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# Does the GDPR offer a solution to the ‘problem’ of sharenting?

“Sharenting” is a term used to describe parents’ actions when they disclose content about their children using social media. Concerns are increasingly being expressed about the impact of sharenting upon children’s privacy, with suggestions being made that children whose information has been shared online should be afforded a right to be forgotten.<sup>1</sup> To date, however, no-one has examined how or whether a child could use the General Data Protection Regulation (“GDPR”)’s right to erasure (the “right to be forgotten”) to remove sharented personal data. Limited academic consideration has been given to whether parents who sharent are data controllers under the GDPR and thus subject to controllers’ obligations under that regulation.<sup>2</sup>

Many parents share their children’s information primarily with family and friends. This raises questions about whether sharenting may be caught by the personal and household exemption, thus falling outside the GDPR’s scope. This article explores the application of the GDPR and the UKGDPR to sharenting. The UKGDPR, introduced following the UK’s departure from the European Union to ensure that the UK provides the same level of protection to personal data as the GDPR, is in most respects identical to the GDPR, although some modifications have been made to reflect the UK’s changed status as a non-EU member. This article highlights that where a child’s personal data has been sharented, the child’s ability to exercise rights afforded by the GDPR/UKGDPR may depend upon how the relevant supervisory authority interprets the personal and household exemption.

## 1 What does sharenting look like in practice?

Millions of parents worldwide now share their children’s information online.<sup>3</sup> Many share relatively limited information, either to connect with wider family, or to obtain advice and support from family, friends and other parents.<sup>4</sup> Some consider carefully who can see their posts, making profiles private or limiting who can view information about their children.<sup>5</sup> Some parents share more widely, and publicly, using blogs to articulate their frustrations about or to celebrate the positives of parenthood.<sup>6</sup> For others, sharenting has become a commercial enterprise, with substantial incomes being earned through the sharing of family lives and product endorsement.<sup>7</sup> The activities of these parent influencers are, some suggest, leading to the increasing normalisation of sharenting behaviours.<sup>8</sup>

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<sup>1</sup> Stacey Steinberg, (2016) Sharenting: Children’s Privacy in the Age of Social Media. *Emory Law Journal*, 66: 839-883; Claire Bessant, (2018) Sharenting: Balancing the Conflicting Rights of Parents and Children. *Communications Law: Journal of Computer, Media & Telecommunications Law*, 23(1): 7-24; Tama Leaver, (2020) Balancing Privacy: Sharenting, Intimate Surveillance and the Right to Be Forgotten, in L. Green, D. Holloway, K. Stevenson, T. Leaver, & L. Haddon (Eds.), *The Routledge Companion to Children and Digital Media*. Routledge; Keltie Haley, (2020) Sharenting and the (Potential) Right to Be Forgotten, *Indiana Law Journal*: 95 (3) Art. 9.

<sup>2</sup> For Germany Buchner Benedikt, Schnebbe Maximilian (2021), *Kinderfotos im Netz*, ZD-Aktuell: 5171; Buchner Benedikt (2019), *Von der Wiege bis zur Bahre*, FamRZ: 665-672.

<sup>3</sup> See Maja Sonne Damkjaer, (2018) Sharenting = Good Parenting? Four Parental Approaches to Sharenting on Facebook p. 209-218 in Giovanna Mascheroni, Cristina Ponte & Ana Jorge (eds.) *Digital Parenting. The Challenges for Families in the Digital Age*. Göteborg: Nordicom; P Wardhani & L Sekarasih, (2021) Parental Decisions on Sharing Their Children’s Private Information on Social Media among Families in Jakarta Area. *Makara Human Behavior Studies in Asia*, 25(2), 127-136; Deborah Lupton, (2017) ‘It Just Gives Me a Bit of Peace of Mind’: Australian Women’s Use of Digital Media for Pregnancy and Early Motherhood, *Societies* 7 (3) 25.

