



LAW REFORM COMMISSION

Issue Paper on “Law for prevention of sharenting”

[LRC_ R&P 189, April 2025]

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EXECUTIVE SUMMARY

Issue Paper on “Law for prevention of sharenting” [LRC_R&P 189, April 2025]

In our rapidly evolving world, where parents are becoming increasingly adept with technology, a new phenomenon has emerged: “sharenting”. This term, a portmanteau of “sharing” and “parenting”, refers to the practice of parents sharing personal information, images, and videos of their children on social media platforms. While often perceived as a benign and endearing form of self-expression sharenting carries profound risks for children. These risks include exposure of cyberbullying, sextortion, and other forms of exploitation. As the prevalence of sharenting grows, so too does awareness of its unintended and far-reaching consequences.

Globally, jurisdictions are beginning to grapple with this issue, but France remains the only country to specifically legislate against excessive parental sharing of children’s content online. This pioneering approach underscores the need for other nations to address this pressing concern with similar foresight and legal rigor. The Law Reform Commission has therefore deemed it important to draft this Issue Paper with the aim of amending the Civil Code to prevent sharenting. Hence, the Commission has evaluated the unintended consequences of the phenomenon of sharenting (Part I); reviewed the existing laws in Mauritius for the protection of the right to privacy (Part II); analysed the anti-sharenting laws in other jurisdictions, such as Italy, France and Australia (Part III); and contemplated certain recommendations in order to reform existing Mauritian laws (Part IV).

A robust legal framework for the prevention of sharenting will not only fulfil Mauritius’ obligations under international law but also reflect the nation’s commitment to adapting its legal system to the demands of a rapidly evolving digital age. By enshrining the right to privacy and image rights in its domestic laws, Mauritius can position itself as a leader in protecting children’s rights in the digital sphere, ensuring that their dignity, safety, and autonomy are preserved. Sharenting represents a growing challenge in the digital age, one that requires immediate and decisive action to safeguard the rights and well-being of children. By enacting legislation to regulate this practice, Mauritius has the opportunity to position itself as a leader in protecting children’s rights in the digital sphere. This would not only fulfil its international obligations but also ensure a safer and more responsible digital environment for future generations.

This Issue Paper is a natural continuation of the principles and objectives outlined in the Report and Draft Bill on “Anonymity of Individuals in Court Judgments” [LRC_R&P 172, June 2023]. Both initiatives share a common underlying philosophy: the protection of vulnerable individuals, particularly children, and the safeguarding of their best interests in contexts where their privacy and dignity are at risk.

The said Report sought to address the critical need for ensuring that sensitive information about children is not unnecessarily disclosed in judicial proceedings. By advocating for the anonymisation of personal details in court judgments, the report aimed to prevent harm such as stigmatisation, social ostracism, and potential exploitation. This legal safeguard not only reflects the Mauritian legal system’s commitment to protecting the best interests of the child but also aligns with international standards under the UNCRC. Similarly, the Issue Paper on Sharenting builds upon this logic by addressing the threats posed to children’s privacy in the digital age. Where the Report on Anonymity focuses on safeguarding privacy within the judicial sphere, the Issue Paper on Sharenting extends this principle to the broader digital environment, recognising that parental oversharing on social media can have equally detrimental consequences. Both initiatives emphasise the importance of preserving children’s dignity and autonomy, advocating for legislative frameworks that minimise risks to their well-being.

INTRODUCTION TO THE PHENOMENON OF SHARENTING

1. Through the domination of the globe by social media, ‘sharenting’ has become trendy. The term ‘sharenting’ is a hybrid name formed from the words parenting and sharing, and which is a practice of parents or guardians who frequently make use of social media platforms, such as FaceBook; Instagram; TikTok to share pictures, videos, achievements or other identifying information of their children.¹
2. The motives behind parents’ willingness to share their children’s private information can alter considerably: from a desire to share news or events from the child’s life, such as their achievements or just adorable and hilarious moments with acquaintances, to boasting about their exceptional aptitudes and accomplishments in academic or extra-curricular fields; from searching for assistance and guidance while encountering parenting difficulties, to deriving income as ‘mom influencers’; or from an urge to depict themselves as ‘good parents’, to archiving memories as aforesaid in baby albums.²
3. While the action of sharing personal information about their children might be perceived as a non-malicious one and forming part of normal parenting practice, yet same is unfortunately not devoid of any consequences and controversies. Not only does sharenting create a traceable digital footprint which is associated with children, without their consent, but it also exacerbates instances of identity theft, cyberbullying, sextortion and possible rifts between parent-child relationship.
4. The key findings of a survey of 1,000 parents and teenagers in the United States with regards to their sharenting habits and attitudes towards such a practice, conducted in

¹ B. Carey, ‘What You Need to Know About Sharenting’ (29 March 2023) <https://netsafe.org.nz/blog/index.php/2023/03/29/what-you-need-to-know-about-sharenting/#~:text=Specific%20Laws%20for%20sharenting&text=It%20aims%20to%20stop%20parents,posting%20anything%20personal%20about%20them.>

² LL Ong, ‘Sharenting in an evolving digital world: Increasing online connection and consumer vulnerability’ [2022] 56(3) Journal of Consumer Affairs, 1106-1126.

