

# The identity of child consumer in Hungarian Law

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**SUMMARY:** 1. Introduction. – 2. Reasoning of children consumer protection. – 3. The Hungarian system of regulation for the protection of children. – 4. The concept of child consumer in the digital world. – 5. The National Media and Infocommunications Authority. 6. Summary of Hungarian legislation on the identity of child consumers.

## **1. Introduction**

Children have become significant participants of the information society. Given that, a large proportion of consumers in the ICT sector are children due to the intensity of innovation processes, characterizing the 21st century, their protection has become an increasingly important area.

However, the widespread use of certain ICT technologies also raises the question of children's identity in the digital world.

According to the Handbook of UN Commission on the Rights of the Child, a child has the right to preserve his or her identity and States Parties are obliged to respect it<sup>1</sup>. Under the Convention, identity is an obligation that imposes a burden both on the children's parents and on the state. However, the UN Committee states in General Comments no. 7 that "Rapid increases in the variety and accessibility of modern technologies, including Internet-based media, are a particular cause for concern. Young children are especially at risk if they are exposed to inappropriate or offensive material"<sup>2</sup>.

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<sup>1</sup> United Nations Convention on the Rights of the Child, Article 8.

<sup>2</sup> UN Committee on the Rights of the Child (CRC), General comment No. 7 (2005):

The widespread availability of the Internet offers the opportunity not only to access goods in the traditional sense, without borders and boundaries, but also to “consume” today’s online content. As highlighted in a 2011 report by the European Commission, significant changes in the media usage of children consumers can be observed with the proliferation of mobile devices and on-demand media services. This is especially true with the increasing use of social media services<sup>3</sup>. However, online content can also have a detrimental effect on the identity of children consumers.

Given the above, our study focuses on the issue of the identity of children consumers, highlighting concerns about online content consumption. We introduce the Hungarian system on the protection of children consumers, as well as the characteristics and consumption habits of the child consumer.

## 2. Reasoning of children consumer protection

When focusing on the reasoning of child consumer’s protection, it is necessary to refer to the concepts of child, child consumer and online content consumption.

In the case of domestic laws and international conventions on the protection of the “child”, the legally relevant age for becoming an adult is typically defined in 18 years. However, it is necessary to emphasize that the Hungarian system typically uses the term of “minors” for persons under 18 years of age. In addition, in the case of advertising, there are other categories: persons under the age of 14 are considered children, while persons between the age of 14 and 18 are considered juveniles. In accordance with international legislation, the term ‘child’ shall be taken to mean persons under 18 years of age in our study.

In connection with the identity of child consumers, the “consumer quality” should be considered important. However, there is no age requirement related to the category of being a consumer, a distinction needs to be made between the adult and the child consumer, given that numerous legal provisions cover the protection of children.

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Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev. 1 <https://www.refworld.org/docid/460bc5a62.html> (2019. 07. 25.).

<sup>3</sup> Report of the Commission, Protecting children in the digital world /\* COM/2011/0556 final \*/.

In the area of the protection of children, constitutional provisions should be considered the basis of regulation. The provision of adequate protection for physical, mental, and moral development supports children to develop their personality to the fullest. In this context, the reasons for protecting children are supported by several psychological characteristics. Age-specificity has a connection to incomplete life experiences. Children are basically incapable of properly interpreting the stimuli and effects in their environment and are unable to properly enforce their interests<sup>4</sup>.

Regarding the protection of children, it is generally accepted that children can be influenced in their decision-making due to their age-specific characteristics.

However, the expression of personality shall involve making free (consumer) decisions. According to the Hungarian Competition Authority, *consumer choice is the choice of action between alternatives that are considered feasible for the consumer, which creates a link between supply and demand in the market*<sup>5</sup>.

In addition to protecting children, it is of course also important that children have access to information on the dangers that they may be exposed to, while providing adequate sensitivity, to develop conscious consumer identity.