<sup>4</sup> Maeve Duggan, Amanda Lenhart, Cliff Lampe and Nicole Ellison, (2015) *Parents and Social Media*, Pew Research Center, 3; Priya Kumar and Sarita Schoenebeck, (2015) ‘The Modern-Day Baby Book: Enacting Good Mothering and Stewarding Privacy on Facebook’ in *Proceedings of the 18th ACM Conference on Computer Supported Cooperative Work & Social Computing* 1302-1312.

<sup>5</sup> Davide Cino and Ellen Wartella, (2021) Privacy-protective behaviors in the mediated domestic milieu: Parents and the intra- and extra-systemic governance of children’s digital traces, *Journal of Theories and Research in Education*, 16(3), 133-1536.

<sup>6</sup> Alicia Blum-Ross A and Sonia Livingstone, (2017) “Sharenting,” Parent Blogging and the Boundaries of the Digital Self, *Popular Communication* 15(2) 110; Kate Orton-Johnson, (2017) Mummy Blogs and Representations of Motherhood: “Bad Mummies” and their Readers 3(2) *Social Media + Society* 1.

<sup>7</sup> Emma Nottingham, (2019) “Dad! Cut that Part Out!” Children’s Rights to Privacy in the Age of “Generation Tagged”: Sharenting, Digital Kidnapping and the Child Micro-celebrity, in Jane Murray, Beth Blue Swadener and Kylie Smith (eds.), *The Routledge International Handbook of Young Children’s Rights*. United Kingdom: Routledge.

<sup>8</sup> Fox, Alexa K., Mariea Grubbs Hoy, and Alexander E. Carter. (2022) An Exploration of First-Time Dads’ Sharenting with Social Media Marketers: Implications for Children’s Online Privacy. *Journal of Marketing Theory and Practice*, <https://doi.org/10.1080/10696679.2021.2024441>.

The sharenting phenomenon appears to have first gained attention around 2010.<sup>9</sup> Sharenting has, however, been given new impetus by the Covid-19 pandemic. Subject to lockdowns and unable to engage with other parents or wider family face-to-face, parents had little option but to engage online. During the pandemic many UK businesses, including schools, encouraged parents to share images of their family.<sup>10</sup> Some academics are now expressing concern about companies encouraging parental sharenting on public forums, where children's information then becomes available to the businesses who have induced such disclosures and to the public.<sup>11</sup> Once such information has been shared, it is, of course, beyond the control of either the child or the parent. Indeed, whilst parents may assume information shared on private social media profiles remains within their control, such information may, of course, be further processed by social media platforms or disseminated further by recipients. Today the internet affords numerous examples of children whose images have been shared by their parents with family, or a limited number of friends, only for those images to go viral.<sup>12</sup>

## 2 Legal starting point: the right to be forgotten

The impact of sharenting upon children's privacy is most apparent where parents make their images publicly available, or where images initially shared with a limited group are subsequently shared more widely. That some children do not want their images to be widely circulated is becoming increasingly evident.<sup>13</sup> Whenever a child's personal data is shared online by their parent, however, even when it is made available only to a limited number of family and friends, the child's privacy rights are engaged. It is thus that some academics suggest children should be afforded a right to seek removal of sharented information – or “a right to be forgotten”.<sup>14</sup>

Such a right is afforded by Article 17 GDPR/UKGDPR, enabling data subjects to ask parents to erase their personal data, in specified circumstances. Most obviously relevant to the older child who wishes to remove personal data shared when they were younger is Article 17(1)(a), which applies where personal data are no longer necessary for the

purposes for which they were originally processed. Article 17(1)(c) might also be relevant where the child is able to exercise their right to object to processing under Article 21. The applicability of Article 21 will depend upon the lawful ground for processing used by the parent, specifically whether sharenting is undertaken to further legitimate interests. In practice, of course, it is rarely clear what legal basis parents are relying upon to justify their processing. Indeed, if parents do not know they are subject to the GDPR/UKGDPR they are unlikely to consider the issue.

