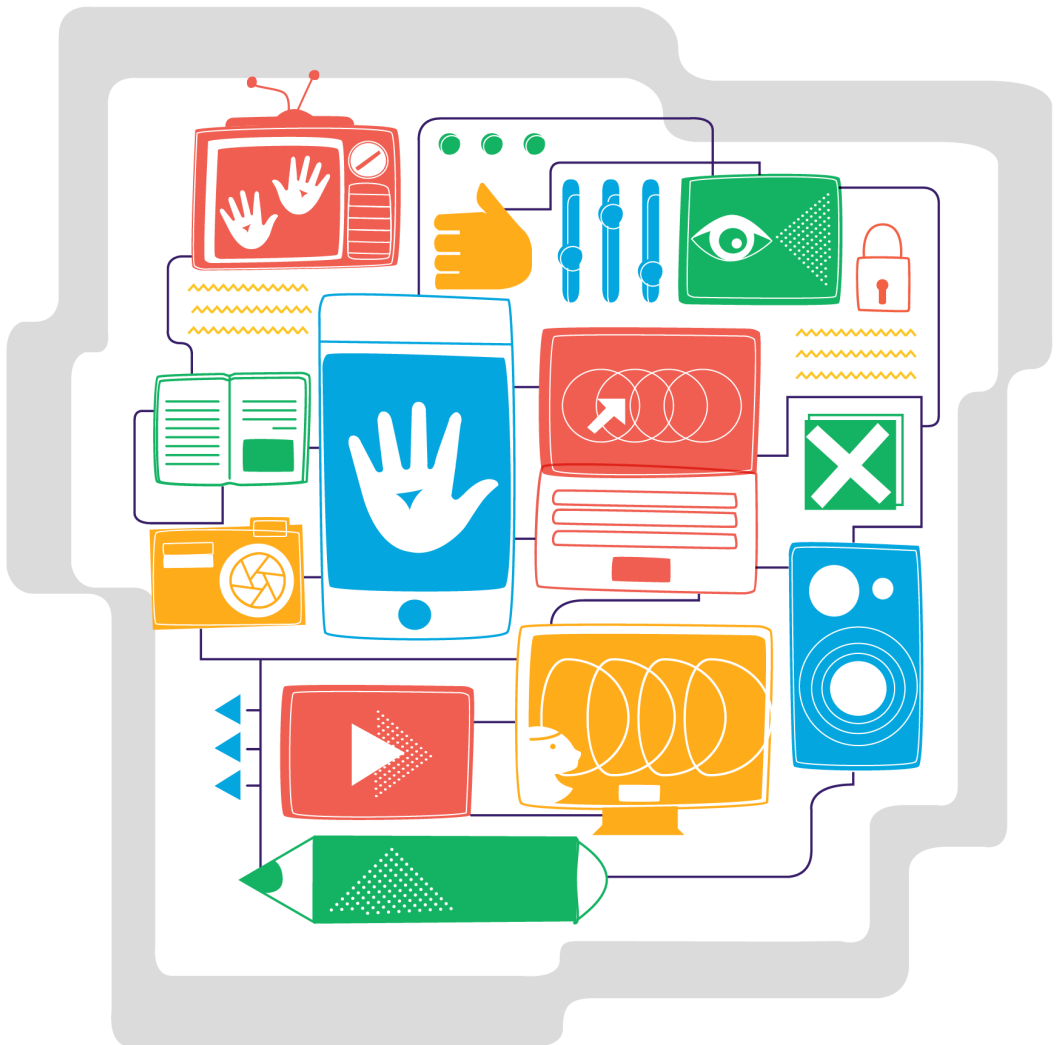


# Childhood, freedom of expression, and the media in the Americas



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# Childhood, Freedom of Expression, and the Media

Office of the Special Rapporteur for Freedom of  
Expression of the Inter-American Commission  
on Human Rights

Edison Lanza  
Special Rapporteur for Freedom of Expression

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# INTRODUCTION



## INTRODUCTION

1. This report analyzes the right to freedom of expression of children and adolescents in the context of traditional media and in the rise of the new paradigm that the Internet represents for communication. In particular, it studies the fundamental role played by the media in the democratic society for this group and the articulation between the right to freedom of expression, the media, and the promotion and protection of the rights of children and adolescents. The exercise of children's freedom of expression and access to information, as well as their relationship with the social and cultural development, depends on this.
2. The Inter-American Commission on Human Rights (hereinafter, "Inter-American Commission" or "Commission") and its Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Office of the Special Rapporteur") understand that the promotion of the right to freedom of expression of children and adolescents under the American Convention on Human Rights (hereinafter, "American Convention"), must be interpreted in the widest and most effective way possible. At the same time, it is necessary to integrate into the inter-American legal framework the provisions of the United Nations Convention on the Rights of the Child (hereinafter CRC) related to the activity of the media in order to establish a harmonious interpretation with the Inter-American legal framework on freedom of expression.
3. The right to freedom of expression has a universal content and reaches all people, and it cannot be interpreted in a counter-posed manner to the right to protect the privacy and dignity of children and adolescents. On the contrary, as has been emphasized on several occasions, all the rights recognized in the American Convention constitute a dynamic and interdependent relationship, reinforcing and complementing the protection of children. In short, any interpretation in a sphere as important for human development as communication must pursue the goal of promoting the interests and the development of children in that sphere.
4. This report first of all adopts the need to see and treat children and adolescents as subjects of rights, in the broadest sense that the law grants to such notion, without prejudice to understanding that certain aspects of this statute may be subject to special legal treatment for causes related to the degree of maturity, their evolution, and the ability to act autonomously. This notion, transferred to the field of communication, is inscribed in the need to abandon the adult-centric paradigm in what refers, precisely, to the discussion, definition, and application of the norms and obligations of the States.
5. In the context of this report, the Inter-American Commission and its Office of the Special Rapporteur recognize that in the region, children and adolescents have

been largely subject to discriminatory treatment for decades as subjects of rights, and have had difficulties in gaining access to the public sphere, the media, and the effective enjoyment of the rights analyzed herein after. Likewise, to a large extent, children have been at a disadvantage in terms of the protection of rights such as privacy, dignity in the formative stages, as well as the exercise of freedom of expression as defined by the CRC.

6. In general, the youngest have been deprived of institutional channels to express their demands. Likewise, we must recognize the difficulties they have had to access traditional media in order to freely, vigorously, and permanently exercise their right to express themselves on the matters that involve them or interest them. This reality has changed in recent years due to the possibilities offered by the Internet and other digital spaces, which have allowed young people to express themselves and share their points of view on topics of public interest.
7. However, the internet is a space which maintains a high rate of inequity in the possibilities of access and enjoyment of the benefits it entails. In fact, the existence of the digital divide affects the possibilities of children who do not have access to the Internet to make themselves heard in the public sphere and produces a phenomenon of exclusion and invisibility.
8. The IACHR and its Office of the Special Rapporteur also recognize the important role played by the media and investigative journalism when it comes to investigating and denouncing the abuses to which children are subjected to in our continent. Notwithstanding the foregoing, different organizations and academic spaces have pointed out the need to advance in the awareness of the role and the ethical responsibilities that the media have regarding the adequate treatment of information regarding children, as well as the need to take into account children and their advocates in the media coverage of issues that involve them.
9. Although with different responsibilities to international law, States and the media are fundamental spaces for the promotion and facilitation of the exercise of the right to freedom of expression directly by children and adolescents, as well as for the prevention of dissemination and accessibility of contents with harmful potential for them.
10. The Inter-American Commission has also reiterated that children need a space of autonomy promoted and protected by the family, the education, and by public authorities in order to plan and develop their own life project with no unnecessary guardianships and interference. The role of the State and international organizations cannot only consist in the prevention of damage or attacks against the physical, moral, or other integrity of the children, but also in the assumption of an active and facilitating role, creating the conditions so that the development of the different aspects of their individual and social personality is real and effective.

# METHODOLOGY



## METHODOLOGY

11. The IACHR and its Office of the Special Rapporteur want to highlight in a special way that this report has been drafted with broad participation and transparency, through a series of consultations with OAS member states, civil society organizations specialized in the promotion and protection of the rights of children, representatives of the media, and children themselves.
12. In this regard, responses provided by States, civil society, and academic organizations in the region have been analyzed and incorporated within the framework of a questionnaire published and sent to the States by the IACHR and its Office of the Special Rapporteur with the purpose of receiving information on the promotion of freedom of expression and the role of the media in the continent, linked to the rights of children and adolescents.
13. The purpose of the consultation process was to uncover the legal frameworks and regulations related to audiovisual communication services (open television, subscriber television, radio, and other alternative services that offer programming through convergent platforms), as well as to receive studies or information related to the promotion of freedom of expression and the access of children to information through the media and the programming produced in the region directed to this age group.
14. Information has also been received on the public policies and practices that States have developed regarding the protection and promotion of the rights of children and adolescents linked to their freedom of expression and compliance with the obligations imposed by international law. Finally, we have also sought to collect information on the role of journalism and the practice of the media in the treatment of issues related to childhood.
15. The IACHR and its Office of the Special Rapporteur also appreciate the extraordinary participation and collaboration received from the various civil society organizations in the framework of the public hearings convened during the 154th session of the Inter-American Commission on Human Rights (IACHR) between March 16 and 20, 2015<sup>1</sup>. It also highlights the celebration of the

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<sup>1</sup> IACHR. 154 Period of Sessions Hearing on Children's Rights and the Media. March 20, 2015. Available for consultation at: <https://www.youtube.com/watch?v=il7XRncMOBE> Attending the hearing on behalf of the applicant organizations: Karina Quintanilha Ferreira (Article 19 Brazil); Veet Vivarta (Consultant associated with ANDI Latin American Network); Frank La Rue (Demos Institute - Guatemala); Marta Benítez (ANDI Latin American Network); Guilherme Canela (Communications and Information Counselor for Mercosur and Chile); Pedro Hartung (Alana Institute, representative of Conanda - National Council for the Rights of



international seminar titled "Freedom of expression, media, and rights of children and adolescents" which took place in Lima (Peru) on October 2, 3, and 4, 2017, organized under the sponsorships of ANDI Network<sup>2</sup>, CONCORTV, the University of Lima, and the UNESCO Regional Office, in alliance with the Rapporteurship on the Rights of the Child, and the Office of the Special Rapporteur for Freedom of Expression of the IACHR<sup>3</sup>.

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Children and Adolescents of Brazil); Susan Linn (Director of the Campaign for a Childhood Free of Consumerism); Paula Baleato (ANDI Latin American Network).

<sup>2</sup> The ANDI Latin American Network was born in 2003 as an initiative that brings together various civil society organizations, in order to make visible the problems associated to children and adolescents and improve public policies, legislation, and practices in general in this area. Since its creation, it has published several contributions in the specific field of communication and regularly contributes to the work of international organizations and institutions with competencies in the field. Available for consultation at: <http://www.andi.org.br>

<sup>3</sup> The event materials are available at: <http://www.concortv.gob.pe/destacados/seminario-internacional-ninez-y-medios/>

# APPLICABLE LEGAL FRAMEWORK



## APPLICABLE LEGAL FRAMEWORK

16. The right to freedom of expression constitutes a unique principle that fulfills a fundamental function in the development of children's ability to think for themselves about the issues that affect them, and to see the world from their own perspective. That is why both the American Convention and the United Nations Convention on the Rights of the Child expressly recognize that children and adolescents are direct and active owners of the right to freedom of expression, which includes the freedom to seek, receive, and disseminate information, as well as to make society aware of their points of view on the issues that affect or interest them, even beyond the communication channels offered by the adult world.
17. In the case of children, the importance of the double dimension that characterizes freedom of expression is evident, which has been explained on numerous occasions by inter-American jurisprudence. In the individual dimension, this right allows children to express their own thoughts, ideas, and information. On the other hand, in the collective or social dimension, it allows society, which includes children, to seek and receive any information, to know the thoughts, ideas, and information of others and to be well informed<sup>4</sup>.
18. International law has recognized that the right to freedom of expression regarding children is extended as they mature and develop their process of personal autonomy, while decreasing the direction and guidance provided by parents so that children exercise their rights under the terms of Article 5 of the CRC<sup>5</sup>.
19. Article 13 of the American Convention on Human Rights is the provision of international law that grants greater protection to freedom of thought and expression. In what relates to this report the following paragraphs apply:

“1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds,

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<sup>4</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.2/09. December 30, 2009. Para. 13.

<sup>5</sup> General Assembly of the United Nations. [Convention on the Rights of the Child](#). November 20, 1989. Art. 5: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”; General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para. 13.

regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. (...)"

20. Along this same line is the text of the American Declaration of the Rights and Duties of Man (hereinafter, the American Declaration), whose article 4 proclaims the right of all people to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever. On the other hand, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (hereinafter, Declaration of Principles) emphasizes in its Principle 1, that freedom of expression is "an indispensable requirement for the very existence of a democratic society", Reaffirming also the right of everyone to "seek, receive, and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights".
21. According to the inter-American legal framework, freedom of expression is a right that distinguishes all human beings and is fully recognized in relation to all individuals, regardless of their age. Neither the American Convention nor the Convention on the Rights of the Child establish a limit to behold this right. In fact, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has underlined that the possibility of children and adolescents expressing themselves in different fields allows them to develop as autonomous beings and participate fully in society<sup>6</sup>.
22. Under the terms of Article 13 of the American Convention, freedom of expression is a right of every person, which is exercised under conditions of equality and

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<sup>6</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014.

- without discrimination for any reason<sup>7</sup>. In the universal sphere, the recognition of the dignity inherent to all human beings and of their equal and inalienable rights by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, determine that freedom of expression (recognized and protected) by article 19 of both instruments cannot be applied exclusively to adults, but also has full validity with regard to children<sup>8</sup>.
23. Regional jurisprudence has also emphasized that freedom of expression cannot be restricted to a particular profession, or group of people, nor to the professionalized field of press freedom<sup>9</sup>. In this way, the promotion of the rights to freedom of expression of children and adolescents under the American Convention must be interpreted in the widest and most effective way possible, particularly when they are exercised in a significant, though not exclusive, manner through the media.
  24. On the other hand, both the Commission and the Inter-American Court of Human Rights (the Inter-American Court) have reiterated that the media are vehicles for the exercise of freedom of expression, and in that sense, the guarantees established in article 13 of the Convention are also applicable to them. The Inter-American Court has indicated that "the media are true instruments of freedom of expression, which serve to materialize this right and that play an essential role as vehicles for the exercise of the social dimension of this freedom in a democratic society, reason for which it is essential that they gather the most diverse information and opinions"<sup>10</sup>. Likewise, the Court has affirmed that these media are "mechanisms that serve for the exercise of the right to freedom of expression of those who use them as a means of disseminating their ideas or information"<sup>11</sup>.
  25. The foregoing does not mean that any restriction on the activity of the media or, in general, on freedom of expression, is necessarily contrary to the Convention. However, any restriction must be adapted to the requirements established in Article 13.2, so they must be provided for in a law and have a sufficient degree of precision and clarity; geared towards achieving the imperative objectives authorized by the Convention; and be necessary and proportional to the existence and promotion of democratic society<sup>12</sup>.

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<sup>7</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.2/09. 30 December 2009. Para. 11.

<sup>8</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para. 80.

<sup>9</sup> I/A Court H.R., [Case of Tristán Donoso v. Panama](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 114.

<sup>10</sup> I/A Court H.R., [Case of Granier et al. \(Radio Caracas Television\) v. Venezuela](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Para. 148.

<sup>11</sup> I/A Court H.R., [Case of Granier et al. \(Radio Caracas Television\) v. Venezuela](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Para. 148.

<sup>12</sup> I/A Court H.R., [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#). November 13, 1985. Series A No. 5. Para. 38 and following.

26. In the case of children, it is significant that the Convention has foreseen, in addition to the possibility of protecting the rights of this group through subsequent responsibilities, the State's power to subject prior public censorship to public spectacles regarding the access of underage individuals to them, by law. As we will see later when analyzing this particular point, the Commission has interpreted this provision as a mechanism for regulating or classifying shows delimited to access content, but not as an absolute prohibition to broadcast content that may affect children.
27. The fact that the Convention refers explicitly to the prohibition of prior censorship *ab initio* for any kind of expression has been interpreted particularly clearly by the Inter-American Court in favorable terms to the enhanced protection of freedom of expression and freedom of those discourses that favor public debate -especially on political issues and in the electoral context-, accountability on facts of public interest, and the protection of human rights<sup>13</sup>.
28. Regarding the legal framework regarding the promotion and protection of the rights of children, the Commission has declared that the 26 articles of the Convention that enshrine fundamental rights are applied in their entirety for the protection of this group of the population<sup>14</sup>, without prejudice of the importance of articles of the Convention directly devoted to the protection of children, especially article 19: "*Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state*".
29. By means of this clause, the inter-American system understands the existence of a comprehensive list of international norms on the subject, which are integrated into the American Convention through this provision and that must engage with each other<sup>15</sup>. In this line, when we talk about fundamental freedoms, we must also take into account the CRC, as well as the decisions adopted by the Committee on the Rights of the Child, also of the United Nations.
30. The CRC contains a series of provisions that, like the American Convention, protect the rights of children and adolescents in the area of freedom of expression and opinion, as well as their right to privacy and the positive obligation that States have to promote their welfare. First, Article 12 states that:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (...)"

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<sup>13</sup> I/A Court H.R., [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#). November 13, 1985. Series A No. 5. Para. 38 and following.

<sup>14</sup> IACHR. [The rights of the child in the inter-american human rights system. Second edition.](#) OEA/Ser.L/V/II.133. Doc. 34. 29 October 2008. Parr. 21

<sup>15</sup> I/A Court H.R., [Juridical Condition and Human Rights of the Child](#). Advisory Opinion OC-17/02 of August 28, 2002. Series A No.17, paras 37, 53; and [Case of the "Street Children" \(Villagrán Morales et al.\) v. Guatemala](#). Merits. Judgment of November 19, 1999. Series C No. 63, para 194.

31. Also, of particular importance it is Article 13:

“1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. For respect of the rights or reputations of others; or
- b. For the protection of national security or of public order (ordre public), or of public health or morals.

32. Finally, it is also necessary to highlight the provisions of article 17:

“States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- a. Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- b. Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- c. Encourage the production and dissemination of children's books;
- d. Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- e. Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18”.

33. The United Nations Committee on the Rights of the Child in its General Comment No. 12 noted that article 12 of the CRC recognizes the right of the child to be heard<sup>16</sup>, as well as protects the right of the child to express itself freely in relation to the matters that affect them. The right to be heard has a clear connection with its broader right to freedom of expression, to the extent that "freely" means that children can express their opinions without pressure and can choose whether or not to exercise their right to be heard. According to the Committee, "freely" would

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<sup>16</sup> UN Committee on the Rights of the Child. [General Comment No. 12 \(2009\)](#). CRC/C/GC/12. July 20, 2009.