2021 by Security.org; a non-profit organisation based in the United States, focusing on security, digital safety and identity theft,³ revealed the following:

- Above 75% of parents have shared videos, stories or images of their children or step-children on social media;
- In these posts, the real names of the children had been used by over 80% of parents;
- More than three quarters of parents do not obtain their children’s permission prior to posting content about them on social media, and about a third never seek their children’s permission;
- Almost a quarter of parents have public settings on their social media accounts, which means that even strangers may have access to the contents they share on their accounts; and
- Virtually 8 in 10 parents have friends or followers on social media whom they have never met in real life.⁴

5. Following the adoption of General Comment No. 25 in 2021 by the United Nations Convention on the Rights of the Child (UNCRC), which highlights children’s rights within the digital environment, Mauritius, being a signatory to the Convention, is under an obligation to report formally to its provisions. This landmark document emphasises that the principles of human rights extend to children both in the physical and digital realms. By recognising the importance of the digital environment, the UNCRC supports the idea that children warrant protection, dignity and equal rights online.⁵

6. Paragraph 26 of the General Comment No. 25 specifies that:

“States parties should ensure the operation of effective child protection mechanisms online and safeguarding policies, while also respecting children’s other rights, in all

³ A. Vlgderman, ‘Parents’ Social Media Habits: 2021’ (Security.org, 26 June 2024)
<https://www.security.org/digital-safety/parenting-social-media-report/>

⁴ *ibid.*

⁵ Committee on the Rights of the Child, ‘General comment No. 25 (2021) on children’s rights in relation to the digital environment’
[tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en](https://treaties.un.org/ilc/texts/instruments/english/commentary/25_2021_1_1.pdf)

settings where children access the digital environment, which includes the home, educational settings, cybercafés, youth centres, libraries and health and alternative care settings.”

7. Therefore, to address the pressing issue of sharenting and its potential harm to children, the Commission has undertaken a comprehensive analysis aimed to propose amendments to the Civil Code and the Children’s Act. This effort seeks to establish a legal framework that balances parental freedoms with the imperative to safeguard children’s privacy and dignity. The analysis begins by examining the unintended consequences of sharenting, including risks such as identity theft, cyberbullying, sextortion, and the creation of lasting digital footprints. It further evaluates the adequacy of existing Mauritian laws, such as the Data Protection Act 2017 and the Children’s Act 2020, which, while offering some protections, lack explicit provisions to mitigate the dangers associated with sharenting.
8. Building on this foundation, the Commission has analysed international approaches, drawing key insights from jurisdictions like France, Italy, and Australia. France’s incorporation of children’s image rights into its Civil Code serves as a model for legislative reform, while Italy and Australia provide complementary strategies for addressing this phenomenon. Based on these findings, the Commission has developed specific recommendations to reform Mauritian laws, including amendments to integrate the right to privacy into parental authority, establish joint parental responsibility for protecting children’s image rights, and empower judicial intervention in cases of dispute. These proposals aim to create a robust and child-centred legal framework that aligns with international standards and addresses the unique challenges posed by the digital age.

PART I: UNINTENDED CONSEQUENCES OF THE PHENOMENON OF SHARENTING

i. Identity Theft

9. According to media reports, European parents typically share approximately 300 photos of their children annually. The practice turns out to be particularly unsafe when parents intend to make a profit from this content. An investigation conducted by Serena Mazzini, a social media strategist in Italy, suggests that of over 100 accounts across Italy and Portugal, content featuring children can acquire up to three times more interactions and views than those with only adults.⁶ A study carried out by Carnegie Mellon CyLab in 2011 of identity scans of 40,000 children, revealed that there were likely 4,000 cases of child identity theft.⁷
10. The digital identity of a child is formed immediately upon being digitally exposed for the first time; including during a pregnancy announcement or when an ultrasound picture is posted on social media.⁸ Ultimately, when the child reaches the legal age (ranging from 13 to 16 years) to use the internet, their digital footprint exceeds that of their parents’ and covers a myriad of data: from name, age, date of birth to how their voice sounds like, their favourite clothing and food to their tantrums.⁹
11. From a very premature age, certain children are provided with a “digital identity” highly likely comprising of hundreds of photos that they will find burdensome to obliterate upon growing up. Research carried out by the British agency, ‘OPINIUM’ and

⁶ C. Castro, ‘Italy considers law against sharenting to protect children's privacy’ (5 April 2024) <https://sg.news.yahoo.com/italy-considers-law-against-sharenting-160023735.html>

⁷ R. Power, ‘Child Identity Theft’ (2011) p.6 https://www.cylab.cmu.edu/_files/pdfs/reports/2011/child-identity-theft.pdf

⁸ Prakash G. “Parental role in creation and preservation of digital identity of children” (Test Eng Manag, 2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3521688

⁹ J. A, Marôpo L, N. F. “When you realise your dad is Cristiano Ronaldo”: celebrity sharenting and children’s digital identities. Inf Commun Soc. 24 January 2022;25(4):516–35. doi: 10.1080/1369118x.2022.2026996.

published in 2018, ascertained that on average, the parents of a 13-year-old child have already published approximately 1,300 photos of the latter on social media websites.¹⁰

12. According to Leah Plunkett, who authored the book *“Sharenthood: Why We Should Think Before We Talk About Our Kids Online”* and stated that “these images frozen in time may hinder children’s ability to develop their own identities later in life.”¹¹ Indeed, in the event that the parents’ social media accounts are public, this abundance of information can become highly accessible to anyone and may be prone to potential misuse. Consequently, malevolent individuals can digitally kidnap the shared images and information to generate fake online identities, deceitfully proclaiming the child as their own.¹²

