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„Children’s Data Protection: The EU and the U.S. Approach“

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TABLE OF ABBRIVIATIONS

CDA	Communication Decency Act
CFR	The Charter of Fundamental Rights
COE	Council of Europe
COPA	Children's Online Privacy Act
COPPA	Children's Online Privacy Protection Act
CRC	Convention on the Rights of the Child
EU	European Union
FTC	Federal Trade Commission
GDPR	General Data Protection Regulation
IoT	Internet of Things
ISS	Information Society Services
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
UNCRC	The United Nations Convention on the Rights of the Child
US	United States
VoIP	Voice over Internet Protocol
WP29	Article 29 Working Party

1. Introduction

1.1 Background

Nowadays, children are becoming increasingly active over the internet causing their personal information to be disclosed whether through joining social media platforms or simply by just browsing the internet, not to mention their use of applications and games which can be downloaded on devices that they have an easy access to. Furthermore, it is believed that one out of every three people accessing the internet have not reached the age of majority.[1]

The protection of children's data has become the center of many legislators worldwide due to its importance.

This paper will firstly give a general overview of Children Rights, their history, evolution and justification, and then it will be focusing on the European Union's approach to protect children's data and the American one.

1.2 Research questions

This research seeks to shed light on the situation of children in terms of their personal information protection in the European Union, in particular after the entry of force of the General Data Protection Regulation (GDPR), and the one in the United States of America, where there exists a specific legislation for the protection of children's online data known as the Children's Online Privacy Protection Act (COPPA).

The main focus of this research will be on these two legislations and analyzing them to measure the effectiveness of the GDPR's provisions that are relating to children, especially when compared to COPPA, as well as to identify any noteworthy differences and similarities between the two.

1.3 Methodology

The methodology used in this paper is mostly a comparative methodology between the American legal system and the European legal system in relation to protecting children's data online and will be based mainly on analyzing the related legislations namely the General Data Protection Regulation provisions that are intended to improve the

protection of children's data, along withChildren Online Privacy Protection Act's provisions.

1.4 Importance of the Research

Due to recent technical advancements, contemporary childhood and childhood in the past (pre-internet childhood) have become divergent. Nowadays, a household without having any access to the internet is almost inconceivable. While most children presently are living in a digital world with an access to the internet has its own advantages, it can bring too many risks to them and their privacy. Children are immature and are reliant on adults, and consequently they could be more exposed when compared with others.[2]

Moreover, special attention is needed when the personal information of children is processed since such processing by enterprises could constitute a serious threat to these children due the fact that it is possible for certain personal information types to be involved in specific instances.[3]

As a result, the importance of protecting children's data online has to be highlighted and children's data must be processed carefully in compliance with the related regulations.

This could be challenging notably where there has been an amendment in the laws or policies dealing with children's online privacy protection which is the case in the European Union as well as in the United States of America which are considered to be two of the most important legal systems in the world.

Thus, this research will be focused on children's personal information protection situation in the EU and in the US, particularly after the entry of force of the GDPR had the EU and the amendment of COPPA in the US to clarify and analyze the protection that the children have under these two legislations.

2. Childhood and Children's Rights: Historical Development and Justification

2.1 Historical Development

It is claimed by Hendrick that children have been 'kept from history'.[4] He further explains that before the 1970s not so much that was 'written about either children as people or childhood as a condition, and even at the present time there are barely more than half a dozen English language general histories of either focus'.[5]

It is believed that just like children's rights, the notions regarding child and childhood were not accomplished long ago, not to mention that children were considered to be property for centuries.[6]

Prior to the 16th Century, particularly during the medieval times, the notion of childhood as a separate period of life was absent in the society at the time, and once the child was able to live without the physical dependency of infancy, he would immediately be considered as Ariès explains to be part of 'adult society'.[7]
This classless state seemed to be beneficial for children to an extent.[8] However, early childhood has been described by Lloyd as a 'nightmare' by saying:

The history of childhood is a nightmare from which we have only recently begun to awaken. The further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorized, and sexually abused.[9]

Furthermore, in the medieval ages, family was different from today's families which are now consistent of two parents and their children, in contrast to the way it used to be as it was as explained by Scott 'open and public'.[10] In addition, the survival of the children was dependent on their ability to work as hard as anyone else in the society as they were supposed to do so at the time.[11]

Moreover, Scott claims that there were several factors that would render the child free from the authority of his/her parents which are 'his or her economic status, the status of their property, regional laws and customs and individual capacity'.[12]
Interestingly, during that time, children's work in the family was customary in the countryside.[13]

During the Renaissance Era Children were mostly seen as affiliated members of family circle that is bigger.[14] Furthermore, and as Scott explains, parents were not legally liable for difficult children since such children were 'emancipated'.[15]

The reformation of the church in the 16th century was advantageous to children, as the opposing protestant and catholic theorists started to pay attention to children as part of the competitiveness between them ,and therefore, children were the centerpiece.[16]

Scott further points out that in the 17th century during the Enlightenment Era, a new conceptualization of childhood emerged opposing the formal concept in the medieval period, and children were regarded as 'being ''innocent'' beings '.[17]Additionally, social class was relevant in 'determining what constituted childhood and to whom'.[18]

Until the time of the French Revolution, 'The trend toward a more caring parent-child relationship developed.'[19] Physical punishments imposed by middle-class families on their children for the purpose of discipline have become less common.[20] Children were not expected to totally obey their parents unwillingly anymore, but rather to show respect towards them.[21]

In the Victorian Era, the conceptualization of children as being innocent beings did not last.[22] Moreover, the financial status of the family that the child belonged to, was determent of his way of life.[23]
Children who were born in a wealthy family had a life of Rile but seemed to suffer from solitude and from lack of affection Nonetheless.[24] However, Poor Children had a miserable life and were targeted by industrial units at an early age.[25]

Due to children's physique, they were suitable for cleaning the chimneys and for labouring at mines and factories since working there did not require a great skillset or a serious power.[26] they were forced to labour for an excessive number of hours and to endure the hard working conditions.[27] Additionally, they were subjected to auction sales where they could be bought by the highest bidder, otherwise they would be bundled off to orphan asylum.[28]

However, all of these exploitations of children have led to the development of a movement known as the child-saving movement.[29] For the purpose of safeguarding children, their home life was subject to a rising interference by organizations of different types. [30]

The start of 20th century witnessed the introduction of the juvenile court system, and children were seen to be important as potential individuals.[31]
Hart explains that it was not until the last half of the 20th century that 'The child's existing rather than potential person status received concrete support.'[32]

Subsequent to the world war 1, On 26 September 1924, the League of Nations adopted the Declaration of Geneva on Children's Rights thanks to Eglantyne Jebb's the founder of International Save the Children Union successful attempt to convince the League of Nations to do so.[33]
The Declaration of Geneva on Children's Rights 1924 contains 5 principles and recognizes that humankind 'owes the Child the best it has to give …'.
This declaration remains the first ever international document dealing with children's rights in particular, even though its signatories were not legally bound by it.[34]

After the devastating effects of World War 1&2 on both properties and rights, the Universal Declaration of Human Rights was adopted in 1948.[35]
Children were not ruled out from it.[36]
This can be observed in its text, as it states that 'Motherhood and childhood are entitled to special care and assistance.'

However, the imperfections of Geneva Declarations were revealed after the World War 2, as rights started to develop progressively and therefore an enlargement was necessary.[37] As a result, in 1959 the United Nations General Assembly adopted the Declaration of the Rights of the Child which contained 10 principles.
It can be noted that both the Geneva Declaration and the Declaration of the Rights of the Child have both failed in identifying the age when childhood commences and the one when it is finished.[38] However, the preparatory statement of the Declaration of the Rights of the Child of 1959 states that the child 'by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'.

The Year 1979 was appointed as the International Year of the Child which witnessed an increase in the implementation of children's rights on a bigger international scale.[39] The nomination of the year 1979 as the International Year of the Child by the UN was with the aim of celebrating the Declaration of the Rights of the Child 20th anniversary.[40] This celebration also involved a proposition of a follow-on convention.[41]

10 years later, on November 20, 1989, the United Nation General Assembly adopted the Convention on the Rights of the Child unanimously.
Cohen claims that the Convention on the Rights of the Child has been nothing but an innovative treaty in the history of human rights for so many reasons.[42]

One of the reasons is because of the number of its signatories is considered to be significantly the greatest when comparing it to the other human rights treaties, not to mention its fast-paced entry into force which is also regarded as the rapidest among the other human rights conventions.[43]

Ever since the adoption of the CRC and in spite of the existence of some reservations, there has been a significant increase in the number of the countries who agreed to ratify it.[44]

Historically, CRC has the greatest number of ratifiers and Somalia was the last country to ratify it making it the 196th country to do so.[45] Despite the US role in the CRC

negotiations and contribution to its provisions, the United States of America is the only country in the world that did not ratify it.[46]

According to Hart, the CRC indicates 'the increased, formal, societal emphasis being given to participation and autonomy or self-determination rights for children, in balance with protection and nurturance rights'.[47]

There are 3 common classifications of the articles of the Convention on the Rights of the Child referred to as the three P's which are: Provision, Protection, and Participation.[48] In addition, there are 4 guiding principles which constitute the foundation of the Convention on the Rights of the Child which are: Non-Discrimination, right to life, survival, and development, doing what is in the child's best interest, and recognizing the views of the child by allowing him/her to take part in the decision-making process about any action that might have an impact on him/her.[49]

It is important to mention that the Convention of the Rights of the Child does only apply to children who are under the age of 18 in accordance with the its child's definition in Article 1.

