



Children as social network actors: legal challenges concerning membership, behaviour and liability

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State of the art: Children & social network sites

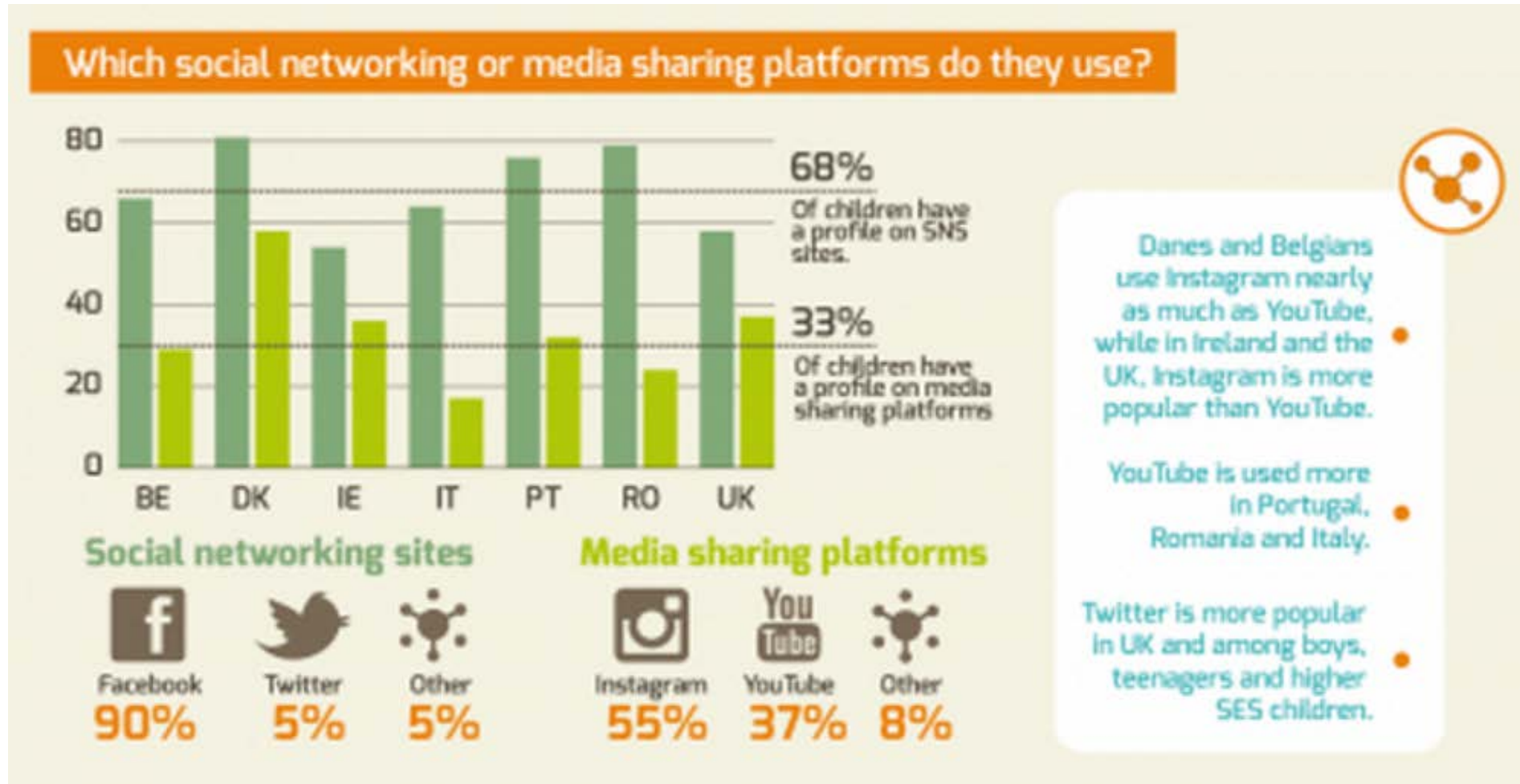
- UK
 - Study NSPCC (2013): Around half of 11 and 12 year olds in the UK have an underage profile.
- Germany
 - 44% of children under 13 use SNS that are aimed at teenagers and adults
- Flanders
 - 35% of 9-12 year olds have a Facebook profile
 - 88,9% of 12-18 year olds have a Facebook profile

Table 1. Percentage of European children aged 6-9 using SNS sites in 2010. Source: "Young children", 2011.

