
A Child Rights Based Proposal for the Regulation of Commercial Sharenting



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Executive Summary

This thesis analyses the practice of commercial sharenting with a child rights based approach.

Chapter 1 defines commercial sharenting as a practice where an adult, who has legal responsibility for the care of the child, shares private details (e.g. photos, stories, location data) about the child via digital channels and receives financial gain from doing so. It then outlines the researched benefits and risks of commercial sharenting, and which actors are involved in it. Then, the research question and key words are defined, followed by an explanation of the aims of the thesis, the methods that will be used to answer the research question and a layout of the structure of the rest of the thesis.

Chapter 2 analyses the effects of commercial sharenting on the children rights of the United Nations Convention on the Rights of the Child (CRC). It illustrates why the regulation of commercial sharenting is necessary and answers the sub research question: What children rights can be violated by commercial sharenting?

Chapter 3 looks at the role of parents' right to freedom of expression and respect for privacy and family involved in commercial sharenting as well as parental responsibilities under CRC Article 5 and 18. This chapter answers the sub research question: What parental rights and responsibilities are involved in commercial sharenting?

Chapter 4 examines existing national efforts to regulate commercial sharenting. Dutch and Italian case law, French legislation, and national awareness-raising campaigns are explored and evaluated to find out the feasibility of regulating commercial sharenting in practice. This chapter answers the sub research question: In what ways can States regulate commercial sharenting?

Chapter 5 seeks to address how States could regulate commercial sharenting keeping in mind the balance between parents' rights and children's rights. This chapter draws on the findings from the previous chapters to answer the sub research question: To what extent can the State intervene in family life to regulate commercial sharenting and in what ways would this be possible? Recommendations for what States should consider to regulate commercial sharenting are proposed.

Chapter 6 concludes the thesis by providing an answer to the main research question. It contends that commercial sharenting can lead to violations of various children rights and a child rights based approach to regulate it at State level is increasingly necessary to align States with the international children's rights framework. This chapter also mentions ideas for further research on this topic, namely, on research that could come up with proposals for the other actors involved in commercial sharenting to regulate it.

Keywords

Child Rights Based Approach – Commercial Sharenting – United Nations Convention on the Rights of the Child – Balancing Parents’ and Children’s Rights – Regulations

Overview of Main Findings

This thesis seeks to answer the research question: **In what ways can commercial sharenting violate children rights embedded in the United Nations Convention of the Rights of the Child (CRC) and how should it be regulated by States to comply with their obligations under the international children's rights framework?**

The analysis of commercial sharenting with a child rights based approach provides an answer to the first part of the research question. It finds that commercial sharenting as it is today, has the potential to violate many children's rights of the CRC. The CRC rights of the child to non-discrimination, best interests of the child, development, respect for the views of the child, evolving capacities, privacy, and protection from violence, abuse, neglect, and exploitation, including economic exploitation, are at risk of being violated by commercial sharenting. It also finds that unrestricted commercial sharenting, as it is today, gives more weight to parents' right to freedom of expression and private and family life than to children's rights. However, these rights are not absolute and should be restricted. Parents also have parental responsibilities under the CRC to protect children, including in the digital environment, while considering the evolving capacities and best interests of the child. Taking part in unregulated commercial sharenting is not in line with protecting children in the digital environment nor with the best interests of the child due to all the risks of harm it causes.

This means that for States to comply with the international children's rights framework, State regulations, based on a child rights based approach, that limit parents' online disclosure about their children are necessary. To answer the second part of the research question about how States should regulate commercial sharenting, this thesis explores existing regulations that exemplify possible avenues to restrict the harmful consequences of commercial sharenting. These existing regulations show that legal regulation provides social and educative, preventive, and remedial measures, whereas non-legal regulations lack a remedial measure. Therefore, legal regulation is most effective, however, non-legal regulation is complimentary and can fill in the gaps that legal regulation may have. The existing regulations are not widespread nor systematic, with only a few States implementing them, therefore States need to address this legal gap to fulfil their obligations under the CRC. Additionally, more regulations are needed to provide protection for each of the other rights of the child at risk due to commercial sharenting. States should not simply copy-paste the existing regulations and should instead conduct Child Right Impact Assessments to be able to address the particular impacts of commercial sharenting from a child rights based approach, which may vary. To determine penalties and remedies in cases of commercial sharenting, a case-by-case analysis of the harm to the child should be applied. Moreover, regulations of commercial sharenting will need to be constantly monitored and reviewed to adequately address the continuously evolving aspect of the digital environment.

1. Introduction

1.1 Defining commercial sharenting

Digital technology is advancing fast in this century. A child rights based approach illustrates this has many positive implications, such as enabling and enhancing children's access to high-quality inclusive education,¹ healthcare,² and information³. Nevertheless, these advancements can also bring dangers for the protection of children's rights. The law is running behind digital technological advancements, and we need regulations to address them. Commercial sharenting is a practice brought about by digital technology advancements that may be a source of harm to children, which has gone largely unaddressed.

Commercial sharenting is a form of sharenting. The term 'sharenting' is a combination of the words parenting and sharing and refers to a practice where an adult, who has legal responsibility for the care of the child, shares private details (e.g. photos, stories, location data) about the child via digital channels.⁴ Most of the time, sharenting is undertaken without the consent of the children involved.⁵ The addition of the term 'commercial' to 'sharenting' means that the adult who takes part in commercial sharenting receives financial gain from the sharenting they are doing.⁶ This is because they use their social media and their children's personal data to advertise things through brand deals and product placements in videos and photos they post, which they get paid for in money and benefits like receiving free samples of products. The practice of sharenting without the commercial aspect has already been deemed dangerous for children and the attainment of their rights,⁷ however, the addition of the commercial financial gain brings with it even higher risks to children as it becomes profitable for parents to share information about them and may lead to children's economic exploitation.

Adults with the legal responsibility for caregiving are responsible for the safety, health, development, and well-being of the child.⁸ These adults are often the parents of the child but may include any other legal guardian of a child. For the purpose of this thesis, reference to parental responsibilities will include the responsibilities of all legal caregivers. The Convention on the Rights of the Child (CRC) and its Committee views parents as gatekeepers of their children's rights rather than as threats to their rights, and subsequently protects parental responsibilities from State intervention to a large extent.⁹ This

¹ CRC GC 25 para 99.

² Ibid. para 93.

³ Ibid. para 50.

⁴ Plunkett, 2019: xv.

⁵ Kopecky et al, 2020: 2; Minkus, Liu, & Ross, 2015: 783.

⁶ Plunkett, 2019: 55.

⁷ Bessant, 2018; Siibak, & Traks, 2019; Kopecky et al, 2020.

⁸ CRC Committee, GC13: para 33.

⁹ Sandberg, 2019: 188.

becomes a problem in the commercial sharenting context when the actions of parents may be threatening their children's rights.¹⁰

1.1.1 Benefits of commercial sharenting

Commercial sharenting has many consequences for children, most of them negative. However, the benefits of commercial sharenting are worth mentioning to understand the reasons for parents to take part in the practice. One of the major benefits is the creation of a connected community of parents. Through commercial sharenting, parents can share their parenting challenges and can give and receive advice from other parents all around the world who may be experiencing the same things. A study found that about 70% of parents say that social media is useful for making them feel like they are not alone, learning what not to do and getting advice from more experienced parents.¹¹ A quick google search of "parental advice blog/YouTube channel" illustrates that there are thousands of blogs and YouTube channels created for this purpose. Moreover, social media platform TikTok is increasingly being used by parents to post videos about "gentle/positive parenting" showing how to handle children's tantrums in real-time.¹² This is beneficial for the parents as they feel like they are not alone on their parenting journeys, and it may also be beneficial to the children as their parents could receive tips about how to better raise them. However, it is not a certainty that the tips they receive will be beneficial for the children as there is a lot of varied information online that does not apply to every situation. Plunkett argues that this kind of advice-giving commercial sharenting is dangerous as the advice can be inaccurate, incomplete, and misleading.¹³

Another benefit is that commercial sharenting can be used as an awareness raising method for parents who are raising children with specific health conditions and disabilities.¹⁴ They can contribute to reducing stigma about health conditions and disabilities by sharing information about their situation with their children. They also provide communities of support and solidarity.¹⁵ Moreover, the revenue they gain from commercial sharenting can contribute to paying medical bills for the treatment of their child.¹⁶ Nevertheless, by posting on social media about their child's disabilities, they disclose an aspect of the child's identity that the child may prefer not to be public.¹⁷ As Steinberg contends "it can be very difficult to differentiate advocacy from oversharing".¹⁸

1.1.2 Risks of commercial sharenting

¹⁰ CRC GC 25 para 67.

¹¹ C.S. Mott Children's Hospital, 2015.

¹² TikTok channels: highimpactclub, sharijonaslifefx, parentingcoach, jothemama.

¹³ Plunkett, 2019: 62.

¹⁴ YouTube channel: FatheringAutism; TikTok channel: love_logan07, iamrnnesbitt.

¹⁵ Meakin, 2013.

¹⁶ Steinberg, 2017: 841.

¹⁷ Ibid.: 852

¹⁸ Ibid.

The practice of parents sharing information and pictures of their children is not new. However, the platform for the sharing has moved from word of mouth and printed photos to the world wide web. Moreover, in commercial sharenting, the platform is not restricted to friends and family, like in most cases of sharenting, but extends to strangers. This much larger public platform brings about big risks that affect many children's rights. When parents share private information about their children on their public social media platforms, anyone in the world is able to see and collect this data. A 2016 study in the United Kingdom found that, on average, parents have shared 1500 photos of their child on social media by the fifth birthday with 24% of parents unable to answer questions on where to find and amend privacy settings online.¹⁹ Another research has found that 63% of parents state their child's first name in at least one photo on their Instagram feed and 27% of parents reference their child's date of birth.²⁰ This illustrates that some parents are unaware of the repercussions that publicly posting private information about their child's name, birthday, appearance, location and opinions can have. One of these repercussions is identity theft. Barclays bank has estimated "that "sharenting" will account for two-thirds of identity fraud facing young people by the end of the next decade".²¹ Another repercussion is child sexual abuse material. In 2015, Australia's eSafety Commissioner declared that "innocent photos of children originally posted on social media and family blogs account for up to half the material found on some paedophile image-sharing sites".²² Cyberbullying is another big negative repercussion. Because of the comment section under public social media posts, it is easy for anyone in the world to leave a bullying comment about someone, without facing reprimanding consequences. Moreover, it is easy to collect data posted about a child by parents who take part in commercial sharenting to create pages aimed at bullying them. For example, in 2013, a Facebook group was discovered reposting photos of children from other Facebook accounts, and mothers who were part of this group were criticising the children in the pictures.²³ It is often the case that parents are unaware of the risks that commercial sharenting can bring about for their children.²⁴ This is why academics have recommend that parents be educated and made aware of all these negative repercussions before they publicly post private information about their child online.²⁵ Chapter 2 of this thesis will address the risks of commercial sharenting further with a focus on how the practice negatively affects children's CRC rights.

1.2 Actors involved in commercial sharenting

The actors who are directly involved and affected by commercial sharenting are parents/caregivers and children. However, social media businesses provide the platform for commercial sharenting to occur and they also financially benefit from the practice, thus making them an important actor involved. Depending on their policies, they have the power to exacerbate or hinder the practice of commercial

¹⁹ Nominet, 2016.

²⁰ Steinberg, 2017: 849.

²¹ Coughlan, 2018.

²² Battersby, 2015.

²³ Klausner, 2013.

²⁴ Minkus, Liu, & Ross, 2015: 776; Steinberg, 2017: 842.

²⁵ Oswald et al., 2017: 29; Nottingham, 2019: 183.

sharenting, for example by developing features that remind parents of the potential effects on their children's rights before posting content of their child.²⁶ Their role in regulating commercial sharenting on their platforms is therefore important, however, an examination of this falls outside the scope of this thesis.

International and regional organisations that protect human rights also have a role to defend children from the harmful effects of commercial sharenting. This can be through general comments, such as CRC General Comment (GC) 25 on children's rights in relation to the digital environment, through guidelines, such as the Council of Europe 2018 Guidelines to respect, protect and fulfil the rights of the child in the digital environment, and can even be through court/communication decisions. Nevertheless, arising from the concept of sovereignty, international law has a rule that domestic remedies must be exhausted before being able to bring a complaint about violations of human rights to the international level.²⁷ Therefore, this thesis will look at the importance of international law in assisting States Parties to enact national legislation in line with international children's rights, but will focus on the actions of States at the domestic level to regulate commercial sharenting.

The implementation of children's rights is primarily a domestic matter.²⁸ According to Article 4 of the CRC, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention".²⁹ This means that States have obligations to respect, protect and fulfil children's rights. Since commercial sharenting may infringe upon children's rights, the role of States becomes important. Moreover, since commercial sharenting is a practice that is conducted by parents/caregivers, it is important that regulation balances parental rights and responsibilities with the rights of children. Under the CRC it is the role of the State to provide parents and legal guardians with assistance in the performance of their child-rearing responsibilities,³⁰ while also taking appropriate measures to protect the child from all forms of abuse, neglect, maltreatment, and exploitation that may happen while in the care of parents or any other person who has legal responsibility for the care of the child.³¹ Due to this and the limited length of this thesis, which does not allow for an in depth analysis about the role of other actors, this thesis will focus on the role of the State to regulate commercial sharenting.