- also mean that the child cannot be manipulated or be subject to undue influence or pressure<sup>17</sup>.
34. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has pointed out that Article 12 of the Convention on the Rights of the Child contains a unique provision in international human rights law. It is a right that only children have and not adults, since the former do not have a general right expressly stated in the International Covenant on Civil and Political Rights to express their opinions in all situations that affect them. The fact that children are not always heard justifies the inclusion in the Convention of a general right to be heard.
  35. The Committee emphasizes that the right to be heard enshrined in Article 12 should not be separated from what constitutes the proper recognition of the right to freedom of expression of children, which would be enshrined in its entirety in Article 13 of the CRC. In this way, while the first precept would be exclusively connected with the right to express opinions, specifically about matters that affect the child and his or her right to participate in the measures and decisions that affect his or her life, the second has to do, in a more wide, with the right of children to have and express opinions and to collect and receive information by any means<sup>18</sup>.
  36. It is worth mentioning, regarding the right to receive information from young people, that this is a matter of increasing importance and debate, due to the restrictions that some religious groups, parents' organizations, and even States propose to teach about the prevention of teenage pregnancy, sexual education, or respect for the rights of LGBTI children and adolescents, for example.
  37. The Commission and its Office of the Special Rapporteur also highlight the role that Article 17 of the CRC assigns to the media in relation to children, as addressed in the aforementioned General Comment:
    - a. "(...) the media are an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for the public expression of such views. It urges various forms of the media to dedicate further resources to the inclusion of children in the development of programmes and the creation of opportunities for children to develop and lead media initiatives on their rights"<sup>19</sup>.
  38. In the same vein, the Special Rapporteur of the United Nations on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in the context of his report to the General Assembly in 2014, highlighted the full recognition, as a

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<sup>17</sup> UN Committee on the Rights of the Child. [General Comment No. 12 \(2009\)](#). CRC/C/GC/12. July 20, 2009. Para. 22.

<sup>18</sup> UN Committee on the Rights of the Child. [General Comment No. 12 \(2009\)](#). CRC/C/GC/12. July 20, 2009. Para. 81.

<sup>19</sup> UN Committee on the Rights of the Child. [General Comment No. 12 \(2009\)](#). CRC/C/GC/12. July 20, 2009. Para. 83.

result of the current international norms, of children and adolescents as subjects of rights. At the same time that the Committee on the Rights of the Child has drawn attention to numerous States that traditional attitudes towards children in all spheres, particularly at home, school, and society in general, continue to delay acceptance of the right of children to express themselves freely<sup>20</sup>.

39. The IACHR, in its on-site visits and thematic hearings, has been paying attention to the growing participation of children and adolescents in the public sphere through the manifestation of their opinions, demands and political positions on issues of public interest or issues that affect them. This growing participation is observed through demonstrations, protests in their different modalities, or in the use of social networks, all of which implies recognition of the useful effect that the Convention on the Rights of the Child and the American Convention have had on to universality the right to freedom of expression.

#### **A. On admissible restrictions to protect the rights of children**

40. According to the American Convention, despite its fundamental importance, freedom of expression is not an absolute right. Article 13.2 of the American Convention, while prohibiting prior censorship, admits certain restrictions of an exceptional nature aimed at protecting the imperious objectives authorized by the Convention, among which is the "moral protection of childhood and adolescence" and the effective protection of the rights to honor, good name, and privacy of individuals, which includes children as subjects of rights.
41. However, when establishing these restrictions, they must always satisfy the conditions imposed by the Convention itself: that is, they must be provided for in the law, have a legitimate purpose and be in keeping with the preservation of democratic society, which requires that the restrictions respond to strict criteria of necessity and proportionality. It is in light of these requirements that both the restrictions on the rights to freedom of expression and access to information by children, as well as the general restrictions that seek to protect them, must be evaluated.
42. As already stated, freedom of expression and the obligations assumed by States for the protection of children are mutually reinforcing and should not be viewed in a different way. Following the rule laid down by the Inter-American Court when analyzing the scope and content of the right to freedom of expression: "Hence if there are various options to achieve this objective, that which least restricts the right protected must be selected. Given this standard, it is not enough to demonstrate, for example, that a law performs a useful or desirable purpose; to be compatible with the Convention, the restrictions must be justified by reference to governmental objectives which, because of their importance, clearly outweigh the social need for the full enjoyment of the right Article 13 guarantees. Implicit in this

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<sup>20</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para. 35.

- standard, furthermore, is the notion that the restriction, even if justified by compelling governmental interests, must be so framed as not to limit the right protected by Article 13 more than is necessary".<sup>21</sup>
43. There are three alternative mechanisms through which the weighting between the freedom of expression and the protection of the rights of children in the cases authorized by the inter-American legal framework can be made effective, they are: the subsequent liabilities; the regulation of children's access to public shows; and the obligation to prevent hate speech for discriminatory reasons.
  44. In the American Convention, Article 13.2 prohibits prior censorship, but allows the attribution of subsequent liabilities for possible abuses. The establishment of these limitations must be of an exceptional nature and, to be admissible, must be subject to three basic conditions established in said article 13.2, that is: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued<sup>22</sup>. The Commission and its Office of the Special Rapporteur understand that this possibility of prior restriction must be interpreted in accordance with the exclusion of censorship of Article 13.1 of the Convention.
  45. On the other hand, the provision established in the CRC is identical to that in article 13.2 of the Convention, which reinforces the fact that this standard applies equally to the protection of the reputation and rights of children. In this regard, the Declaration of Principles on Freedom of Expression of the IACHR states in its Principle 10 that "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news".
  46. It follows that any restriction aimed at protecting the rights of children and adolescents must adhere to this requirement and apply the necessity and proportionality test that the inter-American system has designed to protect the public interest in information, so as not to disproportionately affect the right to freedom of expression.
  47. Regarding the second mechanism, the Convention establishes in article 13.4 that:

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<sup>21</sup> I/A Court H.R. [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#). November 13, 1985. Series A No. 5. Para. 46.

<sup>22</sup> IACHR. [Violence against LGBTI Persons](#). OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015. Para. 228.

Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

48. When analyzing the case known as "The Last Temptation of Christ", in which the State of Chile had issued a censorship measure in order to protect a group of citizens who were offended by the content of this film, the Commission analyzed this provision and understood that it was legitimate for the State to classify that film to allow access only to those over 18 years of age, but it declared the violation of the right to freedom of expression when, subsequently, the domestic courts proceeded to flat prohibit its exhibition.
49. According to the IACHR's report, article 13.4 "means that public spectacles may be submitted by law for qualification in order to regulate the access of underage persons". And further on, it states that "to prohibit outright the exhibition of the film" enters "in open violation of the precept established in Article 13 (1) of the American Convention".<sup>23</sup>
50. This interpretation was later ratified by the Inter-American Court in establishing the conviction of the Chilean State for maintaining in its Constitution and in practice a prior censorship regime for film production:
  - a. In the instant case, it has been proved that, in Chile, there is a system of prior censorship for the exhibition and publicity of cinematographic films and that, in principle, the Cinematographic Classification Council prohibited exhibition of the film "The Last Temptation of Christ" and, reclassifying it, permitted it to be exhibited to persons over 18 years of age (supra para. 60 a, c and d). Subsequently, the Court of Appeal of Santiago decided to annul the November 1996 decision of the Cinematographic Classification Council, owing to a remedy for protection filed by Sergio García Valdés, Vicente Torres Irrazábal, Francisco Javier Donoso Barriga, Matías Pérez Cruz, Jorge Reyes Zapata, Cristian Heerwagen Guzmán and Joel González Castillo, "for and in the name of [°] Jesus Christ, the Catholic Church and themselves"; a decision that was confirmed by the Supreme Court of Justice of Chile.
  - b. Therefore, this Court considers that the prohibition of the exhibition of the film "The Last Temptation of Christ" constitutes prior censorship in violation of Article 13 of the Convention. (...) That is, any act or omission that may be attributed to the State, in violation of the norms of international human rights law engages the international responsibility of the State. In this case, it was engaged because article 19(12) of the Constitution establishes prior censorship of cinematographic films and, therefore, determines the acts of the Executive, the Legislature and the Judiciary<sup>24</sup>.

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<sup>23</sup> IACHR. Case No. 11,803 - Juan Pablo Olmedo Bustos and others. Submission before the Inter-American Court of Human Rights against the Republic of Chile.

<sup>24</sup> See in this sense the terms of the judgment of the I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73. Paras. 71 - 72.

51. This interpretation is valid against the possibility of establishing classification or access systems for children to the media through other platforms. The Commission reiterates this interpretation and understands that the advisory rating systems with the objective of regulating the access of children to certain contents may be applicable to shows or content that are broadcasted on different platforms, such as broadcasts through the media or the Internet. When adopting any restriction for the protection of children, they must be proportional and must respect the general principle of prohibiting prior censorship. Likewise, to the extent that technology allows it, they must place in the hands of the parents and/or caregivers the control of the access to content during children's lower autonomy stage, improving their own capacities for positive access to content, and promoting awareness of their right to seek and receive information, including access to entertainment.
52. In other words, children's access to certain potentially harmful content must not be prevented through mechanisms of prior censorship or general prohibitions for the entire population, but through the regulation by law of the access of children to them, through advisory rating mechanisms and/or time slots for the emission of certain contents, as well as of parental controls facilitated by new technologies deployed on the Internet.
53. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression also warns about the impossibility of protecting the rights of children and adolescents based on the adoption of disproportionate restrictions on freedom of expression. Such protection would require, rather, to help children develop good communication skills and to know the positive uses of new technologies in order to improve their capacity to protect themselves<sup>25</sup>, through, for example, the so-called media and information literacy policies, while always maintaining the best interests of children as the axis of all public policies.
54. In some areas, fears for the safety and well-being of children may be legitimate and understandable when accessing certain types of information. In this way, many countries regulate the access to radio broadcasting, and television at certain time slots, in particular, aiming for the protection of children, among other things. National regulations often include some type of division system, for example, and establish independent bodies for their application. Content that is generally considered inappropriate for children includes explicit sex, excessive violence, and offensive language, and is restricted in certain time slots. However, regulation can have important repercussions on the freedom of the media and that is why it must comply with the previously analyzed requirements<sup>26</sup>.
55. In that sense, the need to protect children, as a result of not having the same maturity as adults, against forms of expression that include excessive or graphic

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<sup>25</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para. 82.

<sup>26</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para. 48.

violence, offensive language, or explicit sex, does not justify a deprivation of the information society on issues of public interest, preventing, de facto or by law, access to essential content for the democratic function that meets the freedom of expression. In any case, it is necessary to emphasize the need to respect, in the adoption of restrictive or restrictive measures aimed at the protection of minors, the international parameters generally applicable in this regard, especially the aforementioned *tripartite test*.

56. We can also find references, particularly in European jurisprudence, of a clear link between this limit and the moral development and integrity of underage individuals, also linked to Article 8 of the European Convention on Human Rights, which protects, in a broad sense, respect for private and family life<sup>27</sup>. In this regard, the European Court in dealing with a case about the filming of a nude underage girl by her stepfather without her consent<sup>28</sup> has indicated that "in order to provide full and effective protection of children, covert filming of children, with or without a sexual purpose on the part of the perpetrator, and inside or outside a pornographic environment, should be penalized. Such criminalization is consistent with the guarantee of the Convention of the Right of the Child to the protection of their image and the current international prohibition of any type of abuse or violation of the various facets of the child's personality, which includes its image<sup>29</sup>.
57. It is also important to address the protection and handling of images of children and adolescents involved in violent events or the criminal justice system, whether as witnesses, victims, or perpetrators. In these cases, consistent with Article 16 of the CRC, journalists must protect children's images in published photographs, and take care not to provide sensitive personal data, in order to shield their identity. UNICEF Dominican Republic noted that in these situations, "Another point to keep in mind is the careful use of children's images, which should be considered from the perspective of potential 'revictimization,' that is, the reliving of traumatic or stigmatizing situations." It also stated that this would not involve censoring information, "but that journalists can find other ways to report on the events, either by talking to the adults or authorities involved or by interviewing specialists."<sup>30</sup>
58. Finally, it must be reiterated that, under the Inter-American System, any type of restriction must comply with the guarantees of due process, and decisions that affect freedom of expression in the aforementioned area must be adopted by the most appropriate authority in this regard, avoiding, in this way, undue political

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<sup>27</sup> Council of Europe. [European Convention on Human Rights](#). Rome, 4.XI.1950. Article 8: "1. Everyone has the right to respect for his private and family life, his home and his correspondence".

<sup>28</sup> In the present case, "The applicant complained that the Swedish State had failed to comply with its obligation under Article 8 to provide her with remedies against her stepfather's violation of her personal integrity when he had attempted secretly to film her naked in their bathroom when she was 14 years old. She also relied on Article 13 of the Convention [Right to an effective remedy]". European Court of Human Rights. Case *Söderman v. Sweden*. Sentence of the Great Hall of November 12, 2011. No. 5786/08. Para. 56.

<sup>29</sup> European Court of Human Rights. Case *Söderman v. Sweden*. Sentence of the Great Hall of November 12, 2011. No. 5786/08. Page 39.

<sup>30</sup> United Nations Children's Fund (UNICEF) Dominican Republic. [Manejo de imágenes de niños, niñas y adolescentes en los medios de comunicación](#). October, 2008.

interference or, in short, the application of criteria or standards incompatible with international law. Specifically, in the field of audiovisual services, the Office of the Special Rapporteur has clearly emphasized the need for the application body to respond to the characteristics of what is known as an independent administrative authority<sup>31</sup>.

59. The third aspect with regard to the protection of children, established both in the American Convention in its Article 13 (5) and in the CRC, are illicit expressions, which the doctrine considers illegal and which do not enjoy the enhanced protection of the right to freedom of expression due to its impact on the dignity and rights of children and adolescents.
60. In exceptional cases, when faced with openly illicit content or discourses not protected by the right to freedom of expression, such as war propaganda and hate speech, which constitutes incitement to violence, direct and public incitement to genocide, and child pornography, which constitutes an offense against children and adolescents, the Office of the Special Rapporteur has indicated that it is permissible to adopt mandatory blocking and filtering of specific content in Internet cases. In these cases, the measure must be subject to a strict proportionality judgment and be carefully designed and clearly limited in a way that does not reach speeches legitimate or protected by freedom of expression<sup>32</sup>.
61. It must be borne in mind that the definition of what constitutes harmful content is a subjective and ambiguous concept. Consequently, any regulation aimed at protecting children and adolescents and the mechanisms adopted to ensure compliance should be reviewed periodically in an open and transparent manner to avoid the imposition of disproportionate or arbitrary restrictions that restrict the rights of both adults and children<sup>33</sup>.
62. Under the principles abovementioned, this report will address in the following chapters the national regulations and existing practices in the region to regulate the binomial promotion and protection in the field of children's rights. Although in the region there is a considerable dispersion of regulations and institutional responsibilities and competencies in this area, there is an emerging attention from the public authorities on the scope of the media and the rights of children, which must be observed under the previously established standards.

## **B. The Media and Children**

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<sup>31</sup> The importance of having, on the part of States, independent authorities regulating audiovisual communication has been highlighted by the Office of the Special Rapporteur in various reports related to media coverage. See IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 46 and following.

<sup>32</sup> See IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 88.

<sup>33</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/69/335. August 21, 2014. Para 48.

63. Under the inter-American legal framework, the media are those that serve to materialize the exercise of freedom of expression, in such a way that their working conditions must be adapted to the requirements of that freedom. For this, it is essential, *inter alia*, the plurality of media, the prohibition of any monopoly on them, whatever form they intend to adopt, and the guarantee of protection of the freedom and independence of journalists<sup>34</sup>.
64. The Commission and the Inter-American Court have reiterated that no individual or group can be excluded *a priori* from the media<sup>35</sup>, from which positive obligations arise for the States to promote the access of children and adolescents to both information technologies and traditional media.
65. Several of the aspects addressed in this report are related to the need to make the exercise of journalism compatible through the media and respect for the rights of children and adolescents.
66. The IACHR and its Office of the Special Rapporteur recognize the fundamental role of the media as an instrument for the development, expression, and socialization of children and adolescents. In the Americas, the consumption of radio and television (as well as of certain written media) occupies a significant part of children's leisure time, providing them with a shared imagery that acts as an undoubted socializing agent.
67. Likewise, said media are extremely accessible both from a technological and economic point of view. Proof of this is the important presence of free-to-air television and radio within the general framework of the media offer, and to a large extent they have also been an important means for children's access to entertainment and culture in the region, in the framework of societies in which the adult population cannot always reconcile professional life with time and spaces dedicated to their children.
68. Therefore, a study on the rights of children and adolescents in the field of media cannot ignore or deny their importance as elements that shape children individual and social development. Observing the media with distrust or trying to build barriers between them and the children with protective purposes would be an exercise in denial of reality and also a way to restrict the right they have to access information. It is important to adopt a constructive position in this regard and to promote that the media can contribute, in the best possible way, to the growth and integration of children and adolescents as citizens.
69. This position does not mean to fail to recognize the existence of a growing range of programs with high impact and easy consumption (police chronicles, reality

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<sup>34</sup> I/A Court H.R., [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#), November 13, 1985. Series A No. 5. Para. 34.

<sup>35</sup> I/A Court H.R., [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#), November 13, 1985. Series A No. 5. Para. 34.



- shows, social chronicles, and others) aimed at an adult audience, but easily accessible to children and adolescents. Rather, it is about having adequate instruments to discern their impact and promoting the necessary measures to make the offer more diverse and of higher quality.
70. According to the Declaration of Principles on Freedom of Expression, "journalistic activity must be governed by ethical conduct, which in no case can be imposed by States." In general terms, in the Americas, these ethical duties require a strengthened view in the area of protection and promotion of the rights of children and adolescents.
  71. Likewise, the Inter-American Court, citing the European Court, has indicated that the development of a responsible and ethical journalism is of particular relevance in a contemporary society where the media not only inform but can also suggest, through the way it presents the information, the way in which said information should be understood<sup>36</sup>. This ability to suggest symbolic meanings is especially complex with regard to protecting children and adolescents from certain content, such as the promotion of those dedicated to satisfying their interests and needs, or those who have their direct involvement.
  72. In this context, the Inter-American Court of Human Rights has rejected in important decisions the establishment of mechanisms of state or official control of the right of expression in the name of a supposed guarantee of the correctness and veracity of the information that society receives. According to the Court, this control system can be a source of great abuse and, in the end, violates the right to information that the same society has<sup>37</sup>.
  73. However, the region has much progress to do in "positive" self-regulatory mechanisms, that establish reference standards for the treatment of information that involves children and adolescents. Some examples of these mechanisms are the education and training activities of children or communication professionals, or on the other hand, the production of content that responds to the ideas of promoting freedom of expression and the right to information, that have been referenced. In this report, some examples of good practices that can be used as a reference are mentioned.
  74. It is also necessary to recognize a certain presumption that the proper protection of the rights and interests of children and adolescents is something where the family environment would be the natural and preferred space. From this point of view, we would not be so much in the face of deficiencies on the part of the public powers, as in the delegation or recognition by them of areas of action that would belong to the sphere of family and private relations. Notwithstanding the fact that

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<sup>36</sup> I/A Court H.R., [Case of Granier et al. \(Radio Caracas Television\) v. Venezuela](#) . Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Para. 139.