Interestingly, the treaties dealing with child's rights that succeeded the Convention on the Rights of the Child were significantly influenced by it, not to mention the Convention's positive role in boosting the UN agencies endeavor to develop children's rights.[50]

The Convention on the Rights of the Child has been subject to subsequent optional protocols over the past years.[51]The first two optional protocols were adopted in 2000, while the third optional protocol was put into effect in 2011.[52]

Looking at children's standing at the present time, a general improvement has to be acknowledged, particularly when comparing it to the dreadful old times that children suffered from.[53] This can be seen in the trending global approach in recognizing children's rights and their application.[54]

However, while this seems to be the case in the Western world, children who live in developing countries which are estimated to be 2 billion, seem not to enjoy equal rights and life conditions.[55]

Furthermore, regardless of the fact that equality between adults and children is considered to be achieved, its true implementation seems to be hindered in many countries.[56]

2.2 Justification of Children's Rights

Forst Claims that human rights are composed of 3 strands which are: Legal, Political, and Moral.[57]
Therefore, when asserting whether the idea of the human rights of the children can be justified, the justifications of these 3 aspects when applied to children's human rights have to be taken into consideration.

In relation to the legal justification, international law, notably the Convention on the Rights of the Child, is being relied on as an evidence for children's rights justification.[58] CRC signatories who ratified the convention, did that of their own will and therefore accepted the resulting commitment in regard to fulfilling their duties 'in good faith'.[59]

The political justification is examined by Beitz which is based on the view that:

The human rights enterprise is a global practice. The practice is both discursive and political. As a first approximation, we might say that it consists of a set of norms for the regulation of behavior of states together with a set of modes or strategies of action for which violations of the norms may count as reasons. The practice exists within a global discursive community whose members recognize the practice's norms as reason-giving and use them in deliberating and arguing about how to act.[60]

Those practice norms are demonstrated by the core International human rights treaties.[61]

Tobin explains that the Moral justification rests on a ''neglected truth'' relating to international human rights treaties which lies in the fact that these treaties are a display of

an array of ethical values regarding to the way countries are required to be treating children.[62] This moral justification seems to derive its cogency from the viewpoint that 'rights are inherent and inalienable'.[63] In spite of this, others are still convinced that children's rights mortal status is controversial and recognize that there is a lack of agreement about it.[64]

Logically, and in addition to these justifications, it can be argued that the importance of the early childhood which is characterized by a ''lack of maturity'' comprises a valid and relevant basis when it comes to children's rights justification. The brain development during the early childhood stage is claimed to be swiftest comparing it to the other stages and thus when there is an inadequacy in the emotional and physical nourishment and care given to the child, this deficiency will have a negative impact on its development.[65]

The Declaration of the Rights of the Child 1959 did embrace the idea of this children's lack of maturity as grounds for the justification of granting them special protection as it states that 'The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.' The Convention on the Rights of the Child followed the same approach in this regard by referring to this Declaration of the Rights of the Child acknowledgment.

3. Children's Data Protection in the EU

3.1 Data Protection in the EU and its Development in General

After the World War 2, and with the purpose of executing the Marshall Plan that aimed to reconstruct Europe, The Organisation for European Economic Cooperation was found in 1948 and was later supplanted by The Organisation for Economic Co-operation and Development in 1961 after the OECD convention came into effect.[66]

Consequently, in 1980, the OECD issued guidelines on data protection which are recognized as "Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data" and in spite of their significance, they were not legally binding.[67] It is claimed that the subsequent endeavors of the EU and the Council of Europe in the field of data protection were guided by the principles contained in the OECD data privacy guidelines.[68] It is important to note that the OECD guidelines were subject to revision in 2013 which led to the contemporization of the OECD approach in general.[69]

On 28 January 1981, with the aim of reinforcing data protection, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data was which is also known as Convention 108 was adopted by the COE in Strasbourg and Its importance lies in the fact that this convention is still up to the present time the sole international instrument and first of its kind in the data protection sphere that is binding with the possibility of any State to become a party to it even if it is a non-member State of the COE.[70]

The Convention 108 was subjected to a revision latterly and on 18 May 2018, The Council of Europe's Committee of Ministers adopted the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[71]

This amending protocol seeks to bring convention 108 up to date in order for it to cope with the technological advancements and the recently developed inventions relating to information and communication while guaranteeing is it applied efficiently by reinforcing its mechanism.[72]

The growth in legislation that had the purpose of safeguarding personal information was not only on an international level, but was also on a domestic level by numerous European Member States.[73] However, this enactment on such level revealed the necessity of passing a Directive to address the hinderance of the internal market development that resulted from the lack of harmonization caused by Member States approach in executing the rules interpreted in their relevant national laws, and as a result the European Data Protection Directive 95/46/EC was created in 1995.[74]

It is believed that the main principles incorporated in the Council of Europe Convention 108 helped to lay the foundations of this European Data Privacy Directive while the latter expanded them.[75] Furthermore, Numerous common concepts can be found between the European Data Protection Directive and other privacy frameworks, e.g., OECD Privacy Guidelines.[76]

However, the Member States implementation of the European Data Privacy Directive differed from that of another every so often.[77] As a result, and as explained by Bender, The European Data Privacy Directive has been superseded by the General Data Protection Regulation with the aim to 'bring into conformity with each other, the data protection laws of the 28 EU member states'.[78]Directives are different from Regulations in terms of the transportation by the Member States, as a regulation is considered to be a national legislation in all Member States once it is passed by the EU, and as a consequence, it deprives them from any chance 'to depart from it through transposing legislation'.[79]

The General Data Protection Regulation entered into force on 24 May 2016 as part of the Data Protection Reform during a time where securing personal data has become hindered by the fast advancement of technology.[80]

It is worth mentioning that at the present time the data protection in the EU has been considered to be a fundamental right ever since the Lisbon Treaty.[81] While data protection was already in the past incorporated in the EU Charter of Fundamental Rights, The Lisbon Treaty was behind the CFR obtaining a legal status that is equivalent to that of EU constitutional treaties.[82]

3.2 Children's Data Protection under the Previous EU Privacy Directive 95/46/EC

Despite the European Data protection Directive not granting a specific protection for Children's personal data due the fact that it does not explicitly mention them, the Information Commissioner's Office explains that children do not fall outside the scope of this Directive as 'its provisions apply to them as individuals in their own right'.[83] Article 1 of the Directive 95/46/EC of the European Parliament and of the Council states that 'Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.' Therefore, the provisions of the European Data Protection shall apply to every natural person including children since they are considered to be natural persons.

Furthermore, Article 29 Working Party which is an advisory body established by Article 29 of the Directive 95/46/EC, issued Opinion 2/2009 on the protection of children's personal data which affirmed the idea that children do not fall outside the scope of the European Data Protection Directive and children are indeed included.

This Article 29 Working party opinion 2/2009 which is also known as General Guidelines and the special case of schools further states in the introduction that 'A child is a human being in the complete sense of the word. For this reason, a child must enjoy all the rights of a person, including the right to the protection of their personal data.'

3.3 The Current Situation under the GDPR: Special Protection for Children's Data

In regard to the children's situation under Directive 95/46/EC, Macenaite and Kosta point out that the GDPR has remarkably altered 'the status quo and rejected the ''age-

blind''approach to data subjects'.[84] The GDPR is conscious of the fact that Children require a certain special protection.

This can be noticed in the Recital 38 of the General Data Protection Regulation as it states that 'Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.'

The newly introduced elements belonging to this protection will be discussed in detail below.

3.3.1 Definition of a ''child''

Apart from the age threshold belonging solely to Article 8(1) which is intended for the purposes of this merely Article, the GDPR does not include a definition of a child.[85]

A valid approach to reason this out is to make a reference to the definition incorporated in UN Convention on the Rights of the Child since all the EU Member States signed that convention.[86]

Article 1 of the Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

It should be noted that in case Member States chose to employ this definition, a dualism of rules relating to children would exist and would most likely result in complications.[87]

Another approach as a substitute since the GDPR seemed to disregard the UNCRC as explained by Krivokapić and Adamović is to presume that the age threshold mentioned in Article 8(1) does in fact include 'A definition of a child valid for interpretation of all other provisions.'[88]

3.3.2 Consent

Consent constitutes one of many other legal grounds for the processing of personal data that are incorporated in Article 6 GDPR even though, when appropriate, these other legal

grounds could be better suited for children's personal information processing in some occasions.[89]

However, Article 8 of the GDPR is a ''dedicated'' article to the conditions that apply to child's consent relating to information society services that are offered directly to the him/her when consent is the legitimate ground that is relied on by the controller for the processing of the child's personal data.
It establishes a default age (16 years old) for consent to such information society services that are offered directly to the child, but at the same time it still considers such processing to be lawful if the child is under 16 years old 'only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child'.
Moreover, it does allow Member States to opt for a lower age on the condition that such lower age in not under 13 years.

The controller under Article 8(2) GDPR is obliged to 'make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology'.