1.3 Research question, aims and methodology

Consequently, this thesis seeks to answer the research question: **In what ways can commercial sharenting violate children rights embedded in the United Nations Convention of the Rights of the Child (CRC) and how should it be regulated by States to comply with their obligations under the international children's rights framework?**

²⁶ Plunkett, 2019: 105.

²⁷ Skelton, 2019: 69

²⁸ Liefwaard, 2008: 648.

²⁹ CRC Article 4.

³⁰ CRC Article 18.

³¹ CRC Article 19.

The main aim is to look at commercial sharenting through a child rights lens to determine which rights of the child can be violated by the practice and to propose actions States can take to comply with the international children's rights framework. A child rights based approach takes the protection, respect, and fulfilment of children's rights as the centre of all actions concerning children.³² It also sees children as rights holders instead of as passive objects in need of assistance.

The research this thesis aims for is important because it will bring children's rights to the forefront of the practice of commercial sharenting, which can help to raise thoughts, concerns and start conversations about how it may be detrimental to children and needs regulation. This thesis will provide a collation of real-life examples of how States have started to address children's rights issues that arise from commercial sharenting. This can serve as an example for more States to take action of their own to regulate commercial sharenting with a child rights based approach. Moreover, this thesis can act as a catalyst for similar research to be conducted on how other actors involved in commercial sharenting can take action to be more in-line with the international children's rights framework.

This thesis is a doctrinal desk-based research looking at legal and academic sources. Firstly, academic literature is used to define commercial sharenting. Next, the international legal human rights framework is analysed to evaluate the effect of commercial sharenting on children's rights and parents' rights and responsibilities. Then, relevant national case law, legislation and awareness raising campaigns are explored to show what is already being done in practice to regulate commercial sharenting, providing a comparative legal analysis to help answer the research question. Finally, based on all the previous analysis, recommendations for what States should consider to regulate commercial sharenting are proposed.

1.4 Structure of the thesis

Chapter 2 will analyse the effects of commercial sharenting on the children rights of the CRC. This chapter will illustrate why the regulation of commercial sharenting is necessary and answer the sub research question: What children rights can be violated by commercial sharenting?

Chapter 3 will look at the role of parents' right to freedom of expression and respect for privacy and family involved in commercial sharenting as well as parental responsibilities under CRC Article 5 and 18, GDPR Article 8. This chapter will answer the sub research question: What parental rights and responsibilities are involved in commercial sharenting?

Chapter 4 will examine existing national efforts to regulate commercial sharenting. Dutch and Italian case law, French legislation, and national awareness-raising campaigns will be explored and evaluated in this chapter to find out the feasibility of regulating commercial sharenting. This chapter will answer the sub research question: In what ways can States regulate commercial sharenting?

Chapter 5 seeks to address how States could regulate commercial sharenting keeping in mind the balance between parents' rights and children's rights. This chapter will draw on the findings from chapter 3 to answer the sub research question: To what extent can the State intervene in family life to regulate commercial sharenting and in what ways?

Chapter 6 will conclude by providing an answer to the main research question by elaborating that commercial sharenting can lead to violations of various children rights and a child rights based approach

³² CRC GC13 para 59.

to regulate it at State level is increasingly necessary to align States with the international children's rights framework. This chapter will also mention ideas for further research on this topic.

2. The effect of commercial sharenting on children's rights under international law

2.1 General Principles of the CRC

The CRC Committee has selected four rights of the Convention to act as General Principles (GPs). They were not intended to have priority over other rights but rather to guide the interpretation and implementation of all other rights in the Convention as CRC rights are interdependent.³³ Therefore, the Committee pays special attention to these GPs when analysing State Party reports and writing Concluding Observations, as well as when creating GCs. This is why when looking at the practice of commercial sharenting through a child rights lens, it is important to pay special attention to the GPs. Moreover, academic van der Hof has come up with a Child Rights Impact Assessment (CRIA) tool (Figure 1) to evaluate the impact of any digital technology matter to be regulated with an impact on children that involves the analysis of the GPs as the starting point.

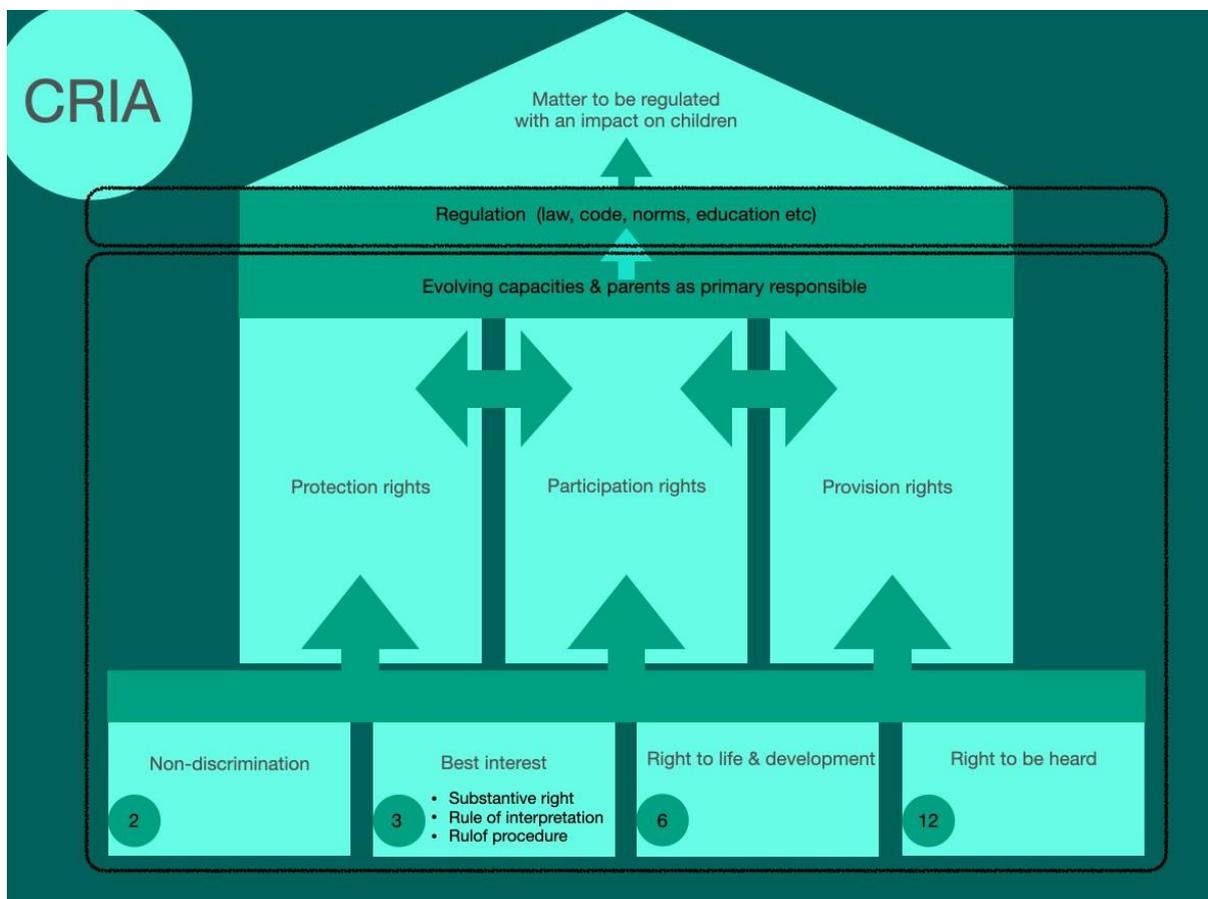


Figure 1: CRIA digital technology tool.³⁴

2.1.1 Article 2 – The Right to Non-discrimination

³³ Hanson & Lundy, 2017: 291.

³⁴ Van der Hof, 2022, Lecture.

Discrimination against children occurs when there is differential treatment between children or between children and adults where there is no legitimate objective that justifies it.³⁵ Examples of this are: when States set a different minimum age for marriage for girls and boys, or, when access to social services is restricted for children of an ethnic minority. While children are protected by the general anti-discrimination clauses of international human rights instruments just as adults are,³⁶ the Committee found it necessary to include a specific non-discrimination provision for children in the CRC. This is because children are often discriminated in ways that reflect their specific position in society, such as through punishment.³⁷ This leads to a potential double discrimination of children against their identity first as children and then as members of a specific gender or group. Moreover, and most significant in the context of commercial sharenting, children may be discriminated against because of the actions of their parents/guardians.³⁸ Article 2(2) specifically addresses that the State should actively protect children from discrimination on the basis of their parents, guardians, or family members. The Committee therefore urges States to take domestic legal actions to ensure the principle of non-discrimination applies to individuals.³⁹

When parents/guardians take part in commercial sharenting, their children may be discriminated against by others based on their parents' activities and/or expressed opinions. The revealing information about children posted by parents can be found by their peers at schools and be a catalyst for bullying. Additionally, the private data that parents share about their children can easily be found by dataveillance firms that use data to create profiles of people for economic incentives that is then sold to banks, employment agencies and college admission offices. This means that a child's opportunities for a loan, employment and education is shaped, and can be negatively impacted, by what their parents post publicly about them.⁴⁰ Moreover, anyone in the world is able to leave harmful discriminatory comments on commercial sharenting posts on social media platforms. The CRC Committee has noted the receipt of "hateful communications or unfair treatment" through the use of digital technologies as discrimination that States must protect children against.⁴¹

Therefore, the discrimination of children in the context of commercial sharenting is a high risk. This discrimination may then affect the child's mental health and hinder the development of the child, encroaching upon various other children's rights as well. In accordance with CRC Article 2(2), it is the role of the State to take measures to ensure that the child is protected from this discrimination.

2.1.2 Article 3(1) – The Best Interest of the Child

³⁵ Peleg, 2019: 140.

³⁶ Article 2 and 26 International Covenant on Civil and Political Rights; Article 2.2 International Covenant on Economic, Social and Cultural Rights.

³⁷ Besson, 2005: 443.

³⁸ Ibid.

³⁹ Ibid.: 450.

⁴⁰ Haley, 2020: 1010.

⁴¹ CRC GC25 para 10.

The right of children to have their best interests taken into primary consideration serves as a reminder to prioritise children's rights in matters that affect them. The Committee outlines that the best interest of the child is a principle that contains a threefold concept.⁴² It acts as a substantive right that gives obligations to States. It acts as a fundamental, interpretive legal principle that guides the implementation of other rights. And it acts as a rule of procedure for child-friendly procedural safeguards to involve the consideration of the best interest of the child in any action or decision affecting children. The best interest of the child is also specifically mentioned in seven other rights of the child in the CRC. Significant for commercial sharenting is that, when recognising parental responsibilities, the Committee instructs that the best interests of the child will be the basic concern of parents.⁴³ Moreover, as stated by the Committee, the best interest of the child must be a primary consideration "in all actions regarding the provision, regulation, design, management and use of the digital environment".⁴⁴

Nevertheless, the determination of what is in the best interest of the child is complex, dynamic and context specific, with many elements to be considered and balanced against each other. The Committee stipulates some of these elements; the child's views, the child's identity, preservation of the family environment and maintaining family relations, care protection and safety of the child, the child's situation of vulnerability, the child's right to health and the child's right to education.⁴⁵ Academic Cantwell argues that when dealing with situations where the interests of others may jeopardise outcomes for the child, a best interest assessment becomes vital.⁴⁶ "As it is adults who determine what is best for the child, there is a risk that adults will try to enforce their own opinion while using the discourse of the best interests principle as a pretence."⁴⁷ The Committee has pointed out that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention".⁴⁸

Commercial sharenting is a situation in which the interests of parents may jeopardise the rights of the child. This is mainly because commercial sharenting provides parents with the opportunity to use their children to make financial profit. An example of this is when in September 2021 YouTuber Jordan Cheyenne uploaded a vlog titled 'We are heartbroken' to tell her viewers that the family puppy had fallen ill.⁴⁹ In this vlog, she filmed her distressed 9-year-old son and told him to "act like you're crying" to pose for the thumbnail. The son responded that he really was crying because he was genuinely sad, but the mother (as she later admitted in a video) was more focused on getting a good picture for the thumbnail so the video would get good views, which leads to more revenue, than caring for the emotional needs of her child.⁵⁰ This is one example of many that will be mentioned in this thesis to show that due to the

⁴² CRC GC14 para 6.

⁴³ CRC Article 18(1).

⁴⁴ CRC GC5 para 12.

⁴⁵ CRC GC14 paras 52-79.

⁴⁶ Cantwell, 2016: 70.

⁴⁷ Peleg, 2019: 143.

⁴⁸ CRC GC14 para 4.

⁴⁹ Smith, G. 2022; Mooney, 2022.

⁵⁰ Smith, G. 2022.

financial incentive behind commercial sharenting, when parents take part in commercial sharenting, their interests can override their child's best interest and their obligation to respect many children's rights.

2.1.3 Article 6 - Right to Life, Survival and Development

The objective of Article 6 is to protect children from any immediate and long-term threat to their lives and growth. It is a key right to enable the child to have as many options as possible in living a fulfilled life.⁵¹ The practice of commercial sharenting does not pose an immediate threat to the child's life, however, it may infringe upon the development of the child mentioned in Article 6(2).