13. Reportedly, in the United States, teenagers applying for driving licences have found out that someone has already got a licence in their name and had already been banned.¹³ Additionally, forecasts from Barclays Bank in the United Kingdom designate that by 2030, parents’ act of uploading photos online will account for two thirds of all identity theft cases.¹⁴ Although sharing pictures of a child on a private account appears to be a better step, yet those pictures can still be redistributed and circulated.

ii. Sextortion

14. Another distressing consequence of sharenting is the heightened risk of sextortion, where perpetrators blackmail to disseminate compromising content, irrespective of being real or manipulated media, save where the child is compliant to their demands.¹⁵

¹⁰ “Sharing photos and videos of your child on social networks: what risks” (20 December 2023)

<https://www.cnil.fr/en/sharing-photos-and-videos-your-child-social-networks-what-risks>

¹¹ L. A. Plunkett, *“Sharenthood: Why We Should Think before We Talk about Our Kids Online”* (The MIT Press, 2019)

¹² Deepfake, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/deepfake> [perma.cc/HLT4-3KEL]

¹³ S. B. Steinberg, “Sharenting: Children’s Privacy in the Age of Social Media” (66 EMORY L.J. 2017).

¹⁴ S. Coughlan, “‘Sharenting’ puts young at risk of online fraud” (21 May 2018)
<https://www.bbc.com/news/education-44153754>

¹⁵ S. B. Steinberg, “Changed Faces: Morphed Child Pornography Images and the First Amendment” (68 EMORY L.J. 2019).

Parents who post videos and photos of their children on social media have no control over the storage of these personal data.¹⁶ As quoted by Dr. Rebecca Portnoff, director of data science at Thorn, a non-profit that fights the spread of child sexual abuse online, in an interview with ABC News said “*once an image is shared online, it can be hard to control where it ends up.*”¹⁷

15. Videos and photos posted on social networks can attract child predators who can retrieve these contents with the aim of creating fake profiles, to circulate them with other strangers or to distribute them on child pornography networks. Even though, Pinterest; a platform whose primary purpose is to enable its users to virtually pin inspirational ideas about food recipes, home, style and clothing, could seemingly appear harmless, yet same is undeniably not the case.

16. According to NBC, men on Pinterest have created sex-themed image boards of little girls. While parents might not think twice before posting innocent pictures such as their children in bathing suits, ballet or gymnastics leotards, doing the splits, dancing in their bedrooms or sticking their tongues out; such contents have, however, been pinned by men to boards labelled “sexy little girls” and “guilty pleasure.”¹⁸

iii. Commercial Sharenting

17. The term ‘*commercial sharenting*’ refers to parents oversharing the personal data of their children on social media for financial gain. Almost 1,500 images of children feature on the net even before the average child turns 5.¹⁹ According to Ross Smith, a social media celebrity, who garnered over 11 million followers through his comedy

¹⁶ S. Kirkey, “Do You Know Where Your Child’s Image Is? Pedophiles Sharing Photos from Parents’ Social Media Accounts” (NAT’L POST, 18 April 2017) <https://nationalpost.com/news/canada/photos-shared-on-pedophile-sites-taken-from-parents-social-media-accounts> [perma.cc/D5N9-JN28].

¹⁷ E. Saliba, “Sharing photos of your kids? Maybe not after you watch this deepfake ad” (28 July 2023) <https://abcnews.go.com/GMA/Family/sharing-photos-kids-after-watch-deepfake-ad/story?id=101730561>

¹⁸ J. Cook, “Men on Pinterest are creating sex-themed image boards of little girls. The platform makes it easy” (NBC News, 9 March 2023) <https://www.nbcnews.com/tech/internet/pinterest-algorithm-young-girls-videos-grown-men-investigation-rcna72469>

¹⁹ A. Kamenetz, Opinion, The Problem with ‘Sharenting,’ N.Y. TIMES (June 5, 2019), <https://www.nytimes.com/2019/06/05/opinion/children-internet-privacy.html>

videos, and who collaborates with children on certain posts, who stated: “*Kids are the new social influencer.*”²⁰

18. Nevertheless, while there are instances where certain children enjoy being in the limelight when their parents share content concerning them, others might feel embarrassed and uncomfortable when their parents frequently do so. Hence, child stars do not necessarily celebrate the fame that accompanies their parents’ online posts.²¹

iv. *Cyberbullying*

19. Sharenting may also significantly increase the risk of a child being cyberbullied. It has been reported that one in five children have skipped school owing to cyber bullying²² and that the majority of children with social media presences have been faced with some kind of cyberbullying.²³ A child who has been cyberbullied may exacerbate his risk of both self-harm and suicidal behaviours.²⁴ Additionally, the susceptibility of cyberbullying is directly proportional to a child’s audience online. Hence, cyberbullying and its complementary hazardous issues are significantly intensified for those children who are prominent personalities on social media.

²⁰ K. Rosman, “Why Isn’t Your Toddler Paying the Mortgage?” (N.Y. TIMES, 27 September 2017), <https://www.nytimes.com/2017/09/27/style/viral-toddler-videos.html>.

²¹ C. Tate, “My Daughter Asked Me to Stop Writing About Motherhood. Here’s Why I Can’t Do That.” (WASH. POST, 3 January 2019) <https://www.washingtonpost.com/lifestyle/2019/01/03/my-daughter-asked-me-stop-writing-about-motherhood-heres-why-i-cant-do-that>

²² ‘UNICEF Poll: More Than a Third of Young People in 30 Countries Report Being a Victim of Online Bullying’ (UNICEF 3 September 2019) <https://www.unicef.org/press-releases/unicef-poll-more-third-young-people-30-countries-report-being-victim-online-bullying> [RPR9]

²³ “Cyberbullying Tactics” <https://www.stopbullying.gov/cyberbullying/cyberbullying-tactics>

²⁴ SAFETY NET: CYBERBULLYING’S IMPACT ON YOUNG PEOPLE’S MENTAL HEALTH: INQUIRY REPORT, THE CHILDREN’S SOCIETY 38 (2018).