It is believed by Lievens and Verdoodt that Article 8 GDPR 'is by far the most debated provision of the GDPR in relation to children'.[90]

Therefore, it should undergo a thorough examination:

3.3.2.1 The relevant adopted age threshold

Due to many reasons, it is claimed that the age threshold for consent relating to Information Society Services contained in Article 8(1) GDPR is contentious.[91]
to begin with, the option Member States have which is incorporated in Article 8(1) GDPR to diverge and lower the default age threshold to a minimum of 13 years is considered to be a ''threat'' to the remarkably sought harmonization of the Member States data protection laws by the GDPR since Member States could be adopting dissimilar age thresholds.[92]

As a matter of fact, when looking at the current situation, it can be noticed that, and apart from Slovenia and Greece, all Member States managed to adopt their the national GDPR implementation laws.[93]
While some Member States like Germany and Netherlands chose to maintain the default age limit, numerous Member States as it was expected decided to deviate and lower it, for example in Austria the age of consent for children is 14 years, whereas in Sweden is 13 years.[94]

All of this means that there would exist certain complications for online service providers that operate on a European Level as they will come across GDPR implementation Acts that vary from Member State to another and they will be compelled to comply with them at the same time.[95]

Furthermore, it is believed that Article 8(1) GDPR incorporated default age threshold for consent that relates to ISS is excessively high, which gives rise to the claim relating to its controversary.[96]
Savirimuthu, Senior Lecturer in Law, who seems to oppose this age threshold explains:

Article 8 feels so wrong in many respects. It effectively turns the clock back. It is anachronistic. It perpetuates the image of a vulnerable child whose choices, preferences and decisions cannot be trusted. And it is policymaking that has not been thought through to the point of being derided.[97]

Given the fact that the UNCRC grants children several certain rights such as the ‘’right to respect for the views of the child’’ that is contained in Article 12 UNCRC as well as the ‘’right to freedom of expression’’ which is incorporated in Article 13 UNCRC, the age threshold for consent belonging to Article 8(1) GDPR is believed to be in contravention of UNCRC.[98] Such age threshold would be a barrier for the children to enjoy significant participation rights who are below it and who are not able to acquire a parental consent should service providers deny them access to their provided information society services.[99]

However, Livingstone and Ólafsson in their recent analysis of Ofcom's data on media uses and attitudes which functions as a UK regulator for communications services, and with the intention of establishing if the Article 8(1) GDPR incorporated age threshold for consent is justified, came to the conclusion that the parental consent requirement for children who are under the age of 16 is favorable to them in relation to the protection of their personal information since there is an increase in commercial media literacy for children from the age of 12 to 15 years old.[100]

3.3.2.2 What are ''information society services''?

In terms of the definition of the Information Society Service, the GDPR adopted the definition that is incorporated in in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 by referring to it which states that information society service is 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'.

Regarding the requirement that ISS service is any service that is ''normally provided for remuneration'', the Information Policy Centre explains that the common fashion to deal with this specification is to look at the term ''remuneration'' from a wide perspective 'so that any service which supports a business is regarded as covered'.[101]
In fact, the European Court of Justice did embrace this broad interpretation in numerous cases when it was addressing the concept of remuneration in the context of services rendered in the EU.[102]

That being said, Recital 38 GDPR sates that 'the consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.' Therefore, preventive and counselling services, are beyond the scope of Article 8 GDPR even if they qualify as Information Society Services.[103]

3.3.2.3 The offering of information society services directly to the child

It has to be established whether the service at issue is being offered directly to the child as soon as it is ascertained that such service is indeed an Information Society Service.[104] The GDPR left the terms ‘’offer’’ and ‘’directly’ undefined, and different from its approach for defining Information Society Services which makes a reference to the definition incorporated in Directive (EU) 2015/1535, the GDPR did not refer to any other piece of legislation that could help in defining both of these two terms.[105]

It is believed that the services that involve the processing of children’s data which are covered by the GDPR planned protection are difficult to be distinguished precisely from the ones that are not covered by this protection as such distinguish is complicated.[106]

Information Society Services that are targeting children by design along with the ones that are specifically intended for adults are not ticklish as it is simple to determine that the former is covered by Article 8 GDPR, while the latter is not.[107] The concerns arise, and as explained by the Centre for Information Policy Leadership, over the Information Society Services meant for mixed audience that ‘includes children as a subset’.[108]

These universal audience services are overlooked by Article 29 Working Party Guidelines on consent under Regulation 2016/679 even though it discussed Information Society Services that are intended for adults.[109]

In spite of the fact that the majority of social media websites have age restrictions, children who are under the age limit and who are without a parental consent are still able to use these websites.[110] Because of that, Macenaite and Kosta make clear that children without a warranted access are not singled out from adults and the privacy settings that are put in practice for adults are also applied to these children ‘without any consideration of their particular needs, online behaviour or the risks for them in the online environment’.[111]

Therefore, one could come to the conclusion that these concerns related to the universal audience services should be address by legislators.

3.3.2.4 Authorization by the holder of the parental responsibility over the child

Holders of parental responsibility over the child have the entitlement under Article 8 GDPR to give and authorize the consent. However, the absence of a guidance on how to distinguish between the giving of the consent from authorizing it in the GDPR could lead to uncertainties.[112]

The empowerment of the parents to subsequently approve the child's consent in the event when such consent is previously given by the child would be in question.[113]
Another thing to examine is whether it is possible for the definition of ''holders of parental responsibility'' under the GDPR to include persons with competence other than the parents to give consent in behalf of the child.[114]
In the regard, it is believed that the understanding of the idea of ''holders of parental responsibility'' must be in alignment with family law to gain an insight into the GDPR related standpoint.[115]

Article 2 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 defines parental responsibility as follows:

'Parental Responsibility' shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access.

It further explains that holder of parental responsibility 'shall mean any person having parental responsibility over a child'.

Therefore, if this definition is complied with, the scope of Article 8 GDPR in terms of the consent presented by holders of parental responsibility on behalf of the child will be narrow and the giving of the consent will be exclusive to parents and legal guardians, as

such definition rules out the possibility for individuals other than parents to be competent unless assigned by a court of law.[116]

But since it can be concluded that holders of parental responsibility in the majority of cases are the parents of the child, is limiting such competence, making it exclusive for holders of parental responsibility the best idea?
Some believe that such limit, even if lacking adaptability, is logical.[117] However, Larry Magid, the CEO of ConnectSafely.org, seems to oppose such limitation and explains:

Some parents may not have the literacy or technology skills to fill out the necessary consent mechanisms, others may be afraid to provide information that they fear might get into the hands of government or immigration authorities, many will simply be confused by the consent mechanisms, some may be too busy or too preoccupied with the challenges of providing for their families. There will be many parents who will refuse to give consent because they don't want to support their children's curiosity in such areas as religion, civic engagement or sexual health or orientation. And, sadly, there are some parents who abuse or mistreat their children who may want to keep them from being able to reach out for help.[118]

As a logical conclusion, the emphasis should be placed on parental education given their important role in providing the consent on behalf of the child.[119]

3.3.2.5 The requirement regarding the verification of the consent

When the consent is given or authorized by the holders of parental responsibility, data controllers are obliged under Article 8(2) GDPR to verify such consent giving consideration to available technology.
However, the GDPR does not include certain methods of verification that data controllers can rely on to verify the parental consent and therefore be compliant.

Article 29 Data Protection Working Party Guidelines on Consent under Regulation 2016/679 As last Revised and Adopted on 10 April 2018 states on page 26 that the level of risk incorporated in the processing could possibly be a determining factor of the

appropriateness of the measure to be taken by the data controller to verify that the consent is given or authorized by the holder of parental responsibility along with the available technology and therefore processing that entails high risk would require more serious measures.

However, disproportionate measures that necessitate an inordinate amount of personal data collection should be avoided by data controllers as the verification of the consent is insufficient by itself to be compliant with Article 8(2) GDPR.[120]
In this regard, this Article 29 Data Protection Working Party Guidelines on Consent under Regulation 2016/679 seems to uphold the idea that data controllers should restrain from using such extreme measures as it explains that in general 'Controllers should avoid verification solutions which themselves involve excessive collection of personal data.'[121]

It is worth mentioning that Article 29 Data Protection Working Party has been replaced by the European Data Protection Board under the GDPR. However, some of the Article 29 Data Protection Working Party Guidelines that are related to the GDPR were endorsed by the European Data Protection Board such as the previously mentioned Article 29 Data Protection Working Party Guidelines on Consent under Regulation 2016/679.[122]

It is also important to note that there could possibly be serious consequences for data controllers as a result of the uncertainty concerning particular definite mechanisms to verify parental consent since such uncertainty would give rise to GDPR violations.[123] Article 83(4) GDPR imposes administration fines up to 10 000 000 EUR or in the event of an undertaking, 2% of the total worldwide annual turnover of the last financial year for the infringements of Article 8 in regard to the data controllers' obligations.

Accordingly, one would come to a conclusion that the formulation of guidelines by the European bodies and institutions and Data Protection Authorities on the methods that the controller can rely on to verify the parental consent is not only sensible, but also pivotal.[124]

Indeed, the option of drawing up codes of conduct which could be useful in this matter is within the bounds of possibility under the GDPR.[125]

Article 40 (2) (g) GDPR enables the formulation, the amendment, and the extension of codes of conduct concerning 'the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained'.