The Committee stipulates that States should interpret development as a holistic concept, encompassing the child's physical, mental, spiritual, moral, psychological, and social development.⁵² The publication of private information of the child that occurs through commercial sharenting can have many effects on the child's development. The discrimination and bullying that children may be faced with can affect their mental, psychological, and social development. Adults who grew up with disabilities have expressed concern that the personal and sometimes embarrassing information parents share online about their disabled children takes away the agency of the child to form his/her identity and how the world interacts with them.⁵³ Posting children on social media to a wide audience can also lead to behavioural consequences where they become addicted to fame and attention and neurologically lose their ability to have empathy for other people.⁵⁴ Their presence on social media may also give them pressure to keep up certain appearances, either because their parents tell them to or because of comments they receive that praise or criticise something about them. "Both legal and social science scholars recognize children's need for privacy in order to develop their sense of independence, self-reliance, and individuality."⁵⁵ Commercial sharenting takes away children's privacy and affects various aspects of their development that is linked to privacy.

Moreover, the education of a child can be affected by commercial sharenting and have consequences on the development of the child. The mother of the family YouTube channel 'Fantastic Adventures' took her children out of school so that they could focus on filming for the channel.⁵⁶ This complete lack of education certainly had effects on the overall development of the children. There are also many YouTube channels in which parents are home schooling their children. Home schooling is not necessarily a bad way to educate a child, however, it does mean that a child is not in the same social environment as in traditional school, which may affect their social development.⁵⁷

⁵¹ Peleg, 2019: 147.

⁵² CRC GC5 para 12; CRC GC20 para 15; CRC GC7 para 10.

⁵³ Steinberg, 2017: 852

⁵⁴ Greespan, 2020.

⁵⁵ Haley, 2020: 1010.

⁵⁶ CBS News, 2019.

⁵⁷ ECtHR, *Wunderlich v. Germany* para 15.

The right to development should also empower children to have self-determination and the necessary capabilities to choose and express their preferences.⁵⁸ When parents share private information online about their children without the children's involvement, they contribute to constructing their children's online identities. Through this process, not only are parents violating the right to privacy of their children but also their right to express and have their views heard and this all affects the child's development.⁵⁹ States have a duty to redress this.

2.1.4 Article 12 - Respect for the Views of the Child

Article 12 contains two components: the right of the child to express views, and for those views to be given due weight. The starting point for this right is that every child is capable of forming a view, regardless of age, and therefore should have the right to express it.⁶⁰ Age and maturity are not directly correlated so a case-by-case analysis must be made to determine the weight that the views of the child may be given.⁶¹ The views of the child do not necessarily have to be decisive but should be taken into serious consideration in all matters that affect the child. This right empowers children to be "active agents who should have a voice in their lives" and "is an act of inclusion that recognizes children as citizens in their communities".⁶² However, a major hindrance to this is the widespread paternalistic "resistance to the idea that children should influence the decisions that impact on their lives"⁶³ because "the child is an incomplete human being".⁶⁴

A number of scholars have argued that for child participation to be successfully implemented, "a renewal of adults' perspectives on children is necessary in all societies and cultures"⁶⁵ because "the opportunity to participate is usually dependent on the goodwill of the adults involved in the child's life".⁶⁶ Adults hold a lot of power in giving children the right to participate because they are the ones who decide whether or not a child is lacking capacity.⁶⁷ The Committee recognises this and calls for challenging assumptions about children's capacities and encourages "the development of environments in which children can build and demonstrate what they are capable of".⁶⁸ Moreover, States' obligation to protect regarding Article 12 requires them to prevent non-state actors from unreasonably interfering

⁵⁸ Peleg, 2019: 147.

⁵⁹ Van der Hof, 2016: 119.

⁶⁰ CRC GC12 para 20.

⁶¹ Ibid. para 29.

⁶² Peleg, 2019: 148.

⁶³ Lundy, Tobin & Parkes, 2019: 398.

⁶⁴ Krappmann, 2010: 502.

⁶⁵ Percy-Smith & Thomas, 2009: 359.

⁶⁶ Ibid.: 14.

⁶⁷ Peleg, 2019: 149.

⁶⁸ CRC GC12 para 135.

with a child's right to participation.⁶⁹ This also carries a requirement "that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or guardian."⁷⁰ Specifically regarding children's right in the digital environment, the Committee requires States to promote awareness, access, training and support for children to use digital means to express their views and participate on an equal basis with adults, "so that they can be effective advocates for their rights, individually and as a group."⁷¹

Unfortunately, this right is vastly ignored in the process of commercial sharenting as most of the parents do not ask their children their opinion or permission before they post about them on social media.⁷² Recently, the daughter of a popular Instagram influencer made a post on the social media platform Reddit describing that she had asked her mother to stop sharing photos of her many times and made it explicitly clear that she did not consent to images of her being posted online. She said, "It sucks because there's so much out there about us and it's what's gonna come up when I'm looking for a job, when I'm dating, when anyone looks up my name".⁷³ Her mother had ignored her requests so the daughter created custom hoodies that said 'I do not consent to be photographed' and 'respect my privacy' and wore them around her mother to prevent her from taking photos of her and sharing them on social media.⁷⁴ The mother's response to this was to argue that sharing images of her daughters on Instagram formed part of the family's income and if the daughter wanted money for something, she should stop arguing about the photos.⁷⁵ Moreover, in 2019, celebrity Gwyneth Paltrow posted a picture on Instagram of her and her 14-year-old daughter on a ski trip and the daughter commented "Mom we have discussed this. You may not post anything without my consent." Paltrow replied: "You can't even see your face!" and many of her fans argued that because she is her mother, she had every right to share pictures of her daughter.⁷⁶

Conversely, Hannah Williams, a famous Youtuber, posts a series of videos called 'Mom in Progress' on the YouTube channel BuzzFeedVideo where she films videos of herself and her family, consisting of three children. One of the main types of videos she posts depict her cooking new meals for her children and filming their reaction. In a video titled 'I Hid My Kids' Least Favorite Foods In Meals For A Week', one of her sons says "I want to eat off the camera" and she proceeds to say "Ok, I'll turn it off" and cuts to a clip of her sitting down and explaining to the audience that she finds it important to mention that she is aware that there is a notion that family channels involve parents putting a camera in their

⁶⁹ Lundy, Tobin & Parkes, 2019: 417.

⁷⁰ CRC GC12 para 25.

⁷¹ CRC GC25 para 16.

⁷² Kopecky et al, 2020: 2; Minkus, Liu, & Ross, 2015: 783.

⁷³ FinallyAnonymous6,
https://www.reddit.com/r/AmltheAsshole/comments/evqd98/aita_my_mom_is_an_influencer_i_am_sick_of_being_a/, 2020.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Cheung, 2019.

children's faces at all times.⁷⁷ However, she explains that she films her children because they enjoy it but that they also have their boundaries where they are allowed to say when they do not want to be on camera, and she respects it and does not force it upon them.⁷⁸ Respecting the child's voice and consent in practicing commercial sharenting is a way for parents to self-regulate in a child rights based way and is respecting, instead of violating, children's Article 12 rights. However, even if the child consented to it, commercial sharenting still puts many other children's rights at risk of being violated due to the public nature of it.

Ignoring the child's voice in matters that concerns them affects many of their CRC rights, raises concerns from a child rights based approach and illustrates the importance of balancing child rights with parental rights and responsibilities. Therefore, to regulate commercial sharenting, this thesis reinforces the call by the CRC Committee that "States parties should encourage, through legislation and policy, parents, guardians, and childminders to listen to children and give due weight to their views in matters that concern them. Parents should also be advised to support children in realizing the right to express their views freely and to have children's views duly taken into account at all levels of society."⁷⁹

2.2 The Principle of Evolving Capacities

Article 5 of the CRC introduces the principle of evolving capacities. It is not classified as a GP by the Committee, however, as Varadan's research shows, the term 'evolving capacities' has appeared over 80 times in the GCs of the Committee, acting as a guiding principle for the interpretation of at least 14 other CRC rights.⁸⁰ Moreover, Hanson and Lundy have argued that the principle of evolving capacities is a very cross cutting standard and should be considered a GP.⁸¹ Nevertheless, it must be noted that the principle of evolving capacities is only one out of two principles contained in Article 5, therefore, Varadan has argued that the principle of evolving capacities alone should be used as a broader principle, delinked from Article 5.⁸² The recognition of a child's evolving capacities is of paramount importance as "a child's lack of capacity was, at times, used as a basis to bring into question whether children could have rights at all".⁸³ The use of the term 'evolving capacities' in various publications by the Committee has led to "a far-reaching and transformative impact on how children are viewed, enabled, and empowered within their families, schools, communities and society generally."⁸⁴ The other principle contained in Article 5 is the respect of parental responsibilities. Therefore, Article 5 ensures the global recognition that children are right holders whose capacities evolve as they grow and that it is the role of parents and legal guardians to adapt their guidance over time to support their children to

⁷⁷ BuzzFeedVideo, https://www.youtube.com/watch?v=w9iL-WloXEI&ab_channel=BuzzFeedVideo, 2021.

⁷⁸ Ibid.

⁷⁹ CRC GC12 para 92.

⁸⁰ Varadan, 2019: 316 & 320.

⁸¹ Hanson & Lundy, 2017: 301.

⁸² Varadan, 2019: 331.

⁸³ Ibid.: 307.

⁸⁴ Ibid.: 330.

exercise increasing agency over the decision-making in their lives.⁸⁵ This is very relevant for the analysis of commercial sharenting with a child rights based approach. GC 25 on children's rights in relation to the digital environment has a whole specific section to discuss evolving capacities. The CRC Committee stipulates that:

"In accordance with States' duty to render appropriate assistance to parents and caregivers in the performance of their child-rearing responsibilities, States parties should promote awareness among parents and caregivers of the need to respect children's evolving autonomy, capacities and privacy. They should support parents and caregivers in acquiring digital literacy and awareness of the risks to children in order to help them to assist children in the realization of their rights, including to protection, in relation to the digital environment."⁸⁶

Regarding commercial sharenting, parents may violate the principle of evolving capacities if parents ignore the increasing agency of the child as they mature. For example, in the aforementioned cases where the children were telling their parents they no longer wanted images of them to be shared on social media, but their parents ignored them. Furthermore, in the case involving Gwyneth Paltrow, the right for respect for parental responsibilities was used to justify her actions. However, the CRC Committee clearly states that "To help parents and caregivers to maintain a balance between parental responsibilities and children's rights, the best interests of the child, applied together with consideration of the child's evolving capacities, should be the guiding principles."⁸⁷ States should focus on enforcing this when regulating commercial sharenting.

2.3 Article 16 - Right to privacy

The CRC Committee stipulates that, in the digital environment, "threats to children's privacy may arise from data collection and processing".⁸⁸ This implies there is a need for children's data protection in order to safeguard children's right to privacy. "The four unique characteristics of online public spaces that create new challenges to privacy are (1) persistence (the durability of online expressions and information), (2) visibility (information's potential audience), (3) spreadability (the ease with which information is shared), and (4) searchability (the ability to find information)."⁸⁹ This means the risks linked to sharing private information on online public spaces are heightened. To illustrate, "Unlike traditional child actors, social media influencers often film in their own homes, use their real names, and share their daily routines."⁹⁰ Commercial sharenting is centred around sharing a child's private data on very public platforms, which constitutes data processing,⁹¹ hence the child's right to privacy is directly

⁸⁵ Ibid.: 307.

⁸⁶ CRC GC25 para 21.

⁸⁷ CRC GC25 para 86.

⁸⁸ Ibid. para 67.

⁸⁹ Hamming, 2020: 1043/4.

⁹⁰ Masterson, 2021: 595.

⁹¹ Article 4(2) GDPR.

at risk. The act of “parents sharing photographs online”,⁹² included in commercial sharenting, is mentioned by the CRC Committee as an activity that may threaten children's privacy. Moreover, this privacy risk can subsequently impact children's general safety and affect the psychosocial development of the child through the creation of the child's digital identity.⁹³

Some parents engaged in commercial sharenting do this with more regard to their children's privacy by, for example, using pseudonyms for their children or not posting images of their faces, while others share their children's full names, photos, date of birth, and location.⁹⁴ Minkus, Liu and Ross conducted a research on sharenting and were able to find out the names, faces, birthdates of many children through age detection software and automated textual analysis of adults' public Facebook photos.⁹⁵ Another study by the University of Michigan found that the majority of parents who use social media knew parents who shared embarrassing information about a child online and shared personal information that could lead to identifying a child's location.⁹⁶ As previously mentioned, this is risky as it can lead to security risks for the child, online child sexual abuse and exploitation, and identity theft.

Moreover, through this information sharing, the parents are creating and shaping the online identity and digital footprint of their children, often without their consent or input. By telling a story or posting a photo on social media about, for example, a child's toilet issues, the child will be branded and known to the people who have access to the internet as the child with toilet issues and that will become part of their identity. “Identity is theorised as mutually constructed through our lived relations and the interdependent nature of communication with others.”⁹⁷ However, the actions of parents in commercial sharenting leads to the identity of children being constructed through their parents' lived relations and communication with others instead of solely their own.