PART II: EXISTING LAWS IN MAURITIUS PROTECTING THE RIGHT TO PRIVACY

20. Parents have the primary responsibility in ensuring the safety of their children and this also applies to their protection from all forms of abuse in the digital environment.²⁵ Statistics from the Information and Communication Technologies Authority revealed an alarming number of attempts by Mauritian Internet users to access child sexual abuse websites.²⁶

21. The Law Reform Commission has extensively reviewed the existing laws that protect a child’s right to privacy in Mauritius, by analysing the Data Protection Act, the Children’s Act and the Code Civil Mauricien.

i. Data Protection Act

22. The Data Protection Act 2017 was enacted with a view to strengthening the control and personal autonomy of data subjects over their personal data. The Act is divided into 9 Parts, dealing with the preliminary provisions; the Data Protection Office; registration of controllers and processors, their obligations; processing operations likely to present risk; transfer of personal data outside Mauritius; rights of data subjects; other offences and penalties and miscellaneous provisions.

23. Section 30 of the above-mentioned Act is concerned with the personal data of a child, and states the following: -

“No person shall process the personal data of a child below the age of 16 years unless consent is given by the child’s parent or guardian.”²⁷

²⁵ Ombudsperson for Children Annual Report 2020-2021, p.180.

²⁶ Ombudsperson for Children Annual Report 2020-2021, p. 176.

²⁷ Data Protection Act 2017, Pt. IV, s. 30 (1).

Where the personal data of a child below the age of 16 years is involved, a controller shall make every reasonable effort to verify that consent has been given or authorised, taking into account available technology.”²⁸

24. However, at the very outset, the Act explicitly mentions that it exempts the processing of personal data by an individual in the course of a purely personal or household activity.²⁹ Arguably, this particular section highlights that where a child’s personal data has been sharented, the child’s capacity to exercise rights afforded by the Act may be dependent upon how the Data Protection Commissioner interprets the personal and household exemption.

ii. *Code Civil Mauricien*

25. The right to a private life is enshrined in the Civil Code under article 22, which states the following: -

« Chacun a droit au respect de sa vie privée.

Les juridictions compétentes peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l'intimité de la vie privée.

Ces mesures peuvent, s'il y a urgence, être ordonnées par le Juge en chambre. »³⁰

26. Thus, the fundamental principle laid down in the aforementioned article, suggests the fact that children have the right to a private life. In France, this notion is embedded in the French Constitutional Council, and implies the respect for privacy, medical confidentiality, the right to a person's image, limits on spying and investigative

²⁸ Data Protection Act 2017, Pt. IV, s. 30 (2).

²⁹ Data Protection Act 2017, Pt. I, s. 3 (4)(b).

³⁰ Code civil mauricien, Livre 1er, Tit. I, Ch. 3^{ème}, art. 22.

practices; such as telephone tapping; and the introduction of new rules and bodies to limit the risks associated with the development of digital tools.³¹

27. Book I, Title IX deals with « *De l'autorité parentale* ». By virtue of article 371-2 of the Code, parents have the responsibility to ensure the child's safety, health and morals.³² They have the right and duty to look after, supervise and educate the child.³³ During the marriage, the father and mother exercise their parental rights jointly. However, in the case of their de facto separation, then the Judge in Chambers, or the Supreme Court, decide upon the child's custody, exclusively considering the best interests of the child. Subsequently, the parental authority is exercised by the father or mother to whom custody has been granted, with the exception of the other spouse's visiting rights.³⁴

28. Nonetheless, in the event that the parents disagree with regards to what constitutes the best interests of the child, then such practice as they may have followed previously shall prevail. Otherwise, the matter may be referred to the Judge in Chambers, who shall give a ruling after attempting to reconcile the parties.³⁵ Moreover, with respect to third parties acting in good faith, both the father and the mother are deemed to act with the agreement of the other when they individually perform a customary act of parental authority in relation to the child.³⁶

29. Article 373 of the Civil Code specifies 3 situations where one of the parents may lose his or her parental authority or be temporarily deprived of it: if he is unable to express his will, due to his incapacity, absence, estrangement or any other cause; if a judgment of revocation or withdrawal has been pronounced against him, in respect of those of his rights which have been withdrawn; if he has been convicted of abandoning his children.³⁷ Furthermore, if one of the parents has passed away or is subject to one of the

³¹ 'En quoi consiste le droit au respect de la vie privée ?' (6 June 2023) <https://www.vie-publique.fr/fiches/23879-en-quoi-consiste-le-droit-au-respect-de-la-vie-privee#:~:text=il%20implique%20%3A,au%20d%C3%A9veloppement%20des%20outils%20num%C3%A9riques>.

³² Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, art. 371-2, *alinéa* 1.

³³ Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, art. 371-2, *alinéa* 2.

³⁴ Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 372.

³⁵ Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 372-1.

³⁶ Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 372-2.

