Civil Code, 1994/2023). Parents are the legal representatives of the child in their name and on their behalf. Children have the right to express their opinions and give consent in matters that affect them, depending on their age and level of maturity (Albanian Family Code, art. 6; 157, 2015). Although the law does not establish a specific age for every case, it outlines certain ages for specific legal capacities. By age 10, minors have the right to express their opinion, and by age 12, they have the right to give their consent for matters related to them. Courts must consider the child's opinion in their decisions. However, the court may choose otherwise if it believes that the child's opinion is not in the child's best interests. When the child reaches the age at which they can give their consent, this is considered mandatory for the court's decision-making, except in exceptional cases.

According to Austrian law, children must be heard by the court by the age of 10. The child's wishes become increasingly important with their advancing age; however, in cases of doubt, the child's well-being prevails over any wishes they may express. In principle, the older the child, the more their wishes should be complied with (SCLC, 2024).

France and Italy also provide for the child's right to be heard by setting age limits. In French civil law, there is no minimum limit for hearing a child (generally starting at the age of 7). While, according to Italian legislation, hearing the child's will is mandatory starting at the age of 12.

All decision-makers must seriously consider the opinions, wishes, and feelings of children, including the very youngest ones (*PACE Website, 2025*). Children have a unique body of knowledge about their lives, needs, and concerns (National Human Rights Institutions, 2018).

However, can a child's opinion be sought regarding posts about their lives on social media, and do these provisions apply in this case?

Posts made by parents or other individuals on social networks or various online platforms, which can include photos, videos, and data on the child's life and identity, as well as their talents, are often created without the child's awareness. However, even when they are aware,

they often lack the necessary maturity to evaluate the giving of consent or their own opinions. Therefore, all legal responsibility falls on parents regarding the consequences of online postings, whether these are made in their name or the child's name on social media accounts. Parents have the right to act on behalf of their child, but they also bear responsibility for actions that may have negative consequences for the child, which could lead to the loss of parental rights. Parents should also be careful in the event of the dissemination of such information by third parties, such as educational institutions, various parties that organize extracurricular activities, etc., in order to exercise their right to protect the best interests of the child when they judge that the dissemination of such information may be detrimental to the child. Since obtaining consent from the child in these cases is considered insufficient due to the child's maturity to make a proper assessment, third parties must obtain the consent of the child's parents before publishing various data online regarding the child's life.

Although social media posts are publicly accessible or available to a limited number of persons, they must not be stored, processed, or reused without the data subject's consent. The processing of personal data of a minor based on consent, in the context of the online offering of goods or services directly to him, is lawful only if the minor is at least 16 years old. When the minor is under the age of 16, processing is lawful only when consent is given or authorized by their parent or legal guardian, and to the extent that it is given or authorized by them (Law 124/2024, art. 8).

2.2 Online Postings from Educational Institutions

In Albania, it is now a trend for schools to have their official social media accounts, where they share information, announcements, photos, and videos of events, as well as information for their pupils. Unlike parent accounts, which are generally private, school accounts are public, allowing an unlimited number of people to view their posts. An analysis based on a random selection of 14 official Facebook and Instagram accounts of kindergartens and schools in the city of Shkodra reveals that none of these institutions blur or obscure children's faces in their posts. These posts pertain to children's activities during school hours, as well as extracurricular activities organized by the school.

In 2023, the Commissioner for Information and Data Protection in Albania found, based on a complaint from a parent, that the Controller (a private kindergarten in Tirana), on its business accounts on Facebook and Instagram, posted photos and videos of kindergarten children during educational, cultural activities, etc., without obtaining prior parental consent. Not obtaining the consent of the parents is in contradiction with the principles of personal data protection and the legal criteria for data processing, provided for in Articles 5 and 6 of the Law¹ "On the protection of personal data" (Decision No. 08, 2023). According to this Commissioner's decisions, the Controller shall delete personal data, photos/videos of all children that are data subjects, published on the social networks "Facebook" and "Instagram", in all cases where the Controller has not guaranteed the receipt of consent from the parents or legal representatives of minor children.

Article 35 of the Constitution of the Republic of Albania guarantees the protection of personal data as a fundamental individual right. The new law² ensures better data protection treatment in response to emerging privacy challenges arising from the growing use of technological tools, as well as the increasing circulation of personal data in the digital world (Council of Ministers, 2024). In the public services system, the best interests of the child are ensured by procedure.

¹ Law No. 9887, dated 10.03.2008 "On the protection of personal data". (abolished).