<sup>37</sup> I/A Court H.R., [Advisory Opinion OC-5/85. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 American Convention on Human Rights\)](#). November 13, 1985. Series A No. 5. Para. 77.

both national and international standards recognize a margin of action for the parents and guardians of children and adolescents, this in no way exempts the States from the responsibility of ensuring their best interests.

75. Secondly, from the point of view of the new media, especially those that use the Internet as a distribution platform, these have an undoubted influence in children and adolescents, who also enjoy an experience that distinguishes them and places them in a position of greater autonomy for their use and knowledge in comparison with adults, as a consequence of their character as *digital natives*.

### C. Internet and children's rights

76. Access to the Internet is a *sine qua non* condition for the effective exercise of human rights today, including especially the rights to freedom of expression, opinion, association and assembly, education, health, and culture. According to its nature, as an essential means of exercising full rights, access to the Internet must be universally guaranteed, adopting measures to close the digital divide, promoting infrastructure development policies.<sup>38</sup>
77. The Office of the Special Rapporteur has insisted on the need to close the digital divide in the Americas, which particularly affects children, given the importance of this medium for access to rights. The lack of access to the internet increases vulnerability and deepens inequality, perpetuating exclusion. The digital divide that persists in the region is the result of multiple structural problems, which include poverty and "exclusion factors" such as race, sex, disability, lack of digital skills, insufficient relevant digital content available to the local population, and affordability, among others<sup>39</sup>.
78. In this way, it is fundamental to promote and reinforce the digital citizenship of children and adolescents in order to guarantee their full and future integration in a society and in a world in which new technologies already play a central role. Without connectivity, children lose the ability to access an increasingly significant part of the public sphere. In addition, the risks involved in using the Internet must be tackled with appropriate policies, so any measure in this area should not imply a limitation on freedom of expression and free access to information circulating in the networks.
79. With regard to the promotion of the right of children to freedom of expression, the United Nations Special Rapporteur places special emphasis on two areas. First, the duty of the States to encourage the use of various forms of communication by

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<sup>38</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. March 15, 2017, para. 32.

<sup>39</sup> General Secretariat of the Organization of American States (OAS) and Inter-American Children's Institute (IIN). [Lineamientos para el empoderamiento y la protección de los derechos de los niños, niñas y adolescentes en Internet en Centroamérica y República Dominicana](#). January, 2018.

children in schools, encouraging the inclusion in the curriculum of subjects on social communication, digital media, and journalism<sup>40</sup>.

80. The second is the need for States to adopt comprehensive strategies that include not only or mainly restrictive measures, but also strengthen the capacity of children (as well as their parents and guardians) and empower them to exercise their rights online<sup>41</sup>. This need to treat digital media in a positive and constructive way, and not as a threat, is also found in the conclusions of the general discussion on digital media and children's rights that took place within the framework of the United Nations Committee on the Rights of the Child on September 12, 2014<sup>42</sup>.
81. In particular, States are called upon to adopt and effectively implement systematic and comprehensive laws based on human rights, as well as policies that integrate children's access to digital media and information and communication technologies, together with full protection of their rights in accordance with the international legal framework.
82. Regarding the exercise of freedom of expression on the part of children and adolescents on the Internet, it is evident that they can create, with relative ease, their own profiles and disseminate content generated by them through social networks, which facilitates the use of certain platforms, directly and without the need for intermediation. An example of this is the children and teenagers *youtubers* with a very high number of followers on audiovisual platforms. This promotes a better and broader exercise of freedom of expression, in the sense that they can use these tools as a means to exercise their right to share information, ideas, and their opinion on the matters in which they have an interest. This new reality has opened a debate regarding the need to articulate measures to avoid the possible consequences derived from excessive and unconditioned exposure of children and adolescents to scrutiny and public debate, especially in those cases in which their image, their reputation, or their privacy could be affected. In view of this situation, it is important that States have adequate legal frameworks for the protection of children's rights to privacy and freedom of expression. In the absence of one, UNICEF has noted that "Companies should follow enhanced due diligence to ensure policies and practices are in line with international law." In this regard, it is important that these companies strike a careful balance between the right of children to be protected and their right to freedom of expression and access to information.<sup>43</sup>
83. Furthermore, the Office of the Special Rapporteur has indicated that respect for privacy should also be a guiding principle of the digital environment. The right to privacy, whereby no one may be subjected to arbitrary or abusive interference

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<sup>40</sup> Asamblea General de Naciones Unidas [Informe del Relator Especial para la promoción y protección del derecho a la libertad de opinión y la libertad de expresión](#). A/69/335. 21 de agosto 2014.

<sup>41</sup> Asamblea General de Naciones Unidas [Informe del Relator Especial para la promoción y protección del derecho a la libertad de opinión y la libertad de expresión](#). A/69/335. 21 de agosto 2014.

<sup>42</sup> Available for consultation at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2014.aspx>

<sup>43</sup> United Nations Children's Fund (UNICEF). [Children's Rights and the Internet - From Guidelines to Practice](#). May 2016.

- with his or her privacy, family, home, or correspondence, is a prerequisite for the exercise of the right to freedom of expression online, which must be protected by law and strictly promoted through public policy. This is closely linked to the State's obligation to create a safe environment for the exercise of freedom of expression, as the violation of communication privacy has a chilling effect and hampers the full exercise of the right to communication.<sup>44</sup>
84. The digitalization of society is an irreversible process, and in this context, the first challenge, as has been emphasized, is the elimination of gaps and inequalities in the universal access of children to digital networks within the framework of spaces especially suitable and indicated for them (home, schools, libraries, etc.). On the other hand, once access itself is guaranteed, it is also necessary to reduce the inequalities between children and adolescents with regard to training and education for their use. There is no need to ignore the distance that exists between the digital natives who receive this support and those who, so to speak, access the digital world autonomously or without the assistance of an adult with knowledge of these technologies.
85. In this regard, the United Nations Human Rights Council has expressly declared that "the rights of individuals must also be protected on the Internet, in particular freedom of expression, which is applicable regardless of frontiers and by any procedure that is chosen", urging States to "promote digital literacy and facilitate access to information on the Internet" and warning that problems arising from the Internet must be addressed "in accordance with their international obligations in the field of human rights"<sup>45</sup>.
86. For its part, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression had already emphasized that "Internet literacy should be included in school programs, as well as in learning modules outside of schools"<sup>46</sup>. In this regard, international standards indicate the need to adopt extreme caution in relation to possible restrictive measures, especially proposing the training and literacy of all members of society.
87. Finally, the Commission recalls the importance of training processes (not only of children, but also of tutors, parents, and educators), awareness campaigns and adequate knowledge of risks (particularly using new technologies to get closer to users), promotion of self and co-regulation mechanisms, training of the different authorities and bodies with competence to intervene in these matters, as well as the direct involvement of those who act as facilitators of access to content and

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<sup>44</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17 March 15, 2017, para. 10.

<sup>45</sup> UN Human Rights Council. [The promotion, protection and enjoyment of human rights on the Internet](#). A/HRC/32/L.20. June 27, 2016.

<sup>46</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/66/290. August 10, 2011.

- online services (social networks, on demand content platforms, web portals, chat services, etc.)<sup>47</sup>.
88. Regarding the Internet, the private sector also plays an increasing role, and its role seems to be generalized and constantly expanding, so that this sector has become one of the driving forces of the greatest expansion of access to history information<sup>48</sup>.
  89. The platforms for sharing and accessing online audiovisual content and the large forums for public expression are now private and, as a result of the dialogue in different instances, mechanisms such as verification of the age of the user/subscriber are incorporated, the establishment of certain restrictions in terms of the age of access to certain content, the promotion of the use of voluntary content classification systems by users, the possibility of implementing systems restricting access to certain types of content based on preferences and profile of the user, the implementation of systems specifically oriented to the protection of children and adolescents<sup>49</sup>, as well as the promotion of the collaboration of the community of users and civil society in the monitoring of contents, and the formulation of reports, among others. It is evident, in any case, that the intermediaries or platforms that operate on the Internet exhibit a tendency to the progressive adoption of instruments such as those indicated, in order to react to civil society's demands and avoid intervention or direct pressure from public authorities.
  90. Along these lines, Europe's major Internet, media, and telecommunications companies have made progress in developing important self-regulatory and co-regulatory initiatives focused on guaranteeing the rights of children and adolescents. For example, several leading online companies created the ICT Coalition.<sup>50</sup> In addition, initiatives including the "CEO Coalition to make the internet a better place for kids"<sup>51</sup> and the "Alliance to better protect minors online" have been carried out with the direct encouragement of the European Union.<sup>52</sup> As part of this second initiative, a group of companies signed a Statement of Purpose, in which they pledged, among other things, to promote the use of content classification when and where appropriate, the awareness and use of parental control tools, and children's access to diversified online content, opinions, information, and knowledge.
  91. However, companies and private platforms that operate on the Internet, by adopting measures to regulate the content and design products that may have an

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<sup>47</sup> On the implementation of these policies in Europe see the comprehensive report prepared by the European Audiovisual Institute. [The protection of minors in a converged media environment](#). IrisPlus, 2015.

<sup>48</sup> General Assembly of the United Nations. [Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression](#). A/HRC/32/38. May 11, 2016.

<sup>49</sup> See for example the application developed by YouTube, YouTube Kids, to assist parents and guardians in the consumption of content of this platform by their children: <https://kids.youtube.com>

<sup>50</sup> Available for consultation at: <http://www.ictcoalition.eu/>

<sup>51</sup> European Commission. February 10, 2014. [Better Internet for Kids: CEO Coalition 1 year on](#)

<sup>52</sup> European Commission. [Alliance to better protect minors online](#).

impact on the enjoyment of human rights by users, should observe and align their policies with the principles of international human rights law, as pointed out by the the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression in his recent report on issues related to state regulation, private sector and freedom of expression in the digital era<sup>53</sup>.

#### **D. National regulatory frameworks for the protection and promotion of the right to freedom of expression of children and adolescents**

92. The Commission has received information that in several States the constitutional provisions contain provisions that establish a series of parameters in terms of regulation of the media for the protection of certain aspects of general interest. On the other hand, the legislation of some States contains obligations directed to the public authorities to protect children and adolescents effectively.
93. In the case of Brazil, article 21, paragraph XVI, of its Federal Constitution refers specifically to the competence of the Union with regard to the exercise of classification, with indicative effect, of public shows and radio and television programs. According to the mentioned article, "It is the responsibility of the Union: (...) XVI - to exercise the classification, for indicative purposes, of public shows and radio and television programs"<sup>54</sup>.
94. In Mexico, the constitutional and legal reform in telecommunications and broadcasting of 2013 and 2014, respectively, introduced as one of its axes the protection of the rights of telecommunications users and audiences, including children. In 2014, with the approval of the Federal Law of Telecommunications and Broadcasting [*Ley Federal de Telecomunicaciones y Radiodifusión*], it was determined in article 223, section II, that the harmonious development of children must be one of the objectives of the programming that is broadcasted through restricted broadcast or television and audio, within the framework of freedom of expression and reception of ideas and information. In addition, the eleventh title of the aforementioned Law establishes provisions regarding audiovisual content and the guidelines to be followed by broadcast programming aimed at this sector of the population, "in order to promote the free and harmonious development of girls, boys, and adolescents, as well as contribute to the fulfillment of the educational objectives set forth in article 3 of the Constitution and other legal systems". Article 246, on the other hand, establishes traits of advertising intended for children that are not permissible.<sup>55</sup>

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<sup>53</sup> Asamblea General de Naciones Unidas. [Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión](#). A/HRC/32/38. 11 de mayo de 2016

<sup>54</sup> Presidência da República. [Constituição da República Federativa do Brasil de 1988](#). "Art. 21. Compete à União: (...) XVI - exercer a classificação, para efeito indicativo, de diversões públicas e de programas de rádio e televisão; (...)."

<sup>55</sup> Estados Unidos Mexicanos. [Ley Federal de Radio y Televisión](#). July 14, 2014.

95. In Colombia, for its part, the judgment C-442 of the Constitutional Court of Colombia of 2009, urges the Congress of the Republic to elaborate a comprehensive and systematic regulation around the regime of responsibility of the media regarding children, in accordance with the general provisions already existing in the current legislation on children and in accordance with the provisions contained in article 44 of the National Constitution regarding the protection of children. As a consequence of this mandate, a legislative project was drawn up introducing educational, preventive, and promotion measures for the rights of children, as well as measures of self-regulation of the media, slots, parental control, and a sanction for non-compliance with communication responsibilities. This project has not yet been discussed and approved.
96. From the legislative point of view, the IACHR has also identified the existence of regulations applicable to the field of media and public entertainment. These regulations generally introduce a series of regulations, restrictions, and obligations applicable to the content distributed through audiovisual media (radio and television) or even, as just mentioned, within the framework of shows or events accessible to the general public.
97. These are basically rules that approach the topic from a protective point of view, aiming at avoiding children's access to certain types of content considered harmful to them. The IACHR emphasizes those provisions aimed at protecting children, affect the right to freedom of expression of the media and journalists to a lesser extent, as well as leave out of these provisions access to information on matters of public interest that may involve to underage individuals.
98. Within this framework we can observe, for example, the Federal Law of Telecommunications and Broadcasting of Mexico<sup>56</sup>, the Law of Radio and Television [*Ley de Radio y Televisión*] of Peru<sup>57</sup>, the Law on the Regulation of Public Shows and Broadcasting [*Ley sobre la Reglamentación de Espectáculos Públicos y Emisiones Radiofónicas*] of the Dominican Republic<sup>58</sup>, the Law of Audiovisual Communication Services [*Ley de Servicios de Comunicación Audiovisual*] of Argentina<sup>59</sup>, and the Law of Audiovisual Communication Services [*Ley de Servicios de Comunicación Audiovisual*] of Uruguay<sup>60</sup>, among others. Thus, for example, Title II of Peru's Radio and Television Law [*Ley de Radio y Televisión*] addresses the issue of family programming hours, stating in Article 44 that "The head of the television service shall ensure that cinematographic works and their previews are only broadcast on television at times appropriate to the age rating that such works had or should have had when they were shown in the country's cinemas, or in keeping with the adjustments made to [them]."<sup>61</sup> In Argentina, Article 68 of the Audiovisual Communication Services Law [*Ley de Servicios de Comunicación*

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<sup>56</sup> Estados Unidos Mexicanos. [Ley Federal de Radio y Televisión](#). July 14, 2014.

<sup>57</sup> República del Perú. [Ley de Radio y Televisión](#). July 15, 2004.

<sup>58</sup> República Dominicana. [Ley sobre la Reglamentación de Espectáculos Públicos y Emisiones Radiofónicas](#). March 7, 1949

<sup>59</sup> República Argentina. [Ley de Servicios de Comunicación Audiovisual](#). October 10, 2009.

<sup>60</sup> República Oriental del Uruguay. [Ley de Servicios de Comunicación Audiovisual](#). December 29, 2014.

<sup>61</sup> República del Perú. [Ley de Radio y Televisión](#). July 15, 2004. Art. 44.

- Audiovisual*], on the protection of children and dedicated content, provides, *inter alia*, that “In all cases, programming content, previews, and advertising must comply with the following conditions: a) From 6 a.m. to 10 p.m., they must be suitable for all audiences; b) From 10 p.m. to 6 a.m., programs deemed suitable for adults may be broadcast.” It further states that “Programs that are not suitable for all audiences must begin by displaying the appropriate rating based on the categories set out in this article.”<sup>62</sup> Likewise, Jamaica has established the so-called “Children’s Code for Programming”<sup>63</sup>, that was adopted by the broadcasting regulatory authority in the country.
99. In addition, in many of the States of the region there are also standards that generally address the protection of children and adolescents in relation to different areas of social, political, and cultural life, among others. These general regulations contain norms of a facilitating nature for the exercise of the rights of expression, association, and assembly by children, establishing mechanisms of political and social participation, the exercise of freedom of expression, and defining the role and responsibility of the media in access to information by children and adolescents.
  100. Examples of such general and cross-cutting norms are the General Law on the Rights of Children and Adolescents [*Ley General sobre los Derechos de los Niños, Niñas y Adolescentes*] of Mexico<sup>64</sup>, the Law for the Integral Protection of Children [*Ley para la Protección Integral de la Niñez*] of Guatemala<sup>65</sup>, the Law for the Integral Protection of Children and Adolescents [*Ley de Protección Integral de Niños, Niñas y Adolescentes*] of Argentina<sup>66</sup>, the Brazilian law that establishes the “*Estatuto da Criança e do Adolescente*”<sup>67</sup> (hereinafter, ECA), the Code of Childhood and Adolescence [*Código de la Niñez y la Adolescencia*] of Ecuador<sup>68</sup>, the Code of Childhood and Adolescence [*Código de la Infancia y de la Adolescencia*] of Colombia<sup>69</sup> or the Code of Children and Adolescents [*Código de la Niñez y Adolescencia*] of Uruguay<sup>70</sup>.
  101. Beyond the progress made in the legal recognition of these fundamental rights for children, the Commission also observes that there are still few examples in the region of systematic and articulated public policies in the area of protection and promotion of rights of children and adolescents regarding the right to seek, receive, and disseminate information and ideas. This issue appears only tangentially in some general planning instruments or public policies.
  102. For example, in Mexico, in the framework of the program called “25 by 25: National Objectives of Rights of Girls, Boys, and Adolescents”<sup>71</sup> or more broadly, the National Development Plan, in Peru, in the National Plan of Action for Children

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<sup>62</sup> República Argentina. [Ley de Servicios de Comunicación Audiovisual](#). October 10, 2009. Art. 68.

<sup>63</sup> Broadcasting Commission of Jamaica. [Children’s Code for Programming](#). August 8, 2002.

<sup>64</sup> Estados Unidos Mexicanos. [Ley General de los Derechos de Niños, Niñas y Adolescentes](#). December 4, 2014.

<sup>65</sup> República de Guatemala. [Ley de Protección Integral de la Niñez](#). June 15, 2012.

<sup>66</sup> República Argentina. [Ley de Protección Integral de los Derechos de Niños, Niñas y Adolescentes](#). September 28, 2005.

<sup>67</sup> República Federativa do Brasil. [Estatuto da Criança e do Adolescente](#). July 13, 1990.

<sup>68</sup> República del Ecuador. [Código de la Niñez y Adolescencia](#). July 3, 2003.

<sup>69</sup> República de Colombia. [Código de la Infancia y de la Adolescencia](#). November 8, 2006.

<sup>70</sup> República Oriental del Uruguay. [Código de la Niñez y Adolescencia](#). September 7, 2004.

<sup>71</sup> Available for consultation at: <https://www.gob.mx/segob/videos/que-es-25-al-25?idiom=es>



and Adolescents 2012 - 2021, or in Ecuador in the National Plan of Good Living. As has been observed, the reference to communication issues is brief and general, and to a large extent they lack the articulation of specific measures and agendas, as well as mechanisms for evaluating and monitoring public action.