3.3.2.6 The non-requirement of age verification

There is no age verification requirement under the GDPR as this regulation does not demand such validation of the child's age.[126]
A recent research project that focuses on the effectiveness of the techniques of age verification that are used by the industry of online gambling reports the following:

Insofar as age verification is one possible technical measure which can help prevent illegal access to age-restricted goods or services, it is still not a perfect solution for what is ultimately a social problem, but there have been significant improvements in the past five years, and it may now deliver enough additional benefits to be worth serious consideration across a wide range of online businesses.[127]

This age verification, and in comparison with services that are targeting children by default, is believed to be vital for providers of universal audience in order for them to fulfill their obligations under Article 8 GDPR since such services are accessed not only by adults, but also by children.[128]

However, the GDPR's stance on age verification and not demanding a requirement to authenticate the age of the child, is believed to be foreseeable for a number of reasons.[129]
To start with, with regard to the freedom of expression online and the children's privacy which are two delicate matters, age verification is claimed to be problematic.[130]
Additionally, Introducing mandatory age verification would do more harm than good as it would entail the gathering of further data not only from adults, but also from adolescents to fill its purposes , let alone its incapability to offer them a noteworthy protection and therefore it would have a negative impact on their privacy on the internet.[131]

Moreover, in view of the context of data protection which has a need for an approach that is highly detailed, and which is more complicated than the authentication of whether the age of majority is reached, certain known resolutions that are related to age verification are deemed to be inappropriate within this context.[132]

Article 29 Data Protection Working Party Opinion 15/2011 on the definition of consent Adopted on 13 July 2011 on page 28 recognizes that there is a lack of harmonization in relation to age verification of the child procedures.[133]
This lack of harmonization constitutes another favorable ground for the GDPR approach concerning age verification and not requiring such verification.[134]

Polonetsky points out that in most of the times, age verification measures are divided into two classifications.[135]
The first category consists of the adoption of suitable measures in the situation where individuals are unable to demonstrate that they are adults when accessing a website that is limited to the ones who can, whereas the adult in the other category is subject to identity authentication and 'on whose authority as a legal guardian age verification for his or her children can be performed thereafter.'[136]

One of the methods whereby could be established whether the user is an adult, and which also seems to be popular among adult sites, is self-verification.[137]
This method even though it is not difficult to find a way around it by individuals, it has the advantage of being not costly, and its application is simple since such method only requires the user to give their date of birth when asked by the site they want to access, and if the user is under the age limit, they will be denied access to the website.[138]

A not yet fully developed mechanism that is worth mentioning which could be a complement to this self-verification method, is Semantic Analysis mechanism where, the profile of the user is analyzed, and his age-range is established by technology that is put to use.[139]

Another Method is peer-based verification, where several websites and social networking sites 'employ some aspect of peer-review to determine whether a user's participation in

an online environment is appropriate'.[140] While this method has the same advantages as the self-verification method, it can also be bypassed by people by making numerous profiles, not to mention that this method could possibly lead to cyber-bullying since it grants peers many authorities including rating the individual.[141]

Credit and Debit Cards as an age verification method are not effective as they are only capable of establishing if the user did in fact reach the age of majority, but still they are considered to be 'Ubiquitous'.[142]

In regard to identity authentication measures, there exists a dependable and efficacious, albeit complicated and high-cost, database method.[143] This method is known as 'offline verification' whereby the parent or the legal guardian is directly contacted with the purpose of verifying the age of the minors and acquiring the parental consent.[144]

eID Cards are identification cards which also serve as an identity authentication method as they incorporate a chip that saves the contained user's data with the aim of employing this data for the carrying out of the authentication of identity and the verification of age.[145] The sources of data which eID cards depend on are considered to be reliable which is an advantage, but there is a concern related to this method implementation as its levels differ online, not to mention that imposing a one common-standard for its application would be challenging.[146]

Furthermore, there is a recent technology that is reliable and that cannot be bypassed easily known as Biometrics.[147]
However, this technology is believed to be expensive and in regard to the establishment of the user's accurate age, it cannot be accomplished by nearly all systems.[148]
Additionally, the fact that the categorization of detailed personal data gives rise to several moral issues, constitutes a concern.[149]

After examining some of the age verification methods, it can be concluded that there is a necessity for further guidance towards coming up with age verifications measures that are balanced, as well as effectual that can be depended on, and in this regard, it appears to be that Data Protection Authorities along with European Data Protection Board have a major

role as they are required to adopt a stand on this long outstanding problem concerning age verification.[150]

3.3.2.7 Parental consent expiry

An important question arises, is whether the consent given or authorized by the holder of parental responsibility expires upon reaching the age of consent.
Article 8 GDPR remained silent on this matter and there is no specification under the GDPR stating that once the child attains the age of consent, the consent given or authorized by holder of parental responsibility shall expire.[151]

Article 29 Working Party reconsidered its position regarding this issue in its Guidelines on Consent under Regulation 2016/679 after revising them.
Prior to the revision, the Article 29 Working Party in these Guidelines on Consent under Regulation 2016/697 page 26 and 27 pointed out that the consent that was given or authorized by the holder of the parental responsibility will expire as soon as the child attains the digital consent age and that this consent 'must be reaffirmed by the data subject personally'.[152]

However, and after the revision, Article 29 Working Party had second thoughts about this issue and came to the conclusion that the consent which was given or authorized by the holder of parental responsibility 'can be confirmed, modified or withdrawn, once the data subject reaches the age of digital consent.'[153]
It further explains that if there is no action taken by the child, such consent 'will remain a valid ground for processing'.[154]

It is believed that even after reaching the age of digital consent by the child, the consent that was previously given by the holder of parental responsibility on the child's behalf before the attainment of such age shall remain in his/her interest, otherwise he/she would be prevented from accessing the service that the holder of parental responsibility, on behalf of the child, previously gave the consent to.[155] Therefore, not requiring reassertion by the child upon reaching the age of digital consent seems to be logical.

This non-requirement appears to be even more reasonable in the case where the consent is authorized by the holder of parental responsibility since it is assumed that upon this authorization, the child took part in giving the consent.[156]

Moreover, imposing a reassertion requirement would pose a hardship on Information Society Services Providers and would be problematic, especially when the child relocates to another member state that has a different digital consent age from the one in the member state where the parental consent was acquired , as such requirement entails the gathering of further data related to the child such as his/her country and age and keeping hold of such data by the controller in order for him to submit in due course a request to reassert the consent.[157]

Therefore, as long as the previously given or authorized consent by the holder of parental responsibility was in the child's best interest and was not withdrawn by the holder of parental responsibility prior the child reaching the age of digital consent age, nor was it withdrawn by the child upon the attainment of digital consent age, such consent shall remain in effect.[158]

But what about the prior obtained consent from existing users?

Existing users who could be deemed to be a child as of the date of the application of the GDPR constitute a practical problem for providers of Information Society Services which are subject to Article 8 GDPR as it is not clear yet if there is a need for these users to give their consent again if necessary and whether the services should be withheld from them till the acquirement of the consent from the holder of parental responsibility is successfully accomplished in accordance with the GDPR.[159]

Thus, in an effort to avoid the temporal suspension of services rendered to the individuals who would be as of the GDPR date of application considered a child, it is recommended that controllers substitute consent as a legal basis for the processing with legitimate interest after fulfilling and requirements of this substitute legal basis and notifying the data subject accordingly since doing this would be beneficial for existing users, not to

mention that it would make certain Article 8 GDPR would be complied with in respect to any new processing.[160]

Article 6 GDPR is devoted to the lawfulness of the processing and states the cases where the processing of the data is considered to be lawful, with legitimate interest being one of them. Article 6(1)(f) states that processing of data shall be lawful if:

processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Therefore, and given this emphasis, when relying on legitimate interest as a ground for processing, it is crucial in this regard that the legitimate balance test take into account the child's interest when the service is not withheld and continues to be used by the child.[161]

3.3.3 Transparency

Children are explicitly mentioned under Article 12 GDPR as it requires the controller to take appropriate measures to provide individuals with information regarding the processing of their data 'in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child'.

Recital 58 GDPR further explains 'Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.'
Thus, this duty of the controller is considered to be a key element in this specific protection since the GDPR centers on informed and specific consent.[162]

However, the requirements of transparency are extensive and are not limited to consent under the GDPR and that lead to some difficulties for enterprises when children are involved as data subjects, such as informing them of the personal data breach in case of such breach as required under Article 33 GDPR.[163]

While this issue could possibly be tackled by providing a notice that can be easily understood by children of different ages with the possibility of this notice containing a preceding declaration directing the reader to show this notice to their parent or legal guardian prior to proceeding with the service if they are below the age of 18, difficulties still arise regarding the fashion that children should be informed in of the legitimate interest of the controller when legitimate interest is relied on as a legal basis for the processing, or even with respect to coming up with notices that are children-friendly in the case where the processing of the data is based on consent.[164]

In regard to providing more than one notice, the Centre for Information Policy Leadership explains that given the possibility that the conversion of the notice may render particular data missing when translating, It is believed that implementing the usual notice together with an intelligible variation of it that is particularly designed for children can be problematic and can lead to unpleasant results 'if the notice becomes the subject of an enforcement action and questions arise as to which text is controlling'.[165]

Therefore, it is recommended that the service providers take into consideration the audience of their services as it is considered to be better suited in this regard.[166]

While the provision of notices that are child-friendly (which includes not only text-based notices, but also notices where the technique of visualization is put to use along with the generation of videos) is a must for providers of services that target children, service providers that merely target adults do not have such requirement, as presenting intelligible notices to children would only be a best business practice rather than an obligation in their case.[167]

With regards to universal audience services that children still manage to have access to even though these services are intended for adults and not for them, uncertainty remains about how to address such services.[168]

A distinction is made here between when the data is processed on the basis of consent in the scope of Article 8 GDPR, and where such processing is also based on consent, but it

is beyond the scope of Article 8 GDPR or where there are legal bases being relied on for the processing of the data other than consent.[169]
In the former case, is it sufficient for notices to be understandable to 13 year old children and to the ones who are over this age as doing this would be favorable for all the children in all Member States in the event where the age of digital consent for children differs from a Member State to another, whereas in the latter case, the Centre for Information Policy Leadership makes clear that notices are required to be easy to understand for 'children of all relevant ages'.[170]

On a final note, discretion must be granted to organizations in terms of coming up with notices that would be fit in the best way in their estimation for mixed audience due the fact that there has been no pattern that they can rely on that is suitable for notifying children who are at an early age in particular.[171]

3.3.4 Marketing targeting children

According to Recital 38 GDPR, the specific protection that children merit which is mentioned in this Recital, should particularly apply when the data of the children is processed for marketing purposes.