³⁷ Code civil mauricien, Livre 1^{er}, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 373.

circumstances referred to in article 373, the exercise of parental authority is entirely devolved to the other parent.³⁸

30. In the event that the parents are divorced or judicially separated, then the parental authority is exercised by the parent to whom the Supreme Court grants the custody of the child, with the exception of the right of visit of the other parent.³⁹ In case a child is born out of wedlock, then parental authority is exercised by the father or mother who has voluntarily acknowledged the child, if the latter has been acknowledged by only one of them.⁴⁰

31. The Civil Code further states that parental authority may be withdrawn from fathers and mothers who are convicted as authors, co-authors or accomplices of a crime or misdemeanour committed against their child, or as co-authors or accomplices of a crime or misdemeanour committed by their child.⁴¹ Nevertheless, parental authority may also be withdrawn from fathers and mothers who, either through ill-treatment, or through serious instances of habitual drunkenness, notorious misconduct or delinquency, or through a lack of care or a lack of supervision, manifestly endanger the child’s safety, health or morals.⁴²

iii. Children’s Act 2020

32. The Law Reform Commission subsequently analysed the Children’s Act 2020 with the aim of evaluating whether there are statutory provisions that protect children in the digital environment.

33. Part II of the Act relates to the implementation of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child

³⁸ Code civil mauricien, Livre 1er, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 373-1.

³⁹ Code civil mauricien, Livre 1er, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 373-2.

⁴⁰ Code civil mauricien, Livre 1er, Tit. IV, Ch. 1^{er}, s. 1^{ère}, art. 374.

⁴¹ Code civil mauricien, Livre 1er, Tit. IV, Ch. 1^{er} s. 2^{ème}, art. 375.

⁴² Code civil mauricien, Livre 1er, Tit. IV, Ch. 1^{er} s. 2^{ème}, art. 376.

and Sub-Part A of this particular Part concerns the best interests of children and parental responsibilities.

34. By virtue of section 4 of the Act, any person, Court, institution or other body, must give primary consideration to the best interests of a child, in respect of any matter pertaining to the latter.⁴³ In so doing, the Act specifies 14 instances where the rights and best interests of the child must be respected, as depicted below: -

“... every person, every Court, every institution or any other body shall, in relation to any matter concerning a child –

- (a) respect, protect, promote and fulfil the rights and the best interests of the child;*
- (b) respect the inherent dignity of the child;*
- (c) treat the child fairly and equitably and give the child an opportunity to be heard;*
- (d) protect the child from discrimination;*
- (e) bear in mind the needs of the child for its development, including any special needs which may be due to a disability;*
- (f) give, where appropriate, the child and the child’s family member an opportunity to express their views;*
- (g) take the views of the child into account;*
- (h) act, as far as possible, promptly;*
- (i) have regard to the desirability of*
 - i. placing the child with a family member;*
 - ii. placing siblings together,*

where the child has to be removed from the custody of the child’s parents;

- (j) adopt an approach which is conducive to conciliation;*
- (k) inform the child, having regard to the age, maturity and stage of development of the child, of the outcome of any proceedings, act or decision relating to the child;*
- (l) inform any person having parental responsibilities and rights in respect of the child of the outcome of any proceedings, act or decision relating to the child;*

⁴³ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 4 (1).

- (m) have, where appropriate, regard to the capacity of the parents or any other person to provide for the financial, emotional or other needs of the child; and*
- (n) consider, in the case of a child under the age of 5, all surrounding circumstances and the parenting capacity of both parents of the child before taking a decision regarding its custody.”⁴⁴*

35. In essence, as emphasis given to sub-sections (f) and (g) in the former paragraph, the child must be given an opportunity to express his views, and which must be considered. Thus, the Law Reform Commission opines whether a child’s views not to feature in his parents’ posts on social media ought indeed to be given due consideration and whether parents’ posts about their children against their will would contravene these sub-sections.

36. Moreover, section 7 of the Act concerns parental responsibilities and rights. And clearly specifies that more than one person can hold parental responsibilities and rights in respect of a child.⁴⁵ By virtue of section 7 (2) of the Act, the parental responsibilities and rights which a person may have in respect of a child include the responsibility and right to have the child’s custody, provide for the child’s basic needs, including the responsibility to take decisions relating to the child’s day-to-day upbringing;⁴⁶ maintain contact with the child;⁴⁷ act as the child’s guardian⁴⁸ and contribute to the maintenance of the child as co-holders of parental responsibilities and rights.⁴⁹

37. Furthermore, section 27 of the Act concerns the right to privacy and explicitly states the following: -

“No person shall do an act which affects the privacy of a child.
... no person shall, in relation to a child witness, child victim or child offender, publish or broadcast in the media any information in any form, including a photograph, a

⁴⁴ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 4 (2).

⁴⁵ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 7 (1).

⁴⁶ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 7 (2)(a).

⁴⁷ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 7 (2)(b).

⁴⁸ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 7 (2)(c).

⁴⁹ Children’s Act 2020, Pt. II, Sub-Pt. A, s. 7 (2)(d).

picture, a video recording or an audio recording, which identifies or tends to identify, the child.”

38. However, upon carefully analysing the said sub-section of the Act, the Law Reform Commission presumed that it is likely that this provision merely protects the privacy of a child witness, child victim or child offender with respect to any publication or broadcast in the media,⁵⁰ rather than respecting the child’s right to a private life.

⁵⁰ According to Children’s Act 2020, PT. III, Sub-Pt. A, s. 27 (6), “**media**” means ‘any print, broadcast or online media, regardless of whether or not these are incorporated or otherwise legally registered; and includes online periodicals, television and radio broadcasts, blogs and other social media unless restricted to members only.’