### **E. Protection of the rights of children and adolescents in relation to the media**

103. The Commission notes that the protection of children’s and adolescents’ rights in relation to the media in the region is generally addressed through the introduction of restrictions on freedom of programming and content provided by the media. The rules on this subject are part of the framework on audiovisual services, and are aimed at the traditional audiovisual media (radio and television).
104. The contents subject to restrictions relate mainly to the following areas: verbal or physical violence (especially when it is “gratuitous”), adult, vulgar, or obscene language, scenes with erotic or sexually explicit content, content with a high visual or auditory impact that may create a strong emotional response, incitement to discriminatory treatment and behavior or to the commission of illegal acts, or incitement to the consumption of psychotropic substances or any other substance that is considered particularly harmful to the physical or mental development of children and adolescents.
105. In this regard, as mentioned above, any measure established in accordance with the legitimate principle of the protection of the rights of children and adolescents must also be respectful of the international framework for the protection of the rights to freedom of expression and freedom of information, especially with regard to respect for the *three-part test*, thus preventing restrictions that cannot reasonably be justified or that are excessive in relation to the objectives and principles to be protected.
106. The Commission reiterates that in establishing any restrictions on freedom of expression based on the protection of the interests of minors, it is vitally important to avoid excessively vague legal concepts that could be used to construe or apply potentially excessive limitations, or limitations that have an impact on speech that is in principle protected by the right to freedom of expression. In this sense, although concepts such as “morality,” “good taste,” “truculence,” “morbidity,” and “sordidness” are still present in the laws of some of the States examined, they should be clearly and precisely defined, considering that they may open the door to arbitrary interpretations that are difficult to predict.
107. Dominican legislation on public entertainment, for example, refers in general terms to the prevention of public entertainment and radio broadcasts “that offend morals, good manners, relations with friendly countries, and that in general may be detrimental to the principles and norms of the Dominican people.”<sup>72</sup> Similarly,

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<sup>72</sup> República Dominicana. Ley no. 1951 sobre la reglamentación de los espectáculos públicos.

- Costa Rican laws on public entertainment prohibit activities that constitute “a social danger” or “an incitement to vice,” among other things.<sup>73</sup>
108. Secondly, in accordance with the idea of necessity, the respective limitations must at all times be confined to the area of public interest to be protected: the rights and interests of minors. For the restriction to be legitimate, it must be clearly established that there is a clear and compelling need to effect the restriction, i.e. that such a legitimate and overriding objective cannot reasonably be achieved by other means less restrictive of human rights.<sup>74</sup> It must therefore be ensured that such measures cannot also be used to limit adults’ access to content that falls within the scope of the exercise of freedom of expression.
  109. On the other hand, in accordance with the principle of proportionality, the IACHR has stated on several occasions that, in order to determine the strict proportionality of the limiting measure, it must be determined whether the sacrifice of freedom of expression that it entails is excessive or disproportionate in relation to the advantages it offers.<sup>75</sup> In this regard, the Inter-American Court of Human Rights has indicated that the proportionality of a restriction that limits freedom of expression in order to preserve other rights must be assessed on three grounds: (i) the degree to which the contrary right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the competing right; and (iii) whether the satisfaction of the competing right justifies the restriction of freedom of expression.
  110. This rule for balancing the rights of children must also be interpreted in light of the legal principle that protects the best interests of the child, as set out in Article 3, paragraph 1, of the Convention on the Rights of the Child: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>76</sup>
  111. There is no *a priori* answer or generally applicable formula in this area: the outcome of this balancing exercise must be determined on a case-by-case basis, in some cases prioritizing freedom of expression when protected speech or information of public interest is at stake, and in others prioritizing the protection of children, as in the aforementioned cases of unlawful speech such as child pornography. General Comment 14 of the Committee on the Rights of the Child “on the right of the child to have his or her best interests taken as a primary

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<sup>73</sup> República de Costa Rica. Ley no. 7440 de 11 de octubre de 1964 de Espectáculos Públicos, Materiales Audiovisuales e Impresos. Available for consultation at: [http://www.wipo.int/wipolex/es/text.jsp?file\\_id=217730](http://www.wipo.int/wipolex/es/text.jsp?file_id=217730)

<sup>74</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.2/09. December 30, 2009. Para. 85.

<sup>75</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.2/09. December 30, 2009. Para. 88.

<sup>76</sup> United Nations. Office of the High Commissioner for Human Rights. [Convention on the Rights of the Child](#). Art. 3.

consideration” states that “Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.”<sup>77</sup> The Comment also notes that “best interests of the child” is a principle that should be interpreted so as to respect the complementary roles of other rights, such as the child’s right to be heard.<sup>78</sup>

112. Finally, the Office of the Special Rapporteur recalls that any limitation on the right to freedom of expression must be a suitable instrument for achieving the purpose sought by its imposition. In other words, the limitations must be suitable to contribute to the achievement of the aims compatible with the American Convention, or be capable of aiding in the accomplishment of such aims.<sup>79</sup> In cases such as these, where certain rights of children must be protected, measures affecting freedom of expression should be designed to target illegal content exclusively, without affecting other content.<sup>80</sup>
113. Thus, for instance, in a November 19, 1992 decision, the Court of Justice of São Paulo reversed in part a trial court’s decision requiring a newspaper to always sell its issues in a sealed package, with a warning that it was inappropriate material for children and adolescents. The Court of Justice also ruled that the package had to be sealed and opaque when the front page of a given issue was not suitable for children and adolescents, with the same warning. According to the Court, the idea of imposing the same obligation on this newspaper for all future editions, regardless of the content of that edition, could be a violation of the Constitution, which prohibits prior censorship. The Court also noted that according to Article 220 of the Brazilian Constitution, this would only happen if the newspaper, through self-criticism and self-censorship, deemed the content unsuitable for children and adolescents. This decision was subsequently affirmed by the Superior Court of Justice of Brazil [*Superior Tribunal de Justiça*].<sup>81</sup>
114. Brazil’s Superior Court of Justice (STJ) also carried out a balancing test of this type in case MS 14.041 of 2009, in which it ruled that the Federal Government should require television stations to comply with the Advisory Rating rules according to the summer schedule. The dispute had arisen from the government’s decision not to require broadcasters to adapt the programming grid to the summer schedule, on the grounds that the regulations in question referred only to the application of the

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<sup>77</sup> United Nations. Committee on the Rights of the Child. [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#). May 29, 2013, p. 4.

<sup>78</sup> United Nations. Committee on the Rights of the Child. [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#). May 29, 2013, p. 11.

<sup>79</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.2/09. December 30, 2009. Para. 87.

<sup>80</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17 March 15, 2017. Para. 88.

<sup>81</sup> Superior Tribunal de Justiça (STJ). [Recurso Especial No. 50-639-5 Sao Paulo \(94.0019565-6\)](#). March 14, 1996; Global Freedom of Expression. Columbia University. Case Law. [São Paulo Prosecution Office v. Notícias Populares](#). March 14, 1996.

rules in the country's different time zones, and not to summer schedules. However, the Court held that the aspects relating to the summer schedule were implied in the regulations and that their application should be enforced. In so ruling, the Court stated that "Our constitutional system clearly prioritizes the protection of children and adolescents, whose interests prevail, in certain circumstances, even when they conflict with other sacred constitutional values, such as freedom of expression."<sup>82</sup>

115. In many cases, it is the legislature that performs this balancing test for the broadcasting of content legally considered unsuitable for children, either in general terms or in terms of the times at which it is aired. It is generally regulated through penalties established in radio and television laws, or more broadly in audiovisual laws, and is imposed by the administrative authority (independent or governmental) with jurisdiction over the matter.
116. Moreover, it should also be noted that restrictions are not always applied by authorities possessing a sufficient degree of autonomy or independence, as would be required in the sphere of audiovisual services, to identify conflicts involving freedom of expression. In many cases, the interpretation and application of the above concepts is left to government agencies, and therefore is subject to political control.<sup>83</sup>
117. As discussed in the sections on the penalty regime and its enforcement, which may affect how the media operates, such restrictions must also comply with the requirements of Article 13 of the American Convention.

## **F. Programming schedules for the protection of children and adolescents**

118. In most countries in the region, the program scheduling system is still used as the main vehicle for protecting children and adolescents from harmful or harmful content. It is clear that this mechanism is a well-established practice in comparative law, although it is also true that in the new digital environment based on on-demand services and conditional access technologies, it tends to be replaced by other mechanisms that place greater power in the hands of the user.<sup>84</sup> In any case, as has been said, protective program scheduling is a central pillar in the legislation of most of the States in the region.
119. The use of particular time slots can have either a negative component, by preventing the broadcasting of certain content for part of the day; or a positive component, by promoting the broadcasting of content of interest to children and

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<sup>82</sup> Superior Tribunal de Justiça (STJ). [Mandado de segurança N° 14.041](#). September 9, 2009.

<sup>83</sup> For instance, despite the existence of an independent federal communications regulatory authority, the General Directorate of Radio, Television, and Film of the Ministry of the Interior of the Government of Mexico has punitive powers in this area.

<sup>84</sup> See, in this sense, the report published by the European Regulators Group for Audiovisual Media Services (ERGA) in April 2017, under the title "Protection of minors in the audiovisual media services. Trends & Practices". Available for consultation at: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44167](http://ec.europa.eu/newsroom/document.cfm?doc_id=44167)

adolescents during specific time slots when they are particularly likely to consume audiovisual content, thus creating a “space of trust.” In the latter sense, there are a number of overlapping time slots in Colombia that contain programs aimed at specific segments of the public. Thus, we find a so-called children's time slot (between 7:00 a.m. and 9:30 p.m.), made up of programs that have been designed and produced for children between the ages of 0 and 12, whose narrative and language are in keeping with the profile of this audience. The adolescent time slot (also between 7:00 a.m. and 9:30 p.m.) also contains programming that has been designed and produced to meet the entertainment, education, or training needs of adolescents between the ages of 12 and 18. The family time slot contains programs that have been designed and produced for the whole family, and they must be aired between 5:00 a.m. and 10:00 p.m. In general terms, content intended exclusively for adults is reserved for a time slot that starts at 10:00 p.m. and lasts until the early hours of the morning (between 5:00 and 7:00 a.m., as a general rule).

120. In terms of gradual limitation, Brazil also has a system of time slots, with the maximum protection slot being between 6:00 a.m. and 8:00 p.m., and gradually open up from that time until 10:00 p.m. the possibilities of providing content not recommended for children under 12, 14, and 16 years of age (one degree per hour). In Uruguay, Article 32 of Law No. 19307 (Audiovisual Communication Services Law, on the provision of radio, television and other audiovisual communication services), regulated by Decree 160/2019, establishes that children and adolescents must be protected every day of the week from 6 a.m. to 10 p.m. That article states, *inter alia*, that “Programs that promote violent, morbid, criminal, discriminatory, or pornographic attitudes or behavior, or encourage esotericism, gambling, or betting should be excluded from the above time slot.”<sup>85</sup>
121. Each State establishes the criteria for classifying content into time and age slots. The criteria usually used are those already referred to in a previous paragraph. It should be borne in mind that this classification task may be the result of the sector's own self-regulation, of decisions made by the regulatory body or the specialized classification body (as is the case in Brazil), or on the basis of pre-existing classifications in the case of the film industry. In any case, a significant number of States have their own list of symbols.

### **G. Classification Systems**

122. In accordance with the aforementioned international standards, the access of children and adolescents to certain potentially harmful content should not be prevented through mechanisms of prior censorship or general prohibitions, but by regulating children and adolescents' access to them, through classification mechanisms and/or time slots for the broadcasting of certain content. The classification system, in particular, may be composed of evaluative or descriptive classifications, or a combination of the two. The evaluative-type classifications are

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<sup>85</sup> República Oriental del Uruguay. [Ley No. 19307](#). Published on January 14, 2015 and regulated by Decree No. 160/019 of June 5, 2019.

based on the developmental stage of children and adolescents, as well as on their age, and provide guidance and advice on restrictions. They also provide recommendations on who can and who should not be exposed to certain media content.<sup>86</sup> In addition, the descriptive classifications provide information on the content of audiovisual productions. Then, they warn about controversial elements of the content, so the parents and/or caregivers of children and adolescents, or the minors themselves, must decide whether to allow them to view the content.<sup>87</sup>

123. In the United States, for example the TV Parental Guidelines were established as a voluntary participation system, with the industry itself setting the age classifications.<sup>88</sup> This followed the Telecommunications Act of 1996, which called on the entertainment industry to establish a system to provide parents with information about television content<sup>89</sup>. The TV Parental Guidelines can be used together with the V-Chip, which is a device that has been built into most television sets since 2000, that allows parents to block programs they do not want children and adolescents to have access to.<sup>90</sup> The United States also has a TV Parental Guidelines Monitoring Board, which is responsible for ensuring that the TV Parental Guidelines are applied, to the greatest extent possible, uniformly and consistently. It is made up of television industry experts and public interest advocates.<sup>91</sup> This is a clear example of co-regulation or “regulated self-regulation,” as some experts have defined it,<sup>92</sup> in which industry plays a central role and the State acts as a facilitator and supervisor of the system. The European Union encouraged States to use self-regulation and co-regulation and established, through *Audiovisual Media Services Directive 2018/1808*, that States should recognize the potential role of effective self-regulation as a complement to each country’s legislative, judicial, and administrative mechanisms, which can in no way replace the obligations of the national legislature.
124. In this area, Brazil established the so-called Advisory Rating System (CLASSIND), which is based on the aforementioned article 21 of the Constitution and on the framework regulation for the protection of children and adolescents (also known as the ECA). The Advisory Rating System specifies the age range for which each program is recommended. The specific regulation in this area can be found in Ministry of Justice Decree number 1.189 of 2018,<sup>93</sup> supplemented by the Practical Guide prepared by the Ministry of Justice.<sup>94</sup> It should be noted that the entire rating system (applicable not only to audiovisual media, but also to video games

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<sup>86</sup> Consejo Nacional de Televisión (CNTV) de Chile. [Clasificación de contenidos audiovisuales infantiles: el nuevo contexto de los medios y las multiplataformas](#). 2015, p. 9.

<sup>87</sup> Consejo Nacional de Televisión (CNTV) de Chile. [Clasificación de contenidos audiovisuales infantiles: el nuevo contexto de los medios y las multiplataformas](#). 2015, p. 9)

<sup>88</sup> The TV Parental Guidelines. [About us](#).

<sup>89</sup> The TV Parental Guidelines. [About us](#).

<sup>90</sup> Federal Communication Commission. [The V-Chip: Options to Restrict What Your Children Watch on TV](#).

<sup>91</sup> The TV Parental Guidelines. [About us](#).

<sup>92</sup> Schulz, W., & Held, T. (2004). *Regulated self-regulation as a form of modern government*. Luton, UK: University of Luton Press.

<sup>93</sup> Available for consultation at: <https://www.justica.gov.br/seus-direitos/classificacao/legislacao>

<sup>94</sup> Available for consultation at: <http://www.justica.gov.br/seus-direitos/classificacao/guia-pratico>

and certain shows) is based on the content or service provider's own self-classification criterion.

125. The control and monitoring system is under the responsibility of an organ (agency? entity?) of the Ministry of Justice, that since 2016 has been operating under the name of Advisory Rating Coordinating Body [*Coordenação de Classificação Indicativa*] (hereinafter, COCIND). In general terms, its function is to verify and ensure compliance with this self-classification system. In 2012, the system also began to receive input from the Civil Society Monitoring Committee on Advisory Rating [*Comitê de Acompanhamento pela Sociedade Civil para a Classificação Indicativa*] (CASC-Classind), made up of independent experts with an “advisory and guiding role” in the area of policy. In the case of free-to-air television, the function of COCIND is also to verify the correct application of the relevant classification criteria, with the final decision being made by the National Secretary of the Ministry of Justice in the event of a discrepancy. Regarding the scope and criteria of classification, the fundamental criteria are based on the presence of elements such as violence, sex and nudity, or drugs. The classification system also includes the criteria for the presentation of the labels concerned, depending on the content or service in question.<sup>95</sup> These labels establish different age groups which, in turn, and in accordance with the legal framework outlined above, must be adapted to a number of time slots.
126. Finally, in Costa Rica, Law No. 7440 on Public Entertainment, Audiovisual, and Printed Materials [*Espectáculos Públicos, Materiales Audiovisuales e Impresos*]<sup>96</sup> “governs the activity that the State must carry out in order to protect society, particularly minors and the family, in terms of access to public entertainment, audiovisual, and printed materials; it also regulates the dissemination and marketing of such materials and printed matter.” The above-mentioned law created the Commission for the Control and Rating of Public Entertainment as a body that reports to the National Council for Public Entertainment. Among its functions, the Commission “shall rate the content of the activities expressly established in Articles 2 and 3 of the Law, guide the public with the policies and guidelines issued by the Council, and apply the criteria stipulated in Article 11 of the Law and in these Regulations [Regulations to the General Law on Public Entertainment, Audiovisual, and Printed Materials].”<sup>97</sup>
127. It is important to point out that these systems serve to implement the right of children and their families to access information as it relates to audiovisual content. As such, they empower children and their families to decide what to consume and what not to consume, given that there is no censorship, only the establishment of time slots.

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<sup>95</sup> A full and detailed explanation of the mechanisms and criteria referred to above is available at: <http://www.justica.gov.br/seus-direitos/classificacao>

<sup>96</sup> República de Costa Rica. Ley No. 7440 de Espectáculos Públicos, Materiales Audiovisuales e Impresos. October 11, 1994. Available for consultation at: [http://www.wipo.int/wipolex/es/text.jsp?file\\_id=217730](http://www.wipo.int/wipolex/es/text.jsp?file_id=217730)

<sup>97</sup> Presidencia de la República de Costa Rica. Reglamento a la Ley General de Espectáculos Públicos, Materiales Audiovisuales e Impresos. September 26, 1998. Available for consultation at: <http://www.wipo.int/edocs/lexdocs/laws/es/cr/cr034es.pdf>

## H. Display of images of children and adolescents

128. With regard to the display of images of children and adolescents, it is important to examine their portrayal in general, beyond the context in which they would be involved in situations of violence—as victims of crime, or as perpetrators—which is regulated in a significant number of States in the region and is contained in the general regulations or codes relating to childhood.
129. With regard to the first aspect, it bears noting that, under Article 16 of the CRC, “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.” Similarly, Article 11 of the American Convention explicitly includes the protection of the rights to private life, family, home, and correspondence.<sup>98</sup> This demonstrates the importance of journalists and media professionals observing children’s and adolescents’ right to privacy when photographing or interviewing them, the only exception being when it is in the best interests of the child and the public interest, and provided that permission has been granted.<sup>99</sup>
130. Some of the recommendations that UNICEF has developed based on the Guidelines for Journalists and Media Professionals published by the International Federation of Journalists and the ANDI Network’s Working Guides in several Latin American countries include: (1) Have a sensitive and respectful attitude when taking the image, remembering that this child or adolescent could be our son or daughter, our brother or sister, or a loved one; (2) Do not show the faces of children and adolescents when the data, images, or information threaten their honor or reputation, or constitute arbitrary or illegal interference with their privacy and personal life; (3) Clearly inform children and adolescents about why and for what purpose they are being photographed or interviewed, and about the media outlet in which it will be published; among others<sup>100</sup>.
131. In an April 30, 2014 decision, the Colombian Constitutional Court ordered a media outlet to edit a video about the complaint made by some residents of a building next to the Comptroller General’s house, who claimed to be affected by “excessive noise” coming from the official’s house. The video contained images of 4 children playing on the house’s soccer field. After the images were broadcast, a journalist published two press columns in a newspaper in which she “criticized the Comptroller’s handling of the media’s questions and the complaints of her neighbors.” In this context, the Comptroller filed a petition for the protection of

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<sup>98</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. March 15, 2017. Para. 186.

