

RIGHTSCON 2025

Statement on International Human Rights Law Against Online Age Gating

https://docs.google.com/document/d/1MXuHmRF_JkWQhFIOu8K4kt_TwUTicqr0cz73A16upPM/edit?tab=t.0

[1] As used in this statement, “age-gating” refers to policies and technologies that prevent persons from accessing online services and contents, unless they prove their age through verification or submit to age estimation technology. This statement concerns age-gating mandates from governments rather than voluntary policies a service may choose on its own to implement, that is, state measures prohibiting or designed to prohibit users from accessing or expressing information or opinions of any content, time, place, or manner of their choice based on their age.

Age-gating mandates threaten human rights as follows:

[2] All individuals, regardless of age, must be guaranteed freedom of expression and the right to information as enshrined in Article 19 of the ICCPR. Age-gating mandates threaten freedom of expression by burdening and inhibiting speakers.

[3] All individuals, regardless of age, must also be guaranteed the right to privacy, as protected by Article 17 of the ICCPR. Age-gating mandates threaten privacy rights by requiring the collection, retention, and storage of intimate and highly personal information, including documentation and biometric information, as a precondition for accessing online services. Age-mandates require people to submit much more data and affect all users of digital services because compared to in-person age-checking.

[4] Age verification often involves collecting, retaining, or processing personally identifiable information, such as phone numbers, birth dates, or residential addresses, beyond what is strictly necessary to confirm a person’s age. According to ICCPR Article 17 and 19, as interpreted by the Human Rights Committee (General Comment No. 16 on privacy; General Comment No. 34 on freedoms of opinion and expression) and the UN Special Rapporteur on Freedom of Expression (A/HRC/29/32), such extensive mass data collection can undermine the right to anonymity, which is integral to exercising free expression without fear of retaliation. The resulting chilling effect deters individuals, both adults and children alike, from fully participating online, including those who, for their personal safety or otherwise, cannot associate their online activity with their actual identities.

[5] The best interest of the child should be given primary consideration in all actions regarding the provision, regulation, design, management and use of the digital environment, as stated in

the UN CRC and General Comment no. 25. This includes giving due consideration to children's rights and evolving capacities, including their right to seek, receive and impart information, and to have **their views given due weight through meaningful participation**. Parents and legal guardians should be able to offer guidance, as part of their responsibility as primary caregivers, in accordance with children's varying levels of maturity, and should not impede on children's agency and their ability to exercise their rights, including in the digital environment.

[6] Age-gating mechanisms often assume that a parent or guardian is available to provide informed consent. However, in many countries, parents or guardians may not be literate or digitally literate, which could result in children being denied access to information, and by extension, their right to education.

[7] Mission creep is a serious concern with age gating mandates. Once a system collects personal data (or links a user to a persistent identifier), there is a real danger that this data will be used for more extensive monitoring or profiling than originally justified. This could normalize surveillance, violate privacy, and produce a chilling effect on free expression.

International human rights standards require that age-gating mandates be limited as follows:

[8] Given the threats brought to critical human rights by age-gating mandates, age-gating measures must satisfy all international human rights standards, and children as the beneficiaries of the aforesaid human rights, should not be discriminated against unreasonably relative to adults. What is guaranteed to adults should be guaranteed to children unless there are specific reasons for the disparate treatment.

[9] If implemented, age gating measures must meet the same "three part" test which includes the tests of legality (of form), legitimacy (of ends sought), and adequacy, necessity and proportionality (of the means for/to the ends), generally applicable to international human rights analysis.

[10] Any alleged harm to children must be supported by substantial evidence and not be based on intuition and anecdotes.

[11] The supposed benefits of the age restriction must be measured against the harm to children who will be denied access to the information. **In instances where the harmful effects of social media on children's mental growth stems from the design, features or functions of social media, measures to address these should be prioritised by platforms and age gating should only be secondary to these measures.**

[12] Age-gating measures must not be implemented unless they are legislated by the supreme legislative authority of each jurisdiction in the form of a clear law made publicly available that informs all the parties of what to do and what not to do to stay in compliance with law.