One clear example of this is parents who create and run Instagram profiles for their children. The YouTube famous LaBrant family have public Instagram accounts for each of their children run by their parents. The Instagram accounts of the three youngest children were started within days of their birth and the parents have been posting photos and information about them with captions written in the first person such as “i woke up like this” with a photo of the child barely awake.⁹⁸ This raises questions about whether the child would like to be portrayed like this on such public platforms, most adults certainly would not like it. There are also many examples of Instagram fan pages for the children of influencers. Famous YouTube star Zoella recently had her first child and there are many Instagram fan pages for the baby, sharing her date of birth and reposting any image of her they can find online.⁹⁹ These pages

⁹² CRC GC25 para 67.

⁹³ Hamming, 2020: 1045.

⁹⁴ Blum-Ross & Livingstone, 2017: 112; Archer, 2019: 53.

⁹⁵ Minkus, Liu, & Ross, 2015: 776.

⁹⁶ C.S. Mott Children's Hospital, 2015

⁹⁷ Blum-Ross & Livingstone, 2017: 111.

⁹⁸ <https://www.instagram.com/p/CVGNYH9FLft/>.

⁹⁹ https://www.instagram.com/ottilie_rue_deyes_journey/?hl=en.

show that strangers are also able to shape the child's online identity as a consequence of commercial sharenting.

The formation of a child's digital identity through commercial sharenting by his/her parents can hinder the child from independently developing a sense of self. Moreover, the vast public exposure can make it very difficult for a child to change or erase his/her personal digital identity and this can cause a lot of harm to a child's development.¹⁰⁰ One study of adolescents' perspective on and experiences with sharenting found that "adolescents described some contradictions between the image they are trying to construct online and the posts of their parents, which might create embarrassing situations".¹⁰¹ The adolescents' solution to remedy these contradictions was for parents to consider their views so they could have some control over the posts that could contribute to their online image.¹⁰² This becomes especially relevant when acknowledging that these digital footprints can be found by educational institutions and employers in the future.¹⁰³

Furthermore, the violation of children's right to respect of privacy may be affected for the rest of their lives. This is illustrated by the case of *Sidis v F-R Publishing Corp*, which is not a case about commercial sharenting, but its judgement has applicability to it. As a child, William Sidis became a famous prodigy due to his mathematical skills and many articles were written about him in newspapers.¹⁰⁴ After he graduated from Harvard, Sidis told reporters he had now decided he wanted to live a private life away from the public eye.¹⁰⁵ When he was 39, the *New Yorker* newspaper published an article about him and the fact that he did not bring his mathematical talent to fruition in his adulthood.¹⁰⁶ The article also broadcasted private information about where he lived and what his interests and hobbies were now. Consequently, Sidis sued the publisher of the *New Yorker* newspaper, claiming a privacy infringement. The court ruled that he had no right to privacy under state law because he had been a public figure as a child and therefore would remain a public figure his whole life.¹⁰⁷ The court argued that due to his status as a public figure, there was an overpowering public interest in his life story so he could not live a life outside of the public eye.¹⁰⁸ This case indicates how a child becoming a public figure in childhood may hinder his right to privacy for his whole life. This is relevant for commercial sharenting as parents are making their children public figures through their actions, thus affecting their right to privacy not only in the moments of posting but also potentially for the rest of the children's lives.

¹⁰⁰ Hamming, 2020: 1046/7.

¹⁰¹ Ouvrein & Verswijvel, 2019: 319.

¹⁰² Ibid.: 323.

¹⁰³ Steinberg, 2017: 839.

¹⁰⁴ *Sidis v. FR Pub. Corporation* para 807.

¹⁰⁵ Steinberg, 2017: 860.

¹⁰⁶ Barbas, 2012: 21.

¹⁰⁷ *Sidis v. FR Pub. Corporation* para 809.

¹⁰⁸ Ibid.

To remedy this, there exists a provision in the European Union (EU) General Data Protection Regulations (GDPR) that grants a right to erasure/to be forgotten.¹⁰⁹ However, what is shared on the internet has the potential to stay on the internet forever even if the original source is removed because of the fact that anyone in the world can make an instant copy of what is shared and it would be very difficult to track down all copies of something shared on such worldwide platforms. Therefore, the moment something harmful is shared to the internet, any potential damage cannot be fully reversed, even with the right to erasure.

As shown, children's right to privacy in commercial sharenting can be violated and is also interconnected with violations of the right to respect for the views of the child and the child's right to development. Consequently, this thesis agrees with children's privacy scholars Shmueli and Blecher-Prigat who "contend that children should have an individual right for privacy against their parents, while recognizing that this right should be qualified according to the child's age and evolving capacities".¹¹⁰ States should reflect this when regulating commercial sharenting.

2.4 Right to protection from violence, abuse, neglect, and exploitation

Articles 19, 34, 35 and 36 provide children with protection from harmful violence, abuse, neglect, and exploitation and allows for the State to intervene in the private sphere to protect children from this. This is because the CRC Committee recognises "that the majority of violence takes place in the context of families and that intervention and support are therefore required when children become the victims of hardship and distress imposed on, or generated in, families".¹¹¹ The Committee even addresses the particular dangers that the internet brings by stating that "Child protection risks in relation to ICT comprise the following overlapping areas: The process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs or pseudophotographs ("morphing") and videos of children and those making a mockery of an individual child or categories of children".¹¹² Moreover, the Committee explicitly mentions that forms of violence and exploitation in the digital environment may be perpetrated by family and may include "cyberaggression, including bullying and threats to reputation, and the non-consensual creation or sharing of sexualized text or images".¹¹³ These rights are therefore particularly relevant in the case of commercial sharenting which comprises many of these child protection risks and may need State intervention to protect children from it.

A concrete case of child violence, abuse, neglect, and exploitation that occurred through commercial sharenting is the DaddyOFive case. In 2015, a couple from the United States (US) created a YouTube channel called 'DaddyOFive' in which they posted daily family vlogs and conducted pranks on their children. The channel gained up to 760,000 subscribers and "it is estimated that DaddyOFive earned between US\$ 200,000-350,000 each year from YouTube advertising revenue".¹¹⁴ Public concerns

¹⁰⁹ Article 17 GDPR.

¹¹⁰ Shmueli & Blecher-Prigat, 2011: 763.

¹¹¹ CRC GC13 para 3(h).

¹¹² Ibid. para 31(b).

¹¹³ CRC GC25 para 81.

¹¹⁴ Leaver & Abidin, 2017.

started growing about the pranks as they were physically and emotionally abusive towards the children.¹¹⁵ In 2017, a criminal investigation was started for two of the five children who were biologically related to the father but not to the mother of the channel, who was their stepmother. The three other children were not included in the investigation. The parents of the channel were charged with child neglect for those two children by a Court in Maryland and received supervised probation for five years, including a ban from filming and uploading videos of the children, unless it is for “legitimate family purposes”.¹¹⁶ Moreover, custody of the two children was given to the biological mother of the children and the DaddyOFive parents were not allowed to make contact with the children or the biological mother without prior approval by a court.

The main aspect of commercial sharenting that leads to child violence, abuse, neglect, and exploitation is the potential for income generation. Because of this potential, content creation can easily become a higher priority for parents than their child’s protection, like in the example given earlier in this chapter about Jordan Cheyenne. This is why CRC Article 32 is also affected by commercial sharenting.

This Article protects children from economic exploitation. Exploitation “means taking unjust advantage of another for one’s own advantage or benefit”, and economic implies there is a material interest, which is “a certain gain or profit through the production, distribution or consumption of goods and services”.¹¹⁷ Therefore, the exploitation is of an economic nature when the existence of a material interest in an activity is unjustly taken advantage of. A report by the World Health Organisation has similarly stated that “Commercial or other exploitation of a child refers to the use of the child in work or other activities for the benefit of others”.¹¹⁸

Throughout history, children have been economically exploited in families with society believing “that the right to benefit from one’s child was one of the natural privileges of parenthood”.¹¹⁹ Fortunately it is now internationally recognised that economic exploitation is harmful to children and there are many laws to protect children from it. However, a new form of economic exploitation has arisen with the growth of social media platforms that provides economic revenue for advertised posting, and the law in most countries does not protect children from the harmful effects of it. Academics have called this exploitative practice arising from the digital environment “digital child labour”.¹²⁰ Nevertheless, child labour is not automatically economic exploitation as “‘economic exploitation’ is focussed on the hazardous and harmful forms of work that children do, and not on their work generally”.¹²¹ Therefore child labour is only exploitative if it involves: “full-time work at too early an age; too many hours spent working; work that exerts undue physical, social or psychological stress; work and life on the streets in bad conditions; inadequate pay; too much responsibility; work that hampers access to education; work that undermines

¹¹⁵ Ohlheiser, 2017.

¹¹⁶ Griffith, 2019.

¹¹⁷ UN Doc CRC/C/20, 1993 : 3.

¹¹⁸ WHO, 1999: 16.

¹¹⁹ Guzman, 2020: 86/7.

¹²⁰ Van der Hof et al., 2020: 846.

¹²¹ Swebston, 2012: 20.

children's dignity and self-esteem, such as slavery or bonded labour and sexual exploitation; work that is detrimental to full social and psychological development".¹²²

In commercial sharenting, there is definitely a material interest for parents, and, as already outlined, there are many cases where the parents take unjust advantage of their child for the benefit of gaining more material interest. Thus, commercial sharenting may amount to economic exploitation. Due to the potential to earn high sums of money through social media, parents have a big incentive to use their children as a "commercial tool" to attract attention, followers, and sponsorships.¹²³ For example, there are many videos on YouTube of parents featuring their children trying on products such as clothes from different brands which they have financial partnerships with.¹²⁴ The parents will usually provide affiliated links in the description of the video for people to click on to buy the same clothes and will receive a commission when people purchase clothes through these affiliated links. These videos may also be entirely or partially sponsored by the clothing brands, or clothing brands may gift their clothes to the YouTube channel with requests that they be advertised in videos. This may seem harmless to children, however, the daughter of a family YouTube channel posted on her own social media channels about her experience as a child used as a source of income through commercial sharenting saying, "I get creepy comments and harassed online and I feel like I can't relax at home when home is a content farm".¹²⁵ Because of this she says she explicitly told her parents that she does not consent to being filmed. When they ignored her, she asked people to unsubscribe to her parents YouTube channel. This gained attention and the YouTube channel got demonetized and her parents were furious with her for affecting their income, so she told them to "get a real job that doesn't depend on filming their children for the internet".¹²⁶

Many parents try to justify their economic exploitation through commercial sharenting by saying that the child enjoys wearing the clothes and playing with the new toys they are paid to promote so it does not amount to economic exploitation. However, there are no regulations to supervise the conditions of this commercial activity, such as working hours, and the earnings that the children create through their presence on social media are controlled by their parents, even though the children may be the main source of income.¹²⁷ Therefore, the risk of child labour turning into economic exploitation in this context is high. This is why the CRC Committee requires States parties to "review relevant laws and policies to ensure that children are protected against economic, sexual and other forms of exploitation and that their rights with regard to work in the digital environment and related opportunities for remuneration are protected."¹²⁸ This would necessitate State action to regulate commercial sharenting.

2.5 Conclusion

¹²² UNICEF, 1997: 24.

¹²³ Kopecky et al, 2020: 3; Van Kessel, Toor & Smith, 2019.

¹²⁴ https://www.youtube.com/watch?v=YTL0RTThmls&ab_channel=MummyofFourUK.

¹²⁵ Spindifu, 2022.

¹²⁶ Ibid.

¹²⁷ Masterson, 2021: 594.

¹²⁸ CRC GC25 para 113.

This chapter has illustrated the potential violations of children's rights that taking part in commercial sharenting can cause. These potential violations are not always noticeable or straightforward and vary on a case-by-case basis, however, they exist, and the current legal recognition of these potential violations is very poor. By respecting the child's voice and consent when practicing commercial sharenting, parents can avoid violations of Article 12 and align with the principle of evolving capacities. However, due to the overly public platform, the risks of harm for the safety of children and their rights to non-discrimination, best interests of the child, development, privacy, and protection from violence, abuse, neglect, and exploitation remain and require action to be avoided. As Steinberg argues, the issue of parents sharing information about their children on the internet "is ripe for a child-centered, solution-focused discussion to ensure the protection of the best interests of children that is responsive to the age and developmental stages of children as they mature."¹²⁹ There is a clear need for the protection of children from their parents' online disclosure about them, which invites "the world into their children's lives."¹³⁰

¹²⁹ Steinberg, 2017: 846.

¹³⁰ Ibid.: 878.

3. The rights and responsibilities of parents involved in commercial sharenting

This thesis has laid out the rights of children, however, parents also have rights and responsibilities that must be considered when examining the practice of commercial sharenting and seeking to regulate it.