<sup>99</sup> International Federation of Journalists (IFJ). [Los derechos del niño y los medios de comunicación: Restituir los derechos de la infancia - Guía para Periodistas y Profesionales de la Prensa](#). January, 2002. P. 52 - 53.

<sup>100</sup> United Nations Children’s Fund (UNICEF) Dominican Republic. [Manejo de imágenes de niños, niñas y adolescentes en los medios de comunicación](#). October, 2008. See also: United Nations Children’s Fund (UNICEF) Dominican Republic. [Pautas para la Cobertura Periodística sobre Temas de Niñez y Adolescencia](#). 2018.



- constitutional rights [*acción de tutela*] against the media outlet’s reporter and a newspaper journalist on behalf of her son and the representatives of the other three children. According to the Court, the video had to be edited to remove the images showing the figures of the children involved, as well as other data that might facilitate their identification.<sup>101</sup>
132. Similarly, the Court indicated that the opinion columns published by the journalist fall within the sphere protected by freedom of opinion. The reasons given by the Court referenced the Inter-American standards on freedom of expression: “[The objective of the media outlet] was to report on the conduct of a senior civil servant of the State—the Comptroller General of the Republic—which, although not directly related to the performance of her duties but rather to aspects of her private life, was of public relevance because it revealed a possible failure to comply with her civic duties. As already stated in paragraph 16 of this ruling, and as reiterated by the Inter-American Court of Human Rights in its judgment in the case of *Fontevicchia and D’Amico v. Argentina*, this type of speech is deemed to warrant special constitutional protection, since through it the press accomplishes its mission of fostering public debate on the conduct of senior government officials who, by virtue of their duties, must be worthy of public trust. This function is one of the reasons why freedom of the press enjoys a special place in the system of freedoms. In the present case, therefore, by virtue of the “two-way” nature of freedom of information, not only is it the right of journalists and the media to disseminate the information at issue, but it is also the right of the public to have free access to those aspects of the news that directly concern the civil servant’s performance of her duties as a citizen.”<sup>102</sup>
133. It should also be noted that the display of images of children and adolescents is an area of growing interest, insofar as, beyond the traditional media, young people are intensive users of new technological platforms and new media to obtain direct and unmediated access to the public sphere that they did not have until recently, such as the case of the growing success and popularity of child and adolescent YouTubers.
134. As mentioned above, a particularly important and sensitive issue in this area is the media treatment of children and adolescents who have been victims of crime or may have committed a criminal offense. In this regard, it is worth mentioning that during the preparation of this report, specialized civil society condemned the undue exposure in the media of children and adolescents in situations of special vulnerability or victimization. This is a result of the strong market dynamics affecting the commercial media sector, and of the insufficiency and lack of resources in the oversight and supervision of the protection of children’s and adolescents’ rights. According to these organizations, this undue exposure makes

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<sup>101</sup> Corte Constitucional. [Sentencia T-904/2013](#). December 3, 2013; IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 236-237.

<sup>102</sup> Corte Constitucional. [Sentencia T-904/2013](#). December 3, 2013; IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 236-237.

the situation of children and adolescents more difficult in a significant and troubling number of countries in the region.<sup>103</sup>

135. The CRC contains provisions on the treatment of children and adolescents accused or found guilty of criminal offenses. Such rules must be interpreted in the particular field of media coverage of these events, taking into consideration that they are often regarded as news or information of public interest. The provisions of Article 40 of the CRC, which refers to the need for treatment consistent with the dignity of the child, should be emphasized here, with the ultimate aim of reinforcing “the child’s respect for human rights and fundamental freedoms.” In accordance with principle of the best interests of the child already mentioned, it must be taken into account the age of the child, as well as “the importance of promoting the child’s reintegration and the child’s assuming a constructive role in society”, when making decisions on the protection of the image of children in these situations.
136. International norms specifically refer to these cases involving minors in conflict with the law, noting that the overriding and fundamental interest in this area would be to properly safeguard the dignity of the child concerned, avoiding any situation that could cause irreparable harm to his or her dignity and future development as an adult, as well as, in particular, to his or her integration into the social system. These premises have been included in many of the national laws analyzed, which contain provisions with the common feature of prohibiting the display of the image or, in any case, allowing the identification of any children or adolescents who are in any way involved in the commission of unlawful acts, whether as perpetrators, participants, or victims, or even as witnesses.
137. Such restrictions on the dissemination of images are contained in the Children and Adolescents Code of Peru, the Children and Adolescents Code of Honduras, the Children and Adolescents Code of Colombia, the Code for the System of Protection and Fundamental Rights of Children and Adolescents of the Dominican Republic, and the Statute on Childhood and Adolescence [*Estatuto da Criança e do Adolescente*] of Brazil.
138. In its decision of July 23, 2009, the Constitutional Court of Colombia held that “The media have a duty to provide true, objective, and timely information; they also have the right to publicly report the facts and actions, even if unlawful, that come to their attention by virtue of their function.” However, they must be diligent and careful in the disclosure of information that involves aspects of the private lives of individuals or their families, which (even if true), when presented, violates the fundamental rights of the human beings involved there, thereby damaging their honor, reputation, or good name, and giving rise to a direct violation of privacy. This requires a greater degree of responsibility when the news involves minors,

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<sup>103</sup> See on this subject some aspects dealt with in the report “Derechos, Infancia y Agenda Pública. Un análisis comparativo de la cobertura periodística latinoamericana 2005-2007”, prepared by Red ANDI. Available for consultation at:  
[http://www.andi.org.br/sites/default/files/Derechos Infancia y agenda publica 2005 2007.pdf](http://www.andi.org.br/sites/default/files/Derechos%20Infancia%20y%20agenda%20publica%202005%202007.pdf)

- who are constitutionally protected by Article 44 of the Constitution, with inalienable rights enshrined therein, in the international treaties ratified by Colombia, and the laws governing the matter, [which] establish the State's duty to protect children and ensure that their rights prevail over those of others."<sup>104</sup>
139. In terms of recommendations or other mechanisms of ethical self-regulation for improving the professionalism of journalists in reporting on issues involving children and adolescents, there are a number of initiatives across the region, that generally come from civil society or from academic or similar circles, but are not the result of public policy or political agendas that have made these issues a major priority in the sphere of State action.
  140. In Argentina, for example, the Office of the Ombudsperson for Audiovisual Communication Services has published the document "Journalists' Frequently Asked Questions on Children and Adolescents," which answers the most common questions that arise in exchanges with journalists about their specific practice when covering issues involving children and the use of images.<sup>105</sup> Likewise, the Costa Rican National Children's Trust has circulated to journalists a document under the title "Lost innocence: how the Costa Rican press perceives the underage population," which illustrates the state of the situation and provides relevant lessons. In Ecuador, the National Council for Intergenerational Equality has published several useful guides for journalists on the subject, such as "Communicating without Harming: Childhood and Adolescence."<sup>106</sup>
  141. Especially interesting are the initiatives of the *Voz y Vos* news agency for children and adolescents in Uruguay, especially in the area of covering situations involving the sexual exploitation of minors.<sup>107</sup> In this regard, the image and privacy of children involved in conflict situations require special treatment.<sup>108</sup> It is important to keep them from being identified, thereby protecting them from any present or future harm or injury that could occur if they are recognized. In these cases, some of the recommendations include protecting the identity of children and adolescents in situations of vulnerability, and not using images of their surroundings, or relatives, for instance, which could lead to their identification.<sup>109</sup>

## I. Penalty regime

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<sup>104</sup> Corte Constitucional. [Sentencia T-496/09](#). July 23, 2009; See also, Global Freedom of Expression Columbia University. Jurisprudence on freedom of expression in Spanish. "[A" y "N" v. Diario del Huila](#). June 23, 2009.

<sup>105</sup> Available for consultation at: <http://defensadelpublico.gob.ar/preguntas-frecuentes-de-periodistas-sobre-ninez-y-adolescencia/>

<sup>106</sup> Available for consultation at: [https://issuu.com/cnna\\_ecuador](https://issuu.com/cnna_ecuador)

<sup>107</sup> This issue and others is available for consultation at: <http://www.wozyvos.org.uy/category/noticias/>

<sup>108</sup> United Nations Children's Fund (UNICEF) Uruguay. [Guía: Periodismo de calidad para la cobertura y promoción de los derechos de niños, niñas y adolescentes](#). December, 2012. P. 28.

<sup>109</sup> Fondo de las Naciones Unidas para la Infancia (UNICEF) de República Dominicana. [Manejo de imágenes de niños, niñas y adolescentes en los medios de comunicación](#). Octubre de 2008. See also: Instituto Interamericano del Niño, la Niña y Adolescentes (IIN-OEA). [Medios de comunicación y Niñez en Perspectiva de Derechos: Referencias para funcionarios públicos en la elaboración de estrategias comunicacionales para la promoción de los derechos de niños, niñas y adolescentes](#). 2012. p. 9.

142. The Office of the Special Rapporteur has stated that broadcasting regulations may establish penalties for the breach of a legal obligation or in the event of a licensing violation or irregularity. These penalties are restrictions on freedom of expression. Therefore, both the regulation and the application of these penalties must meet certain requirements in order to be consistent with the American Convention and with the principles established by inter-American jurisprudence.<sup>110</sup>
143. Furthermore, in order to ensure respect for the right to freedom of expression, the violations and penalties provided for in broadcasting regulations must be legitimate and applied through a procedure that respects due process of law. In order to be legitimate, the violations and penalties imposed by broadcasting regulations must satisfy the “three-part test” derived from Article 13(2) of the American Convention, which has been established in the jurisprudence of the bodies of the inter-American system: (1) the penalties must have been defined in a precise and clear manner in a pre-existing law; (2) they must be oriented toward the achievement of compelling objectives authorized by the American Convention; and (3) they must be necessary in a democratic society to attain the compelling objective pursued; strictly proportionate to the aim pursued; and suitable for attaining the compelling objective pursued. These conditions must exist simultaneously and the authority that imposes the penalties has the burden of demonstrating that all of them have been satisfied.<sup>111</sup>
144. In the region, the violation of children’s and adolescents’ rights as a result of the dissemination of content considered legally inappropriate for their development, either in general terms or in terms of its broadcasting within a specific time schedule, is generally subject to penalties provided for in radio and television laws, or more broadly in audiovisual legislation, and are imposed by the administrative authority with jurisdiction in the matter. Most of them are financial penalties, although legal systems such as Uruguay’s contain a broad, progressive, and proportionate range of measures that can be taken in such cases. Depending on the seriousness of the infraction committed and the existence of other factors such as recidivism, the punitive measures to be imposed include the following levels: observation, warning, confiscation of the items used to commit the infraction or of the property found to be in violation (the latter measure may be applied exclusively or in addition to others), a monetary fine, up to 90 days’ suspension from the provision of the service, and even the revocation of the respective license.
145. The IACHR and the Office of the Special Rapporteur have maintained that, when it comes to speech that is in the public interest, penalties can never be criminal; nor can they be provided for or imposed as punishment for a media outlet’s news reporting or editorial line. Economic penalties should be proportionate to their potential harm to freedom of expression and should not be arbitrary or

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<sup>110</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 133.

<sup>111</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 135-136.

- disproportionate or have a general chilling effect. Any penalty involving the revocation of a license warrants particular caution in this regard, given its effect on the ability to continue exercising freedom of expression. This can only be provided for and applied in cases of serious regulatory noncompliance that has caused real harm to the rights of others.<sup>112</sup>
146. Regarding the use of media sanctions to regulate aspects related to the protection of children's rights in the media, it should be noted that the Brazilian Supreme Court [*Superior Tribunal Federal*]<sup>113</sup> issued a ruling on August 31, 2016, in the framework of the Unconstitutionality Action ADI 2.404/DF, regarding the prohibition contained in Article 254 of Law 8.069/90, Statute on Childhood and Adolescence (ECA). According to that article, "broadcasting, by radio or television, a show at a time other than the authorized one or without notice of its rating: Penalty - a fine of 20 to 100 times the salary of reference, doubled in the event of a repeat offense; the judicial authority may order the suspension of the station's programming for up to two days."<sup>114</sup> In this regard, the STF considered that there was "a legislative excess contained in the sanctioning mechanism, by means of which a classification constitutionally qualified as indicative would have been made mandatory." It also stated that the administrative penalty provided for in this article would offend the "fundamental right to freedom of expression, free from censorship or licensing."<sup>115</sup>
147. The decision points to the unconstitutionality of a very specific aspect, namely the possibility that by administrative means and with the ultimate support of the punitive power of the State, the decision of television providers to broadcast certain content in a certain time slot may be limited. This impossibility would, in the Court's view, be based on the provisions of Article 220 of the Constitution, which gives government authorities the power to issue recommendations, but not to establish obligations in this area. In this case, the Supreme Court considered that the aforementioned mechanism for the protection of children and adolescents from certain audiovisual content would amount to a violation of freedom of expression, which is accorded primacy.
148. According to a technical opinion of the Working Group on Communications Media of the Federal Public Prosecutor's Office (PFDC) of the Public Ministry, this does not mean that television providers cannot be sued in court for abuses or damages caused by their failure to comply with the relevant legal provisions.<sup>116</sup> For their part, civil society organizations have argued that they are in favor of maintaining

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<sup>112</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 138-140.

<sup>113</sup> Supremo Tribunal Federal de Brasil. [Sentencia con relación a la Acción Directa de Inconstitucionalidad 2404](#). August 31, 2016.

<sup>114</sup> Congresso Nacional do Brasil. [Lei No. 8.069 - Estatuto da Criança e do Adolescente](#). July 13, 1990. "Art. 254. Transmitir, através de rádio ou televisão, espetáculo em horário diverso do autorizado ou sem aviso de sua classificação: Pena - multa de vinte a cem salários de referência; duplicada em caso de reincidência a autoridade judiciária poderá determinar a suspensão da programação da emissora por até dois dias."

<sup>115</sup> Supremo Tribunal Federal de Brasil. [Sentencia con relación a la Acción Directa de Inconstitucionalidad 2404](#). August 31, 2016. P. 8-9.

<sup>116</sup> Ministério Público Federal (MPF). October 5, 2016. [Classificação indicativa: "decisão do STF não impede responsabilização judicial de emissoras de TV", destaca PFDC](#).

the advisory rating system, and that the Court's decision represented a step backwards in the protection of children.<sup>117</sup>

## J. Audiovisual media enforcement and regulatory bodies

149. The Commission and the Office of the Special Rapporteur have emphasized that the regulatory bodies that apply and enforce the broadcasting laws should be independent of the State and from economic interests, with sufficient protection against political or other interference.<sup>118</sup> In this regard, the Office of the Special Rapporteur has pointed out that the authority for the application and enforcement of broadcasting activity “must be a deliberative body that ensures plurality in its composition. It must be subject to clear, public and transparent procedures, as well as to the imperatives of due process and strict judicial review. Its decisions must be public, in accordance with existing legal norms, and adequately justified. Finally, the body must be accountable for and give public account of its activities.”<sup>119</sup>
150. In general, the region has bodies in charge of regulating and enforcing media laws, which are usually specialized bodies with a greater or lesser degree of independence. Examples of bodies whose regulatory design seeks to ensure greater degrees of independence include the Federal Telecommunications Institute of Mexico,<sup>120</sup> the Audiovisual Communication Council of Uruguay, Colombia's National Television Authority,<sup>121</sup> and the Chilean National Television Council.<sup>122</sup> These entities have a certain degree of autonomy recognized by the respective legislation, although their actual independence from political guidelines and views must be observed in each particular context.
151. The IACHR further notes that various institutions in the region with cross-cutting responsibilities in the area of children and adolescents also have the power to enforce provisions that may involve the media and even to establish penalties.
152. This group includes the Secretariat for Children, Adolescents, and the Family of the Government of Argentina,<sup>123</sup> the National Commission for Children and Adolescents together with the Office of the Ombudsperson for the Rights of Children and Adolescents of the Office of the Human Rights Ombudsperson of

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<sup>117</sup> Conselho Nacional dos Direitos da Criança e do Adolescente (CONANDA). September 2, 2016. CONANDA lança nota sobre decisão do STF. Available for consultation at: <http://www.classificacaoindicativa.org.br/2016/09/02/conanda-lanca-nota-sobre-decisao-do-stf-de-acabar-com-a-vinculacao-horaria-da-classificacao-indicativa/>

<sup>118</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights), and the Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>119</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 46 - 57.

<sup>120</sup> Available for consultation at: <http://www.ift.org.mx>

<sup>121</sup> Available for consultation at: Función Pública. [Manual de Estructura del Estado Colombiano – ANTV](#).

<sup>122</sup> Available for consultation at: <https://www.cntv.cl/>

<sup>123</sup> Available for consultation at: <https://www.argentina.gob.ar/desarrollosocial/ninezyadolescencia>

- Guatemala,<sup>124</sup> the National Children's Trust of Costa Rica,<sup>125</sup> and the Institute for Children and Adolescents in Uruguay.<sup>126</sup> At the decentralized level, the Human Rights Commission of the Federal District of Mexico<sup>127</sup> has the power to receive complaints from children and adolescents. It should also be noted that such bodies may be executive or purely advisory in nature, or a combination of the two.
153. Any review of this type of design should consider shifting the enforcement of administrative provisions and penalties against the media to a specialized agency with the aforementioned characteristics.
  154. On the other hand, the IACHR highlights the creation in recent years of bodies dedicated to promoting the participation of children and adolescents in the media and the protection of their rights, such as the Uruguayan Communications Council, which is provided for in the regulations on audiovisual media services and is currently in the process of being created. According to Chapter II of this regulation,<sup>128</sup> the Communications Council will be created as a decentralized body of the Executive Branch, without prejudice to its capacity to transfer cases, and will be responsible for “the application, monitoring and enforcement of the provisions of the [Audiovisual Media Services Act] and the regulations thereto in all matters not falling within the jurisdiction of the Executive Branch or the Ursec.” It shall be administratively linked to the Executive Branch through the Ministry of Industry, Energy, and Mining, and will act with technical autonomy. It will also act in the general interest, protecting and promoting the exercise of the right to freedom of expression, the right to information, and the cultural rights of all individuals and of audiovisual media service providers in accordance with existing legal frameworks. Among its areas of responsibility, which are listed in Article 68, it will be competent to “advise and participate in the formulation and monitoring of policies for the protection and promotion of the rights of children and adolescents in audiovisual media services.”
  155. Another example of a body dedicated to promoting the participation of children and adolescents in the media and the protection of their rights is the National Commission for Public Entertainment and Radio of the Dominican Republic.
  156. In other cases, there are bodies that report directly to the respective Minister or Government. In the case of Argentina, for example, it is necessary to highlight the National Communications Agency, which is the regulatory authority for the sector.<sup>129</sup>
  157. In advisory terms, the Advisory Council on Audiovisual Communication and Children (CONACAI) of Argentina acts under the call of the media regulator and is

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<sup>124</sup> Available for consultation at: <https://www.pdh.org.gt>

<sup>125</sup> Available for consultation at: <http://www.pani.go.cr>

<sup>126</sup> Available for consultation at: <http://www.inau.gub.uy>

<sup>127</sup> Available for consultation at: <http://cdhdf.org.mx>

<sup>128</sup> República Oriental del Uruguay. [Ley No. 19.307. Servicios de Comunicación Audiovisual](#). January 14, 2015.