Generally, marketing to children is allowed under the GDPR as long as they are not exploited and the GDPR requirements are entirely fulfilled while bearing in mind that the data subject's right to object to the processing of their personal data that is for direct marketing purposes (Article 21(2) GDPR) is not limited merely to adults as children also have the right to object to such processing likewise.[172] Therefore, children should be informed of this right.[173]

The legitimate interest of the controller as discussed before is one of the lawful bases that a controller can rely on for the processing of data as long as a balancing test has been done by it whereby it can be established that the interests of the controller are not overridden by the ones of the data subject's interests or his/her fundamental rights and freedoms. This legitimate interest can be also relied on for direct marketing in accordance with Recital 47 GDPR provided that this balancing test is applied as it states that 'The

processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.'

On a final note, and all things considered, when it is a question of whether processing the data of the children for advertising purposes would result in a high risk, any preconceptions that this processing would be considered as such should be eliminated as such processing is not enough for the processing to be considered as such.[174]

3.3.5 Profiling for children

Children are not specifically mentioned in Article 22 GDPR which is the article dedicated to the automated decision making, including profiling.
However, the specific protection that children merit which is mentioned in Recital 38 does not only particularly apply when the data of the children is processed for marketing purposes as previously discussed, but also apply in particular when children's data is processed with the aim of creating personality or user profiles, as Recital 38 states:

Such specific protection should, in particular, apply to the use of personal data of children 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, Recital 71 GDPR does explicitly state that decision-making that is based solely on automated processing, including profiling, where legal or similarly significant effects are produced should not concern children.
Notwithstanding this, and because of the wording of Recital 71 GDPR, Article 29 Working Party on its Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 believes that such processing is not totally forbidden under the GDPR as it states that 'Given that this wording is not reflected in the Article itself, WP29 does not consider that this represents an absolute prohibition on this type of processing in relation to children.'[175]

The Information Commissioner's Office distinguishes between two cases where Article 22 GDPR does not apply and where it does.[176]

In the former case, profiling children is allowed if the Recital 38 GDPR is complied with by granting the mentioned specific protection for children and if the further requirements laid down in the GDPR are fulfilled as well, whereas in the latter case the profiling of children is still allowed, but organizations who are processing children's personal data should be attentive to Recital 71 GDPR and the Article 29 Data Protection Working Party Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679.[177] Article 29 Working Party recommends in these Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 on page 28 that the exceptions incorporated in Article 22(2) GDPR should not depended on in general by controllers to give a justification for the solely automated decision making with legal or similarly significant effects concerning children.[178]

However, on the same page of these guidelines, Article 29 Working Party does recognize that there might be a necessity for controllers to perform such processing in certain situations, and consequently it would be possible for controllers in these circumstances to depend on the exceptions incorporated in Article 22 GDPR as long as there are proper safeguards in place that are suitable and effectual 'in protecting the rights, freedoms and legitimate interests of the children whose data they are processing'.[179]

It should be mentioned that in order to make certain that the scope of Article 22 would only apply to the solely automated decisions that have legal or similarly significant effect on the data subject and to element solely automated decisions that do not have this effect on the data subject from falling under the scope of Article 22 GDPR, the interpretation of Article 22 GDPR need to be a strict one.[180]

Indeed, Article 29 Working Party in its Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 makes clear on page 21 that there is no definition of legal or similarly significant effect under the GDPR, but 'the wording makes it clear that only serious impactful effects will be covered by Article 22.'[181]

However, on the same page of these guidelines, the WP29 proceeds to explain the meaning of ''legal effect'' and ''similarly significant effect'' and it states that a ''legal

effect'' affects the legal rights of an individual, or could possibly affect the legal status of an individual or his/her rights under a contract, while in regard to the ''similarly significant effect'', in order for a data processing to have a significant effect on an individual, the WP29 further explains that 'the effects of the processing must be sufficiently great or important to be worthy of attention .'[182]
That being said, in regard to meeting the threshold, the WP29 does acknowledge in these guidelines on page 22 the difficulty that lies in the accurate determination of which effects that would be regarded as adequately significant to meet this threshold and provides some examples of decisions that would be considered to have such effects, some of these decisions are the ones have an impact on the access on health services or education for the individual.[183]

On a related note, Recital 71 GDPR does also give some examples in this regard, which are 'automatic refusal of an online credit application or e-recruiting practices without any human intervention'.

3.3.6 Children's right to erasure

Article 17(1) GDPR states that the data subject has the right to require the erasure of the personal data concerning them where some specific grounds apply, such as where the personal data are not necessary anymore for the purposes for which they were collected.

One of these grounds is incorporated in Article 17(1)(f) GDPR as it specifically refers to the child's right of erasure (being the data subject) and states that this right of erasure can be exercised by the data subject where 'The personal data have been collected in relation to the offer of information society services referred to in Article 8(1).'

However, in regard to the age when the data subject can make use of their right of erasure, Article 17 GDPR makes no mention of such age, and in general, the GDPR contains no reference to the age limit for children to exercise the rights by themselves that the GDPR grants them.[184]

The Centre for Information Policy Leadership believes that 'The question turns on competence and whether the child has the ability to understand the consequences of exercising his or her rights.'[185]

Therefore, as long as the child was competent to put his/her right of erasure to use under the law of the Member State that is of relevance and was aware of what would result from exercising such right, it would be possible for him/her to exercise this right of erasure.[186]

Recital 65 GDPR as it states that the right of erasure 'is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing …'. It further adds that 'The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child.'

As a result, it is believed this idea regarding possibility for the child to exercise his/her right of erasure provided that he or she has competence in accordance with the relevant Member State's law and he/she is aware of the consequences arising from exercising such right is implicitly upheld by this Recital.[187]

3.3.7 Other related provisions

The supervisory authority under Article 57(1)(b) GDPR is required on its territory to 'promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing'. Article 57(1)(b) GDPR further adds that 'Activities addressed specifically to children shall receive specific attention.'

Another noteworthy Provision is Article 25(1) GDPR, as it states the following:

Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimization, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.

Therefore, this provision is believed likely to result in children enjoying protection of a certain degree that would be incorporated by the controller into the service provision or the technology.[188]

4. Children's Rights in the US

4.1 Overview of data protection in the US

Boyne makes clear that the US 'follows a sectoral approach to data privacy protection'.[189]

Furthermore, At the federal level, there is no single inclusive legislation that is devoted to the privacy of the individuals and to the protection of their data in the US, but rather there exists as Boyne further explains 'a combination of legislation at the federal and state levels, administrative regulations, as well as industry specific self-regulation guidelines.'[190]

Looking back at the history of personal data protection in the US, the year 1970 witnessed the enactment of the first legislation dealing with data protection known as The Fair Credit Reporting Act.[191]

By virtue of this Act which governs the consumer protection agencies, consumers enjoy the right to have knowledge of their credit information that is filed in their credit report and are able to correct errors in these reports by debating them.[192]

In 1973, a report titled ''Computer and the Rights of Citizens'' was published by the US Department of Health, Education, and Welfare, whereby a number of fundamental principles regarding privacy protection were laid down which were later relied on by the OECD in forming the 1980 Guidelines Governing the Protection of Privacy and Transborder Flows of Data.[193]

This report did not only suggest the enactment of a Code of Fair Information practice that contained these principles, but it also suggested rules for its execution particularly.[194]

Following the Watergate Scandal, the Privacy Act of 1974 was passed, and the principles belonging to the Code of Fair Information Practices were integrated in this Act by the Congress.[195]

It has to be noted that as a result of this Scandal, several responding legislations to the concerns related to the likelihood that the personal data would be abused by the government were enacted, with the Privacy Act of 1974 being one of them as it keeps the data secure from such abuse by virtue of the protection measures and the limitations that

it offers.[196] However, this Act contains a certain number of exceptions, and its scope is not inclusive since it is only applicable to records maintained by federal agencies in a ''system of records'', not to mention that not all the federal agencies are compelled by the rules of this Act.[197]

It is worth noting that this Privacy Act of 1974 was later amended by the Computer Matching and Privacy Protection Act of 1988.[198]

Looking at the current situation, Boyne notes that 'Despite the fact that Congress declared its commitment to the right to data privacy in 1974, the U.S. continues to lack a comprehensive data protection framework.'[199]
On the bright side, the adoption of consumer privacy laws by several states along with the enactment of the California Consumer Privacy Act are giving momentum to the passage of a federal data privacy law, not to mention that a number of major undertakings, and even the Chamber of Commerce are in favor of adopting such law.[200]

Moreover, this year witnessed the release of a model privacy legislation by the U.S Chamber of Commerce after cooperating with a significant number of corporations in formulating it.[201]
Additionally, on March 12 during the current year, the Senate Judiciary Committee held a hearing on GDPR and CPPA titled ''GDPR & CCPA: Opt-ins, Consumer Control, and the Impact on Competition and Innovation'' where the probability of a comprehensive federal privacy legislation was focused on among other matters.[202]