3.1 Parents' right to freedom of expression

The right to freedom of expression is internationally provided in Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). This right is involved in commercial sharenting as the practice involves parents expressing themselves through social media posts. Mummy blogger Christie Tate was confronted by her four-year-old child about the pictures she has shared of her on the internet and was asked by her child to take them down. Tate responded that she would not take them down and would continue to post about her daughter because she was not done exploring and expressing her motherhood in writing.¹³¹ This shows there is a clash between children's rights to privacy, protection and participation and the rights of parents to express themselves.¹³²

The ICCPR Committee has stipulated that there are two legitimate grounds for restricting the right to freedom of expression. The one of particular relevance to the practice of commercial sharenting is "that of respect for the rights or reputations of others".¹³³ These 'rights' to be respected include human rights found in international human rights law, thus, they include CRC rights. Chapter 2 has shown how the freedom of expression that parents exhibit through commercial sharenting can harm various children's rights and can even damage the reputation of children. With their expression through commercial sharenting, parents "unknowingly shape the opinions and beliefs of others about the child, hindering the chance for the child to mould those experiences with people who already have a sense of the child's identity from what they previously viewed online."¹³⁴ This not only affects the reputation of children but also takes away the availability of rights and agency of children, going against the CRC. In fact, in its Concluding Observations to Norway, the CRC Committee noted concern "at information that parents may violate their children's right to privacy when revealing the particulars of their children's lives on webpages, sometimes in order to support positions in custody conflicts",¹³⁵ and recommended Norway "to mandate the Norwegian Data Inspectorate to prevent parents and others to reveal information about children which violates children's right to privacy and is not in their best interests".¹³⁶ There have also been legal cases which established that where publication of a child's personal information will likely cause harm to the child, the child's rights are to be given more weight, especially when there are more than one right at risk.¹³⁷ This implies that for parent's right to freedom of expression to take pre-

¹³¹ Graham, 2019.

¹³² Kopecky et al., 2020: 4.

¹³³ CCPR GC34 para 28.

¹³⁴ Hamming, 2020: 1047.

¹³⁵ CRC/C/NOR/CO/4 para 28.

¹³⁶ Ibid. para 29.

¹³⁷ *K v. News Group Newspaper at 19-21; ZH (Tanzania) v. Secretary of State for the Home Department at 46.*

eminence, it will have to outweigh all the rights of a child involved, which are many in the case of commercial sharenting.

In addition, the right to freedom of expression is not only a right granted to adults. Children are also granted this right in the same international human rights law provisions as adults, and it is reiterated in CRC Articles 12 and 13. Therefore, the right to freedom of expression of adults should not encroach upon the right to freedom of expression of children by, for example, posting a picture or anecdote about their child without providing the child with an opportunity to express their view about the post or the way they are portrayed in the post. In addition, the information that is shared by parents in commercial sharenting includes information about their experiences and thoughts, which they have every right to share, but it also involves private information about their child and being their parent does not give them an “open license” to share that information.¹³⁸ Moreover, even if the children did give their parents’ permission to share their private information, it would still lead to high risks of harm for children’s safety and their rights. Therefore, a restriction of parents’ right to freedom of expression occurring in commercial sharenting is warranted. Such a restriction will have to conform with the principle of proportionality mentioned in CCPR GC27, meaning it should be appropriate to achieve protection, least intrusive, and proportionate to the interest to be protected.¹³⁹

3.2 Parents’ right to respect of privacy and family

ICCPR Article 17 provides every human with the right to respect of privacy and family. The ICCPR Committee specifies that this right guarantees against all unlawful and arbitrary interferences with a person’s privacy and family from State authorities or from natural or legal persons.¹⁴⁰ Parents may use this right to argue that State interference to regulate commercial sharenting would violate their right to respect of privacy and family. However, through commercial sharenting parents are not only sharing information about themselves but about their children, thus infringing on their children’s right to respect of privacy. Therefore, to protect the rights of one party through regulation would require the restriction of the rights of the other. Article 17 is not an absolute right, meaning it can be restricted. It protects from arbitrary or unlawful interference with privacy and family, meaning if interference is lawful and non-arbitrary, the right can be restricted. Unlawful interference means that no interference can take place except in cases envisaged by the law.¹⁴¹ Arbitrary interference refers to interference that may be lawful but is not reasonable or in accordance with the provisions, aims and objectives of the Covenant.¹⁴² It is the role of domestic law to “specify in detail the precise circumstances in which such interferences may be permitted” and a “decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis.”¹⁴³ For example, where the State authorises the processing of personal data, “domestic law must provide for effective safeguards against abuse, it must limit the powers of use and retention, it must ensure adequate judicial supervision, and

¹³⁸ Plunkett, 2019: 71.

¹³⁹ CCPR GC34 para 34.

¹⁴⁰ CCPR GC16 para 1.

¹⁴¹ Ibid. para 3.

¹⁴² Ibid. para 4.

¹⁴³ Ibid. para 8.

remedies for misuse.”¹⁴⁴ Moreover, the case-by-case assessment of arbitrariness necessitates the consideration of the impact of interference or non-interference on other affected family members and their rights.¹⁴⁵

To decide on whose rights should be restricted, a balance of parent and child interests becomes necessary. The European Court of Human Rights (ECtHR) has held the position that “in judicial decisions where the rights under Article 8 [of the European Convention of Human Rights (ECHR)]¹⁴⁶ of parents and those of a child are at stake, the child’s rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail.”¹⁴⁷ This aligns with the CRC Committee.¹⁴⁸ Moreover, when taking part in commercial sharenting, parents arbitrarily interfere with children’s right to privacy as their actions are not in accordance with the provisions, aims and objectives of the Covenant. States are “obliged to protect children against their parents’ unjustified interference with their rights”.¹⁴⁹ Consequently, the regulation of commercial sharenting is a justified restriction of parents’ rights under Article 17 and would make it both lawful and non-arbitrary. Additionally, in its GC on this right, the ICCPR Committee stipulates that “Effective measures have to be taken by States to ensure that information concerning a person’s private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant”, and “Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files.”¹⁵⁰ Such measures would certainly require the regulation of commercial sharenting.

3.3 Parental responsibilities

CRC Article 5 recognises parental responsibilities, rights, and duties to provide appropriate direction and guidance to the child, according to their evolving capacities, and requires States to respect that. Moreover, CRC Article 18 stipulates that parents have the primary responsibility for the upbringing and development of the child with the best interests of the child being their basic concern. This protection of parental responsibilities stems from the assumption that parents are the best protectors of their children’s rights. While this may be the case in many instances, it is not always the case. A parent that engages in unrestricted commercial sharenting, as it is today, might not be the best protector of his/her children’s rights due to the risk of the practice harming the children’s rights.

The protection of parental responsibilities originates from the fact that “children have historically been viewed as property of their parents. This theory of children as property has contributed to the current

¹⁴⁴ Taylor, 2020: 496.

¹⁴⁵ Ibid.: 466.

¹⁴⁶ This Article provides for the right to respect of privacy and family life.

¹⁴⁷ *Yousef v. The Netherlands* para. 73; *Johansen v. Norway* para. 78.

¹⁴⁸ CRC GC13 para 39.

¹⁴⁹ Vandenhole, Türkelli & Lembrechts, 2019: 192.

¹⁵⁰ CCPR GC16 para 10.

state of children's rights where those rights tend to be an extension of parental rights".¹⁵¹ This is illustrated in Siibak and Traks' study, which found that mothers involved in sharenting thought that their child's opinion on the matter was irrelevant because "parents have a right to decide and to control which information they share about their children on social media, especially if children are still quite young".¹⁵² This was also exemplified in the comments of Gwyneth Paltrow's Instagram picture with her daughter in which some people were arguing that because she is her mother, she had every right to share pictures of her daughter even if her daughter had not consented to it.

The GDPR also takes this approach of reliance on parents as gatekeepers of their children's rights, specifically of their digital safety and privacy. Recital 18 of the GDPR states "This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity".¹⁵³ With this provision, "the GDPR fails to consider the safety and digital privacy of children whose images are shared online by their parents".¹⁵⁴ With the words "and thus", this provision also carries the assumption that online personal and household activities would have no connection to a professional or commercial activity. This is an outdated notion, as proven by commercial sharenting.

Moreover, Article 8 of the GDPR stipulates that the processing of personal data of a child below the age of 16 years old "shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child".¹⁵⁵ The US Children's Online Privacy Protection Act, also requires private companies to have parents' consent before collecting and using data of children below 13 years.¹⁵⁶ These provisions are based on the assumption "that parents are in the best position to make choices for their kids and, thus, that protecting parental control protects kids too."¹⁵⁷ However, this is against the privacy rights of children,¹⁵⁸ and "neglects to acknowledge that not all parents may be computer literate and technologically aware".¹⁵⁹ Many studies have shown that parents are not always aware of the dangers of social media, especially of the risks of their own sharenting for their children.¹⁶⁰ Therefore, these provisions are harmful in the context of commercial sharenting as parents, and not children, are the ones who need to consent to the processing and dissemination of a child's personal data and this legitimises commercial sharenting activities that would be a clear breach of

¹⁵¹ Bennet, 2021: 157.

¹⁵² Siibak & Traks, 2019: 118.

¹⁵³ GDPR recital 18.

¹⁵⁴ Donovan, 2020: 38.

¹⁵⁵ GDPR Article 8.

¹⁵⁶ Plunkett, 2019: 32.

¹⁵⁷ Ibid.: 79.

¹⁵⁸ Van der Hof, 2016: 130.

¹⁵⁹ Donovan, 2020: 38.

¹⁶⁰ Minkus, Liu & Ross, 2015: 776.

privacy if shared by a third party without consent.¹⁶¹ Nevertheless, the CRC Committee stipulates that “Where consent is sought to process a child’s data, States parties should ensure that consent is informed and freely given by the child or, depending on the child’s age and evolving capacity, by the parent or caregiver, and obtained prior to processing those data.”¹⁶² This gives States a wide margin of appreciation for determining when the child can provide consent and therefore, the provisions are in line with the CRC. However, this is problematic as parents are not seen as a potential source of harmful disclosure and are thus unrestricted in commercial sharenting practices. Giving too much weight to parental consent can effectively diminish the rights of privacy,¹⁶³ protection, and participation of children. Therefore, there is evidently a need to remedy the imbalance between parental rights and responsibilities and protecting children’s rights in the practice of commercial sharenting.

An example of a parent influencer who balances this well is Anna Whitehouse, known as Mother Pukka on social media.¹⁶⁴ When telling stories in her blogs, she uses emojis to refer to her children, never using their real names. She also does not reveal any information about their location and only photographs them from behind or in ways that hide their faces. She teaches and encourages her followers, especially other parent influencers, to be aware about children’s privacy and how to protect it.¹⁶⁵ She shows that there can be a balance between parents right to freedom of expression and the protection of children’s rights. This is a great self-led initiative, however, this balance should also be regulated by the State. In CRC Article 18(2) States Parties are required to recognise parental responsibilities and assist parents in the performance of their child-rearing responsibilities. In the context of commercial sharenting, this assistance could consist of States providing information to parents about the risks of their actions on social media for their children. However, if the parents are performing their child-rearing responsibilities in a manner that harms their children’s rights, parental responsibilities should be restricted. The ECtHR has accepted physical violence,¹⁶⁶ psychological and emotional abuse,¹⁶⁷ and neglect¹⁶⁸ as justifiable reasons for State intervention in the family life. Such State intervention can take many forms, focusing on social and educational treatment, such as supervision of the home by a social worker.¹⁶⁹ State intervention in the form of separating a child from his/her family environment, as in the DaddyOfFive case, is a measure of last resort that may be necessary in cases of abuse and neglect of children by parents. Article 9 of the CRC requires that the decision to use this measure must be made only when it is necessary for the best interest of the child and must be conducted by competent authorities subject to judicial review in accordance with the law

¹⁶¹ Donovan, 2020: 46.

¹⁶² CRC GC25 para 71.

¹⁶³ Hughes, 2012: 479.

¹⁶⁴ Leaver, 2020: 236.

¹⁶⁵ Ibid.: 236.

¹⁶⁶ *AD and OD v the United Kingdom*.

¹⁶⁷ *P, C and S v the United Kingdom*.

¹⁶⁸ *MD and others v Malta; YC v the United Kingdom*.

¹⁶⁹ CRC GC13 para 56.

and procedures.¹⁷⁰ This means that parental responsibilities under the CRC are not supreme and, as shown by the DaddyOFive case, can be limited due to harmful actions arising from commercial sharenting.

Finally, it is important to note that under the CRC, in performing their parental responsibilities, parents have to consider the evolving capacities and best interests of the child. In the context of commercial sharenting, this would require parents to listen to the views and seek the consent of their children who are at an age where they can do so, before sharing any information about them online.¹⁷¹ Further, it would mean they should conduct an assessment as to whether it is in the best interests of their children to post such information about them or not. Moreover, parental responsibilities include the responsibility to protect children online and this would include to protect children from their own parental activities, such as commercial sharenting. Parents who do not do this are not complying with their parental responsibilities stipulated by the CRC.

¹⁷⁰ CRC Article 9(1).

¹⁷¹ Sorensen, 2016: 176.

4. National efforts to regulate sharenting, including commercial

Thus far, this thesis has illustrated in what ways commercial sharenting can violate many CRC rights and because of this, there is a need to regulate the practice to protect children's rights. The international children's rights system stipulates that it is primarily the obligation of States to respect, protect and fulfil children's rights when they ratify the CRC.¹⁷² Therefore, this chapter examines the existing national efforts to regulate sharenting, including commercial, to explore how the practice of commercial sharenting could be regulated by States to comply with the international children's rights framework. Most existing national efforts address sharenting more generally and not specifically commercial sharenting, but the findings from these efforts are applicable to commercial sharenting as it is a form of sharenting.

4.1 National case law

4.1.1 The Netherlands

The Dutch legal system is based on civil law, which means its laws are written and Court judgements are based on these legislative sources of law. Jurisprudence gives an interpretation of the legislation and fills the gaps the written laws may have. Commercial sharenting is not explicitly mentioned in any of the written laws of the Netherlands, therefore jurisprudence is particularly important to fill the gaps on this issue.