<sup>129</sup> Available for consultation at: <https://www.enacom.gob.ar>

- made up of individuals and social organizations with a proven track record in the field, as well as representatives of children and adolescents.<sup>130</sup>
158. In the case of Brazil, the Ministry of Science and Technology, Innovation, and Communications (MCTI), which is a purely governmental body, regulates the media in a cross-cutting manner. If the actions of the media affect fundamental rights, the Federal Public Ministry will have jurisdiction. In addition, the time slots and age ratings of the contents depend on the Ministry of Justice, through the National Secretariat of Justice<sup>131</sup> (hereinafter, SNJ). However, the body with general cross-cutting powers and jurisdiction over children and adolescents and the enforcement of sector-specific legislation in this area is the National Council on the Rights of Children and Adolescents,<sup>132</sup> which also coordinates the various decentralized bodies with jurisdiction in such matters within the country's various local and regional governments. It should also be noted that many of the powers of the aforementioned administrative bodies are of an advisory nature, or they have the authority to make recommendations, and their powers of enforcement or regulation are generally quite limited.
159. The Commission notes that examples of best practices are emerging in the region with respect to advocacy on behalf of audiences or the public by the media itself and/or by public institutions, and especially with regard to the protection of children and adolescents. As far as State agencies are concerned, Argentina's Office of the Ombudsperson for Audiovisual Communication Services is the most developed such office in the region, in terms of protecting the right to freedom of expression and the rights of children and adolescents.
160. The Argentine Ombudsperson's Office was created in 2012, through Article 19(a) of the Audiovisual Communication Services Act (hereinafter, LSCA) (Law No. 26.522), with the "mission to promote, disseminate, and defend the right to democratic communication of audiovisual media audiences throughout the country." According to Article 19 of the LSCA, the Office of the Ombudsperson is responsible, among other things, for receiving and channeling queries, complaints, and reports from the public so that their rights as citizens and recipients of media content are respected. Its other functions and missions also include: a) keep a record of the queries, complaints, and reports submitted by users publicly or privately and through the means authorized for this purpose; b) follow up on the complaints and reports submitted and to inform the competent authorities, interested parties, the press, and the general public of their results, and to publish their results; c) present an annual report on its actions to the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication; d)

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<sup>130</sup> Among other things, it prepares proposals to improve the quality of programming targeted at children and adolescents; sets criteria and diagnoses of recommended or priority content and, likewise, points out inappropriate or harmful content for children and adolescents; encourages research and studies on the audiovisual and children, as well as training programs in the field; and encourages the production of content for children and adolescents with disabilities. Website: <http://www.consejoinfancia.gob.ar>

<sup>131</sup> Ministério da Justiça do Brasil. [Classificação Indicativa](#).

<sup>132</sup> Ministério da Mulher, da Família e dos Direitos Humanos. [Conselho Nacional dos Direitos da Criança e do Adolescente \(Conanda\)](#).



call upon organizations, research centers, and other entities to create a permanent participatory forum for debate on the media; e) convene public hearings throughout the country to evaluate with the public the functioning of the media in light of the provisions of the LSCA; f) make public recommendations to the competent broadcasting authorities, which shall be mandatory; and g) represent the interests of the public and of the community, whether individually or as a whole, in an administrative or judicial capacity, with procedural standing to request the nullification of general or particular acts, the issuance, amendment, or replacement of acts, and other precautionary or substantive requests necessary for the proper performance of its duties.<sup>133</sup>

161. In addition, the media in Latin America and the Caribbean have few self-regulatory mechanisms, with some exceptions. In the specific case of Mexico, there are some media organizations that have their own ombudspersons, in both the public and private spheres, such as the Mexican Institute of Radio, *Radio Educación*, *Televidente canal 22*, *Canal "una voz con todos," TV AZTECA*, *Once TV México*, and the university media of the University of Guadalajara.
162. Finally, with regard to media observatories and children's rights, the Commission draws attention to the fact that the initiatives in the region are also limited. In States such as Colombia and Argentina, it has been the media regulator that has taken the initiative to create observatories of this nature. In Colombia, for example, the Audiovisual Content Observatory of the National Television Authority (hereinafter, ANTV) is responsible for systematically monitoring content through observation exercises aimed at establishing the general trend of television in the country.
163. The Commission also notes that there are initiatives in the universities of a large number of the Member States in question that have had a significant impact in this area. For example, in Colombia, the University of Pamplona has a Media Observatory to monitor, among other things, the media in Norte de Santander.<sup>134</sup> A similar initiative has been undertaken at the National University of Colombia, where there is a National Media Observatory, as well as at the private universities of La Sabana and Sergio Arboleda.

## **K. Journalism and self-regulation in the coverage of children's issues**

164. According to the Commission's Declaration of Principles on Freedom of Expression, "Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State." In this report, the Commission wishes to underscore that it is especially important for entities and the media to develop standards on the ethical management of information aimed at children and adolescents. Notably, in general terms, the implementation of ethical and

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<sup>133</sup> Congreso de la República Argentina. [Ley de Servicios de Comunicación Audiovisual \(Ley No. 26.522\)](#). October 10, 2009; Defensoría del Público. Institucional. Available for consultation at: <http://defensadelpublico.gob.ar/institucional/preguntas-frecuentes/>

<sup>134</sup> Universidad de Pamplona. [Observatorio de Medios](#).

professional codes, as well as effective self-regulation or co-regulation mechanisms that guarantee respect for such codes, is still a pending matter in most of the countries of the region.

165. Notwithstanding the above, it is possible to find best practices that may be of interest and serve as comparative models to be followed. For example, in Argentina, the Office of the Ombudsperson for Audiovisual Communication Services and the previous audiovisual services regulatory authority prepared, in conjunction with UNICEF, the publication entitled “Democratic communication for children and adolescents: Tools for students and media professionals,” which systematizes the legal provisions concerning children and communication in Argentina and provides tools for journalists who wish to work with children from a rights-based perspective.<sup>135</sup> In Uruguay, UNICEF, with the Catholic University of Uruguay and the *Voz y Vos* news agency, put together a handbook entitled “Quality journalism for the coverage and promotion of the rights of children and adolescents,” which aims to contribute to the daily work of journalists in reporting on children’s issues by using a rights-based approach to reporting on children in the media.<sup>136</sup> The handbook addresses, among other things, what the media can and cannot do legally in relation to children and adolescents; journalistic quality and children’s rights; and a summary of steps to be taken in covering cases involving adolescents involved in the juvenile justice system.
166. In Paraguay, the Global News Agency, with support from UNICEF, produced the “Manual on Children and Journalism,” which aims to promote a consistent professional practice among journalists that respects the rights of children and adolescents. This manual contains information on the regulatory framework related to children’s rights, and some general guidelines for a quality professional practice that respects these rights.<sup>137</sup> Similarly, in Panama, the Ethics Committee of the National Council of Journalism, with support from UNICEF, published an “Handbook on Child and Teenagers Journalism” in order to provide guidance on working with news of this nature.<sup>138</sup>
167. Brazil offers the particular experience of the “InFormação” program, promoted by the ANDI network in collaboration with the W. K. Kellogg Foundation with the idea of creating academic networks that support the training of journalists on human rights issues, as well as in the field of children and adolescents.<sup>139</sup> In Honduras, UNICEF has promoted “Journalism and Media Accountability” courses for journalists across the country, which obviously cover issues related to children

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<sup>135</sup> Available for consultation at: [https://www.unicef.org/argentina/spanish/media\\_7233.htm](https://www.unicef.org/argentina/spanish/media_7233.htm)

<sup>136</sup> United Nations Children’s Fund (UNICEF) Uruguay. [Guía: Periodismo de calidad para la cobertura y promoción de los derechos de niños, niñas y adolescentes](#). December, 2012.

<sup>137</sup> United Nations Children’s Fund (UNICEF) Paraguay. [Manual de niñez y periodismo](#). April, 2008.

<sup>138</sup> United Nations Children’s Fund (UNICEF) Panama and Comité de Ética del Consejo Nacional de Periodismo. [Dictamen sobre el tratamiento de las informaciones acerca de niños, niñas y adolescentes](#). 2009. See also: United Nations Children’s Fund (UNICEF) Panama and Comité de Ética del Consejo Nacional de Periodismo. [Manual de Periodismo sobre la Niñez y Adolescencia](#). 2019.

<sup>139</sup> More information about this program available at: <http://www.andi.org.br/infancia-e-juventude/page/programa-informacao>

and adolescents.<sup>140</sup> In Peru, the Radio and Television Advisory Council, in partnership with institutions for the defense of children's rights, such as Save the Children and *Acción por los Niños*, has been holding regular workshops on children and the media in various cities with the participation of media professionals, journalists, and students.<sup>141</sup> In addition, visits are also made to the Schools of Communications of various universities in order to teach courses on the rights of children and adolescents in the media to students in the final semesters of their degree programs.

168. In addition, UNICEF produced the document "UNICEF's Ethical Guidelines for Reporting on Children," in which it offers a set of recommendations seeking to "provide basic guidance to the media, but also to administrative, police, and judicial authorities involved in the justice process, on how to address child protection issues in order to respect their best interests and dignity as human beings at all times"<sup>142</sup>. Moreover, UNICEF produced the "Ethical reporting guidelines: Key principles for responsible reporting on children and young people"<sup>143</sup>.
169. As previously mentioned, beyond these specific experiences, some of the region's countries have established self-regulation mechanisms based on the adoption of codes of conduct and journalistic ethics that contain provisions applicable to children and adolescents. Based on the contributions made by the States, we can highlight the Code of Journalistic Ethics of the Uruguayan Press Association, which has a specific approach to the treatment of news and stories involving children or adolescents, in keeping with the Children and Adolescents Code and international standards.<sup>144</sup> In Jamaica, the Press Association of Jamaica and the Media Association of Jamaica have also established a code of conduct with provisions on the treatment of children and adolescents.<sup>145</sup> In Peru, radio and television laws require the sector to have its own system of self-regulation.
170. In Brazil, the Brazilian Journalists' Code of Ethics [*Código de Ética dos Jornalistas Brasileiros*] is an initiative of the National Journalists' Federation [*Federação Nacional de Jornalistas (Fenaj)*],<sup>146</sup> that dates back to 1949 and has undergone successive updates. The Code contains guidelines for action, as well as duties for communication professionals. With respect to the business sector, there is the Code of Ethics and Self-Regulation of the National Journalists' Association [*Código*

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<sup>140</sup>See the United Nations Children's Fund (UNICEF) initiatives in Honduras on these matters at: [https://www.unicef.org/honduras/14352\\_15525.htm](https://www.unicef.org/honduras/14352_15525.htm)

<sup>141</sup> An example of these workshops can be found at: <http://www.concortv.gob.pe/noticias/trujillo-concortv-realizara-taller-sobre-ninez-y-medios-de-comunicacion/>

<sup>142</sup> United Nations Children's Fund (UNICEF). *Directrices éticas de UNICEF para la información sobre la infancia*.

<sup>143</sup> United Nations Children's Fund (UNICEF). *Ethical reporting guidelines: Key principles for responsible reporting on children and young people*.

<sup>144</sup> Available for consultation at: <http://etica.cainfo.org.uy/codigo-de-etica-periodistica/>

<sup>145</sup> Available for consultation at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media\\_standards/Code%20of%20Practice%20for%20Jamaican%20Journalists%20submitted%20to%20the%20MediaAssociation%20of%20Jamaica%20\(MAJ\)%20and%20the%20Press%20Association%20of%20Jamaica%20\(PAJ\)%20f.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media_standards/Code%20of%20Practice%20for%20Jamaican%20Journalists%20submitted%20to%20the%20MediaAssociation%20of%20Jamaica%20(MAJ)%20and%20the%20Press%20Association%20of%20Jamaica%20(PAJ)%20f.pdf)

<sup>146</sup> Federação Nacional de Jornalistas (Fenaj). *Código de Ética dos Jornalistas Brasileiros*. August 4, 2007.

de Ética e Autorregulamentação da Associação Nacional de Jornais],<sup>147</sup> which was written in the 1990s and updated in 2010. However, both documents failed to directly address issues related to the rights of children and adolescents. In Bolivia, the Organic Statute of Journalists, adopted by Supreme Decree No. 20225, establishes the rules of ethical conduct for journalists, as well as their obligations and rights.<sup>148</sup> Bolivia also has the Code of Ethics of the Bolivian Federation of Press Workers.<sup>149</sup> As in the case of Brazil, neither of these documents directly addresses issues related to the rights of children and adolescents. For its part, the Code of Ethics of the Bolivian National Press Association provides that the media should not “publish names or photographs of minors who commit criminal acts or are involved in incidents or altercations, or photographs that are offensive to morals or have an unpleasant impact.”<sup>150</sup>

## L. Advertising

171. With regard to advertising and its impact on children, the Commission notes that the region still has major shortcomings in the regulation of advertising content and commercial communication in general. The above is true both from the point of view of the legislative and regulatory action of the State and the possible self-regulation and co-regulation mechanisms for the advertising industry in relation to children. These shortcomings obviously have an impact on the protection of children and adolescents in this specific area.
172. As a preliminary consideration, we must remember that there is a direct relationship between freedom of expression and what can be called commercial or advertising speech. This debate is particularly evident in the United States, where the concept of commercial speech has been specifically formulated. United States case law has included within the scope of the First Amendment the provision of information to consumers about, for example, the characteristics or price of a particular product offered on the market.<sup>151</sup>
173. The European Court of Human Rights has also included commercial speech, albeit in a more measured way, within the scope of its interpretation of Article 10 of the Convention.<sup>152</sup> Therefore, it would also seem that the limits to commercial speech, particularly in connection with the protection of children and adolescents, could be

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<sup>147</sup> Associação Nacional de Jornais (ANJ). Estatuto Social. Art. 44. [Código de Ética e Autorregulamentação da Associação Nacional de Jornais](#). August 30th, 2018.

<sup>148</sup> Estatuto Orgánico del Periodista. Available for consultation at: [https://cdn.goconqr.com/uploads/media/pdf\\_media/10907603/585d938a-e1aa-4d71-baa5-dd90fd3de5b.pdf](https://cdn.goconqr.com/uploads/media/pdf_media/10907603/585d938a-e1aa-4d71-baa5-dd90fd3de5b.pdf)

<sup>149</sup> Código de Ética de la Federación de Trabajadores de la Prensa de Bolivia. March 10, 1991. Available for consultation at: <https://www.bolpress.com/2016/09/29/codigo-de-etica-de-la-federacion-de-trabajadores-de-la-prensa-de-bolivia/>

<sup>150</sup> Asociación Nacional de la Prensa de Bolivia. [Código de la Asociación Nacional de la Prensa de Bolivia](#). September, 2007.

<sup>151</sup> An adequate description of said jurisprudence can be found in DÍEZ-PICAZO, L.M., “Publicidad televisiva y derechos fundamentales”, *Revista Española de Derecho Constitucional*, 50, 1997, p. 61 and following.

<sup>152</sup> See the judgments *Casado Coca v. Spain*, of February 24, 1994, and *Demuth v. Switzerland*, of November 5, 2002.

- interpreted and applied more extensively than in the case of freedom of expression in the strict sense. Nevertheless, it should be noted that, in many cases, specific commercial speech may incorporate artistic or ideological expressions of various kinds, which deserve protection beyond the merely commercial objective that underpins their dissemination.
174. It is also worth noting that countries such as Sweden—recognized as one of the countries with the best press freedom indicators—prohibits advertising that targets children under 12 years of age, on the grounds that it would be inappropriate for their development and maturity.<sup>153</sup>
  175. In short, in the field of advertising and commercial communications in general, it is also necessary to consider the need to respect the requirements established in article 13 of the American Convention when establishing restrictions in the name of protecting children and adolescents, and also to apply the *three-part test* in a way that is well-balanced with the principle of the best interest of the child and appropriate to the specific content.
  176. In this regard, in a June 29, 2015 decision, the Court of Justice of São Paulo, Brazil, held that “The State may not, under the pretext of regulating the dissemination of products, peremptorily ban messages targeting children solely because they are associated with the world of entertainment or characters popular with children. If it did so, deceived by media initiatives, it would lead to a stifling paternalism (nanny state) that interferes with individual rights that go beyond the public sphere and flirt with totalitarianism.” In light of the above, the Court concluded that ads directed at children are not abusive *per se*, and that to be considered illegal, ads must be abusive or misleading.<sup>154</sup>
  177. However, in 2016 Brazil’s Superior Court of Justice took a step towards consolidating the understanding that advertising directed at children can be abusive. In the case in question, it was found that a food products company used advertising that encouraged children to buy cookies, since they could obtain wristwatches as “gifts” in exchange for five product wrappers plus the cash sum of R\$ 5.00. The Court held that the advertising was doubly abusive, as it was a cross-selling campaign aimed at children in a playful context, and it concluded that the State’s duty to protect children’s rights cannot be diminished by commercial activities or interests. Examining Judge Humberto Martins stated, in this regard, that “The marketing (advertising or sales promotion) of food aimed directly or indirectly at children is abusive. The decision to buy and consume food, especially when there is an obesity crisis, must be made by the parents. Therein lies the

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<sup>153</sup> Alianza por la salud alimentaria. [Publicidad de alimentos y bebidas dirigidas a la infancia: estrategias de la industria](#). May, 2014.

<sup>154</sup> Tribunal de Justiça do Estado de São Paulo. 5ª Câmara de Direito Público. Apelação Cível No. 0018234-17.2013.8.26.0053. June 29, 2015. Available for consultation at: <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/07/ac%C3%B3rd%C3%A3o.pdf>; Global Freedom of Expression. Columbia University. Case Law. [Procon-SP v. McDonald’s](#). July 29, 2015.

