

# Xcsdw3Levelling Up or Cashing In? Privacy Implications for the Data Profiling of Children in Video Games

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## **INTRODUCTION**

Video games have become a cornerstone of children's lives, offering a medium for learning, socialising, and entertainment, with engagement increasing with age.<sup>1</sup> Modern children, born into a world of pervasive 'datafication,' grow up as digital natives.<sup>2</sup> Commercial platforms exploit this reality, using targeted advertising and gamification techniques to reach young children. Numerous studies have shown that children, especially those under eight, often cannot discern advertising from regular content.<sup>3</sup> Alarmingly, studies reveal that 95% of mobile apps targeting children aged 12 months to five years contain advertising content.<sup>4</sup> More concerningly, this advertising works, with over a third of Australian children making in-app purchases.<sup>5</sup> Regulatory scrutiny of these practices has increased significantly over the past few years, and the international consensus is clear: children warrant special protection against data profiling, manipulative gamification, and deceptive tactics by profit-seeking platforms.<sup>6</sup> This submission investigates the strategies digital platforms use to keep their young users safe, highlights the shortcomings of this self-regulation, and conducts a comparative legal analysis of the evolving international legislative landscape. This submission focuses, in particular, on the upcoming changes to the Australian *Privacy Act* aimed at enhancing protection for children in digital playgrounds and identifies what positive changes may be on the horizon for young users of video games and digital platforms.

Video games represent the largest sector in the entertainment industry.<sup>7</sup> Most video games utilise in-app advertising to monetise services, with ad revenue surging from \$AUD120 billion in 2022 to \$AUD142 billion in 2023 and a projected \$AUD168 billion in 2024.<sup>8</sup> Driving the success of advertising within digital platforms is the implementation of data profiling and targeted advertising. The motivation behind this is clear: more than 90% of consumers say they are more likely to purchase when ads are personalised.<sup>9</sup> In video games, data collection goes beyond simply profiling a player's in-game purchases and interactions; as Kröger et al. explain, "patterns and correlations in gameplay and sensor data can be exploited to draw further inferences".<sup>10</sup> While this data is invaluable for creating personalised experiences and sustaining the commercial viability of games, it raises significant privacy concerns. As children navigate these digital playgrounds, there's a growing need to balance the commercial interests of game developers with the protection of young gamers.

Digital platforms extensively use gamification techniques, such as rewards and in-game currencies, to integrate advertising seamlessly with content.<sup>11</sup> This integration often obscures the commercial intent for children. For instance, popular games like *Fortnite* (Epic Games, 2017) leverage children's desire for social currency by disguising promotions as part of the gameplay.<sup>12</sup> The allure of social currency and its perceived importance in their lives motivates children to access such content at any cost. While popular games such as *Roblox* (Roblox Corporation, 2006) have implemented safety measures for younger players, these can be easily bypassed through age misrepresentation—a tactic frequently employed by digitally savvy children desperate to use the platform to socialise.<sup>13</sup> The techniques platforms use to draw young users in also render self-regulatory protective measures such as age

verification and consent procedures ineffective. Furthermore, a 2020 OAIC report revealed that many apps and sites popular among children fail to include age-appropriate privacy policies, reducing the likelihood of truly informed consent.<sup>14</sup> With digital platforms failing in self-regulation, legal interventions have become increasingly essential to ensure child safety.

Over the past few decades, global privacy laws such as the *General Data Protection Regulation* have sought to require digital platforms to mitigate the risk of harm that arises from these privacy intrusions.<sup>15</sup> Regulations like the United States *Children's Online Privacy Protection Act* specifically protect children's data.<sup>16</sup> Still, gaps persist internationally, primarily because most digital platforms are multinational entities, complicating the attribution of liability within specific jurisdictions.<sup>17</sup> In 2021, the Australian *Online Safety Act* granted the eSafety Commissioner authority to enforce industry compliance with codes protecting children from online threats, such as image-based abuse, grooming, and inappropriate content.<sup>18</sup> Separately, the *Privacy Act* governs the collection, storage, and use of consumer data and personal information by businesses in Australia.<sup>19</sup> The Australian government is concerned about children being increasingly subjected to inappropriate data collection.<sup>20</sup>

This submission's comparative legal analysis will focus on two major frameworks: the United Kingdom's *Age-Appropriate Design Code* and California's *Age-Appropriate Design Code*, contrasting them with Australia's current regulations in light of the proposed Children's Online Privacy Code. This examination will underscore principles such as the 'best interest of the child', highlighting the importance of approaches like data minimisation and privacy by design.<sup>21</sup> This submission is critical of the government's proposed exceptions to individual rights to balance privacy and commercial interests, as it indicates an unnecessary and weak negotiation between child protection and market interests. Children are growing up in a world where data collection and profiling are ubiquitous. It is crucial to strike a delicate balance between commercial interests and protecting children's rights and well-being.

## BIO

Caiti Galwey is a Juris Doctor graduate and researcher at the University of Melbourne, supporting funded interdisciplinary projects on artificially intelligent moderation and biometrics in immersive performance. They are also an Educator with the Cyber Safety Project, developing and delivering incursion material to schools across Australia. Caiti's academic accomplishments have been recognised with several scholarships and awards, and their current research is focused on children, technology and law.

## ENDNOTES

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<sup>1</sup> (Kennedy, Jones, and Williams 2019)

<sup>2</sup> (Office of the eSafety Commissioner 2018)

<sup>3</sup> (John 1999)

<sup>4</sup> (Meyer et al. 2019)

<sup>5</sup> (Office of the eSafety Commissioner 2018)

<sup>6</sup> (General Comment No. 25 on Children's Rights in Relation to the Digital Environment 2021)

<sup>7</sup> (Witkowski 2021)

<sup>8</sup> (Statista 2024)

<sup>9</sup> (Coffed 2018)

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- <sup>10</sup> (Kröger et al. 2023)
- <sup>11</sup> (de la Hera 2019)
- <sup>12</sup> (Van Rooij et al. 2017)
- <sup>13</sup> (Blum-Ross 2018)
- <sup>14</sup> (Witzleb et al. 2020)
- <sup>15</sup> (Regulation 2016/679)
- <sup>16</sup> (U.S.C. §§ 6501- 6506 1999)
- <sup>17</sup> (Future of Privacy Forum 2022)
- <sup>18</sup> (Online Safety Act 2021)
- <sup>19</sup> (Privacy Act 1988; Clarke 2023)
- <sup>20</sup> (Australian Government 2023)

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