Whilst Article 17(1)(b) enables a data subject to seek erasure where processing is based upon consent and the data subject withdraws consent to processing, and Article 17(1)(f) permits a child to seek erasure of information disclosed to information society services with the child or parent's consent, an issue in many sharenting situations is that consent is *not* sought from the child whose information is shared. It is unclear in such cases whether there is an absence of consent or whether the parents themselves might be deemed to have consented upon their child's behalf. The GDPR/UKGDPR authorises parents to provide consent in instances where information society services are offered directly to children who are not yet competent to provide consent themselves.<sup>15</sup> Whilst the GDPR/UKGDPR is notably silent about the parent's ability to consent to use of children's data outside the narrow circumstances envisaged by Article 8, European and English case law confirm that parents act as the guardians of their children's privacy, empowered to provide or refuse consent to the use of their children's personal data in a range of circumstances.<sup>16</sup>

Questions concerning whether a parent might provide consent to their own sharenting upon behalf of their child and whether that child might withdraw such consent once competent to do so have not yet been considered by the UK's data protection regulator, the Information Commissioner (ICO). In Germany for example, consent of the parents on behalf of their children is not permitted. Since they are both the bearers of parental responsibility and those responsible under data protection law, there would be an ineffective self-deal according to § 181 BGB.<sup>17</sup>

The final ground on which erasure might be sought applies where personal data has been unlawfully processed,<sup>18</sup> where, for example, parents have not met one of the Article 6 grounds for processing and/or where they have not

<sup>9</sup> AVG TECHNOLOGIES (2010). AVG Digital Diaries – digital birth. <http://www.avg.com/digitaldiaries/2010> (no longer available online).

<sup>10</sup> Claire Bessant, Emma Nottingham and Marion Oswald, (2020) Sharenting in a Socially Distanced World <https://blogs.lse.ac.uk/parenting4digitalfuture/2020/08/12/sharenting-during-covid/>.

<sup>11</sup> Alexa Fox and Mariea Grubbs Hoy (2019) Smart Devices, Smart Decisions? Implications of Parents' Sharenting for Children's Online Privacy, *Journal of Public Policy & Marketing* 38(4) 414-432; Alexa Fox, Mariea Grubbs Hoy, and Alexander Carter (2022) An Exploration of First-Time Dads' Sharenting with Social Media Marketers: Implications for Children's Online Privacy, *Journal of Marketing Theory and Practice*, <https://doi.org/10.1080/10696679.2021.2024441>.

<sup>12</sup> Jack Hunter, “Side-eyeing Chloe” Clem to sell iconic meme as NFT, BBC, 23 September 2021 <https://www.bbc.co.uk/news/world-us-canada-58659667>; Kim Lyons, The David After Dentist meme is now an NFT — and yes, this is real life, *The Verge*, 6 May 2021 <https://www.theverge.com/2021/5/6/22422993/david-after-dentist-meme-nft-real-life>.

<sup>13</sup> Tama Leaver, (2020) Balancing Privacy: Sharenting, Intimate Surveillance and the Right to Be Forgotten. In L. Green, D. Holloway, K. Stevenson, T. Leaver, & L. Haddon (Eds.), *The Routledge Companion to Children and Digital Media*. Routledge;

Apple Martin: Teen tells off her mum, Gwyneth Paltrow, for sharing photo without permission, BBC News 27 March 2019 <https://www.bbc.co.uk/news-round/47718465#:~:text=The%20teenage%20daughter%20of%20Iron%20Man%20star%20Gwyneth,unsmiling%20Apple%20wearing%20a%20ski%20helmet%20and%20mask>.

<sup>14</sup> Keltie Haley, (2020) “Sharenting and the (Potential) Right to Be Forgotten,” *Indiana Law Journal*: 95 (3) Art. 9; Buchner Benedikt, Schnebke Maximilian (2021), *Kinderfotos im Netz*, ZD-Aktuell: 5171; Buchner Benedikt (2019), *Von der Wiege bis zur Bahre*, FamRZ: 665 - 672.

<sup>15</sup> Article 8 GDPR/UKGDPR.