	Virtual worlds	Facebook
UK	23	56
Spain	37	61
Germany	5	12
Italy	0	3
France	3	14

Source: [EU Kids Online](#), 2013

State of the art: Children & social network sites



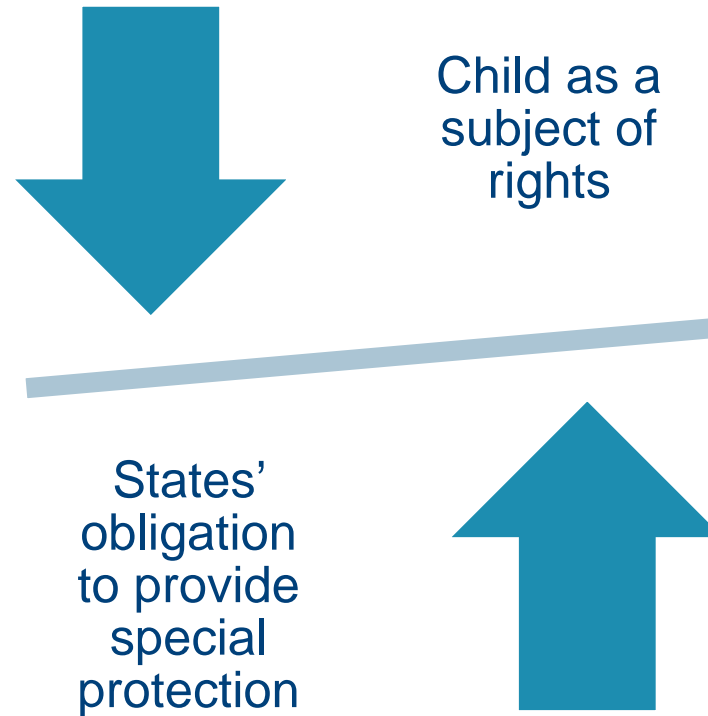
Legal challenges?

Minors  no full legal capacity

- Enter into a membership agreement
- Consent to sharing of or tagging in photographs
- Liability for certain acts on SNS
- ...

Minor?

- UNCRC: “every human being being below the age of 18 years of age unless under the law applicable to the child, majority is attained earlier”
- Age for acquisition of rights



Legal capacity

- E.g. Article 1124 Civil Code (Belgium): minors do not have the competence to enter into an agreement
- Exceptions?
 - 'Daily acts' / 'necessities'
 - 'Age of discernment'

Membership

Sign Up

It's free and always will be.

Birthday

Why do I need to provide my date of birth?

☐ Female ☐ Male

By clicking Sign Up, you agree to our [Terms](#) and that you have read our [Data Use Policy](#), including our [Cookie Use](#).

Sign Up

Membership

- Valid agreement? → national judge
 1. Actual knowledge or have had possibility to acquire knowledge (prior)?
 - availability, visibility and comprehensibility
 - sign-up process / hyperlink clear and prominent?
 - text visible and readable? colour, location? plain, intelligible language?
 2. Acceptance: silently or explicitly

In practice: difficult to find, not read



MINORS: age of discernment?

Disadvantage / imbalance (→ 'free service')?

Membership

- Minimum age?

4. You will not use your personal timeline primarily for your own commercial gain, and will use a Facebook Page for such purposes.

5. You will not use Facebook if you are under 13.

6. You will not use Facebook if you are a convicted sex offender.

COPPA

Article 8

Processing of personal data of a child

For the purposes of this Regulation, in relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

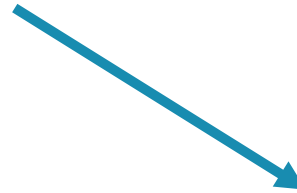
Lying = OK?

Behaviour

- E.g. Facebook *“you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook”*
 - very broad license!
 - valid vis-à-vis minors? ‘null and void’ < 9 years or disadvantage
- E.g. Google *“we may display your Profile name, Profile photo, and actions you take on Google or on third-party applications connected to your Google Account [...] in our Services, including displaying in ads and other commercial contexts”*
 - right to image / processing of personal data: (informed) consent?
 - explicit, prior & subject to restrictive interpretation
 - can minors consent? alone / (together with) parents?

Behaviour

- Behaviour that is forbidden / not tolerated (e.g. bullying, hate speech, etc.)
 - sanction? suspension or termination of account
 - awareness?



Reasons?
e.g. real name

Liability

- Minors as ‘offenders’ → can they be held responsible?