PART III: ANTI SHARENTING LAWS IN OTHER JURISDICTIONS

Italy

39. On 21 March 2024, a draft Bill was presented by a two-party coalition to the House of Representatives, echoing the recent French law and thus aiming to safeguard children’s privacy online and their right to their own image. Unlike the French law, the 3-article Italian draft Bill will not restrict parents from sharing their children’s images online but instead would seek to reduce the risks.⁵¹
40. The first article would place a duty upon parents to officially assert the use of their children’s image online to the Italian Communications Regulatory Authority (AGCOM). If such activities generate a direct profit, then such money will have to be transferred by the parents to a bank account in their child’s name and which will ultimately be accessible to the child upon reaching 18 years old.⁵²

France

41. The relationship between the youth and the digital environment is a growing concern for the French Parliament. France remains amongst the few countries in the world to enact laws promoting the protection of minors on the Internet. Indeed, in 2016, a law was promulgated for a « *République numérique* », enhancing the practice of a child’s right to be forgotten.⁵³ In 2020, specific judicial measures were undertaken to protect child influencers and to enable minors to request the deletion of their images without

⁵¹ C. Castro, “Child influencers at risk as legislators look to regulate sharenting” (19 April 2024) <https://www.tomsguide.com/computing/social-media/child-influencers-at-risk-as-legislators-look-to-regulate-sharenting>

⁵² C. Castro, “Italy considers law against sharenting to protect children’s privacy” (5 April 2024) <https://sg.news.yahoo.com/italy-considers-law-against-sharenting-160023735.html>

⁵³ Loi n° 2016-1321 du 7 octobre 2016 pour une République numérique.

their parents’ consent.⁵⁴ Furthermore, parental control over the means to access the Internet has been tightened since 2022.⁵⁵

42. Recently, the French Civil Code has been amended by « *Loi n° 2024-120 du 19 février 2024, visant à garantir le respect du droit à l’image des enfants* ». The objective of this law is to ensure better protection of children’s image rights on the internet, as recommended by the Defender of Rights and the Ombudsperson for Children, relating to respect for children’s private lives, in its annual report of 2022.
43. Distinct from standards or bills concerning the sharing of children’s personal data which may exist in other jurisdictions, such as the UK Age Appropriate Design Code or the Californian Bill on the collection of personal information of a consumer below 18 years of age, which are applicable to data controllers or processors, this piece of legislation applies directly to children’s parents or guardians.
44. The purpose of the Children’s Image Rights Law is to address the risks of sharenting, including by finalising actions that had been enacted under the ‘Child Influencers Law’; to limit risk-creating behaviour; to enshrine children’s right to privacy and to simplify the exercise of rights which safeguard minors.⁵⁶ This law further reminds parents that the rights to privacy and to their image are inherent to children since photos and videos are personal data. Thus, their digital rights consist of a right of access, rectification, erasure, and a right to object concerning their personal data that can be carried out on their own or by a legal representative. Parents or guardians can practise their children’s rights on their behalf, particularly their right to deletion in case photos or videos posted by them have been reused without their authority.
45. The right to erasure, also known as ‘the right to be forgotten’ is administered under Article 17 of the General Data Protection Regulation (GDPR).⁵⁷ Parents willing to

⁵⁴ Loi n° 2020-1266 du 19 octobre 2020 visant à encadrer l’exploitation de l’image d’enfants de moins de seize ans sur les plateformes en ligne.

⁵⁵ Loi n° 2022-300 du 2 mars 2022 visant à renforcer le contrôle parental sur les moyens d’accès à internet.

⁵⁶ CNIL’s guidance, “Sharing photos and videos of your child on social networks: what are the risks”.

⁵⁷ ‘Art. 17 GDPR Right to erasure (‘right to be forgotten’)' <https://gdpr-info.eu/art-17-gdpr/>

exercise such a right on behalf of their child, may request the data controller to delete personal information about the child.⁵⁸

46. France is one of the only countries that is proposing a sharenting law proposal that protects the privacy of children on social media. The proposal was introduced in 2020 and will apply to children under the age of 13. It aims to stop parents from sharing images of their children on social media, without the child’s consent. Parents would need to obtain their child’s permission before posting anything personal about them. If the law passes, a breach of the act could result in a fine of up to €45,000 or up to a year in prison.⁵⁹
47. Book I, Title IX of the French Civil Code deals with « *De l’autorité parentale* » and is divided into 2 Chapters; Chapter I concerns « *De l’autorité parentale relativement à la personne de l’enfant* » while the second Chapter is with respect to « *De l’autorité parentale relativement aux biens de l’enfant* ». As this Issue Paper is axed towards the law for the prevention of sharenting, the focus shall solely be upon the first Chapter as aforementioned.
48. The latter is sub-divided into 5 sections : « *De l’exercice de l’autorité parentale ; De l’assistance éducative ; De la délégation de l’autorité parentale ; Du retrait total ou partiel de l’autorité parentale et du retrait de l’exercice de l’autorité parentale ; De la déclaration judiciaire de délaissement parental* ».
49. There are 4 key amendments to the French Civil Code following the promulgation of « *Loi n° 2024-120 du 19 février 2024* » ; article 371-1 of the Civil Code: incorporation of the concept of private life into the definition of parental authority; article 371-2: joint exercise of the parents’ right to the child’s image; article 373-2-6: prohibition of

⁵⁸ M.D. Le Clerc and J. Leportois, ‘France introduces new law to enhance the protection of children’s rights in France’ (19 March 2024) <https://www.connectontech.com/france-introduces-new-law-to-enhance-the-protection-of-childrens-rights-in-france/>

⁵⁹ <https://netsafe.org.nz/blog/index.php/2023/03/29/what-you-need-to-know-about-sharenting/#:~:text=Specific%20Laws%20for%20sharenting&text=It%20aims%20to%20stop%20parents,posting%20anything%20personal%20about%20them.>

publication or dissemination of the child’s image without the other parent’s consent and article 377 regarding the devolution of parental authority in the event of improper use of the child’s image.