<sup>16</sup> *Reklos and Davourlis v Greece* [2009] EMLR 16; *Bogomolova v Russia* (App No 13812/09) judgment 20 June 2017; *IVT v Romania* [2022] ECHR 189; *Weller v Associated Newspapers Ltd* [2015] EWCA Civ 1176; *AAA (by her litigation friend) v Associated Newspapers Limited* [2013] EWCA Civ 554; *Murray v Big Pictures (UK) Limited* [2008] EWCA Civ 446.

<sup>17</sup> Buchner Benedikt, Schnebke Maximilian (2021), *Kinderfotos im Netz*, ZD-Aktuell: 5171.

<sup>18</sup> Article 17(1)(d) GDPR/UKGDPR.

fulfilled their obligations to inform the child data subject about how their data is being processed. Even where the child's data has been unlawfully processed, however, the child's ability to require *their parent* to erase their information will crucially depend upon whether the GDPR considers the parent who shares to be a data controller. Indeed, if the parent is not a data controller for GDPR/UKGDPR purposes, the child has no right to exercise any of the rights afforded to data subjects against its parent,<sup>19</sup> to claim compensation for damage caused by parental processing which infringes the regulation,<sup>20</sup> to lodge a complaint with the supervisory authority about such processing<sup>21</sup> or to seek any other form of judicial remedy against the parent under the GDPR/UKGDPR.<sup>22</sup> The child may, of course, still have a remedy against social media platforms who facilitate such sharenting since Recital 18 makes clear that those platforms which facilitate sharenting are themselves caught by the GDPR/UKGDPR.

### 3 Does the GDPR apply to parents who "sharent"?

Article 2 (2) (c) GDPR and Article 2(2)(a) UKGDPR confirm that these regulations do not apply if personal data is processed exclusively for the purpose of carrying out personal or household activities (household exemption). Due to a lack of guidance on the exemption, it is not, however, entirely clear when the exemption will apply to parents who share their children's pictures online.

#### 3.1 Lindqvist decision

In the "Lindqvist" decision in 2003,<sup>23</sup> the ECJ ruled on the identical predecessor of the household exemption found at Article 3(3) EU Directive 95/46/EC, finding that a publication on the Internet, which is accessible to an unlimited number of people, is "obviously" not covered by the exemption. Due to the identical wording of the household exemption of Article 3(2) Directive 95/46/EC and Article 2(2)(c) EU GDPR/Article 2(2)(a) UK GDPR, it might seem at first glance that the case law of the ECJ should continue to apply under the GDPR. This view appears to some extent to be supported by the European Data Protection Board (EDPB), which confirms that the household exemption should be "narrowly construed," referring explicitly to the guidance in Lindqvist that the exemption does not apply where processing of personal data consists of "publication on the internet so that those data are made accessible to an indefinite number of people".<sup>24</sup>

Whether one can wholly rely on case law decided under the Directive is debatable, however, particularly when one

notes the wording of Recital 18 GDPR/UKGDPR, which suggests online activities on social networks are now covered by the household exemption of Article 2(2)(c) GDPR. This Recital acknowledges and seemingly responds to concerns expressed by the Article 29 Working Party (Art. 29 WP)<sup>25</sup> that the European Court's approach to personal and household processing post-Lindqvist had 'an unrealistically narrow scope' which failed to reflect the individual's capacity to process data for personal and household activities using the internet.<sup>26</sup> Whether it does actually achieve this aim is debatable.

According to Recital 18 GDPR the "Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity." The Recital continues to confirm that such personal or household activities *could include* "correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities". The Recital thus makes clear that where a parent shares their child's information *for commercial purposes*, thus when a parent influencer engages in commercial or monetised sharenting, the household exemption does not apply. There is some ambiguity, however, as to whether the exemption will apply to non-commercial sharenting. To determine whether the household exemption applies to sharenting which is undertaken for non-commercial purposes a differentiated approach is required.

Following Lindqvist, and its understanding that the household exemption does not apply where personal data is made accessible to an indefinite group of people, Recital 18 sentence 2 could be understood to mean that, if social networks are used so that the personal data shared is only accessible to a limited group of people, for example in the context of individual or group messages, the household exemption applies. The exemption will not apply when a parent publishes content on a generally accessible profile (page) without restricting the number of authorized users.<sup>27</sup> The exemption would also not apply where parent bloggers share personal data with a small number of followers without commercial intentions, since the content will usually be publicly accessible and can be easily and uncontrolledly distributed using functions such as "Share".