In the area of “*online content consumption*”, children may be exposed to several risks, given that online content can be illegal or harmful to children. While illegal content is banned regardless of the age of the user or the type of medium, harmful content is characterized by its negative impact on the physical, mental and moral development of children<sup>6</sup>. Inter alia, violent content that is cruel, rude, bloody or shocking, cyberbullying, or solicitation to consume drugs or new psychoactive substances should be considered such online content harmful to children<sup>7</sup>.

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<sup>4</sup> A. KOLTAY - A. LAPÁNSZKY (ed.), *Nagykommentár a médiaszolgáltatásokról és a tömegkommunikációról szóló, 2010. évi CLXXXV. törvényhez, 9. § jogtar.hu* (2019. 07. 25.).

<sup>5</sup> Gazdasági Versenyhivatal, *A fogyasztói döntések szabadságára vonatkozó, a GVH által követett alapelvek* <http://www.gvh.hu/data/cms1022582/11695FFBAC14C71AC.pdf> (2019. 07. 25.)

<sup>6</sup> KÓCZIÁN S., *Child protection in the media law (Gyermekvédelem a médiajogban)* <http://mek.oszk.hu/13500/13512/13512.pdf> (2019. 07. 25.)

<sup>7</sup> *Ibid.*

The protection of children is primarily the responsibility of the family; the role of the state is secondary, but not negligible<sup>8</sup>. It is the constitutional duty of the state to protect the development of the child, which may appear primarily in the public sphere<sup>9</sup>.

### 3. The Hungarian system of regulation for the protection of children

Hungary, similarly, to other European countries, has established its regulation system on the protection of children in accordance with the European Union regulation. In Hungarian law, provisions related to children consumers manifested in a complex system. In this system, the protection of children on the internet and from several dangerous online effects should be considered the main questions.

The system of the applicable Hungarian legal provisions can be summarized as follows:

1. The basis of the legal system is the Constitution of Hungary. The Constitution contains a general rule about children's safety. It has also confirmed in its provisions that the universal human rights shall be applied to children as well. The Constitution protects children with specific measures. According to Subsection 1 of Article XVI, *"Every child shall have the right to the protection and care necessary for his or her proper physical, intellectual and moral development"*.
2. In the area of child protection, the Child Protection Act should also be considered. The act summarises children's rights. According to Subsection 5 of Section 6 of Act XXXI of 1991 on Child Protection and Guardianship Administration, *"children have the right to be protected against the influence of infocommunication society"*.
3. Referring to the issue of identity, the Civil Code should also be taken into account. It protects the rights relating to the personality. According to Section 2:42 of Act V of 2013 on Civil Code, *"Everyone is entitled to freely practice his personality rights, in particular the right to privacy and family life, home and communications with others in any way of form, and the right to protection against defamation of character, within the framework of the law and within the rights of others, and to not be impeded in exercising such rights by others"*.

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<sup>8</sup> *Ibid.*

<sup>9</sup> Decision 21/1996. of the Hungarian constitutional Court.

4. Provisions of the Criminal Code provides facts, inter alia, related to online content. More precisely, the Criminal Code regulates several situations, which can also occur on the internet. As for an example, Subsection 2 of Section 162 of Act C of 2012 on Criminal Code, *“Any person over the age of eighteen years who persuades another person under the age of eighteen years to commit suicide, or provides aid for committing suicide is punishable by imprisonment between two to eight years, if the suicide is attempted or committed”*. This provision may be applied in cases related to cyberbullying. Among others, this act forbids and punishes child pornography as well.
5. Relevant provisions on children’s protection can be found in the area of media law. It should be highlighted that the Hungarian media acts have implemented the Directive of the AVMS; of course, with the rules of children’s protection.
6. Provisions concerning the protection of children is also governed by the provisions of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities. The act lays down general and specific prohibitions and restrictions on advertising; and differentiates between children (under the age of 14) and minors. In connection with consumer protection, in the Act CLV of 1997 on Consumer Protection and in the Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers Provisions, implemented the UCP Directive, are also embodied provisions protecting children.
7. In Hungary, the Parliament adopted the Act CCXLV of 2013 on the Amendment of Certain Laws for the Protection of Children (Act of Child Protection on the Internet) in December 2013. The Act has amended, inter alia, the Consumer Protection Act regarding age verification and the sale of gaming software. As it can be read in it, in cases of doubt, the business shall call upon the consumer to prove his age credibly. The sale or service of the product shall be denied without proper proof of age. In connection with gaming software, the manufacturer of gaming software, when distributing gaming software which is capable of adversely affecting the physical, mental, psychological or moral development of children, shall indicate the following statement in a clearly visible manner, *“Not recommended for children under the age of 18!”*.