The Netherlands ratified the CRC in 1995 and it took immediate domestic effect because of the monist system of the Netherlands set out in Articles 93 and 94 of the Dutch Constitution. Nevertheless, the successful use of CRC provisions before a Dutch court depends on the direct effect of a CRC provision, which is determined by national courts.¹⁷³ Provisions of the CRC have most directly affected situations of familial conflict as "the Dutch Civil Code obliges family court judges to take the best interests of the child into account".¹⁷⁴ This is particularly relevant in the context of commercial sharenting, which involve familial conflict. This section will explore Dutch case law on instances of sharenting, including commercial, to illustrate the decision making of the Dutch courts and how they align with a child rights based approach.

4.1.1.1 Case 1

In this 2009 court case,¹⁷⁵ the parents were divorced, and the mother brought the father to court to request an order for him to permanently remove all data of their son that he had posted on the Dutch social media platform 'Hyves', unless she gives him permission to keep it posted. She argued that these posts about their son were endangering him because they had both worked in clinics for psychiatric detention and this meant that it was extremely important for their safety that their private lives be protected. She alleged that the father was violating the CRC right to privacy of the child and claimed that the father was abusing parental authority. In response, the father argued that he only posts photos

¹⁷² CRC GC5 para 1.

¹⁷³ Limbeek, & Bruning, 2015: 90.

¹⁷⁴ Ibid.: 101.

¹⁷⁵ ECLI:NL:RBALM:2009:BK0555.

on the protected/private parts of his Hyves profile, which only his “friends” can see and furthermore, his posts do not infringe on his sons right to privacy.

The court opined that posting photos of one’s children on an unprotected part of the internet would infringe on the CRC right to privacy of the child. However, if the posts about the children are on a protected/private part of the internet, it is different. Therefore, the court ordered the father to permanently remove all data of his son from the internet, except if this data is posted on the protected/private parts of his Hyves profile, which only his “friends” can see. A fine of €100 would apply to the father for each day he failed to comply with this decision.

4.1.1.2 Case 2

This 2011 case¹⁷⁶ involved a conflict between separated parents. The mother was previously granted sole parental authority over the child and the father was denied right to contact the child. The father kept a public weblog about his child, which he no longer lived with. The mother requested that this weblog be deleted as it was not in the best interest of the child to have private information about him publicly available on the internet. Moreover, she argued the child’s right to privacy (citing Article 8 of the ECHR and Section 6:162 of the Dutch Civil Code) was being violated through the publication of his data on the internet and could lead to bullying. In response, the father explained that there was only one photo of his child, in which the child could not be recognised, and he used the weblog to write about his life and his feelings about his child and how he misses him. Thus, the father argued that deleting his weblog would entail a limitation of his right to freedom of expression laid out in Article 10 of the ECHR. Therefore, the court was put in a position in which it had to weigh the competing rights and interests of the child and the father.

The court found that the weblog did not contain any content that infringes on the privacy of the child so the interest of the father to express himself and his feelings about his child publicly through the weblog takes precedence over the interest of the child to be exempted from this.

4.1.1.3 Case 3

This 2018 case¹⁷⁷ was heard within the meaning of Section 1:253a(1) of the Dutch Civil Code, which stipulates that “When two parents jointly exercise authority over a child and there is a dispute in this regard between them, then this dispute may be laid before the District Court upon the request of one or both of the parents. The court shall settle the dispute by taking a decision in the best interests of the child”.¹⁷⁸ The mother requested an order for the father to remove photos/videos of their child from his Facebook account, due to fear that third parties can access these. The father’s counterargument was that sharing photos of his child cannot immediately harm the child and it is a way for him to show his environment that he is still proudly in his child’s life, even though they do not see each other as often due to a shared custody arrangement.

To judge this case, the court held that the question of whether photos/videos of children can be shared on the internet by their parents via social media, is a matter on which parents must decide together.

¹⁷⁶ ECLI:NL:RBARN:2011:BP5304.

¹⁷⁷ ECLI:NL:RBGEL:2018:2737.

¹⁷⁸ Dutch Civil Code, Book 1 Law of Persons and Family Law.

However, if there is a custody dispute and the parents do not agree on this, the assessment framework that the court must use is the interests of the child. The court found that there are no positive interests for the one-year-old child to have her photo posted on Facebook and that the father can use more private platforms to share photos of his child with his environment, such as WhatsApp, Skype or even the traditional photo album. Therefore, the court ruled that the father must remove the photo of the child on Facebook within one week of the date of the decision and may not post photos/videos of the child on social media without the mother's permission, with the exception of sharing via WhatsApp. Furthermore, the court noted that the decision would be applicable until the child turned five years old because regulations on privacy and sharing on social media are in full development and it would not be in the father's interest to impose such a prohibition for an indefinite amount of time. Moreover, by the time the child is five years old, she would be able to form thoughts about this herself and may have a positive interest in her parent's posting images of her on social media.

4.1.1.4 Case 4

This 2018 case¹⁷⁹ was also heard within the meaning of settling disputes of authority between parents under Section 1:253a(1) of the Dutch Civil Code. The parents in this case were divorced and exercised joint parental authority over the children. The father brought the mother to court because he was concerned that her taking part in commercial sharenting on YouTube and Instagram was contrary to their children's right to privacy and best interest and could lead to the children becoming objects of child sexual abuse and bullying. He sought an order for her to delete all visual and audio material of their children she shared on her public social media (for which she earns money) and for her to be heavily financially penalised for posting more of these materials, as well as any posts publicising matters concerning the children. The mother contested this by arguing that their children had grown up being filmed and posted on her social media with the full consent of the father and contended that there were no studies to prove that posting photos and videos of children had negative consequences for the children.

In judging the case, the court strongly considered the father's arguments about the children's right to privacy and placed the risk of harm for the children above the financial interests of the mother. Therefore, the Court ruled in favour of the father's request and judged that the mother delete all material involving her children on her social media and in the future would only be allowed to post material of the children on her personal Facebook page where she could have no more than 250 friends. Moreover, a fine of €500 would apply to the mother for each day she failed to comply with this decision.

4.1.1.5 Analysis

Interestingly, all these cases involved parents who are in conflict, either separated or divorced, and one parent brought the case against the other. The cases were not brought by the children themselves. Moreover, the consent of the child or hearing the child's views on the matter was not part of any of the cases. The age and evolving capacities of the children were also not a factor that the courts took into account, except in case 3 where the court judged that when the child turned five years old, the ban on sharenting would be lifted as the child would be able to form opinions about her parent's posting images of her on social media herself. This implies that the court is capacitating children to provide consent to sharenting at the age of five, however, it assumes that parents would automatically give the child's views due weight in decision making about sharenting, which is not always the case. Furthermore, it

¹⁷⁹ ECLI:NL:RBDHA:2018:13105.

disregards the fact that sharenting is still a risk for children's safety and their rights even if it is consensual.

Case 1 is the only case that explicitly mentions the CRC, but all other cases cite the child's right to privacy that is also protected in Article 8 of the ECHR and Section 6:162 of the Dutch Civil Code. The use of the best interest of the child is used in three out of four cases and there is the mention that sharenting would lead to bullying in two out of four cases. All cases are about balancing the parent's and children's rights and interests and case 2 is the only one where the parent's rights to freedom of expression wins over the child's right to privacy.

An evolution of the court positions on the dangers of sharing private information about children on the internet can also be seen; moving towards a stricter recognition that the most private forms of sharing are the least harmful to children. In case 1, the court found that sharenting on protected/private parts of internet, which only "friends" can see, is less dangerous than sharenting on more unprotected parts of the internet. Then, in case 3 the court contended that even sharing on one's Facebook private profile may not be private enough and that parents have other more private ways to share information such as through WhatsApp or Skype, which is to be preferred. This evolution is a positive step towards regulating commercial sharenting, which involves sharenting on the most public platforms of the internet. Therefore, in case 4, which is the first case of clear commercial sharenting, it is uplifting to see the continuation of this. The judgement provided a recognition that commercial sharenting encroaches upon children's right to privacy and is a risk of harm for the children and encouragingly found that these risks are above the financial interests of the mother. Furthermore, the penalty for failing to comply with the judgement is the most severe of all the cases, which is in accordance with the fact that commercial sharenting is the least private form of sharenting.

The case law mentioned relied on children's rights to illustrate and argue that sharenting, especially on public platforms, can be very harmful to children. This is a good basis for a child-rights based regulation of commercial sharenting. Nevertheless, what is missing is the involvement of the children affected in the proceedings. The Italian case law below aims to show an example of how this gap could be filled.

4.1.2 Italy

The Italian legal system is also based on civil law with the main source of law being the constitution. Therefore, Italian judges base their court decisions on the written laws and are not bound by previous decisions, which according to Article 2909 of Italian Civil Code are only binding on the recipients of the decision. This means Italian case law has a purely persuasive role, which can be influential, especially on issues that have no written laws like commercial sharenting, but nothing prevents judges to reach a different decision if a similar dispute arises. Moreover, judgements made in courts of first instance are much less influential than judgements from the constitutional or supreme court.

Italy ratified the CRC in 1991 and Article 10 of the Italian Constitution gives precedence to ratified treaties over national law and Italian courts have the power to refer to the CRC where relevant.¹⁸⁰ Moreover, the Italian Constitution contains a number of provisions that make specific reference to the rights of the child, which can also be referenced by Italian judges. Below is an Italian court case about sharenting to study the influence of children's rights on the issue.

4.1.2.1 *Ordinanza 23 dicembre 2017*

¹⁸⁰ CRIN, 2012.

During the divorce proceedings of his parents, a 16-year-old boy sought an order for his mother to delete photos of him that she shared on her social media without his consent and to stop his mother from further posting photos of him on her social media without his consent. He based his complaint on Italian law,¹⁸¹ which stipulates that the subject of the photo owns the copyright, rather than the person who took the photo and photos cannot be shared without the permission of the subject. He also argued that his mother's posts of him, in which she referred to him as a mental patient, had a serious impact on his social life to the extent that he was considering transferring to another high school.

To make its decision, the court considered the importance to be attributed to the best interest and will of the minor's aspirations as cited in previous jurisprudence of the Court of Cassation (Cass. n. 5237/2014). The court ruled in favour of the boy and, for his protection, ordered the mother to delete all data of him on her social media accounts as well as refrain from posting any new content of him without his consent. Failure to comply will result in a €10,000 fine.

4.1.2.2 Analysis

The significant aspect of this case is that it was brought by the child himself and the court heard his views and granted significant weight to his requests.¹⁸² Allowing children to institute legal proceedings against their parents and making judgements that give weight to the child's voice is in line with the CRC, especially with Article 12. Additionally, even though the CRC was not cited in this court case, the arguments against the sharenting relied on the negative effects that it had on the well-being of the child, on his best interests, and on his privacy. Therefore, this form of regulation aligns with a child rights based approach.

4.2 French legislation

The French legal system is also based on civil law, thus its sources of law are its own legal codes. However, it also follows the monist system by incorporating ratified international treaties directly into its legal practice with a supra-legislative status (laid out in Article 55 of the 1958 Constitution).¹⁸³ Since France ratified the CRC in 1990, its provisions can be used in its legal practice. Moreover, since ratification of the CRC, France has made active efforts to align its laws more with the international legal framework on the rights of the child. France has enacted two important legislations that are applicable to the protection of children from the risks of commercial sharenting.

The first legislation protects the child's right to privacy. Article 9 of France's civil code already grants everyone in France the right of respect to his/her private life. However, **Article 226-1 of the criminal code** was introduced to protect people's privacy rights further. This Article criminalises the capturing, recording, or transmitting of a person's words and image taken in a private setting without their consent. The punishment for doing so is a year of imprisonment and a €45,000 fine. When the acts criminalised

¹⁸¹ Article 96 of the Copyright Law.

¹⁸² This is an interesting parallel to the situation in the US where children are legally not allowed, under the parental immunity doctrine, to institute legal proceedings against and seek redress from their parents' actions (<https://definitions.uslegal.com/p/parental-immunity-doctrine/#:~:text=Parental%20immunity%20doctrine%20refers%20to,their%20children%2C%20for%20tort%20cl%20aims>).

¹⁸³ Couzens, 2015: 124.

by this Article concern the words and images of a child, consent must be sought from the holders of parental authority. This unfortunately means that children cannot seek redress from their own parents sharing information about them. However, French legal experts have said that, under this law, once children become adults, they could take their parents to court for publishing photos of them without their consent when they were children.¹⁸⁴ This legislation is useful in situations of commercial sharenting as adults would be able to legally seek redress for the harms the practice caused them as children, and this is a good deterrent for parents to take part in the practice. Nevertheless, this law unfortunately is not able to stop and protect children from sharenting when they are still children.