When accounts are private and/or information is made accessible to a restricted number of followers, the application of the household exemption becomes more difficult, in the absence of clear guidance as to what is meant by a personal or household activity. Greater clarity is needed as to when data will be "accessible to an indefinite number of

<sup>19</sup> Afforded by Articles 15-22 GDPR/UKGDPR.

<sup>20</sup> Article 82 GDPR/UKGDPR.

<sup>21</sup> Article 77 GDPR/UKGDPR.

<sup>22</sup> As per Article 79 GDPR/UKGDPR.

<sup>23</sup> *EJC*, 6.11.2003 – Rs. C-101/01 –, MMR 2004, 95 (95ff.) (Lindqvist); später bestätigt durch *EuGH*, Urteil vom 16.12.2008 – Rs. C-73/07 –, MMR 2009, 175 (175ff.) (Satamedia); *EJC*, 10.07.2018 – Rs. C-25/17 –, NJW 2019, 285 (285ff.) (Jehovan todistajat); *EJC*, 14.02.2019 – C-345/17 –, NJW 2019, 2451 (2451ff.) (Buivids).

<sup>24</sup> European Data Protection Board, Guidelines 3/2019 on processing of personal data through video devices, adopted 29 January 2020, 6-7.

<sup>25</sup> Art. 29 WP, Statement of the Working Party on current discussions regarding the data protection reform package Annex 2: Proposals for Amendments regarding exemption for personal or household activities, 27.2.2013 [https://ec.europa.eu/justice/article-29/documentation/other-document/index\\_en.htm](https://ec.europa.eu/justice/article-29/documentation/other-document/index_en.htm).

<sup>26</sup> Art. 29 WP 'Statement of the Working Party on current discussions regarding the data protection reform package Annex 2: Proposals for Amendments regarding exemption for personal or household activities' 27.2.2013, 2.

<sup>27</sup> Golland Alexander (2020) Die „private“ Datenverarbeitung im Internet. Verantwortlichkeit und Rechtmäßigkeit bei Nutzung von Plattformdiensten durch natürliche Personen, *Zeitschrift für Datenschutz*: 397-403.

people". In practice, several alternative different approaches or interpretations are possible.

### 3.2 UK perspective

The Art. 29 WP recognised that some individuals may consider it disproportionate and unworkable to expect natural persons processing personal data for personal or household purposes to be subject to the full weight of the Regulation.<sup>28</sup> As recognized by the English courts, data protection authorities such as the ICO would also face significant practical difficulties were they required to investigate every complaint made by a data subject regarding online dissemination of their personal data.<sup>29</sup> It is perhaps for this reason that under the Directive many data protection authorities chose to have "little – or no – involvement with issues arising from private citizens' processing of personal data for their own personal or household activities."<sup>30</sup> Certainly, the UK ICO's approach under the Directive was to suggest that when an individual shared information online, in a personal capacity, purely for their own domestic or recreational purposes, the Directive's exemption would apply, irrespective of the nature of the data shared, what that data revealed, or the number of people to whom information was revealed.<sup>31</sup> Whilst this approach appears to contradict Lindqvist, there is no sign that the ICO intends to alter their approach post-UKGDPR. The limited guidance currently available on the ICO's website indicates that individuals will not be subject to the UKGDPR if they only use personal data for their "own personal, family or household purposes - eg personal social media activity".<sup>32</sup> What personal social media activity entails is not explained further. In the UK, however, it seems many parents who share large amounts of information about their children online will not be subject to the UKGDPR. Their children will be unable to take advantage of the UKGDPR's rights and remedies.