The said act amended the Act C of 2003 on Electronic Communications, which now requires Internet access service providers to provide free downloading of child protection filter software from their Internet site and thereafter free use thereof.

The Act CVIII of 2001 on Electronic Commerce and on Information Society Services was also modified in order to be able to provide the proper protection of children. As a result of the amendment, the Internet Roundtable for Children Protection was established. Beside this, further requirements are established. As for an example, information published by the service providers and not classified as media content, that could seriously impair the mental, psychological, moral or physical development of children in particular by having decisive elements of violence, and naturalistic and direct representation of sexuality, shall be published in the information sub-page, before the information is published, which contains information about the potential dangers of children, the identifiers in the source code of the sub-page, which refer to the category of content and are recognizable by filtering software.

#### **4. The concept of child consumer in the digital world**

Although, unrestricted and easy access to online content is a crucial element of the information society, it can also have a detrimental effect on the physical, mental and moral development of children.

A significant percentage of online content related to intermediary service providers, so-called hosting service providers. The essence of hosting services is that the service provider provides an interface for users where they can place their own content, for example in the form of posts, photos, videos, comments, etc. Typically, such content is neither monitored, nor examined for potential illegal or harmful content by the hosting service provider. Examples of such hosting providers that are often used by child consumers include Facebook, Instagram, Flickr, etc.

In 2017, the National Media and Infocommunications Authority (hereinafter referred to as "NMHH") conducted a research entitled "*Media use, media consumption, media literacy research with children and parents*" based on a questionnaire and personal interviews with 2,000 children (from 7 to 16 years of age) and their parents, about media use patterns and rules applied by families to curb the children's media presence.

In terms of Internet content consumption, the study found that 77% of 7-16 years old use the Internet. As the age increases, the number of Internet users also increases, and then becomes general in the group of 13-14 years of age. The use of the Internet is extremely diverse. Children use it, for example, as a learning tool or as a basic communication platform, for consuming media and entertainment, or for sharing content.<sup>10</sup>

It should be highlighted that, according to the survey, almost every second young person can be found on a social media platform. Most children between the ages of 12 and 13 are registered members; and 85% of the oldest has also registered. According to the research, 93% of parents know of the registered children that they are using these sites. In most cases, the parent and the child are “acquaintances”, but the profile of every fourth child is beyond the control of the parent<sup>11</sup>.

A part of the research focused on their experience related to *offensive online content*.

Such offensive online content is *cyberbullying*, which may include sending threatening or degrading emails at any time of the day, or threatening, frightening, abusive messages or comments on a social media platform. What is even more concerned in case of cyberbullying is the fact that if offline bullying usually finishes with leaving school at the end of the day, online bullying continues to exist even after it, without time limit<sup>12</sup>.

A similar incident occurred when a 16-year-old girl's photos were taken from a social media platform and posted on Hungarian website with her full name, address, age and phone number. She received threatening letters, was harassed and made obscene comments under her pictures (ABI-4865/2012/P).

In another case, a parent posted some photos of a child on a social media platform from where the perpetrator copied the photos to a public internet portal, with a name, where defamatory comments appeared (ABI-7041/P/2010).

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<sup>10</sup> Nemzeti Média és Hírközlési Hatóság: Médiahasználat-, médiafogyasztás-, médiaértéskutatás 7–16 éves gyermekekkel és szüleikkel [http://english.nmhh.hu/article/197725/Mediahasznalat\\_mediafogyasztas\\_mediaerteskutatas\\_716\\_eves\\_gyermekekkel\\_es\\_szuleikkel](http://english.nmhh.hu/article/197725/Mediahasznalat_mediafogyasztas_mediaerteskutatas_716_eves_gyermekekkel_es_szuleikkel) (2019. 07. 25.).