- illegality, based on its abusiveness, of commercial advertising campaigns that use or manipulate the playful world of children.”<sup>155</sup>
178. On the other hand, in 2014, the National Council for the Rights of Children and Adolescents [*Conselho Nacional dos Direitos da Criança e do Adolescente*] (Conanda) through Resolution No. 163, established what would be considered abusive advertising, stating that “The practice of targeting advertising and marketing communication to children with the intention of persuading them to consume any product or service is considered abusive under the national policy on child and adolescent care when it makes use of, *inter alia*, the following aspects: I – children’s language, special effects, and exaggerated colors; II - soundtracks of children’s songs or songs sung by children’s voices; III – children’s performances; IV - people or celebrities that appeal to young audiences; V – children’s characters or presenters; VI - animation or animated design; VII - dolls or figures; VIII - promotion with the distribution of prizes or collectible gifts or other appeals to children’s audiences; and IX - promotion with competitions or games that appeal to young audiences.”<sup>156</sup>
179. In addition, the Commission notes that the legal system of some of the States consulted contains rules that affect commercial communications (mainly advertising) and are specifically designed to protect children and adolescents from the negative impact that some of these messages may have on them. In many cases, these rules are contained in the audiovisual or radio and television legislation itself, which would be the case, for example, in Argentina, Ecuador or Uruguay; they may also be found in the sector-specific legislation on children and adolescents, in the case of Brazil, for example, or in the legislation on commercial activities, as in the case of Peru. The government body responsible for their enforcement could be the media regulatory authority, the agency responsible for children and adolescents, or the authorities responsible for protecting free and fair competition in the market.
180. With regard to the content of the legislation in question, there are provisions that establish general prohibitions against the incitement of discrimination or violent or illegal behavior, often referring specifically to advertisements targeting children and adolescents; provisions aimed at preventing misleading advertising that exploits the disbelief and inexperience of children and adolescents; prohibitions against directly encouraging the purchase or contracting of products or services, i.e. avoiding the necessary intermediation of parents or guardians, especially if this involves promises of prizes or other benefits; or provisions preventing the use of authority figures to promote or recommend certain goods and services. Similarly, the interruption of programs and content aimed at children and adolescents is specifically limited or even prohibited in some cases.

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<sup>155</sup> Superior Tribunal de Justiça, Brasil. Segunda Turma. [Recurso Especial nº 1.558.086](#). March 10, 2016.

<sup>156</sup> Conselho Nacional dos Direitos da Criança e do Adolescente (Conanda). Resolução Nº 163. March 13, 2014. Available for consultation at: <https://crianca.mppr.mp.br/pagina-1635.html>

181. With respect to food advertising regulations, we can highlight Chile's Food Labeling Law (Law No. 20.606), which is considered an example of best practice in global terms and, among other things, seeks to combat the high rates of childhood obesity and overweight in the country. The law provides that the packaging of all processed and ultraprocessed food products must display labels flagging the presence of excessive amounts of nutrients that are harmful to health, such as sodium, sugar, and saturated fat, and it prohibits the sale, marketing, promotion, and advertising of these foods in nursery, elementary, and middle schools. The law also prohibits advertising foods that are high in fat, saturated fat, sugar, sodium, and other ingredients deemed harmful by the health authority to children under 14 years of age. It is also unlawful to take advantage of the credulity of minors to offer such foods to them for free as a promotion, or to use advertising "hooks" such as gifts, contests, games, stickers, or toys as a marketing tool.<sup>157</sup>
182. Parallel to these public or state regulations, some cases also provide examples of advertising self-regulation codes, which include measures aimed specifically at protecting children and adolescents. The Uruguayan Association of Advertising Agencies, which has defined a Code of Advertising Ethics and Self-Regulation, monitored autonomously through the Advertising Self-Regulation Council, should be mentioned here.<sup>158</sup> In Brazil, the National Advertising Self-Regulation Council enforces the Brazilian Advertising Self-Regulation Code (CBAP).<sup>159</sup> This system was created in 1978, and the self-regulatory body is composed mainly of advertising entities, ad agencies, and communication companies, with the notable absence of civil society and academia. In Argentina, the Advertising Code of Ethics and Self-Regulation of the Advertising Self-Regulation Council<sup>160</sup> establishes specific provisions relating to the broadcasting of advertising and its effects on children and adolescents. Clearly, the effectiveness of the corresponding system of self-regulation will depend on its degree of implementation and respect within the framework of the appropriate sector or sectors. In the above examples, there is, in any case, an effort to incorporate the different participants into the system, i.e., media outlets, agencies, and others.
183. The studies and research on advertising and commercial communications and their impact on children and adolescents have not made it possible to identify public policies and investments in this area, or any consolidated, long-term projects in the public, academic or civil society spheres. There are, however, some relevant initiatives, such as those carried out by the Office of the Ombudsperson for Audiovisual Communication Services in Argentina, for example in its 2015 analysis of "Advertisements in children's programs on free-to-air TV and children's cable channels."<sup>161</sup> It should also be noted the research on Children's Advertising in

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<sup>157</sup> Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=1041570>

<sup>158</sup> The Code includes regulations regarding advertising, children and adolescence. Available for consultation at: <http://www.conarp.org.ar/codigo.html>

<sup>159</sup> Available for consultation at: <http://www.conar.org.br/codigo/codigo.php>

<sup>160</sup> Available for consultation at: <http://www.conarp.org.ar/docs/conarp-codigoeticaautorregulacionpublicitaria.pdf>

<sup>161</sup> Available for consultation at: [https://issuu.com/siproid/docs/informe\\_publicidades\\_en\\_canales\\_inf](https://issuu.com/siproid/docs/informe_publicidades_en_canales_inf)

Times of Convergence [*Publicidade Infantil em tempos de convergência*]<sup>162</sup> of the Research Group on the Relationship between Children, Adolescents, and the Media [*Grupo de Pesquisa da Relação Infância, Juventude e Mídia*] of the Federal University of Ceará (2014), the program “*Criança e Consumo*”<sup>163</sup>, and the research project focused on mapping the relationship between advertising, children, and consumption at the Media Observatory: Human Rights, Policy, Systems, and Transparency [*Observatório da Mídia: Direitos Humanos, Políticas, Sistemas e Transparência*]<sup>164</sup> of the Federal University of Espírito Santo (UFES), in Brazil. In view of these and other examples, we can now see a growing concern over the consumption of unhealthy products by children and adolescents, such as sugary drinks and manufactured products, which also results in a special sensitivity to the commercial promotion of these products through the media. However, it must be said that this viewpoint has not, thus far, resulted in any significant measures being taken in this area, with exception of the mentioned Chilean case.<sup>165</sup>

### M. Children's artistic work in the media

184. With regard to child labor, the Commission notes that a significant number of countries in the region have ratified International Labor Organization (ILO) Convention No. 138 of June 23, 1973, concerning the Minimum Age for Admission to Employment. This international instrument establishes a series of minimum ages for the performance of certain professional activities, also giving States a set of responsibilities in this area. Article 8 also allows for exceptions to these minimum ages “for such purposes as participation in artistic performances,” with the appropriate permits. It is also noted that such permits “shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.”
185. This system seeks to reconcile the need to prevent children and adolescents from accessing the working environment too early, which can obviously have negative repercussions on their development and education, with the need to facilitate their participation, from an early age, in artistic and expressive activities in general, including plays, films, and television programs, among other things. This balance suggested by international standards is, and should be, specified in the relevant domestic legislation.

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<sup>162</sup> Available for consultation at: [http://www.defesadoconsumidor.gov.br/images/manuais/publicidade\\_infantil.pdf](http://www.defesadoconsumidor.gov.br/images/manuais/publicidade_infantil.pdf).

<sup>163</sup> Programa *Criança e Consumo*. Available for consultation at: <http://criancaeconsumo.org.br/>

<sup>164</sup> Universidade Federal do Espírito Santo (UFES). [Observatório da Mídia: Direitos humanos, políticas e sistemas](#). The [Children's Advertising](#) project “aims to monitor and analyze, over three years, the programming of television channels on the eve of holidays, with a high rate of commercial advertisements aimed at girls and boys, as is the case with Easter, Children's Day and Christmas.”

<sup>165</sup> However, researchers from the National Institute of Public Health of Mexico carried out an exploratory study of advertising in communication channels of food and beverages consumed by children and adolescents, which concluded that this type of advertising tends to focus mostly on products with low or no nutritional quality, in addition to being high in fat, salt and sugar, and causing serious damage to the health of this population sector, such as obesity. The study is available for consultation at: <https://www.insp.mx>



186. An analysis of the legislative landscape of the region shows that both the Convention in general and the exception for artistic activities are part of the legal framework of the States of the region. The exception is usually formulated in general terms, with reference to activities of an artistic nature or participation in shows or the media. Thereafter, each State has introduced a greater or lesser degree of protection for minors. Generally, the need for the authorization of the competent authority is established, as well as certain limits to the number of hours of work that children and adolescents can dedicate to this type of activities (daily and weekly).
187. In the case of Ecuador, the Children and Adolescents Code establishes that the work must necessarily respect the physical and psychological development of adolescents, contribute to the training and development of their skills and abilities, transmit cultural values and norms in keeping with their development, and be developed within the environment and for the benefit of the community to which they belong. Argentine legislation on audiovisual services does not permit the participation of children under the age of twelve in programs that are broadcast between 10 p.m. and 8 a.m., unless they have been recorded outside of these hours, a circumstance that must be mentioned in the broadcast.<sup>166</sup>
188. Another important point to highlight is the authority designated by the relevant legal system to analyze or issue such authorizations. In some cases, it is the judicial authority (Brazil), while in others it is the body with the power to oversee labor in general (Colombia), or the competent authority for the protection of children and adolescents (Uruguay, where the Institute for Children and Adolescents has the National Office for Child and Adolescent Labor).
189. A minority of the countries in the region have data on child and adolescent labor within the framework of the above-mentioned activities, mainly based on the registration or collection of the authorizations granted. Beyond this specific aspect, there are no quantitative—let alone qualitative—analyses that allow us to properly understand or appreciate the extent of this phenomenon in the various States.
190. Finally, the Commission notes that the provisions observed in the laws of the States are based on a “traditional” point of view, which regulates the relationship between children and adolescents and large media, film, and entertainment companies. However, the increasingly pressing issue of “child youtubers” or “digital influencers” on social networks and online content sharing platforms, participating directly with their own resources and technological knowledge, and without third-party intermediation, remains completely unaddressed. While it is clear that such cases do not concern “employed” children and adolescents, they do concern subjects who often carry out economically relevant activities, given that those activities may involve direct or indirect remuneration to the extent that the platforms in question attract a large number of consumers and advertisers. In this regard, it should be taken into account that, once children and adolescents become

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<sup>166</sup> Ley de Servicios de Comunicación Audiovisual. Art. 68

part of this landscape, they may also agree to perform daily activities such as producing new videos on a regular basis and disseminating products sent by the companies.

#### **N. Knowledge generation and research on the intersection of childhood, adolescence, and the media**

191. The Commission notes that there are no clear and illustrative examples in the region of public policies and lines of financing aimed at generating knowledge in the specific field of media, childhood and the exercise of freedom of expression. However, there are some specific initiatives that reflect an incipient framework of public-private collaboration in this area. Thus, in Argentina, the Office of the Ombudsperson for Audiovisual Communication Services has signed agreements with the National Council for Scientific and Technical Research (CONICET), which allow academic institutions to collaborate on research related to these issues.
192. Research in this area has also been promoted in Brazil through the National Council for Scientific and Technological Development, which is part of the Ministry of Science, Technology, Innovation, and Communications. It should be noted that various civil society and academic organizations participated, together with the Ministry of Justice, in developing the advisory content rating criteria. UNESCO has also supported the Brazilian State in updating the rating system, carrying out important research on the subject.<sup>167</sup>
193. Finally, we must highlight the absence of solid initiatives to support the exercise of freedom of expression and freedom of information by children and adolescents, in relation to content development. Special mention should be made, in any case, of the Young Journalists' Networks in Honduras, which are part of a UNICEF project on communication for development that was created with the aim of implementing the right to participation enshrined in the Convention on the Rights of the Child. Through the media—written, radio and television, as well as communication campaigns and alternative media such as popular theater—children and adolescents become journalists, reporting on their rights and on the problems affecting children in their communities.<sup>168</sup>

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<sup>167</sup> Classificação Indicativa: uma análise do estado da arte da pesquisa sobre o tema no Brasil. Available for consultation at: <http://compolitica.org/revista/index.php/revista/article/view/59>

<sup>168</sup> More information at: <https://www.unicef.org/15524.html>



PROMOTING FREEDOM OF  
EXPRESSION FOR CHILDREN  
AND ADOLESCENTS IN THE  
MEDIA IN THE REGION



## PROMOTING FREEDOM OF EXPRESSION FOR CHILDREN AND ADOLESCENTS IN THE MEDIA IN THE REGION

### A. Supply of content aimed at children and adolescents

194. With regard to the supply of content targeted at children and adolescents, the IACHR notes that the region, especially Latin America and the Caribbean, has a dearth of audiovisual content targeted at or representing children. In this field, the public media play a leading and prominent role, being the most important—and practically the only—platform for a regular, sustained, and qualitative offering of national content aimed at children and adolescents. Special mention should be made of the role currently played in this area by the media that are part of the public system in countries such as Brazil, Chile, Costa Rica, Colombia, Ecuador, Peru, Uruguay, and Venezuela. In the case of Costa Rica, for example, the National Radio and Television System (SINART) produces a program for children between the ages of 3 and 9, called *“La Pájara Pinta,”* which airs on Saturdays. This program is described as a children’s magazine with music, stories, games, and love, which seeks to promote coexistence, love, and respect for nature, the family as the nucleus of society, and the reclaiming of the country’s national and cultural identity.
195. There are also some cases of direct promotion by public institutions in this area, either through the direct provision of content, such as the EDUCA program in Ecuador, which consists of a range of children’s content produced by the Ministry of Education, that are mandatory broadcasting for all television service providers; as well as through regulatory measures, as in the case of Argentina. In 2010, the Federal Audiovisual Communication Services Authority in Argentina established (Resolution 474/2010)<sup>169</sup> the obligation for all free-to-air television channels to provide at least three hours a day of audiovisual material specific to children, of which at least 50 per cent must be produced nationally. In this regard, the regulatory authority expressly determined the time slots for such programming, in order to make it accessible to children and adolescents, regardless of their school schedules. However, these provisions applicable to all providers were recently repealed by the current regulatory authority, the National Communications Agency (Enacon), through Resolution 2484/2016,<sup>170</sup> on the grounds that they were “excessively strict in procedural terms,” “hindering the dynamism of the sector.”

<sup>169</sup> Autoridad Federal de Servicios de Comunicación Audiovisual. [Resolución 474/2010](#). December 22, 2010.

<sup>170</sup> Ente Nacional de Comunicaciones. [Resolución 2484/2016](#). May 16, 2016.

- This change was criticized by the Civil Association of Argentine Journalists (Comuna), which pointed out that this provision “aims to give absolute supremacy to the interests of private media companies, to the absolute detriment of the rights of the public,” depriving children of specific programming.<sup>171</sup>
196. Finally, another important area is that of international funding programs supported by states outside the region, especially in Europe, which have provided funding to media outlets in countries such as Honduras for programs and commercials targeting children.
  197. From the answers provided by the States for this report, it can be concluded that a substantial part of the supply of content aimed at children and adolescents consists of packages of international origin, which are distributed within the framework of payment platforms and whose content largely does not represent or reflect the lifestyles or issues pertinent to young national or local audiences.<sup>172</sup> In some contexts, commercial content providers have attributed the absence of children’s content to the alleged over-regulation. In Brazil, this shortage was linked to the existence of a resolution adopted by the National Council on the Rights of Children and Adolescents that considers advertising directly aimed at children to be abusive.
  198. Furthermore, the absence of children’s content from free-to-air TV may in many cases be explained by the increasing competition from Internet platforms, given that children and adolescents also have greater access to tablets and smartphones, and are therefore able to search for specific content without relying on a programming grid.
  199. With regard to the geographical scope of the content aimed at children and adolescents, there are few regulations or policies that are particularly significant in terms of the universal geographical coverage of this type of content. However, it is also true that in many cases the providers (public or private) of such content have national coverage, which generally means that they cover significant parts of the territory of the respective States. In any case, the information received allows us to conclude that the content aimed at children and adolescents in the region is generally not produced with the needs or characteristics of a region or community in mind. In addition, the role of children and adolescents in local communications is affected by the absence of incentive policies towards community media in the region, which, at first blush, may be the most appropriate way to address this issue.
  200. The Commission also notes shortcomings in the availability of content reflecting the diversity of the country's youth population (urban, rural, indigenous,

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<sup>171</sup> Comunicadores de la Argentina (Comuna). No date. [Derechos comunicacionales de niñez vulnerados por el gobierno.](#)

<sup>172</sup> However, this trend is also evident in other regions of the world, including Europe. See the report of the European Audiovisual Observatory (2017) on [Media Ownership: Children's TV Channels in Europe, Who Are the Key Players?](#)

immigrant, disabled, LGBTI, etc.). Without prejudice to the fact that in countries such as Argentina, audiovisual legislation alludes to the use of indigenous peoples' languages, there are no public policies or major initiatives that allow this type of programmatic standard to be converted into effective action. However, there are some specific initiatives to be highlighted, such as the Costa Rican Radio Education Institute [*Asociación Instituto Costarricense de Educación Radiofónica*], a religiously inspired non-profit institution dedicated to education and communication,<sup>173</sup> which disseminates material for indigenous children and adolescents through non-commercial radio stations with coverage in indigenous areas.

## **B. Children's and adolescents' right of access to information**

201. In the aforementioned context, the Commission also notes the absence of public policies to guarantee, in particular, equal access to information for all children and adolescents and to adapt it, where appropriate, to their specific needs. Bearing in mind that the Inter-American instruments, including the Convention, guarantee the right to information of all persons, including children as individuals entitled to this right, it must be concluded that there is still a long way to go in the region. Although it does not have a direct impact on the media, the "*Queremos saber*" (We want to know) initiative undertaken in Uruguay should be highlighted. This initiative, led by the Agency for Electronic Government and the Information and Knowledge Society as part of its 2<sup>nd</sup> National Open Government Action Plan 2014-2016, seeks to ensure that children and adolescents learn to exercise their right of access to public information.<sup>174</sup>
202. Chile has had a similar experience through its Council for Transparency. In order to promote the culture of integrity and transparency in Chile, and to build an active citizenship that cares about public issues, this Council supports the process of civic education that begins in childhood and youth. This is being achieved through the development of different learning resources, such as teacher training, educational materials, and the promotion of the CIUDADAN@S Initiative, a game that uses the relationship between children and young people and technology to promote greater knowledge of government and the State, democracy and human rights, public issues, and transparency and participation, and which was allegedly implemented in all schools in Chile by 2018.<sup>175</sup>
203. Mexico, in turn, has the General Law on the Rights of Children and Adolescents, Articles 64 to 70 of which establish the rights to freedom of expression and access to information. Article 65 provides that "[c]hildren and adolescents have the right to free access to information. The federal, state, and municipal authorities and the territorial jurisdictions of the Federal District, within the scope of their respective competences, shall promote the dissemination of information and material aimed

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<sup>173</sup> Available for consultation at: <https://radioteca.net/userprofile/instituto-costarricense-de-ensenanza-radiofonica-i/>

<sup>174</sup> More information at <http://www.agesic.gub.uy/innovaportal/v/4797/1/agesic/queremos-saber-en-marcha.html>

<sup>175</sup> Consejo para la Transparencia de Chile. [Conoce al juego CIUDADAN@S](#).



at ensuring their social and ethical well-being, as well as their cultural development and physical and mental health.” This article also states that “[t]he National Comprehensive Protection System shall agree on general guidelines on information and materials for dissemination among children and adolescents, in accordance with the provisions of this Law.”<sup>176</sup>

204. The Commission also notes that in some countries there are general legal provisions to protect linguistic diversity in the media, especially in radio and television, and to ensure access to content for people with disabilities. However, these provisions do not specifically address the needs of children and adolescents. In addition, and in similarly general terms, the Member States themselves acknowledge that, despite the fact that these provisions have been established within the framework of the relevant legal system, they still present significant challenges for effective implementation, arising both from the reluctance of the audiovisual media sector to adopt them and from a lack of action on the part of the competent enforcement bodies.