### 3.3 Art. 29 WP's view

In contrast to the ICO's broad approach one finds the Art. 29 WP's view that some but not all uses of social media should fall within the household exemption. Adjudging that the household exemption should apply where access to personal data is limited, it suggested that when access "extends beyond self-selected contacts, such as when access to a profile is provided to all members" of a social network "or the data is indexable by search engines" the exemption does not apply because "access goes beyond the personal or household sphere". Similarly, if a user chooses "to extend access beyond self-selected 'friends', data controller responsibilities come into force."<sup>33</sup> This alternative approach is again not without problems. Allowing information to be disseminated to "self-selected friends," even via a private profile, still potentially exposes children to the scrutiny of many individuals. Social media accounts are typically followed by

tens of people or hundreds of people. Questions are raised about how many "friends" is too many for the household exemption to apply.

Consider further for example, where family photographs are posted online, on a private Facebook page, with the intention they be shared only with a few friends or family. Following the Art. 29 WP's guidance such sharing would appear to fall within the household exemption. Even here, however, these photographs are still potentially accessible to an unlimited number of people.<sup>34</sup> In its terms of use, Facebook, for example, is given a comprehensive right to use the content shared on the platform. Furthermore, the social media user cannot prevent friends and family from disseminating the photograph shared with them. The moment parents grant someone else access to images via social media these images are potentially publicly available to anyone.

### 3.4 Narrow interpretation

Taking a very narrow interpretative approach, one might argue that whilst the GDPR does not explicitly state that processing for a 'purely personal or household activity' requires information to be shared only within members of the social media user's household or with close family or friends, this is what should be required to fall within the exemption. If this narrower interpretation of the exemption were adopted, the exemption would not apply if every follower on a parent's private account with whom information is shared cannot be assigned to their personal or household environment. Whilst such an approach would afford maximum protection to the child, in practice, of course, it would result in many parents becoming data controllers, subject to the full requirements of the GDPR. It is questionable whether this was the European Commission's intention or how supervisory authorities across Europe believe the exemption should be interpreted. The EDPB provides an example to illustrate when the household exemption applies, referring to a tourist who shares videos from his holiday with friends and family but who does not make them accessible for an indefinite number of people. Although this example does not discuss images shared online, it seems that the EDPB understands that the household exemption may apply even where personal data is being shared with individuals who fall outside the social media user's immediate household and family, provided that personal data is "not accessible for an indefinite number of people."

Overall, it can be stated that there are various points of reference for assessing the question of which sharing activities fall under the household exception, such as Art. 29 WP, material from the EDPB or the judgment of the ECJ, which even allow for contradictory interpretations. Even if a trend can be seen on the part of the ICO, there are still no official decisions in European countries like Germany, that deal with the scope of the household exemption. Any

<sup>28</sup> Art. 29 WP 'Statement of the Working Party on current discussions regarding the data protection reform package Annex 2: Proposals for Amendments regarding exemption for personal or household activities' 27.2.2013, 2.

<sup>29</sup> The Law Society and others v Rick Kordowski [2011] EWHC 3185 (QB) [96].

<sup>30</sup> Art. 29 WP 'Statement of the Working Party on current discussions regarding the data protection reform package Annex 2: Proposals for Amendments regarding exemption for personal or household activities' 27.2.2013, 1.

<sup>31</sup> ICO (2014) Social networking and online forums – when does the DPA apply? V1.1 <https://ico.org.uk/media/for-organisations/documents/1600/social-networking-and-online-forums-dpa-guidance.pdf>.

<sup>32</sup> ICO, (undated), Some Basic Concepts <https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-dpa-2018/some-basic-concepts/>.

<sup>33</sup> Art. 29 WP, Opinion 5/2009 on online social networking, 00189/09/EN WP 163, adopted 12 June 2009, 6.

<sup>34</sup> Buchner Benedikt (2019), Von der Wiege bis zur Bahre, FamRZ: 665-672.

uncertainties in this regard are at the expense of the children concerned. It is therefore essential, that there are clear instructions from the ICO and the EPDB on when content on social media is covered by the household exception.