<sup>11</sup> *Ibid.*

<sup>12</sup> Nemzeti Adatvédelmi és Információszabadság Hatóság, *Kulcs A Net világhoz!* <http://www.naih.hu/files/2013-projektfuzet-internet.pdf> (2019. 07. 25.).

According to the results of the said study, the group is most widely exposed to cyberbullying consisting of girls between 15 and 16 years of age. 27% reporting that over the past one year they had an experience that may qualify as cyberbullying<sup>13</sup>.

Hungarian children are also exposed to *online hate speech*. Over the past one year, 23% of those involved in the research encountered content or forms of expression that discriminated against certain social groups based on their origin, sexual orientation, religion or disability. In older age groups, exposure to such content was increasingly higher<sup>14</sup>.

The survey also included questions about the *type of information* Hungarian children shared on themselves online. According to the responses, 35% of the oldest children involved in the research (15 to 16 years of age) share at least four pieces of information on themselves through social media. They typically provide their name, age, name of school and usually their e-mail address, as well as sharing an image of themselves. Throughout their online presence, their need for availability and self-expression often overrides safety considerations. However, this entails the possibility of unauthorized use of personal data<sup>15</sup>. A similar incident occurred in which a 15-year-old girl's personal data and photos shared on a social media platform were copied and uploaded to a special website without her consent, with her full name, place of residence, and age (ABI-4841/2012/P).

However, the expression of identity requires that children be adequately protected in similar cases. We think these are general issues, so we have to solve this problem using international instruments and use an effective sanction system. On the other hand, we must try and transform the new smart user's thinking all over the world.

## 5. The National Media and Infocommunications Authority

The National Media and Infocommunications Authority controls the media and the infocommunication area in Hungary. The authority has made many programs about child protection. The main aim

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<sup>13</sup> Nemzeti Média és Hírközlési Hatóság: Médiahasználat, médiafogyasztás-, médiaértés-kutatás 7–16 éves gyermekekkel és szüleikkel [http://english.nmhh.hu/article/197725/Mediahasznalat\\_mediafogyasztas\\_mediaerteskutatas\\_716\\_eves\\_gyermekekkel\\_es\\_szuleikkel](http://english.nmhh.hu/article/197725/Mediahasznalat_mediafogyasztas_mediaerteskutatas_716_eves_gyermekekkel_es_szuleikkel) (2019. 07. 25.).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*



of these programs is the prevention, but giving effective and successful help is also considered extremely important. Consumers can lodge their complaints to the Authority, who provides an electronic possibility. If they have information about a harmful case, they are able to complain to the authority, who can initiate an official procedure.

### **a) The Internet Roundtable for Children Protection**

The Internet Roundtable for Children Protection (hereinafter referred to as the Roundtable), was established in 2014, also monitors the area of protecting minors on the Internet in Hungary. The 21-member Roundtable was established by the chairman of the National Media and Communications Authority (NMHH), in accordance with the provisions of Act CVIII of 2001 on Electronic Commerce and on Information Society Services (and the Act of Child Protection on the Internet).

As a consultative body, the Roundtable develops recommendations for the dissemination of child-friendly internet, including the effective use of filtering software, and raising media awareness among children and their parents. Anyone can turn to the Roundtable in cases where a content provider is publishing information disregarding child protection considerations that may severely impair the intellectual and moral development of children. The Roundtable does not have the power to create binding legal norms<sup>16</sup>.

The Roundtable has taken several measures to ensure appropriate protection of children, contributing to the protection of the identity of child consumers.

In 2014, it adopted a recommendation related to filtering software to be able solve a proper solution for harmful effect of online content. The Recommendation includes, inter alia, recommendations on filtering software to limit the availability of harmful online content by children. According to it, solution to limit the availability of harmful content may be:

- if the content provider drew attention to the content harmful of children before it was displayed, asked for the age and places identifiers warning to harmful content in the source code of the content;

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<sup>16</sup> A Gyermekvédelmi Internet-kerekasztal feladata [http://nmhh.hu/cikk/162718/A\\_Gyermekvedelmi\\_Internetkerekasztal\\_feladata\\_es\\_tagjai](http://nmhh.hu/cikk/162718/A_Gyermekvedelmi_Internetkerekasztal_feladata_es_tagjai) (2019. 07. 25.).