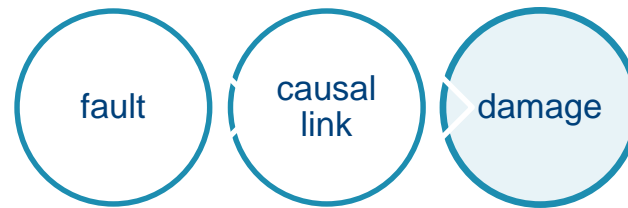
	Commercial	Aggressive	Sexual	Values
Content – child as recipient	Advertising, spam, sponsorship	Violent / hateful content	Pornographic or unwelcome sexual content	Racism, biased or misleading info/advice (e.g.drugs)
Contact – child as participant	Tracking / harvesting personal info	Being bullied, stalked or harassed	Meetings strangers, being groomed	Self-harm, unwelcome persuasion
Conduct – child as actor	Gambling, hacking, illegal downloads	Bullying or harassing another	Creating and uploading pornography	Providing advice e.g. suicide / pro-anorexic chat

Source: EU Kids Online: Hasebrink, Livingstone, Haddon, and Ólafsson, 2009, p. 26.

Liability

- Criminal liability?
 - minimum age for criminal responsibility (UNCRC)
 - ‘act that is described as a crime’? other measures than CC punishments

- Civil liability?
 - e.g. Belgium:



‘normal, reasonable and careful person’

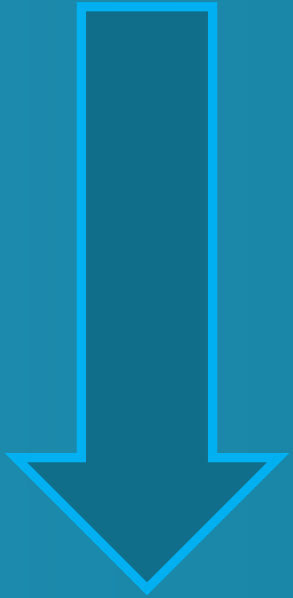
→ for minors: foreseeability; case-by-case (age)



Liability

- Liability of parents / teachers
→ civilly liable? E.g. Article 1384 Civil Code (Belgium): refutable assumption of liability: mistake in supervision / education

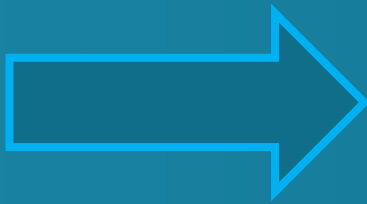




actual
knowledge

foreseeability

discernment



AWARENESS
PARTICIPATION

Provision of information



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This agreement was written in English (US). To the extent any translated version of this agreement conflicts with the English version, the English version controls. Please note that Section 17 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: November 15, 2013.