50. Parental authority is defined as a series of rights and duties whose ultimate aim is the child’s best interests. Previously, it was the parents’ responsibility to safeguard the child’s safety, health and morals, to ensure his education and to enable his development until the child reaches the age of majority or upon his emancipation. However, following the amendment made to article 371-1 of the Civil Code, parents are now under an obligation, to protect the child’s private life. The article further emphasises the importance of involving the child in decisions concerning him, in accordance with his age and maturity.

51. Article 371-1 states the following: -

« L'autorité parentale est un ensemble de droits et de devoirs ayant pour finalité l'intérêt de l'enfant.

Elle appartient aux parents jusqu'à la majorité ou l'émancipation de l'enfant pour le protéger dans sa sécurité, sa santé, sa vie privée et sa moralité, pour assurer son éducation et permettre son développement, dans le respect dû à sa personne.

L'autorité parentale s'exerce sans violences physiques ou psychologiques.

Les parents associent l'enfant aux décisions qui le concernent, selon son âge et son degré de maturité ».

52. Next, the Civil Code provides that parents have the joint responsibility to protect their child’s image right and to consider the latter’s views concerning the exercise of his right to his image in accordance with his age and maturity. Article 372-2 states the following:
-

« Les parents protègent en commun le droit à l'image de leur enfant mineur, dans le respect du droit à la vie privée mentionné à l'article 9.

Les parents associent l'enfant à l'exercice de son droit à l'image, selon son âge et son degré de maturité. »

53. However, there may exist cases where one parent acts to the detriment of his or her minor child, by posting his photos or sensitive information with respect to the child, while the other parent objected to such an action. In such cases, the Civil Code empowers a Judge to intervene in situations where there is a potential disagreement between both parents, as to their responsibility with regards to the child's image right.

54. Article 373-2-6 of the Civil Code thus caters for the lawful restriction of a parent from posting information about his or her child. The relevant article states as follows: -

« Le juge du tribunal judiciaire délégué aux affaires familiales règle les questions qui lui sont soumises dans le cadre du présent chapitre en veillant spécialement à la sauvegarde des intérêts des enfants mineurs.

Le juge peut prendre les mesures permettant de garantir la continuité et l'effectivité du maintien des liens de l'enfant avec chacun de ses parents.

Il peut notamment ordonner l'interdiction de sortie de l'enfant du territoire français sans l'autorisation des deux parents. Cette interdiction de sortie du territoire sans l'autorisation des deux parents est inscrite au fichier des personnes recherchées par le procureur de la République.

Il peut également, en cas de désaccord entre les parents sur l'exercice du droit à l'image de l'enfant, interdire à l'un des parents de diffuser tout contenu relatif à l'enfant sans l'autorisation de l'autre parent.

Il peut, même d'office, ordonner une astreinte pour assurer l'exécution de sa décision. Si les circonstances en font apparaître la nécessité, il peut assortir d'une astreinte la décision rendue par un autre juge ainsi que l'accord parental constaté dans l'un des titres mentionnés aux 1^o et 2^o du I de l'article 373-2-2. Les dispositions des articles L. 131-2 à L. 131-4 du code des procédures civiles d'exécution sont applicables.

Il peut également, lorsqu'un parent fait délibérément obstacle de façon grave ou renouvelée à l'exécution de l'un des titres mentionnés aux 1° à 6° du I de l'article 373-2-2, le condamner au paiement d'une amende civile d'un montant qui ne peut excéder 10 000 €. »

55. The Civil Code further enables the total or partial devolution of parental authority to a third party; a family member; a trustworthy relative, an establishment authorised to take in children or a departmental child welfare service, in case the dissemination of the child's image by his or her parents significantly undermines the child's dignity or moral integrity.⁶⁰ Article 377 of the Civil Code provides the following: -

« Les père et mère, ensemble ou séparément, peuvent, lorsque les circonstances l'exigent, saisir le juge en vue de voir déléguer tout ou partie de l'exercice de leur autorité parentale à un tiers, membre de la famille, proche digne de confiance, établissement agréé pour le recueil des enfants ou service départemental de l'aide sociale à l'enfance.

Le particulier, l'établissement ou le service départemental de l'aide sociale à l'enfance qui a recueilli l'enfant ou un membre de la famille peut également saisir le juge aux fins de se faire déléguer totalement ou partiellement l'exercice de l'autorité parentale :

1° En cas de désintérêt manifeste des parents ;

2° Si les parents sont dans l'impossibilité d'exercer tout ou partie de l'autorité parentale ;

3° Si un parent est poursuivi par le procureur de la République, mis en examen par le juge d'instruction ou condamné, même non définitivement, pour un crime commis sur la personne de l'autre parent ayant entraîné la mort de celui-ci ;

4° Si un parent est poursuivi par le procureur de la République, mis en examen par le juge d'instruction ou condamné, même non définitivement, pour un crime ou une agression sexuelle incestueuse commis sur son enfant alors qu'il est le seul titulaire de l'exercice de l'autorité parentale.

⁶⁰ Code Civil, Liv. 1^{er}, art. 377.