² Law No 124/2024 „On the Protection of Personal Data’.

Procedural requirements to guarantee such interests include, among others, the protection of the child from publicity in matters related to the child's privacy, integrity, and family life (Mikkola, 2021).

2.3 Digital Education

In the digital age, responsible, ethical, and civilized education in the use of new technologies is a priority for action, especially for students in schools (Arapi et al, 2016). States³ should disseminate information and conduct awareness-raising campaigns on the rights of the child in the digital environment, focusing in particular on those whose actions have a direct or indirect impact on children, also should ensure that parents and caregivers have opportunities to gain digital literacy, to learn how technology can support the rights of children and to recognize a child who is a victim of online harm and respond appropriately (United Nation, 2021). Schools should teach children about how their data is collected and used, and what they can do to take control of their data footprints (Longfield, 2008).

We are all involved in one way or another, as parents, educators, public servants, grandparents, and others, in the online sharing of children's data. Faced with the vast amount of data exchanged and processed through online communications, civic education is of utmost importance. Civic education can be delivered in various forms to achieve the highest possible levels of awareness. These methods can include classic training, distributing brochures, media publicity, and sending notifications to each social network user when they click "post/share".

3. Digital Identity and the Best Interests of the Child

When adults make decisions, they should think about how their decisions will affect children (Children's Version of the Convention on the Rights of the Child, 2019). As stated in Article 3 of the UN Convention on the Rights of the Child, in all actions concerning children, the best interests of the child shall be a primary consideration. Parents must consider whether posting material about their child online is in their best interests (SChLC, 2024). Parents are obliged to pay attention to the well-being of the child, including its rights, requirements and interests (SCLC, 2024).

Most of us often feel the desire to share experiences, such as travels, events, birthdays, etc., with our friends and loved ones on social media. Sharing photos online helps have closer relationships with relatives, especially when they live abroad. When posting a photo or information about their child on social media, parents should be aware of their legal responsibilities in case their actions violate the child's best interests. Once published on the internet, the pictures and often other personal data are available worldwide and without limits (AG, 2023).

Is the best interest of the child violated if a part of his life is accessible online by a group of people?

Online access to information, data, photos, and videos is not only possible for a limited group of social media followers but can also be shared with other people who have no direct connection to the child or his family (through screenshots, copying information, etc). Therefore, sensitive information about the child, through naive actions of parents that at first glance do not pose any problem, can fall into the hands of paedophiles, traffickers, etc. With the rapid development of technology, it is now possible for others to use this data to create fake images or videos that could incriminate the person from whom the image was stolen.

³ States Parties to the Convention on the Rights of the Child

In 2023, Deutsche Telekom launched an awareness campaign called "Share with Care", through which it aimed to educate parents about the risks associated with online publications they created about their children. The campaign's video presented the image of a girl created by AI through data that had been shared online by the parents of a young girl and which emphasized the risk of using this data for identity theft, blaming a person for a crime they did not commit, copying voices and sending voice messages, creating fake images to create bullying memes or sexually explicit images. It highlighted that by carelessly sharing images of children online, guardians risk inadvertently exposing children to profiling by data brokers, hacking, facial recognition, paedophilia, and other threats to privacy and security (AG, 2023).

Children are also the most common victims of synthetic identity theft, which means that a criminal takes information from a variety of sources to create a new identity to take out loans, purchase goods and services, or fraudulently obtain credit cards (Weisman, 2024).

The FTC⁴ and affiliated agencies fielded 1,135,270 complaints of identity theft in 2024, which is 9.5% more than the 1,036,845 logged in 2023 (Luthi, 2025). Studies show that children are more than 51 times more likely to become a victim of identity theft than adults (Weisman, 2024).

International human rights instruments⁵ protect children's rights and their best interests; these instruments apply equally to children and adults, even when children are not explicitly referenced within their provisions. The use of child images by reprocessing them for malicious purposes, especially for bullying or the creation of adult content, is directly related to human dignity, as a fundamental requirement of the European Convention of Human Rights (ECHR). ECtHR found a violation of Article 8 "Respect for private life" of the Convention in the case *Reklos and Davourlis v. Greece*. According to the Court: "*Photographing of a newborn baby without prior agreement of parents and retention of the negatives is a violation of Art. 8 of the ECHR*". Convention 108 of CoE⁶ was the first legally binding international instrument in the data protection field (Council of Europe, 2021). Albania incorporated this document into its national legislation through the adoption of Law No. 9288/2004. The Convention was modernized in May 2018 (Convention 108+, 2018) with the approval of Protocol CETS No. 223, which Albania also signed on 28 January 2022 and which was implemented into legislation by Law 49/2022.