Statement of Rights and Responsibilities

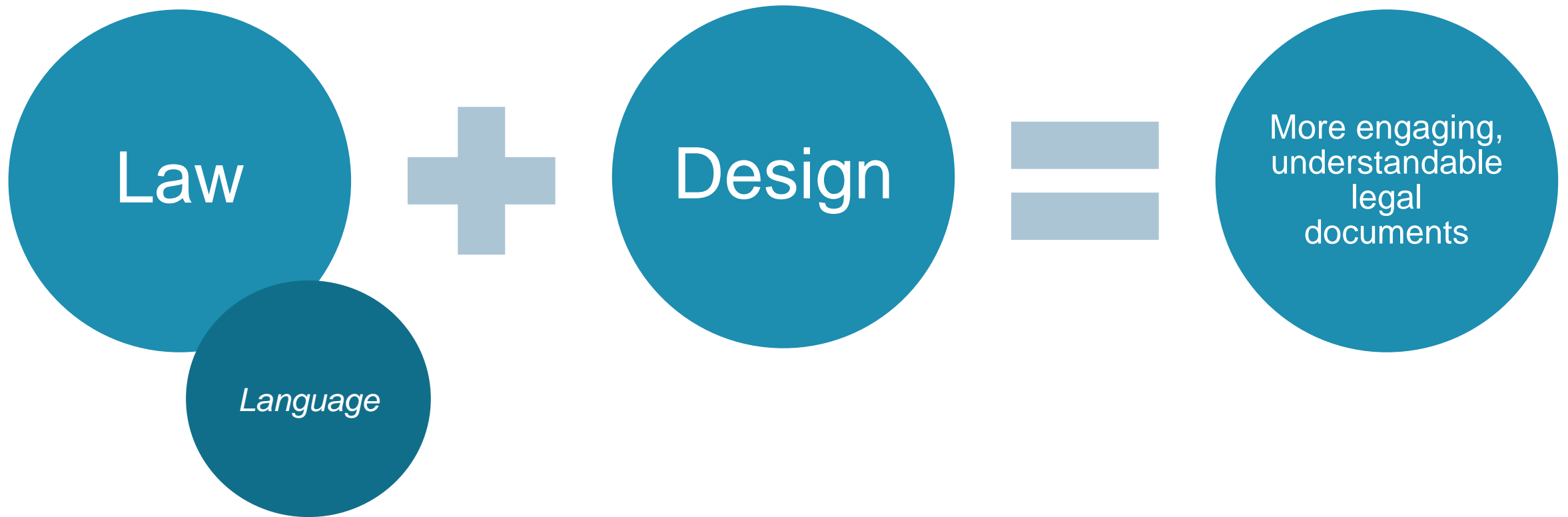
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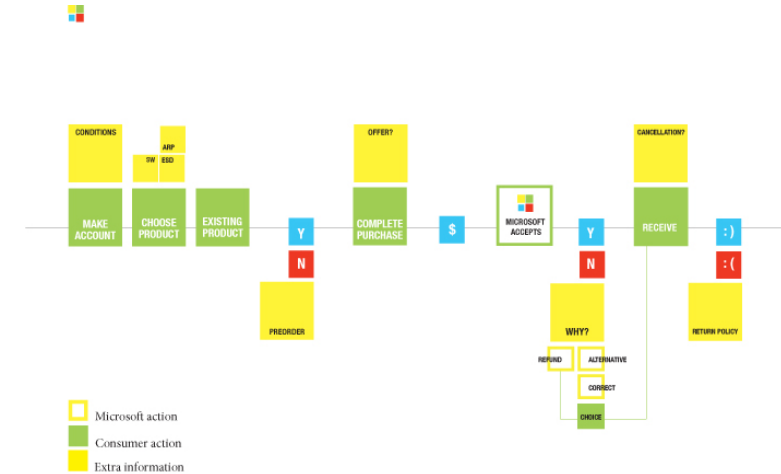
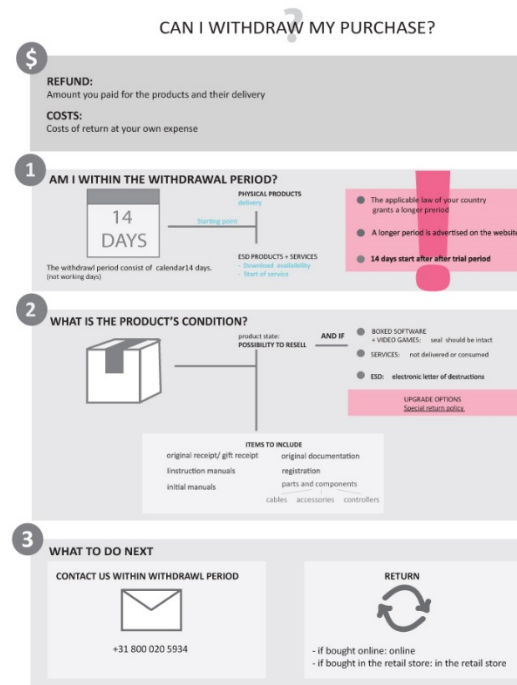
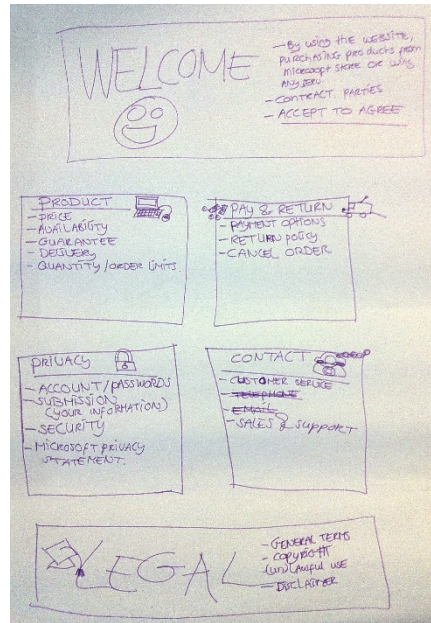
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More than 1 billion
active users!

Adapt ~ age?
13-18 yo
< 13 yo???

Provision of information





Incentives?



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KIJKEN



SPELEN



DOEN



WRAP



WEDSTRIJD



KARREWIET



TV-GIDS

zoek



Hond leert baby kruipen !

♥ 18



Zig



Cop



Copa Ketnet: Zaterdag 21 juni



mpilatie 6



et lieve een



**AANMELDEN
INSCHRIJVEN**



NU OP KETNET
15:57 - 16:16
Tweenies



NU OP KETNET HITS
KIESZA
Hideaway

zoek



KU LEUVEN

Mini legal design jam



Report:
July 2014

Thank you!

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Interdisciplinary Centre for Law & ICT (ICRI) – KU Leuven

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Research Fund Flanders