- or if the internet access provider provided free downloadable child protection filtering software to users with internet access, which made content harmful to children inaccessible<sup>17</sup>.

In case of the alerts, the Recommendation states that the metatag in the source code should clearly indicate that the content is harmful to minors, The content provider shall, before displaying the page for accessing the content, or in a table of contents or other interface presenting the content thereof, identify the content harmful to children clearly by means of optical identification; and shall verify the user's age and permission to access the content, and warn the users to harmful content, in parallel with verifying the age, in the same interface, and indicate the exact availability of filtering software. Besides these, according to the Recommendation, content shall not be accessible for unauthorized users<sup>18</sup>.

In connection with the child protection filtering software, the Roundtable proposes recommendations on the availability and scope of filtering software solutions, the installation of filtering software solutions, the ways to limit ability of accessing online content, the monitoring activities, and on the individual authorize methods to access the content. It should be noted that the Roundtable uses a "positive-negative" approach in case of content filtering. The so-called "*whitelist*" includes child-friendly websites whose accessibility to children is not considered concerning, while the so-called "*blacklist*" includes websites that contain harmful content for children, so their availability is limited by using individual settings<sup>19</sup>.

According to studies conducted in 2015, less than 50% of the websites examined comply with the law and the recommendation of filter software. One third of the websites do not use any kind of warning before displaying harmful online content, and less than tenth of the websites use keywords supporting the functioning of filter software. Only 43% of the websites examined used the warning properly and only 17% offered the use of the filtering software. Of the websites that use metatags, only one or two websites use them in the recommended format.

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<sup>17</sup> Nemzeti Média és Hírközlési Hatóság, *A Gyermekvédelmi Internet-kerekasztal ajánlása a kiskorúakra káros internetes tartalmak és szolgáltatások esetén alkalmazandó figyelemfelhívó jelzésekre és szűrőszoftverekre vonatkozóan* [http://nmhh.hu/dokumentum/162986/szurosoftver\\_ajanlas.pdf](http://nmhh.hu/dokumentum/162986/szurosoftver_ajanlas.pdf) (2019. 07. 25.).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

According to the report, the six most common errors are that the warning window already contains images, videos that are considered adult content; the “no” option is not available; first time, the site warns children about harmful content, but the second time, the content is accessible without any warning; adult content can be seen for a moment before being warned; in case of some websites, harmful content is accessible without any restrictions by using Google; and although an alert appears, anyone is instantly linked to the website by clicking on the ad next to it<sup>20</sup>.

In case of filtering software, the Act CXC of 2011 on National Public Education requires for public education institutions that computers with internet access accessible to children shall be provided with Hungarian language software that is easy to install and use, enabling the protection of children and pupils, to provide children and pupils with harmonious mental, physical and intellectual development. In 2017, NMHH’s co-workers introduced Roundtable to the operation of a filtering software being tested. The application, called NetFilter, is a child protection filtering software primarily tailored to the specific needs of public education institutions. By using NetFilter, one needs a flash drive that should be inserted into the computer used by the child. The work of NetFilter is based on black and white lists containing different domain names. The software determines whether children can view certain content.<sup>21</sup>

The NetFilter has been continuously developed by the NMHH. In 2018, the Roundtable proposed adding hundreds of items to the black and white lists used by NetFilter, and NMHH’s co-workers presented to Roundtable members the enhancement of NetFilter, which, in addition to its institutional use, can also facilitate retail use.

## **b) Internet Hotline**

Beside the operation of the Roundtable, the role of the *Internet Hotline* should also be emphasized, the legal advisory service of the National Media and Infocommunications Authority, available since

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<sup>20</sup> *Ibid.*

<sup>21</sup> Beszámoló a Gyermekvédelmi Internet-kerekasztal 2017. évi tevékenységéről [http://nmhh.hu/dokumentum/195053/gyermekvedelmi\\_internet\\_kerekasztal\\_2017\\_evi\\_beszamolo.pdf](http://nmhh.hu/dokumentum/195053/gyermekvedelmi_internet_kerekasztal_2017_evi_beszamolo.pdf) (2019. 07. 25.).