Remarkably, and in spite of their divergent views, politicians of both the two major political parties in the United States (the Democratic Party and the Republican Party) appear to have come to an understanding that a federal privacy law is required.[203]
All things considered, the following year is expected to be as Atteberry describes 'an eventful one for federal privacy legislation'.[204]

In regard to the privacy enforcement in the U.S, it is important to note that the Federal Trade Commission is the chief agency for it and it is empowered to administer several

legislations that are geared towards specific sectors, such as the Children's Online Privacy Protection Act.[205]

4.2 The children's online privacy protection Act

4.2.1 Background

The year 1998 witnessed the passage of the Children's Online Privacy Protection Act known as COPPA which took effect in April 21, 2000 following the unsuccessfulness of the Communication Decency Act of 1996 (CDA) and the Child Online Protection Act of 1997 (COPA).[206] There was a persistent demand for the enactment of a law that would secure the online privacy of the children before COPPA was adopted.[207]

Millions of children were accessing the internet frequently by the year of 1998 and were presenting marketing firms with their personal data when requested so as to access for example an online video game without being aware of the possible consequences associated with such provision.[208]

Indeed, the incapability of children to comprehend such probable implications was demonstrated in the report that was released in 1996 by the Center for Media Education.[209]

The gathered data from children was of value to other parties and therefore was sold to them at a later stage by these marketing companies after grouping it.[210]
Thus, it can be concluded that a legislation to protect the online privacy of children was necessary.

As a result, and with the purpose of tackling the strategies used by marketing companies across the internet that were aimed at children and which were on the rise in the nineties, the Children's Online Privacy Protection Act was adopted.[211]

When enacting this Act, the Congress was not only planning on securing the personal data of children on the internet and guaranteeing their protection online, but also it was

aiming to achieve a higher level of parents' participation in their child's activities over the internet.[212]

In 2011, subsequent to the Federal Trade Commission Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule, proposed changes to the Children's Online Privacy Protection rule were issued by the FTC.[213] However, the adoption of those changes by the FTC officially took place in 2012.[214]

In July of the following year, the amended rule entered into force.[215] This Revision tackles the new situation regarding the manner in which children are gaining access to the internet and making use of it, on top of that, their personal information definition is broadened by this revision.[216]

It should be pointed out that the compliance plan belonging to COPPA was brought up to date by the Federal Trade Commission in 2017.[217]

4.2.2 COPPA's provisions: The current situation after the revision and the updated compliance plan

4.2.2.1 ''Child'' Definition

The Children's Online Privacy Protection Act of 1998[218] only applies to children that are below the age of 13 as it explains that the child is any individual who is ''under the age of 13''.[219]

The Congress intention to limit the protection to children who are under the age of 13 and not to include teenagers is due to its acknowledgement of the high vulnerability of smaller children when marketing companies reach too far.[220] However, at no time did lawmakers give a complete explanation for this age limit.[221]

4.2.2.2 To whom does COPPA apply?

The FTC's updated COPPA Compliance Plan helps establish who is covered by The Children's Online Privacy Protection Act of 1998. Such clarification is considered to be crucial, especially in view of the fact that the Act was amended.

The FTC explains in its Compliance Plan that the Act applies to operators of websites and online services that are directed to children who are under the age of 13 and who collect the personal information from them, or when the other parties are allowed to collect these children's personal data by these operators of such websites and online services.[222]

Furthermore, the FTC's Compliance Plan makes clear that even operators of general audience websites or online services with actual knowledge that they are collecting personal information from children who are under the age of 13 are also required to comply with COPPA.[223]

It further points out that websites or online services third party operators are also required to comply with COPPA if they have actual knowledge that they are collecting personal information from users of another website or service directed to children who are below 13 years of age.[224]

For further assist in ascertaining whether COPPA applies, it is crucial to examine the definition of certain COPPA's principal terms, and in this regard the FTC's Compliance Plan does indeed suggest the consideration of the manner of how these terms are defined by COPPA.[225]

- **''Website or Online Service'' definition**

  The FTC's updated COPPA Compliance Plan makes clear that this term has a broad definition under COPPA and it is not limited to traditional websites, on top of that, it provides examples of what is also included.[226] These examples are:
  plug-ins, mobile applications through which information is sent or received online, VoIP services, advertising networks, location services are that internet-enabled, gaming platforms which are also internet-enabled, and IoT devices including connected toys.[227]
  In regard to the IoT devices, it is worth mentioning that they are newly introduced by FTC when it updated its COPPA Compliance Plan.[228]

- **''Directed to Children'' definition**

  In establishing if a website or online service is directed to children, COPPA lays down numerous circumstances that the FTC would take into consideration in making such determination.[229]

  The Children's Online Privacy Protection Act of 1998 states the following:

  In determining whether a Web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.[230]

  However, there exists a safe harbor in this case for such websites or online services under the COPPA rule as it states that if a website or online service that is deemed to be directed to children under the criteria mentioned above, but children are not targeted by such website or online service as its primary audience, such website or online shall not be considered to be directed to children if there is no personal information collected by this website or online service before it age-screens its users and as long as it fulfills the requirements of notice and parental consent in regard to the users who indicate that they are under the age of 13 without collecting any personal information from them prior to such fulfillment.[231]
  In regard to the meaning of ''primary audience'', there is a lack of advice from the Federal Trade Commission's side on it.[232]

  The FTC's FAQs regarding COPPA compliance state that children who are identified to be under the age of 13 after performing an age screen should not be forbidden from taking part in the website or service that is deemed to be directed to children under the aforementioned criteria where children are not targeted as the primary audience but such

website or service it is still considered to be directed to children on the basis of the factors mentioned in this criteria.[233] Rather, based on their age, they should be provided with separate activities.[234]

Another case where a website or an online service is considered to be directed to children under the Children's Online Privacy Protection Act of 1998 is where 'It has actual knowledge that it is collecting personal information directly from users of another Web site or online service directed to children.'[235]

- **''Personal Information'' definition**

Scrutinizing the definition of personal information with the purpose of checking whether it is in line with the advances in technology and the rate at which technology was progressing, was one of the intentions behind the COPPA Revision.[236]
As a result, the definition of personal information was broadened after the assertation made by the FTC regarding the inadequacy of the existing rules at the time in preserving children's privacy.[237]
After the revision, The Children's Online Privacy Protection Act of 1998 now defines personal information as the following:

Personal information means individually identifiable information about an individual collected online, including:

(1) A first and last name;
(2) A home or other physical address including street name and name of a city or town;
(3) Online contact information as defined in this section;
(4) A screen or user name where it functions in the same manner as online contact information, as defined in this section;
(5) A telephone number;
(6) A Social Security number;
(7) A persistent identifier that can be used to recognize a user over time and across different Web sites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

(8) A photograph, video, or audio file where such file contains a child's image or voice;
(9) Geolocation information sufficient to identify street name and name of a city or town; or
(10) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.[238]

Since there are new information classifications (4 new categories) that were introduced by the revision, issues arise in regard to the information that were collected and were not considered to be personal information before COPPA was amended and at the present time, however, are deemed to be as such after this revision, but, nevertheless, the FTC does address this issue in its COPPA compliance FAQ's as to how operators should put such information to use or disclose it.[239]

In regard to the geolocation information, the FTC point outs that every geolocation information that presents a sufficiently accurate information to establish the user's address which includes the his/her city, town, or street name was previously contained in the definition of personal information under the original rule, and the inclusion of such information in the definition of personal information as a separate classification after the revision is just to provide elucidation.[240]
As a result, and irrespective of the time of the collection of this type information, the obtainment of the parental consent should precede such collection and, in the case, where parental consent was not obtained for previously collected data of this type, parental consent should be acquired straight away.[241]

However, parental consent is not required for photographs, videos, or audio files that contain the child's image or voice which were previously collected before the amendment took effect but obtaining it would be considered a good practice as suggested by the FTC.[242]

The same applies for user or screen names that were also collected before the amended rule took effect and obtaining parental consent would also be considered as a good practice, provided that there is no new information associated by the operator

subsequently after the amended rule took effect, otherwise parental consent should be obtained as the FTC explains.[243]

In respect of Persistent identifiers, the FTC points out that the original rule already included them, but the coverage of the Rule was broadened after the amendment and now pursuant to the amended rule, 'A persistent identifier is covered where it can be used to recognize a user over time and across different websites or online services. '[244]

For such persistent identifiers that were previously collected before the amended rule took effect, parental consent is also not required to be obtained by operators, unless there is new information associated by them with these persistent identifiers or collected following the date when the amended rule came into effect.[245] However, if the purpose of such subsequent collection is to support the website's or the service's internal operations, the FTC makes clear that operators are exonerated from obtaining parental consent.[246]

- **''Collect'' or ''Collection'' definition**

  According to the Children's Online Privacy Protection Act of 1998, operators would be considered to be collecting personal information if they encourage the child to submit personal information over the internet or when such submission is requested or prompted by them.[247] The FTC makes clear that operators would still be deemed to be collecting personal information regardless of the fact that such collection is not mandatory.[248]

  Furthermore, Operators would also deemed to be collecting personal information under COPPA if the child is passively tracked by them online, or when the personal information of the child is made publicly available by the child as a consequence of allowing him/her to do so.[249] However, in the last case, the Children's Online Privacy Protection Act of 1998 states that if there are logical measures taken by the operator, whereby the personal information is erased from the postings of the child before such postings are made available to the public and by which such information is removed from its records, the operator would not be deemed to have collected personal information.[250]