The second law is **French Law No. 2020-1266 of 19 October 2020**. The French parliament introduced this law to regulate the commercial exploitation of children below 16-years-old on social media platforms. This law stipulates that anyone involved in making audio-visual recordings where the main subject is a child under 16-years-old, with intentions to distribute the content for profit on a video-sharing online platform will need authorisation from an administrative body or risk fines. During the drafting stage of the law, commercial sharenting was given as an example of a practice that needs to be regulated by this law, citing the DaddyOFive case as proof of the dangers on children's rights specifically.¹⁸⁵ In practice, this means that parents must seek approval from the authorities before taking part in the practice. During the authorisation process, the parents will be given information on the rights of their child and on the potential privacy consequences of sharing audio-visual content of their children on the internet. Moreover, the authorities in charge of this process will formulate recommendations given to the parents of children involved about: the time, duration, hygiene, and safety conditions for making these videos; the risks, especially psychological, associated with sharing these videos; the legal requirements for normal school attendance; and the financial obligations of parents involved. These financial obligations are that parents are required to deposit a proportion of their child's income with the 'Caisse des dépôts et consignations' for their child to access once they attain the age of majority or legal emancipation. Moreover, the new law grants children the right to be forgotten, regardless of the parents' consent. Online video-sharing platforms will be required to remove the child's videos upon his or her request. This provision empowers children and effectively implements CRC Article 12. Nevertheless, this is the only provision in the law that considers the consent of children below 16. Introducing consent of the child as a criteria for approving video-sharing involving the child would align this law more with the international children's rights framework.

4.3 Police Awareness Raising

A non-legal example of States' attempt to regulate sharenting, including commercial, is by raising awareness amongst the public about the risks of sharenting.

In 2015 the German police 'Polizei NRW Hagen', posted on their Facebook page a call for parents to stop posting pictures of their children on Facebook.¹⁸⁶ They raised awareness about the fact that children have a right to privacy and that the pictures may cause the children embarrassment and to be the targets of bullying and child sexual abuse. They then encouraged parents to instead show pictures of their children to their acquaintances in person. This post gained a lot of attention with 190k likes, 11k

¹⁸⁴ Chazan, 2016.

¹⁸⁵ Assemblée Nationale, 2020.

¹⁸⁶ Polizei NRW Hagen, 2015.

comments and 421k shares. Additionally, at the bottom of their post, the police made an edit to say that the message had been passed on to 17 million people.



Figure 2: Polizei NRW Hagen Facebook post about sharenting.

In 2016, the French 'Gendarmerie Nationale' made a Facebook post sharing an article by the Figaro about the dangers of posting photos of children on Facebook and encouraging parents to share good moments in real life, instead of online.¹⁸⁷ The post gained 6.8k likes and 18k shares.



Figure 3: Gendarmerie Nationale Facebook post about sharenting.

Since 2021, as part of #TheThinkCampaign - a police initiative to make people think before acting, the Indian Assam police has been posting on their social media about the dangerous consequences of sharenting and advocating for parents to think before they share.¹⁸⁸ In their series of posts they mention that sharenting could lead to discrimination, cyberbullying, identity theft, violation of children's privacy, and child sexual abuse.

¹⁸⁷ Gendarmerie Nationale, 2016.

¹⁸⁸ Deka, 2021.



Figure 4: Assam Police Twitter post about sharenting.

5. Regulation within the balance between parents' rights and children's rights

Based on the analysis in Chapter 2 and 3, and the examples in Chapter 4, this chapter seeks to address how States could regulate commercial sharenting keeping in mind the balance between parents' rights and children's rights. Doing this will answer: To what extent can the State intervene in family life to regulate commercial sharenting and in what ways?

5.1 Forms of State regulation

Regulation is an attempt to alter the behaviour of others according to one or more specific goals to create defined outcomes, such as a goal to monitor and enforce children's rights.¹⁸⁹ These goals can be achieved with a diversity of measures, not only through law. Lessig came up with four regulatory modalities: social norms, which can be regulated through measures like awareness raising; architecture, which includes measures like speed bumps on the road to regulate vehicle speeds; market, which can be regulated by financial incentives; and law.¹⁹⁰ These regulatory measures are necessary forms of State intervention to align States Parties with their CRC obligation to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention".¹⁹¹

Regulation through law can be done with legislation, and with case law, which can lead to enforcing, modifying, or creating legislation. Legal incorporation of the CRC is important.¹⁹² The Committee has stipulated that incorporating the provisions of the CRC in domestic legal systems is key to implementing children's rights.¹⁹³ This is because law has the power to contribute to changing social norms that may hinder the attainment of children's rights. For example, Sloth-Nielsen has argued that new laws about children in Africa (implemented from 1990 onwards, after the development of the CRC) have crucially contributed to redefining custom and tradition about the role of childhood in African society that is increasingly more aligned with the CRC.¹⁹⁴ Moreover, laws can also contribute to shaping architecture and the market, thus, impacting on all of Lessig's regulatory modalities. For example, to protect children from economic exploitation, regulation through law can include labour laws to regulate conditions of labour, consumer laws to regulate misleading unfair commercial practices, and media laws to regulate exploitative advertising involving children. This can lead to social norms changing from believing it is the norm for children to take part in hazardous work, to believing that it is problematic. Legal regulation can also lead to market regulation through financial incentives to buy products that are made without child labour, and architecture regulation if the laws implement rules for products/advertisements to label whether they are dangerous to children or not. Nevertheless, law should not be the only tool to

¹⁸⁹ Black, 2002: 20.

¹⁹⁰ Lessig, 2016.

¹⁹¹ CRC Article 4.

¹⁹² Kilkelly, 2019: 332.

¹⁹³ CRC GC5 para 19.

¹⁹⁴ Sloth-Nielsen, 2011: 131.

implement the CRC and regulate the protection of children's rights, as non-legal measures of implementation can contribute to more far-reaching and complementary implementation.¹⁹⁵

5.2 Balancing parents' and children's rights

The child rights based analysis about how to balance parents' and children's rights can be summarised by this quote:

“Applying a child-centered approach does not suggest that the rights and interests of parents are ignored. However, from the child's point of view, her parents are first and foremost duty-bearers. They are expected to fulfil their obligation to care for her “development and upbringing” (Article 18), rather than being considered as rights-holders vis-à-vis the child. In that sense, the Convention defines a one-way relationship between children and their parents (and society more broadly).”¹⁹⁶

The language of the CRC is clear that parents must act in accordance with the evolving capacities of children when undertaking their parental responsibilities and should have the best interests of the child as their basic concern. Moreover, since the *Neulinger and Shuruk v Switzerland* case in 2010 the ECtHR has recognised the need for parental rights to be weighed against children's rights,¹⁹⁷ moving away from an approach that considers children's rights as an extension of parental rights.

The practice of commercial sharenting, as it is today, grants parents' full freedom and rights over their children's digital footprints, which encompasses their information, security, and identity. It creates an imbalanced relationship between parents and children because parents can sharent without restrictions and children are not adequately protected from the harms the practice can cause. This, in effect, puts parental rights above children's rights, which is imbalanced. From a child rights based approach, the amount of potential child rights violations that commercial sharenting brings outweighs parental rights, and regulation of the practice is necessary to remedy this imbalance. A complete ban of commercial sharenting would disproportionately infringe upon a parent's right to freedom of expression and respect of privacy and family. However, restrictions of the practice are justified from a child rights based approach to protect children and ensure parents are acting in accordance with their parental responsibilities established by the CRC.

Debate about the balance between parents' rights and children's' rights and their imagined future needs has started emerging amongst parents who practice commercial sharenting. The father of the SacconeJolys YouTube channel recently took down old videos featuring his children due to realising the dangers that commercial sharenting can bring for his children. He advocated for safeguarding measures to be put in place for commercial content involving children on YouTube and mentioned that he uses a third-party chaperone to do this.¹⁹⁸ One mummy blogger questioned how much she should make public about the challenging moments with her daughter as she is conscious that she will grow

¹⁹⁵ KilKelly, 2019: 333.

¹⁹⁶ Peleg, 2019: 152.

¹⁹⁷ Fenton-Glynn, 2021: 306.

¹⁹⁸ Smith, L., 2022.

up and be able to see the posts and may feel betrayed.¹⁹⁹ Another mummy blogger rather hoped that she was raising her kids to have enough sense of humour to not take what she posted as a personal attack.²⁰⁰ This, however, is an approach that does not take the best interests of the child as the basic concern and is not in accordance with the CRC. All this shows that regulations to restrict parents' commercial sharenting practices and protect children from harm caused by the practice are necessary to balance the rights of parents and children and thus align State actions with the international children's rights framework.

5.3 State intervention in family life

Since commercial sharenting is a practice that initially takes place in the private and family life sphere,²⁰¹ State regulations of the practice to protect children and their rights will, to some extent, have to intervene in this sphere. The Committee on the rights of the child have stipulated that "Protecting a child's privacy in the digital environment may be vital in circumstances where parents or caregivers themselves pose a threat to the child's safety or where they are in conflict over the child's care. Such cases may require further intervention, as well as family counselling or other services, to safeguard the child's right to privacy."²⁰² Article 19 of the CRC also requires States to take all appropriate measures to protect the child while in the care of parents. Moreover, the ECtHR established a positive obligation on the State to protect children from abuse and neglect, not just from strangers, but also from parents, in the landmark case *Z v the United Kingdom*.²⁰³ Additionally, in the US, the court in *Prince v. Massachusetts* "established that states have the power to protect children from harm, even above the wishes of their parents, and specified child labor as an appropriate area of regulation", thus granting States the authority to intervene in family life to regulate practices that cause harm to children, like commercial sharenting can.²⁰⁴

Huntington and Scott propose a Child Wellbeing Framework for legal regulation of children's rights that has the ultimate goal to promote child wellbeing.²⁰⁵ Because of this goal, the framework is for the strong protection of parental rights, as parents are usually the best carers of their child's wellbeing, however, "when a parent's action seriously threatens the child's welfare, state intervention overriding parental authority is justified".²⁰⁶ As illustrated, there is an increased argument for States to provide regulatory measures to limit the activities of parents who choose to ignore their children's rights.²⁰⁷ Therefore, the amount of potential harm to children and their rights that commercial sharenting brings justifies basic

¹⁹⁹ Blum-Ross & Livingstone, 2017: 117.

²⁰⁰ Ibid.: 117.

²⁰¹ But also moves to the public sphere due to the public platforms.

²⁰² CRC GC25 para 77.

²⁰³ Fenton-Glynn, 2021: 20.

²⁰⁴ Masterson, 2021: 598.

²⁰⁵ Huntington & Scott, 2019: 21.

²⁰⁶ Ibid.: 38.

²⁰⁷ Kravchuk, 2021: 117.

State intervention in family life to regulate it according to the international children's rights framework. Basic intervention would involve limiting parents in their commercial sharenting practices to avoid the risk of harm to children and to ensure parents act in accordance with their parental responsibilities established by the CRC. The national efforts in Chapter 4 have provided good examples of what these limitations could look like. Legislation could limit parents by requiring them to seek approval and safe practice training from the authorities before taking part in the practice, as in French Law No. 2020-1266. It could also limit parents by requiring them to seek consent from their children before sharenting. Parents could also be limited by a restricted audience for posting on social media, as in Dutch case 4. The consequences of parents not adhering to the limits set by the States could include civil law punishment like financial penalties or, in cases where the actions of parents amount to extremely harmful child rights violations, child protection proceedings may remove the child from the care of parents, as in the DaddyOfive case. Therefore, a case-by-case analysis of the harm to the child should be applied to determine the extent of State intervention to limit parents.

5.4 Lessons learnt from national efforts to regulate sharenting, including commercial

When States ratify the CRC, they become bound by obligations to protect, respect, and fulfil the children's rights in the Convention through all appropriate legislative, administrative, and other measures.²⁰⁸ Moreover, measures to protect children from violence, abuse, neglect, and exploitation while in the care of parents should additionally be social and educational, preventive, and remedial or rehabilitative.²⁰⁹ The examples of existing regulations in Chapter 4 provide a variety of regulatory measures for commercial sharenting.

The Netherlands has no legislation that criminalises the actions of commercial sharenting. Therefore, to seek redress from the harms caused by commercial sharenting, people have turned to the courts. In the Netherlands, the cases were all brought by one parent seeking to protect their children's rights from the sharenting actions of the other parent. The cases were all based on the protection of children's rights and demonstrated how sharenting, especially on public platforms, can be harmful to children. This is useful to raise public awareness about the issue and can also be used for agenda-setting for future legislation. The case law also provided restrictions on sharenting and penalties for failure to comply with these restrictions, thus making it a good remedial regulatory measure. All this makes the Dutch case law a good regulatory measure, however, it misses an element of child participation to be fully aligned with a child rights based approach.

The Italian case law had a very strong element of child participation as it was the child himself who brought his mother to court to seek redress from the harms that her sharenting was causing him. This can contribute to raising public awareness about the fact that children have the capacity to understand the repercussions of sharenting and have the right to have a voice on the matter. It is also noteworthy that the child based his complaint on Article 96 of the Italian Copyright Law, which is similar to Article 226-1 of the French criminal code, except it does not mention that for photos of a child consent must be sought from the holders of parental authority. This means that under this Italian law, children can seek redress from their own parents sharing information about them, which is what the child did in this case. Therefore, Article 96 of the Italian Copyright Law can be used as a regulatory measure for limiting commercial sharenting and case law can be used to enforce it.

²⁰⁸ CRC GC5 para 1.

²⁰⁹ CRC GC13 section B.