### **C. Children’s and adolescents’ access to the media in the region**

205. The Commission notes that it has not been possible to identify relevant examples of systematic and sustained policies in the region aimed at ensuring equitable access by children and adolescents to the media with a view to directly promoting the exercise of their rights to freedom of expression and information. This absence of public policies also affects the creation of media spaces managed, produced, and led by children and adolescents, and even the mere promotion of the inclusion of approaches that are not exclusively adult-centric in the treatment of issues and news that affect children and adolescents. Notwithstanding the above, there are some regional examples of best practices in some of these areas.
206. For example, in Brazil, TV Piá, produced under the auspices of the public television station TV Brasil,<sup>177</sup> is an audiovisual production that started in 2010 and is filmed in 30 cities. The program does not have any clearly predefined content; rather, it is developed by the children and adolescents themselves, in the exercise of their freedom of expression and based on their direct participation. However, this interesting initiative is currently on hold due to a lack of funds. In Argentina, the Office of the Ombudsperson for Audiovisual Communication Services carries out activities in this area. These most notably include support for a newscast produced entirely by young people, called “*Aire joven. Nuestras voces, nuestras provincias, nuestras noticias*” [“Young Air. Our voices, our provinces, our news”].<sup>178</sup> There are also many school radio stations in Argentina, including the “Radios CAJ” [“CAJ radio stations”],<sup>179</sup> which are part of the Youth Activity Centers run by the Ministry of Education. The creation of these radio stations was facilitated by an agreement

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<sup>176</sup> Congreso General de los Estados Unidos Mexicanos. [Ley General de los Derechos de niñas, niños y adolescentes](#), December 4, 2012.

<sup>177</sup> Available for consultation at: <http://tvbrasil.ebc.com.br/typia>

<sup>178</sup> Available for consultation at: <http://defensadelpublico.gob.ar/lineas-de-accion/aire-joven/>

<sup>179</sup> UNESCO Institute for Lifelong Learning. [Radio Escolar CAJ - FM de Adentro 94.3](#), Argentina. January 5<sup>th</sup>, 2017.

signed between the Ministry, the Federal Authority for Audiovisual Communication Services (the predecessor of the current National Communications Agency), and the National Communications Commission as the regulatory body for telecommunications, and as a result of the use of radio spectrum.

207. In Honduras, four private television channels distribute the program “Breaking the Silence.” The programs are produced by children from the country’s networks of child journalists supported by municipalities, UNICEF, and the governments of the United States and Canada. In Uruguay, the public channel in Montevideo, TV Ciudad, offers the program “12/29,” which deals with issues of interest to young people in Uruguay, with a special emphasis on learning about and offering first-hand insights from a panel of youths and adolescents regarding different current issues.<sup>180</sup>

#### **D. Direct Internet access**

208. The IACHR and its Office of the Special Rapporteur have pointed out on several occasions that access to the Internet is a prerequisite for the effective exercise of human rights today, including in particular the rights to freedom of expression and opinion, association and assembly, education, health, and culture. Thus, access to the Internet must be universally guaranteed by the States, which must adopt measures to close the digital divide, promoting infrastructure development and other policies.<sup>181</sup> Similarly, in order to ensure that people have the information, and expertise to use and benefit from this tool, States should encourage digital literacy, by promoting “educational measures to promote the ability of all people to make autonomous, independent, and responsible use of the Internet and digital technologies.”<sup>182</sup> In addition, they should promote and ensure the participation of all sectors of society, including all those targeted by such measures, in the design and implementation of effective and specific policies on the subject.<sup>183</sup>
209. In the region, Internet access is a growing phenomenon among children and adolescents. According to “The State of the World’s Children 2017: Children in a Digital World,” published by UNICEF, 1 in 3 Internet users worldwide is a child. According to the report, “Connected children and young people are making their voices heard through blogs, videos, social networks, magazines, drawings, hashtags, podcasts, and other tools. They recognize the potential of digital tools to help them access information and find solutions to problems affecting their

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<sup>180</sup> Available for consultation at: <http://www.tvciudad.uy/programa/1229-2/>

<sup>181</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 32.

<sup>182</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>183</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 45.

- community.”<sup>184</sup> The report also stated that, “Specific factors such as education, user skills, type of device, and availability of content in the local language influence how children use the Internet, what they do when they are online, and how they can maximize online opportunities.”<sup>185</sup>
210. Previously, through its national office in Spain, UNICEF presented a decalogue of ICT-related rights and duties, in which it stated the importance of encouraging Internet use and access for informational and recreational purposes, but with responsibility. The ten “children’s e-rights” identified by this Office are: (1) the right to access to information and technology; (2) the right to freedom of expression and association; (3) the right of children to be consulted and express their opinion; (4) the right to protection against exploitation, trafficking, abuse and violence; (5) the right to personal development and education; (6) the right to privacy in electronic communications; (7) the right to recreation, leisure activities, entertainment and play; (8) parents shall have the right and the responsibility to provide their children with guidance and to agree; (9) the governments of developed countries shall undertake to cooperate with other countries; and (10) the right to enjoy and use new technologies to their benefit.<sup>186</sup>
211. In this regard, according to the publication “*Es mejor educar que prohibir*” [“Better to educate than to forbid”], prepared by UNICEF Paraguay and Global Infancia, 54% of the adolescents participating in the study in Paraguay have computers in their homes, 77% have their own cell phones, and 78% frequently access the Internet. Regarding Internet access, 78% indicated that they access the Internet frequently, while 65% indicated that they access the Internet every day or almost every day, and 47% reportedly use the Internet for 1 to 5 hours per day. According to this publication, if we take account of the adolescents’ socioeconomic level, there would be significant differences in terms of access to the Internet. In this regard, those in the upper socioeconomic class would have greater access to the Internet, at 96.4%. On the other hand, those in the middle and lower socioeconomic strata would have a similar trend in access and frequency of access to the Internet, at 70.6% and 77.3%, respectively, reporting that they had frequent access to the Internet.<sup>187</sup> In Brazil, the implementation of strategies to promote participation on the Internet through different policies focused on digital inclusion and the expansion of broadband access, such as the Broadband at School Program (PBLE), launched in 2008, and the National Broadband Program of 2010.
212. With this growing access to the Internet by children and adolescents, it has been reported that traditional dangers such as bullying and the creation of new forms of

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<sup>184</sup> United Nations Children’s Fund (UNICEF). [The State of the World’s Children 2017. Children in a Digital World](#). December, 2017. P. 16.

<sup>185</sup> United Nations Children’s Fund (UNICEF). [The State of the World’s Children 2017. Children in a Digital World](#). December, 2017. P. 20.

<sup>186</sup> United Nations Children’s Fund (UNICEF) Spain. Decálogo UNICEF “Los e-derechos de los niños y las niñas. February 6, 2004. Available for consultation at: UNICEF; CEPAL. Desafíos: Boletín de la infancia y adolescencia sobre el avance de los Objetivos de Desarrollo del Milenio. [Derechos de la infancia en la era digital](#). Septiembre de 2014. P. 8.

<sup>187</sup> United Nations Children’s Fund (UNICEF) Paraguay. [Es mejor educar que prohibir](#). March, 2016.

child exploitation and abuse have increased. In order to address this situation, Paraguay, for instance, enacted the Law for the Protection of Children and Adolescents against Harmful Content on the Internet [*Ley de Protección de Niños, Niñas y Adolescentes contra contenidos nocivos de internet*].<sup>188</sup> This law “is aimed at the comprehensive protection of children and adolescents from the potential effects of harmful content accessed or found on the Internet.”<sup>189</sup> It provides for the creation of the National Observatory for the Protection of the Rights of Children and Adolescents on the Internet (ONAI), which is composed of the National Secretariat for Children and Adolescents (SNNA), the National Secretariat for Information and Communication Technologies (SENATICs) and other public institutions or civil society organizations that promote actions related to the purpose of the Act.<sup>190</sup> Its functions include monitoring the contents circulating on the Internet and making public reports; receiving complaints about Internet service providers (ISPs) and establishments or institutions of any type that do not comply with the provisions of this law, and referring them to the competent enforcement authorities; as well as advising other State agencies, civil society, or the private sector on the protection and promotion of content for children and adolescents on the Internet, among others.<sup>191</sup>

213. It also provides for penalties for Internet service providers that fail to comply with the provisions of the law, stating that they “shall be sanctioned by the National Telecommunications Commission (CONATEL), according to the seriousness of the infraction and the recidivism of the offender, with a fine of between 0.1% (zero point one percent) to 3% (three percent) of the total gross revenues received from the provision of telecommunications services in the fiscal year immediately preceding that in which the infraction was committed. Public or private establishments that fail to comply with the provisions of this Law shall be sanctioned by the municipal authorities, in accordance with the seriousness of the infraction and the recidivism of the offender, with a fine of between 10 (ten) and 200 (two hundred) times the daily minimum wage.”<sup>192</sup> In addition to the above, in 2017, Decree No. 7052 of the Paraguayan Executive Branch launched the National Cybersecurity Plan, which reportedly includes a specific core component to address issues related to the protection of children and adolescents.<sup>193</sup>
214. In Guatemala, the Institutional Coordinating Body for the Promotion of Children’s Rights (CIPRODENI) and its member organizations are reportedly taking actions to promote the protection of children and adolescents and reduce their vulnerabilities in cyberspace and on social networks.

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<sup>188</sup> Congreso de la Nación Paraguaya. [Ley No. 5653 de Protección de niños, niñas y adolescentes contra contenidos nocivos de internet](#). August 25, 2016.

<sup>189</sup> Congreso de la Nación Paraguaya. [Ley No. 5653 de Protección de niños, niñas y adolescentes contra contenidos nocivos de internet](#). Art. 1. August 25, 2016.

<sup>190</sup> Congreso de la Nación Paraguaya. [Ley No. 5653 de Protección de niños, niñas y adolescentes contra contenidos nocivos de internet](#). Art. 7. August 25, 2016.

<sup>191</sup> Congreso de la Nación Paraguaya. [Ley No. 5653 de Protección de niños, niñas y adolescentes contra contenidos nocivos de internet](#). Art. 8. August 25, 2016.

<sup>192</sup> Congreso de la Nación Paraguaya. [Ley No. 5653 de Protección de niños, niñas y adolescentes contra contenidos nocivos de internet](#). Art. 9. August 25, 2016.

<sup>193</sup> Presidencia de la República del Paraguay. [Decreto No. 7052](#). April 24, 2017.

215. Finally, it is important to highlight the programs and/or campaigns that promote the rights of children and adolescents to access and use the Internet in Central America and the Dominican Republic. In the Dominican Republic and El Salvador, programs such as “Healthy Internet” were adopted to generate informational material on the misuse of the Internet. “The Expansion of Information and Communication Technologies and their Responsible Use” (ENSANCHE) is another such program, which is also reportedly aimed at teachers.
216. There is also another type of training in the region, which is the development of specific technological capabilities. The “Learn to the Max” programs in Panama and Guatemala, for instance, are mostly oriented toward the hard sciences; the National Digital Literacy Plans in Honduras and the Educational Information Plans in Costa Rica are other examples.<sup>194</sup>

### **E. Education on the communication rights of children and adolescents**

217. With regard to media education to ensure better promotion and protection of the rights of children and adolescents, the Commission notes the absence of stable and sustained public policies in the region. That said, it is necessary to mention examples such as the national curriculum design in the Peruvian education system, which develops the area of communication beginning in secondary school. The purpose of this area is to “strengthen the communication skills developed by the student in primary school, thus making it possible for them to interact with others in different spaces: school, family, institutions, and community.”<sup>195</sup> In Jamaica, the Broadcasting Commission has in the past conducted a campaign through conventional media and social networks to block access and protect children and adolescents from harmful and/or illegal content. In addition, in collaboration with UNESCO and the country’s education authorities, the regulatory body is also implementing a media literacy program in schools.
218. In Costa Rica, the aforementioned National Children's Trust has made available to journalists an investigation entitled “*Innocencia perdida: de cómo percibe la prensa costarricense a la población de personas menores de edad*” [Lost Innocence: how the Costa Rican press perceives the underage population], which contains an analysis of the news coverage of matters involving children and adolescents over the course of a year, as well as fifteen recommendations for an approach to news coverage that is respectful of the rights of children and adolescents.<sup>196</sup> In Argentina, the Office of the Ombudsperson for Audiovisual Communication Services has embarked directly on outstanding projects in the area of education. These projects include, among others, the development, together with UNICEF, of a document of recommendations for responsible coverage of situations of violence

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<sup>194</sup> General Secretariat of the Organization of American States (OAS) and Inter-American Children’s Institute (IIN). [Lineamientos para el empoderamiento y la protección de los derechos de los niños, niñas y adolescentes en Internet en Centroamérica y República Dominicana](#). January, 2018. P. 79.

<sup>195</sup> More information available at: <http://www.minedu.gob.pe/DeInteres/pdf/documentos-primaria-comunicacion-iv.pdf>

<sup>196</sup> Available for consultation at: <https://www.pani.go.cr/files/Manual-Derechos-de-la-Infancia.pdf>

against children and adolescents, as well as the projects “The Ombudsperson's Office goes to school,”<sup>197</sup> “The Ombudsperson's Office goes to the Neighborhood,”<sup>198</sup> and “Communication is not a story.”<sup>199</sup> Within the framework of the Ministry of Education's National “Our School” Program, the Ombudsperson's Office developed a virtual course for primary and secondary school teachers in 2015 entitled “The Right to Communication for Boys and Girls - Teaching them in School.” Its aim was to provide educators with tools to work in the classroom on the communication rights of children and adolescents in a cross-cutting manner.<sup>200</sup>

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<sup>197</sup> Available for consultation at: <http://defensadelpublico.gob.ar/la-defensoria-del-publico-va-a-la-escuela/>

<sup>198</sup> Available for consultation at: <http://defensadelpublico.gob.ar/la-defensoria-va-al-barrio-un-recorrido-por-todo-el-pais-desde-la-mirada-de-la-juventud/>

<sup>199</sup> Available for consultation at: <http://defensadelpublico.gob.ar/la-comunicacion-no-es-cuento-nuevo-libro-de-la-defensoria/>

<sup>200</sup> Available for consultation at: <http://defensadelpublico.gob.ar/curso-el-derecho-a-la-comunicacion-de-chicos-y-chicas/0>



# CONCLUSIONS AND RECOMMENDATIONS





## CONCLUSIONS AND RECOMMENDATIONS

219. The States of the region should review laws and regulations that establish disproportionate restrictions on the freedom of expression and opinion of children and adolescents, taking into consideration the obligation to guarantee and promote their right to freedom of expression and to be heard on issues that interest or involve them.
220. Adult guidance on expression is necessary but should be reduced as minors mature and become aware of their own thoughts and opinions. This obligation on adults should not be understood as limiting children's right to express their demands, ideas, and thoughts.
221. The protection of children's privacy and dignity are complementary rather than conflicting objectives and should not be used to restrict the dissemination of information and opinions in the public interest. Any restriction on freedom of expression in the legitimate interest of protecting children must be established by law and be necessary in a democratic society for the accomplishment of the compelling objectives sought; strictly proportionate to the aim pursued; and suitable for achieving the compelling objective.
222. Audiovisual regulatory authorities, organizations working on youth issues, judges and prosecutors, and even labor authorities that share responsibility in this area, must work toward better coordination and institutional clarity in order to improve children's access to media and strike a better balance between the promotion and protection of children's rights at different levels, consistent with international standards.
223. These domestic regulatory changes regarding children and the media must be made in light of the harmonization of inter-American instruments on freedom of expression and international instruments on the rights of children and adolescents, which establish the principle of protecting the best interests of the child.
224. In general, reasonable limitations have been placed on the operation of the media in the region under the standards of the Inter-American System (child protection schedule, prohibition or limitation of broadcasting certain content, classification obligations, etc.), but the challenge lies in the lack of effective independent bodies to enforce these regulations. States should establish bodies independent of political and economic interference to regulate this and other aspects of media operations.

225. States should promote and encourage the production of media content for children in order to publish or disseminate content beneficial to the development of children and their rights, given that at the present time content geared toward children and adolescents is particularly limited.
226. States should take measures to ensure Internet access for children in all settings, considering the central role it plays in promoting all children's rights, especially the rights to freedom of expression, participation in public life, and education. This requires positive differentiation measures to bridge the digital divide for children from communities with very limited or no access.
227. States should train and teach children at different grade levels to use the Internet and other media as a positive resource that enhances their education. At the same time, States should offer training on the measures that parents and children can take to protect their dignity and privacy, but without presenting the Internet as a negative or dangerous means of communication.
228. States should create public grants or tax incentives for content aimed at children and adolescents in order to generate a greater volume of audiovisual content that better represents the region's children and adolescents, particularly in the area of public audiovisual media.
229. The media and national and local authorities should invest resources and promote content that is more locally focused, particularly targeting specific social and linguistic groups, as well as the indigenous peoples' childhood.
230. The media should develop and clearly state their self-regulation processes, establishing standards of journalistic ethics and accountability mechanisms for audiences in order to protect children and adolescents' rights in the media.
231. It is advisable to have government bodies that can receive complaints from the public regarding the media's handling of content aimed at children, as long as they use mechanisms for recommendations, promotion, and training.
232. States should review the measures adopted to regulate advertising content and marketing aimed at children and adolescents, while also encouraging self-regulation and co-regulation mechanisms in the advertising industry, with special emphasis on preventing the promotion of unhealthy foods.
233. Academic entities should support the creation of observatories or other platforms and research centers for the promotion and protection of children and adolescents in the media, including the challenges presented by the digital sphere.
234. The education system should urgently establish programs for the introduction of education and media literacy, including the new information and communication technologies in education curricula, as there are still very few such instruments in the region and they do not reflect a clear policy on the subject.