According to Convention 108+ of Council of Europe "For the Protection of Individuals with Regard to the Processing of Personal Data", it is necessary to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on a person's right to control of his or her personal data and the processing of such data (Council of Europe, 2018).

In 2024, Albania adopted Law No. 124/2024 "On the Protection of Personal Data," the purpose of which is to improve the rules for the protection of individuals regarding the processing of their data, under the standards of the European Union in the field of personal data protection

4 The U.S. Federal Trade Commission (FTC)

5 Universal Declaration of Human Rights (UDHR, 1948), Article 12
International Covenant on Civil and Political Rights (ICCPR, 1966), Article 17
European Convention on Human Rights (ECHR, 1950), Article 8
Convention No. 108+ of the Council of Europe (1981/2018)

6 The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108)

(Relacion, 2024). GDPR⁷ demands particular protections for the use of children's data "for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child." Furthermore, general protections that apply to all data subjects also apply to children. (Longfield, 2008). In some cases, the unauthorized publication of images of private life without consent may constitute a criminal offense under the Penal Code of Albania (Albanian Penal Code, Art. 121, 2024). When committed against minors, it can be punished with imprisonment from 1 to 3 years.

3.1 Kidfluencers

Kidfluencing, a social media business in which children serve as primary influencers of audience opinions or behavior, is a rapidly growing entrepreneurial phenomenon where parents build enterprises around the likability and antics of their children (Clark & Jno-Charles, 2025). Children generate income online through sharing videos on platforms like YouTube, TikTok, and Instagram, as well as sponsorships and collaborations with various brands that advertise clothing, food, toys, and family vacations, among other products. When posting on social media becomes profitable for the child, the issue of his best interest is analyzed from two perspectives:

1. Does the online accessibility of certain aspects of a child's life to a specific audience constitute a violation of the child's best interests? (Always is the primary question.)
2. To what extent is it appropriate to deprive a child of the opportunity to attain fame and derive personal income, particularly in the context of digital exposure?

In this case, the child's consent is essential, but it depends on the child's age and maturity. Under private international law (Law No. 10428, dated 2.6.2011) and the Albanian Family Code, parents act solely as administrators of their child's property. They may utilize such property only for expenses directly related to the child's needs and interests. The Labor Code of Albania, in its articles 98, 99, and 102, stipulates that children under the age of 15 or children who are attending full-time compulsory education may be employed for cultural or similar activities, in light work that does not hinder the health, safety, education, and development of the child. Based on these principles, protection from economic exploitation of children is regulated by Law No. 18/2017 "On the rights and protection of the child, in Article 24, according to which the child cannot be forced to perform work (which is permitted by law based on his age) without his consent, in this case modeling or for advertising purposes, which poses a risk, violates education, harms his health or physical, mental, spiritual, moral or social development.

4 Conclusion

Many of us often feel the urge to share personal experiences with friends and loved ones on social media. The digital world has become deeply integrated into children's daily lives, offering valuable opportunities but also exposing them to significant risks.

When parents share images or personal information about their children online, they must be aware of their legal responsibilities—especially if such actions conflict with the child's best interests. Online posted images and personal data become globally accessible and may be

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

stored or misused without limitations. This risk does not affect only minors; anyone can become a victim of identity theft or data misuse through online platforms.

There is a pressing need for stricter regulations and enforcement mechanisms to safeguard digital privacy and security. In today's interconnected world, we all play a role in how children's data is shared online. With the overwhelming volume of information exchanged through digital communication, civic education is more important than ever.

Parents must also remain vigilant when third parties share information about their children and have the right and responsibility to intervene if they believe the disclosure may harm the child's well-being. Since a child's maturity level may prevent them from making informed decisions, parental consent is essential before any third party publishes information or images related to the child.

Online exposure can place children at continuous risk, violating not only their best interests but also their fundamental rights. The commercialization of children's images through online content is an emerging phenomenon, one that current legal frameworks often fail to address fully. Moreover, the misuse of children's images, whether for cyberbullying or more severe forms of abuse, such as generating adult content, raises serious concerns about human dignity and the protection of individual rights. Urgent measures must be taken to prevent foreseeable consequences, including the strengthening of legal provisions against privacy violations and actions—whether direct or indirect—that affect the lives, privacy, and personal data of children.

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