Germany, France, and India chose to address sharenting with non-legal measures. The police awareness raising on the dangers of sharenting aims to change social norms about the practice within society so that adults are able to self-reflect about taking part in the practice and limit themselves. This is a great social and educational measure and can also be preventive as being aware that the practice is potentially harmful to children can dissuade parents from taking part in it. An experiment was conducted to test the effectiveness of awareness raising on the dangers of sharenting.²¹⁰ In this experiment, parents watched a video about the dangers of sharenting, and half of them were then tasked with writing a summary of the video. The results found that the group that wrote a summary of the video and were forced to reflect on it became less willing to post content about their children online compared to the other group. Therefore, the study demonstrated “that a purely informational intervention is not as effective as one that encourages substantive reflection.”²¹¹ This is something that countries must consider when choosing to regulate commercial sharenting with awareness raising. The police awareness raising examples in Chapter 4 encourage some reflection through the comment section of the posts. However, this may not be substantive enough and the posts would benefit from more interaction with the audience. Additionally, the French and German police only made a one-time post about sharenting for this awareness raising, whereas the Indian police made a series of posts over time. This continuous posting is more effective as it increases constant exposure of the issue to the public, so they do not forget about it. Furthermore, using non-legal measures of regulation alone, like Germany and India have done, does not provide an avenue for remedies, which is important when implementing children’s rights domestically. This reduces the effectiveness of non-legal measures of regulation to make commercial sharenting in compliance with the international children’s rights framework, showing that States should avoid only using non-legal measure to regulate commercial sharenting.

France is the country that has implemented the largest variety of regulatory measures to regulate sharenting, including commercial. Besides addressing sharenting through police awareness raising, France has also addressed it through case law. As in the Netherlands, in the context of separation proceedings between parents, courts have received requests by one parent to enforce the cessation of any publication of the child by the other parent. The first of these cases was in 2011 where one parent requested the other to stop publishing and remove all content of their child from his Facebook because there was no mutual consent about it.²¹² To judge this case, the Bordeaux court stipulated that a distinction should be made between the case where the photographs of the child’s daily life are visible to a restricted group of people (usual act) and when they are visible to the general public, that is to say by a third party (unusual act). In this case, they found the sharenting on Facebook to be a usual act and thus, found that it was not necessary for both holders of parental authority to consent to it. In judging a similar case in 2015, the Versailles Court moved away from this decision and decided that the agreement of both parents is required for the dissemination of photographs of children on social media and ordered the parent doing the sharenting to stop posting any material about the child without the other parent’s permission and to remove all content of the child already posted.²¹³ This decision was reiterated in a similar case in 2017 by the Paris Court, which additionally involved one of the parents

²¹⁰ Williams-Ceci et al., 2020.

²¹¹ Ibid.: 1.

²¹² CA Bordeaux, 2011.

²¹³ CA Versailles, 2015.

publishing photos of the children for commercial purposes.²¹⁴ This shows that over time the courts have moved away from the position that sharenting is a usual act, and judge that due to its status as an unusual act, more restrictions of the practice are necessary. Nevertheless, none of the judgements refer to children's rights and they focus on redressing parental consent issues rather than harm caused to the child, which is not aligned with a child rights based approach. In comparison with the Dutch case law, which had similar facts, French case law shows that courts in different countries will base decisions on different factors although facts of the cases are similar. To avoid this, States should ensure domestic judges' approach sharenting, including commercial with a child rights based approach and place the children's rights and interests at the centre of decisions.

Finally, France is the country with the strongest legislative regulatory measure for addressing the risks of commercial sharenting. The legislation outlined in Chapter 4.3 provides indirect limits to the practice of commercial sharenting aimed at reducing the risks of economic exploitation of children and of violations of children's privacy. Legislation is a good regulatory measure as it can effectively discourage parents to take part in practices that they know could lead to negative legal repercussions for them.²¹⁵ It can also contribute to changing social norms about the importance of respecting children's rights.²¹⁶ This makes it a good social and educational, preventive, and remedial regulatory measure. Many scholars have argued that there is a great need to enact tailored legislation to protect children from economic exploitation in the digital environment.²¹⁷ Interestingly, the French Law No. 2020-1266 of 19 October 2020 aligns with many aspects of their proposals for such a law. Masterson proposed a law that would include provisions for special trust funds for the children involved, work permits, and rules on working hours, conditions and education provision of the children involved, to protect the welfare of the child.²¹⁸ Guzman proposed legislation requiring a license to work as a minor, a limit on working hours, and an "appointment of an independent trustee to oversee the child's financial interests" to protect children from exploitation.²¹⁹ Moreover, he argued that to ensure compliance of these regulations, a separate monitoring agency should be created and there should also be remedies available for children.²²⁰ These proposed provisions, apart from the separate monitoring agency, are all encompassed in the French Law, thus providing a great example of putting theory into practice with a child rights based approach.

5.5 A proposal for the regulation of commercial sharenting

When regulating commercial sharenting States should consider the following as starting points:

²¹⁴ CA Paris, 2017.

²¹⁵ Hamming, 2020: 1061.

²¹⁶ Sloth-Nielsen, 2011: 131.

²¹⁷ Masterson, 2021; Guzman, 2020.

²¹⁸ Masterson, 2021: 605.

²¹⁹ Guzman, 2020: 110.

²²⁰ Ibid.

- > The goal of such regulation is to limit parents in their commercial sharenting practices to avoid the risk of harm to children and remedy the imbalance between parents' and children's rights.
- > It is essential to conduct a Child Rights Impact Assessment (CRIA) (see Figure 1) to evaluate the impact of commercial sharenting from a child rights based approach.²²¹ It helps to identify which rights of the child are at risk because of the practice, which would help to create regulation that can specifically limit these risks. A CRIA also ensures that children's protection, provision, and participation rights are at the centre of regulation. This thesis has provided a CRIA in Chapter 2 which identified that the rights of the child to non-discrimination, best interests of the child, development, respect for the views of the child, evolving capacities, privacy, and protection from violence, abuse, neglect, and exploitation, including economic exploitation, were at risk because of commercial sharenting.

The next consideration for States is the choice of regulatory modality. The national efforts explored illustrate that there are many regulatory measures for the practice. The analysis of these regulatory measures has shown that legal regulation is an effective social and educative, preventive, and remedial measures. Non-legal regulation encompasses social and education and preventive measures but lacks an avenue for remedies, making it a less effective form of regulation to fully comply with the international children's rights framework. Nevertheless, non-legal regulatory measures are still relevant, complimentary and can fill in the gaps that legal measures may have. Therefore, States should aim to regulate commercial sharenting by implementing various types of regulatory measures to be able to address the issue from several angles. By doing this, they would comply with their obligations under the international children's rights framework.

5.5.1 Non-legal regulation

Awareness-raising on the rights of the child in the digital environment is part of the States obligations stipulated by the CRC.²²² It is also accessible, affordable and can be implemented relatively easily by national police, as illustrated in Chapter 4. However, lessons learnt from existing national efforts have shown that purely informational awareness raising is not as effective as one that encourages substantive reflection. Therefore, sharing information about the dangers of commercial sharenting should be accompanied by activities to make the audience interact with the information. This could be done through polls posing reflective questions to parents such as 'Are you aware that, without the correct privacy settings, everything you share online can be found, downloaded, and distributed by others around the world?', 'Do you know which privacy settings to use to avoid this?', and 'Have you asked your child what they think about you sharing information about them publicly?'

5.5.2 Legal regulation

Legislation on privacy like the ones in Italy and France, as well as on economic exploitation in the digital environment can be used to limit the harms of commercial sharenting in accordance with the international children's rights framework.²²³ Further legislation that provides protection for each of the other rights of the child at risk identified in the CRIA could and should also be implemented to regulate commercial sharenting. This could be legislation that outlines a requirement to obtain consent from

²²¹ CRC GC25 para 23.

²²² Ibid. para 32.

²²³ Ibid. paras 70 & 113.

children involved, in accordance with their evolving capacities and best interests, before engaging in commercial sharenting to comply with CRC Article 3, 5 and 12. It could also be legislation that criminalises writing harmful discriminatory comments on commercial sharenting posts to protect children against discrimination and the negative effects it can have on their development. These examples of legislation would not be too specifically focused on explicitly addressing commercial sharenting but rather the potential harms of commercial sharenting from a child rights based approach. It may be argued that enacting specific legislation limiting commercial sharenting explicitly would constitute more effective regulation as it would avoid fragmented protection. However, due to the fast evolving nature of digital technologies, commercial sharenting looks a certain way today but complexities may be added to it in the near future that may render specific legislation addressing it outdated in a short period of time. Broader legislation, that address the child rights potential harms of commercial sharenting, is better able to adapt to such changes as it is less limited by the constraints of specificity.

Any relevant legislation will also have to be enforced for it to be successful. The civil judicial system can be used for this and can reiterate to the public the importance of respecting children's rights in the digital environment. States should ensure domestic judges' approach commercial sharenting with a child rights based approach and place the children's rights and interests at the centre of decisions. A case-by-case analysis of the harm to the child should be applied to determine the remedies necessary. Moreover, establishing a Children's Ombudsman to oversee the monitoring enforcement of relevant legislation is recommended. The Children's Ombudsman could investigate individual complaints about commercial sharenting and also create interactive awareness raising campaigns. This would align States with their international obligations as the CRC Committee requires States to "ensure that the mandates of national human rights institutions and other appropriate independent institutions cover children's rights in the digital environment and that they are able to receive, investigate and address complaints from children and their representatives".²²⁴

²²⁴ CRC GC25 para 31.

6. Conclusion

This thesis has looked at the practice of commercial sharenting with a child rights based approach and sought to answer the research question: **In what ways can commercial sharenting violate children rights embedded in the United Nations Convention of the Rights of the Child (CRC) and how should it be regulated by States to comply with their obligations under the international children's rights framework?**

Commercial sharenting is a practice that entails a conflict between parents' rights and children's rights. Chapter 2 analysed the practice of commercial sharenting with a child rights based approach and found that the CRC rights of the child to non-discrimination, best interests of the child, development, respect for the views of the child, evolving capacities, privacy, and protection from violence, abuse, neglect, and exploitation, including economic exploitation, are at risk of being violated by commercial sharenting. Additionally, current legal recognition of these potential violations is very poor. Chapter 3 established that parents have a right to freedom of expression and a right for their private and family life to be protected, however, these rights are not absolute and can be restricted. The right to freedom of expression can be restricted if it violates the respect of the rights or reputations of others and the right to respect of privacy and family can be restricted if the interference is lawful and non-arbitrary. This thesis has argued that commercial sharenting violates the respect of the rights or reputations of children and thus would justify a restriction of a parent's right to freedom of expression. Moreover, the regulation of commercial sharenting is a justified restriction of parents' rights to respect of privacy and family as it is in accordance with the provisions, aims and objectives of the Covenant, which makes it non-arbitrary. Chapter 3 also established that parents have parental responsibilities to protect children, including in the digital environment, while considering the evolving capacities and best interests of the child. Taking part in unregulated commercial sharenting is not in line with protecting children in the digital environment nor with the best interests of the child, due to all the risks of harm it causes.

This means that there is a clear need for children to be protected from their parents' online disclosure about them. Article 19 of the CRC requires States to take all appropriate measures to protect the child while in the care of parents. Therefore, to adequately protect children from the harms the practice can cause them, States will need to restrict parents in their commercial sharenting practices. Banning commercial sharenting would disproportionately infringe upon a parent's right to freedom of expression and respect of privacy and family. However, restrictions are justified from a child rights based approach as unrestricted commercial sharenting puts parental rights above children's rights, which creates an imbalance that must be rectified to protect children and ensure parents are acting in accordance with their parental responsibilities established by the CRC. The existing regulations in Chapter 4 have exemplified possible avenues to restrict the harmful risks of commercial sharenting to align States with the international children's rights framework. Chapter 5 provided an analysis of the lessons learnt from these existing regulations and presented a proposal for what States should consider when regulating commercial sharenting. It noted that as of now, existing regulations are not widespread nor systematic, with only a few States implementing them, therefore States need to address this legal gap to fulfil their obligations under the CRC. The existing regulations can serve as a starting framework model for States, however, more regulations are needed to provide protection for each of the other rights of the child at risk due to commercial sharenting. States should not simply copy-paste the existing regulations and should instead conduct CRIA's to be able to address the particular impacts of commercial sharenting from a child rights based approach, which may vary. To determine penalties and remedies in cases of commercial sharenting, a case-by-case analysis of the harm to the child should be applied. Moreover, regulations of commercial sharenting will need to be constantly reviewed to adequately address the continuously evolving aspect of the digital environment. States would align themselves more with their CRC obligations by establishing a Children's Ombudsman to oversee the monitoring enforcement of

the regulations. Finally, States should regulate commercial sharenting by implementing various types of regulatory measures to be able to address the issue from both legal and non-legal angles.

Commercial sharenting as it is today, has the potential to violate many children's rights of the CRC. To comply with the international children's rights framework, regulations, based on a child rights based approach, that limit parents' online disclosure about their children are necessary. Due to the limited length of this thesis, this research chose to focus on the role of the State to enact these regulations, because of their obligation to provide parents and legal guardians with assistance in the performance of their child-rearing responsibilities,²²⁵ while also taking appropriate measures to protect the child in the care of parents.²²⁶ However, this topic would benefit from further research to come up with proposals for the other actors involved in commercial sharenting to regulate it with a child rights based approach. For instance, by analysing the role of social media businesses in preventing, detecting, and restricting commercial sharenting, or the role of international and regional organisations and courts in providing preventive and remedial regulatory measures for the practice.

²²⁵ CRC Article 18.

²²⁶ CRC Article 19.

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