  It must be pointed out that the list of these scenarios under COPPA in regard to what is considered to be a collection of personal information is non-exhaustive.[251]

On a final note in regard to COPPA's Coverage, the FTC explains that COPPA normally does not apply to non-profit organizations since various kinds of them are generally exempted from coverage under Section 5 of the Federal Trade Commission Act, but the offering of COPPA's protections by such organizations to children who are accessing the website or online service is recommended by the FTC.[252]

4.2.2.3 The obligation to post a privacy policy

Under the Children's Online Privacy Protection Act of 1998, there exists a requirement for the operators to have a privacy policy and to post a link to it that needs to be clearly identifiable and prominent which should be posted 'on the home or landing page or screen of its Web site or online service, and, at each area of the Web site or online service where personal information is collected from children'.[253] Furthermore, the Children's Online Privacy Protection Act of 1998 further states that 'The link must be in close proximity to the requests for information in each such area.'[254]

The FTC explains that if the operator decides to post such link at the bottom of the home page of its website, the determination whether it meets COPPA's requirements would depend on the fashion such link is displayed as it has to be prominent and clear as demanded by COPPA.[255]

In the FTC's COPPA compliance plan, the Commission suggests that the utilization of fonts that are bigger in size or the employment of other colors that would assure a sufficient contrast between the text and the background should be taken into account by operators.[256]

In regard to operators of general audience websites or online services that have a specific section for children, the Children's Online Privacy Protection Act of 1998 requires the link to their privacy policy related to children to be 'on the home or landing page or screen of the children's area'.[257]

Moreover, the privacy policy under the Children's Online Privacy Protection Act of 1998 should contain specific information as the Act states that operators have the obligation to include not only the name of every operator that collects or maintains personal information from children through their website or online service, but also the telephone number, physical address and email address of all of these third-party operators.[258]

However, it is possible under COPPA for the operator in the case where there are multiple third-party operators collecting information from children through its website or online service to include in the privacy policy the contact information of only one operator under the conditions that this operator is going to be answering every inquire made by parents into the practices of all the operators, and that the names of all of these third-party operators are listed in the privacy policy.[259]

In addition to the mentioned above, the Children's Online Privacy Protection Act of 1998 further states that the operator should describe in its privacy policy what kinds of information is collected from children, whether children are allowed by it to make their personal information available to the public, how this information is put to use by it, and its disclosure practices concerning such information.[260]

Lastly, the Privacy Policy under the Children's Online Privacy Protection Act of 1998 is also required to incorporate a description of the rights that parents have which are the right of reviewing the submitted personal information of the child, the right of having such information erased by the operator, and the right of rejecting any additional collection or use of such information.[261]
In addition to that, the Children's Online Privacy Protection Act of 1998 makes clear that the procedures for making use of these rights by the parents should be stated in the Privacy Policy as well.[262]

It should be noted that the FTC in its FAQ's regarding COPPA compliance explains that in accordance with General principles of notice under COPPA, promotional materials are not allowed to be contained in the privacy policy by the operator.[263]

4.2.2.4 The requirement to send a direct notice to the parent

The Children's Online Privacy Protection Act of 1998 states that before the collection of any personal information from children, the operator is required to give a direct notice to parents of its information practices, and in view of the available technology, reasonable efforts should be made by this operator for the purpose of making certain that such notice is received by the parent.[264]

Moreover, the Rule further explains that in case of any material changes to the to the information practices that the parents gave their assent to before, parents should be presented with a new notice which includes these material changes made by the operator to its information practices.[265]

The Children's Online Privacy Protection Act of 1998 specifies several certain cases where the direct notice is required and the elements that should be contained in the direct notice in each of these cases.[266]

a- Notice to Obtain the parent's consent before collecting, using, or disclosing the personal information of the child

In this case, the operator is required under the Children's Online Privacy Protection Act of 1998 to state in its direct notice that for the purpose of obtaining the parent's consent, their online contact information was collected from the child along with the child's and the parent's name if they were collected as well, and additionally to state that in order to collect, use, or disclose such information, the parent's consent is demanded, and without this consent, there will be no collection, use, or disclosure of any personal information from the child.[267]

In the event that the consent is indeed provided by the parent, COPPA points out that any additional item of personal information that the operator plans on colleting from the child should be included in the direct notice, together with any possible opportunity for the disclosure of personal information.[268]

Moreover, the Children's Online Privacy Protection Act of 1998 further requires the operator to include in the direct notice a hyperlink to its privacy policy.[269] The notice should also explain how parents can give their consent, and to make clear that their online contact information will be removed from the operator's records in the event their consent is not given within a reasonable time.[270]

b- Voluntary notice to the parents in regard to their child's online participation in a website or service where no more than the online contact information of the parents is collected by this website or service

The direct notice in this case as required by the Children's Online Privacy Protection Act of 1998 should state the operator's purposes behind previously collecting the online contact information of the parents from the child which are to present them with this notice, as well as to inform them of the activities of the child in the operator's website or service that does not collect, use, or disclose the personal information of the child.[271]

The operator is also required under COPPA to make clear that there will be no use or disclosure of their online contact information for any other purpose, and that parents have the ability to not only refuse the participation of the child on the website or service, but also to demand the deletion of their online contact information.[272] The operator here should also include in the direct notice a hyperlink to its privacy policy.[273]

c- Notice to parents regarding the operator's intent to communicate with the child on more than one occasion

The Children's Online Privacy Protection Act of 1998 stipulates in this instance that the direct notice should state that the online contact information of the child was collected from him/her for the purpose of communicating with him/her multiple times, together with the online contact information of the parents for the purpose of informing them of their child's request for multiple online communications.[274]
it should further make clear that this collected information will not be put to use by the operator for any other purpose, or will the operator disclose or combine them with other collected information.[275]

Furthermore, the operator is required under COPPA to state in the direct notice the ability that the parents have in regard to declining any further contact with the child, along with their ability to demand the deletion of both of their online contact information and of the child.[276]

In addition to this, COPPA obliges the operator to make clear in its direct notice that it would be able to use the online contact information that was collected from the child for the purpose that was mentioned in the direct notice in the event that parents do not respond to this notice.[277] Ultimately, the operator should provide a hyperlink to its privacy policy in the direct notice.[278]

d- Notice to protect the safety of the child

It is demanded under the Children's Online Privacy Protection Act of 1998 in this instance for the operator to state in the direct notice that the purpose behind the previous collection of the child's name, the parent's name, along with their online contact information is to protect the safety of the child, and to further state that there will be no use or disclosure of the information for any other purpose.[279]

Moreover, it should be made clear by the operator in the direct notice that the parents have the ability to refuse the use of the information that was collected, together with their ability to demand the deletion of the such information.[280]

COPPA further stipulates that the notice should set forth that the operator would be able to put the information that was collected into use for the purpose mentioned in the direct notice in the event that the parents do not respond to this direct notice.[281] Additionally, a hyperlink to operator's privacy policy should be included in the direct notice.[282]

4.2.2.5 Parental consent

Under the Children's Online Privacy Protection Act of 1998 in general, and before collecting, using, and disclosing any personal information from the child, verifiable parental consent should be obtained by the operator.[283]

The Children's Online Privacy Protection Act of 1998 also states that operators have the discretion in choosing the methods for obtaining verifiable parental consent, provided that, and for the purpose of making certain that the person who is providing the consent is indeed the child's parent, these methods are reasonably designed in light of available technology.[284]

Furthermore, The Children's Online Privacy Protection Act of 1998 proposes several accepted methods to obtain verifiable parental consent that are non-exhaustive, one of these methods is to provide the parent with a consent form to sign and return via fax, mail, or electric scan.[285]

Another method that COPPA proposes is to require the parent to use a credit card, debit card, or any other online payment system that notifies the account holder of every separate transaction.[286]

It is also proposed under COPPA as an accepted method to provide a toll-free number staffed by trained personnel that the parent can call, or alternatively, have the parent connect via video conference to trained personnel.[287]

Furthermore, having the parent provide an identification that is government issued to be checked it against a database by the operator is also an accepted method that COPPA suggests, provided that, and as soon as the verification process is complete, the identification of the parent is deleted by the operator from its records.[288]

In addition to these proposed methods, there exist two other methods approved by the FTC that are listed in its updated COPPA compliance plan, which are the use of

knowledge-based authentication questions, and the use of facial recognition to get a match with a verified photo identification.[289]

The FTC explains in its updated COPPA compliance plan that a method called ‘’email plus’’ can be used by the operator, whereby the parent is requested to reply with his/her consent, provided that the personal information of the child is going to be used for internal purposes only by the operator without any disclosure of such information.[290] However, the FTC makes clear that when such method is put to use by the operator, the parent should be sent at a subsequent time another message through his/her online contact information to affirm his/her consent and should be informed that he/she always has the option of withdrawing it.[291]

It is important to mention that there exist certain exceptions to the prior parental consent requirement under the Children’s Online Privacy Protection Act of 1998 where the personal information can be collected without obtaining a parental consent.
However, The FTC in its updated COPPA compliance plan makes clear that each of these exceptions only allows a limited type of information to be collected by the operator and that such information when collected cannot be disclosed or used for any other purpose.[292] These exceptions are explained in this updated COPPA compliance plan.