### 3.5 A need for clarity and additional guidance

It is evident that “commercial” sharenting falls within the scope of the GDPR. It is not clear, however, that this position is well-recognised either by parents or by supervisory authorities such as the ICO. To ensure that parents who engage in monetised sharenting are aware that they are data controllers subject to obligations under the GDPR/UKGDPR it is suggested that the EDPB should develop guidance concerning the activities of this parent group. Whilst the ICO is not bound to follow the EDPB’s guidance, such guidance could be adopted for use within the UK. Those platforms which facilitate monetised sharenting, which will not be subject to the household exemption, also have a role to play in ensuring such parents understand their GDPR obligations.

There is furthermore a need for guidance to be provided to address non-commercial sharenting. In its contribution to the debates on a new European data protection regime the Art. 29 WP, recognizing the ‘legal uncertainty’ about the liability of those posting personal data online, offered sensible suggestions to address that situation.<sup>35</sup> Perhaps most importantly it advised that if the GDPR were to replicate the Directive in exempting processing for personal or household purposes from the regulation (as it does), then supervisory authorities should develop and use the following objective criteria to determine whether processing falls outside the regulation’s scope: whether personal data is disseminated to an indefinite number of persons or a limited community; whether the personal data is about individuals who have no personal or household relationship with the poster; whether the scale and frequency of processing suggests a professional activity; whether individuals are acting together in a collective manner; whether there is a potential adverse impact on individuals, including intrusion into privacy. The Art. 29 WP further suggested that supervisory authorities have explicit powers to investigate whether processing falls within the exemption, and to take action against social media users as controllers. These are sensible proposals which, this article suggests, should be adopted across the European Union and the UK.

This article suggests further that where parents share children’s information, particularly where they receive incentives or encouragement from businesses to share children’s information, the obligations imposed upon those businesses (including social media platforms) should be clarified. The GDPR/UKGDPR does not address such indirect collection of children’s data from their parents. It is suggested, however, that even if parents’ own processing is not subject to the GDPR/UKGDPR, where information about a child is gathered through voluntary or incited sharenting, businesses should, in accordance with Articles 13 and 14

GDPR/UKGDPR, inform the parent *and child* how such information will then be used. Such an approach reflects the GDPR/UKGDPR’s understanding that children may be more vulnerable, that they merit specific protection, and that they have the same right as adults, including rights to object to profiling and direct marketing.

## Conclusion

The European Commission in 2010, outlining their initial proposals for a new European data protection regime, acknowledged explicitly that technology, particularly social media, now enables individuals to share information and “make it publicly and globally available on an unprecedented scale.”<sup>36</sup> It recognised a need to “clarify and specify the application of data protection principles to new technologies, in order to ensure that individuals’ personal data are actually effectively protected.”<sup>37</sup> Nonetheless, post-implementation of the GDPR questions still remain about the household exemption’s application to social media, specifically in the context of parental sharenting. Whilst Recital 18 confirms that commercial uses of social media fall outside the personal and household exemption, it is not clear that parents who are undertaking monetised sharenting are aware of the obligations imposed upon them or that supervisory authorities have considered the implications of such processing for affected children. Uncertainties about the application of the household exemption in non-commercial sharenting remain. Where the exemption is interpreted broadly, as is the case in the UK, children will be unable to utilise the UKGDPR’s provisions, and thus will have no ability to seek erasure of personal data. Where an alternative narrower interpretation results in sharenting parents becoming data controllers this will afford greater protection to children’s privacy, but here guidance is needed to ensure parents, children, and also those businesses which collect shared information are aware of their obligations and rights. This article does not recommend that a particular interpretation is adopted, it calls, however, for the EDPB and the UK ICO to give urgent attention to the question of how and when the GDPR applies in the sharenting context.

<sup>35</sup> Art. 29 WP ‘Statement of the Working Party on current discussions regarding the data protection reform package Annex 2: Proposals for Amendments regarding exemption for personal or household activities’ 27.2.2013, 3.

<sup>36</sup> European Commission (2010a), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the

Committee of the Regions: A Comprehensive Approach on Personal Data Protection in the European Union COM (2010) 609 final 4.11.2010, 2.

<sup>37</sup> European Commission (2010a), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: A Comprehensive Approach on Personal Data Protection in the European Union COM (2010) 609 final 4.11.2010, 3.