2011. The creatives of the Internet Hotline's new campaign highlight all three fields of problems:

- cyberbullying,
- inflammatory content,
- as well as personal data-related abuses.

Based on reports, Internet Hotline provide support in removing infringing contents found on the Internet quickly. The Internet Hotline works with the National Police Headquarters and the National Bureau of Investigation against Cybercrime to combat illegal online content. The Internet Hotline also has a working relationship with social media operators<sup>22</sup>.

- Internet Hotline accepts notifications in nine categories:
- content made available without consent;
- pedophile content;
- harassment;
- racist, xenophobic content;
- content displaying violent content;
- drug use of seductive content;
- content that encourages or promotes terrorist acts;
- phishing websites, content infected with viruses, spyware and worms;
- other content harmful to minors<sup>23</sup>.

Co-workers of Internet Hotline examine the online content complained of in the report. If the content in question is *infringing*, the online content editor, the content provider or the hosting provider is asked to make the content inaccessible. In parallel with it, the service provider shall be considered liable for any failure to do so. In the case of *harmful or unsafe online content* for children, the Internet Hotline calls upon the website's editor or operator to clearly indicate on its interface that the content on the site may be harmful to children<sup>24</sup>.

The National Media and Infocommunications Authority has launched a campaign to promote the Internet Hotline legal aid. The campaign refers to the most important rules of online behavior through emojis. The creatives show that even the emojis frequently used by children can lead to offensive or even infringing statements

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<sup>22</sup> Internet Hotline, Tudástár <http://nmhh.hu/internethotline/tudastar> (2019. 07. 25.).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

depending on the context or situation. The campaign collectively refers to these as awkward situations. The campaign features commonly used emojis in two different contexts: in one, they have a harmless meaning, but in the other their meaning is abusive, offensive and threatening. The advertisements, mainly targeting children of 11 to 16 years of age, provide guidance for recognizing problems, as well as dealing with them. The campaign provides a website of the Internet Hotline, where online infringing content can be reported quickly and anonymously. Hotline employees help in removing such content or counselling to the person filing the report. The central message of the campaign is that although children might seem at ease with the world of digital devices and new media content, they often face uncertainty when judging the community, ethical or legal repercussions of their online actions<sup>25</sup>.

According to the Authority this is not an administrative procedure, yet effective. The Internet Hotline provides those filing a report with a way to solve online infringements. The administrative process does not constitute a regulatory procedure, as the authority requests the content or web hosting service provider to remove the infringing content by letter. Since 2011, the Internet Hotline has received over 4.000 reports, and the experience has shown that Hungarian content and web hosting service providers are exceptionally cooperative and, in most cases, they make the objectionable content unavailable. The website of the advisory service was renewed in autumn 2017, and reports can be easily filed on its new responsive interface, using mobile devices as well. The Internet Hotline collects no information on those filing a report, and anyone can request assistance anonymously<sup>26</sup>.

## **6. Summary of Hungarian legislation on the identity of child consumers**

The identity of child consumer, due to the wide availability and free of charge of the Internet, is a complex issue. In fact, children may be exposed to a variety of harmful content online, which has a negative impact on their physical, mental and moral development.

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

The protection of children is implemented in a comprehensive, complex system in Hungarian legislation. It should be emphasized that the primary role of the family in the protection of children is declared, but the role of the state is not negligible either.

Several legal instruments protect children in different areas of law. As for examples, their general protection is granted by the Constitution, while in case of consumption they are protected by the provisions of consumer protection law or media law.

However, in a digital, online environment, it is necessary that the protection of children consumers also be achieved through technical devices. In connection with this, the Internet Hotline of the National Media and Communications Authority and the Internet Child Protection Roundtable are of great importance.

Not only in Hungary, but in every nations, it is of great importance for the proper development of the identity of children to be protected in high level. As this study highlighted, not only the use of legal but also technological solution appears to be appropriate to reach the target.

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