The first exception is collecting the information for the purpose of obtaining verifiable parental consent.[293] In this case, the operator is only allowed to collect the name of the child, name of the parent, along with their online contact information, and in the event it does not obtain the parental consent after a reasonable time, the operator is required to delete from its records the contact information.[294]

The second exception does not include any collection of the child’s personal information and it only consists of the sole collection of the online contact information of the parent for the purpose of providing a voluntary notice to him/her regarding the activities of the child in a website or service that does not collect personal information.[295]

The third exception is where information is collected for the purpose of responding directly to a specific one-time request made by the child.[296] Under this exception, it is

only allowed to collect the online contact information of the child, and since such information is required to be removed by the operator from its records subsequently after responding to the child's request, the child cannot be re-contacted using this information.[297]

The forth exception has also the same purpose as the previously mentioned exception, but the difference here is to respond directly to the child-specific request on a multiple-time basis.[298] The operator under this exception is only allowed to collect the online contact information of the child and the one of the parent, but combining such information with any other information collected from the child is prohibited.[299]

The fifth exception is collecting the information for the purpose of protecting the safety of the child, and here, only the child's name and the parent's name, along with their online contact information can be collected.[300]

The sixth exception is where information is collected to protect the security or integrity of the operator's website or online service, to take precautions against liability, to respond to judicial process, or to provide information to law enforcement when it is permitted under the law.[301] In this case, only the name and online contact information of the child can be collected.[302]

The seventh exception is related the sole collection of a persistent identifier for the purpose of providing support for the internal operations of the operator's website or service.[303] However, the operator would be prohibited from using this exception if it collects other information (not only a persistent identifier), as such exception does not allow it.[304]

The last exception as explained by the FTC relates to the situation where the operator has actual knowledge 'that a person's information was collected through a child-directed site, but their previous registration indicates the person is 13 or over'.[305] This exception could only be used by the operator when there is no information that was collected other than a persistent identifier from a user who assertively interacts with the operator's website of

the operator, and that user indicated being 13 or older in an age-screen of him/her that was previously conducted by the operator.[306]

4.2.2.6 Parent's right to review the information that was provided by the child

the Children's Online Privacy Protection Act of 1998 states that the operator is obliged to describe to the parent the kinds of the information it collects from the child when asked by him/her.[307]

Furthermore, and upon the parent's request, the operator is also required to provide him/her with the ability to refuse any further use or collection of personal information from the child, along with the ability to instruct it to delete such information.[308]

On top of that, methods to review the collected personal information from the child should be provided to the parent by the operator when requested by him/her.[309] COPPA states that these methods should make certain in light of the available technology that the operator is in fact dealing with the parent of the child, and that they should not be 'unduly burdensome to the parent'.[310]

4.2.2.7 Other important requirements

The Children's Online Privacy Protection Act of 1998 requires operators to implement reasonable procedures for the purpose of protecting the security of the personal information of the child, as it states the following:

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.[311]

Moreover, The Children's Online Privacy Protection Act of 1998 does not allow for the participation of the child in a game, prize offering, or any other activity offered by the operator to be conditioned by it on the disclosure of more personal information by the child 'than is reasonably necessary to participate in that activity'.[312]

4.2.3 Possible COPPA update?

On 12 March 2019, a bill was introduced by Senators Edward J. Markey and Josh Hawley to update the Children's Online Privacy Protection Act of 1998 and improve its effectiveness in many ways.[313]

Some of the key changes that the bill proposes is to extend the reach of COPPA to those who are between the ages of 13 and 16 by requiring online companies to obtain the user's consent before collecting their personal and location information, while maintaining the parental consent obtainment requirement for children who are under the age of 13.[314] Another proposed change is to ban advertising that is directed towards children.[315] Moreover, if adopted, an ''Eraser Button'' would be created, whereby the personal information could be deleted by both the parents and the kids, not to mention that the Division of the Youth and Marketing at the Federal Trade Commission would be established.[316]

5. Conclusion

Children's rights have come a long way since the days where there was little to no acknowledgment of such rights, in particular in the Western World where these rights are prevalent in terms of their recognition and implementation, even though this has not been the case in developing countries as children still to this day do not enjoy such rights in the same manner.

Moreover, their right to data protection is now considered to be acknowledged in different parts of the world, especially in the EU and the US to combat the increased trend of collecting children's personal information by businesses.

This thesis aimed to analyze both of the GDPR provisions relating to children and COPPA provisions in an effort to assess their efficacy when compared to COPPA, and additionally, to point out the most significant differences and similarities between them.

When comparing the GDPR with COPPA, it has to be kept in mind that GDPR unlike the latter, is not specifically made for the protection of the data of children. Rather, the protection of the GDPR covers both adults and children while containing specific provisions for children altering the age-blind approach of the its predecessor the EU Privacy Directive 95/46/EC. However, this is not to imply that children are not also protected under the rest of the GDPR provisions that do not specifically address them.

It can be concluded that both of these two legislations offer an undeniable protection to children's personal information to a great extent in general, in spite of that fact that they have their own shortcomings like any other legislation and that they are consistent with each other in some of the requirements that they demand such as the requirement of the parental consent, requiring the provision of privacy notice, etc.

In measuring the efficiency of the GDPR's children related provisions, it has to be noted that the GDPR remained silent on certain matters and therefore they need to be addressed by the legislator. Doing this would render these provisions more effective.

Firstly, except for the purpose contained in Article 8(1) GDPR which is the offering of information society service to a child, the GDPR does not define the child. This indeed could prove to be problematic when applying other provisions to the child. Should the threshold contained in Article 8(1) GDPR be applicable to all the other provisions? Or should the definition contained in the Convention on the Rights of the Child be referred to?

When looking at the child's definition under COPPA, the Act indeed excels in this regard as it defines the child clearly, even though it is widely held that the threshold COPPA had an effect on the European legislator's decision in regard to the minimum age threshold contained in Article 8(1) GDPR that Member States could opt for.[317]
In this regard, the Commission Staff Working Paper Impact assessment states the following:

The specific rules on consent in the online environment for children below 13 years – for which parental authorisation is required – take inspiration for the age limit from the current US Children Online Data Protection Act of 1998 and are not expected to impose undue and unrealistic burden upon providers of online services and other controllers.[318]

Therefore, such influence is believed to be moderately acknowledged by the EC.[319]

Secondly, in relation to ISS services offered directly to a child, the GDPR also does not define terms ''offered'' and ''directly'', which could be tricky when the service in question targets general audience and children are not its primary target audience but still they access the service. By contrast, website or online service ''directed to children'' is clearly defined under COPPA, not to mention that there exist specific criteria that would help in determining whether a general audience website or service is directed to children.

Thirdly, regarding the data controller's requirement to make reasonable efforts to verify the parental consent under the GDPR in light of the available technology, the GDPR does not specify any methods for such verification, unlike the situation under COPPA where there exists a number of proposed methods for verifying the parental consent. One possible solution for this is to promote the drafting of codes of conduct in accordance with Article 40 GDPR.

Lastly, concerning children's right to be forgotten that they have under Article 17 GDPR, the GDPR did an excellent job by explicitly granting them such right. However, it did not specify when such right can be used by children exactly, not to mention that this issue is not entirely clear under Recital (65) GDPR. Therefore, a further guidance is required.

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Abstract

The rapid technological change and the processing of personal data that is on the rise have left children exposed to harm, in particular with regards to their online privacy. It is widely acknowledged that children are regarded to be more vulnerable than adults, and therefore should be granted a special protection.

The EU legislator was aware of the fact that children should have such protection in regard to their personal information when drafting the GDPR, and as a result, it incorporated certain provisions that provide children with this specific protection. However, it can be observed these provisions in spite of being effective to some extent, there are matters that still need to be addressed by the legislator to increase the efficiency of these children-related provisions contained in the GDPR, especially when compared to other related legislations such as COPPA in the US which is a specific law for the children's data protection.

Therefore, the aim of this thesis is to analyze these GDPR provisions related to children, along with COPPA provisions to highlight some of these matters, and additionally, to point out the most significant differences and similarities between the two legislations when compared.
This paper will also be giving an overview of the historical development of children's rights and their justifications.

Abstrakt

Durch den schnellen technologischen Fortschritt und die steigende Verarbeitung personenbezogener Daten sind Kinder vielen Gefahren ausgesetzt, insbesondere bezüglich ihrer Privatsphäre im Internet. Es ist allgemein anerkannt, dass Kinder verletzlicher als Erwachsene sind und ihnen daher auch ein besonderer Schutz zusteht.

Der EU-Gesetzgeber war sich beim Gesetzesentwurf der Datenschutz-Grundverordnung der Tatsache, dass Kinder eines solchen Schutzes hinsichtlich ihrer persönlichen Information bedürfen, bewusst, weswegen diese auch Regelungen enthält, die Kindern diesen besonderen Schutz bieten. Allerdings gibt es, obwohl diese Regelungen zum Teil wirksam sind, immer noch einige Angelegenheiten, die vom Gesetzgeber adressiert werden sollten, um die Effezienz der kinderbezogenen Regelungen in der DSGVO zu steigern, inbesondere, wenn man diese mit dem COPPA, einem spezifischen Gesetz für den Datenschutz von Kindern in den Vereinigten Staaten, vergleicht.

Daher ist das Ziel dieser Masterthese, die kinderbezogenen Regelungen der DSGVO gemeinsam mit denen des COPPA zu analysieren, um so einige der bisher unberücksichtigten Angelegenheiten hervorzuheben und außerdem die siginifikantesten Unterschiede und Gemeinsamkeiten beider Gesetzgebungen aufzuzeigen.
Diese Arbeit gibt zudem einen Überblick über die historische Entwicklung von Kinderrechten und deren Begründungen.

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