Dans les cas prévus aux 3° et 4°, le juge peut également être saisi par le ministère public, avec l'accord du tiers candidat à la délégation totale ou partielle de l'exercice de l'autorité parentale, à l'effet de statuer sur ladite délégation. Le cas échéant, le ministère public est informé par transmission de la copie du dossier par le juge des enfants ou par avis de ce dernier.

Lorsque la diffusion de l'image de l'enfant par ses parents porte gravement atteinte à la dignité ou à l'intégrité morale de celui-ci, le particulier, l'établissement ou le service départemental de l'aide sociale à l'enfance qui a recueilli l'enfant ou un membre de la famille peut également saisir le juge aux fins de se faire déléguer l'exercice du droit à l'image de l'enfant.

Dans tous les cas visés au présent article, les deux parents doivent être appelés à l'instance. Lorsque l'enfant concerné fait l'objet d'une mesure d'assistance éducative, la délégation ne peut intervenir qu'après avis du juge des enfants. »

Australia

56. Data reported in August 2023 by the Australian Community Attitudes to Privacy Survey (ACAPS), revealed that 79% of parents' primary concern related to the protection of their child's personal information, while only 50% of parents disclosed that they were able to protect their child's privacy. Ninety-one percent of parents declared that privacy was of utmost importance when determining whether to provide their child with access to digital devices and services.⁶¹

57. In August 2024, the Australian Government intends to introduce reforms to the Privacy Act, including drafting Australia's first child data protection law, known as the Children's Online Privacy Code.⁶² Currently, the Privacy Act 1988 promotes the

⁶¹ “Australian Community Attitudes to Privacy Survey 2023” (08 August 2023)

<https://www.oaic.gov.au/engage-with-us/research-and-training-resources/research/australian-community-attitudes-to-privacy-survey/australian-community-attitudes-to-privacy-survey-2023>

⁶² J. Cheeseman, E. Croft and J. Maybloom, “Australia to fast-track some privacy & e-safety reforms to bolster individual rights and combat doxxing” (03 May 2024)

<https://www.twobirds.com/en/insights/2024/australia-to-fast-track-some-privacy-esafety-reforms>

protection of an individual’s privacy, irrespective of age⁶³ and makes no specification concerning an age after which an individual can make their own privacy decisions.

58. In 2014, the Australian Law Reform Commission recommended in its report, titled “*Serious Invasions of Privacy in the Digital Era*”, that a statutory tort be introduced under the Privacy Act 1988, for serious invasions of privacy, that have either been committed purposefully or recklessly, and that cannot be rationalised in the public interest.⁶⁴ Furthermore, according to a review of the Privacy Act, suggestions for enhanced privacy protections were particularly geared towards children, owing to their vulnerability.⁶⁵ Submitters discovered that children were progressively being technologically engaged, and articulated their concern that entities might recurrently share children’s data for advertising purposes, or involve in injurious tracking, profiling of, or targeted marketing to children.⁶⁶

59. Nevertheless, even after the Children’s Online Privacy Code comes into being in Australia, it would be similar to the ‘Age Appropriate Design Code’ in place in the United Kingdom, and as such, it would target data controllers in relation to the personal information of children, rather than placing a legal obligation upon parents or guardians to safeguard the child’s image right and the latter’s right to a private life.

⁶³ Privacy Act 1988 (Australia), Pt. I, s. 2A (a).

⁶⁴ Australian Government, Australian Law Reform Commission (ALRC) Summary Report 123, “*Serious Invasions of Privacy in the Digital Era*” (June 2014) https://www.alrc.gov.au/wp-content/uploads/2019/08/summary_report_whole_pdf.pdf

⁶⁵ Submissions to the Issues Paper: OAIC; Castan Centre for Human Rights Law – Monash University; Reset Australia; Data Synergies; Salinger Privacy; Australian Council on Children and the Media; Privacy108; Obesity Policy Coalition; Google; Snap Inc.; ACCC; Department of Health of Western Australia; Centre for Cyber Security Research and Innovation; Australian Information Security Association; Australian Communications Consumer Action Network; Fundraising Institute Australia; Guardian Australia; ABC; Deloitte; Royal Australian College of General Practitioners; Digital Rights Watch, Access Now, Centre for Responsible Technology Australia, Electronic Frontiers Australia, Fastmail and Reset Australia (joint submission); Uniting Church in Australia.

⁶⁶ Submissions to the Issues Paper: Castan Centre for Human Rights Law – Monash University, 31; OAIC, 80, 84, 91; Privacy108, 11; Salinger Privacy, 23; Obesity Policy Coalition, 2–3.

PART IV: RECOMMENDATIONS

60. Upon analysing the laws prevailing in foreign jurisdictions with respect to how children’s image rights are preserved, the Law Reform Commission has devised certain legislative reform proposals, given that existing laws are inadequate to secure the right to privacy of children in the digital environment.
61. The Commission recommends the amendment of the Mauritian Civil Code, by taking inspiration from the French Civil Code. In particular, it proposes that article 371-2 be amended to include that parents are under a legal obligation to ensure the child’s right to a private life. In so doing, the first *alinéa* of article 371-2 would be read as follows:
- *Art. 371-2 « L’autorité parentale appartient aux père et mère pour protéger l’enfant dans sa sécurité, sa santé, sa vie privée et sa moralité ».*
62. Upon a comparison of the Mauritian Civil Code with the French Civil Code, the Law Reform Commission discovered certain major differences. For instance, according to the French Civil Code, the separation of the parents has no effect on the rules of devolution of the exercise of parental authority in France.
63. By contrast, in the Mauritian Civil Code, article 372 precisely states that in the event of a de facto separation of the father and mother, the Judge in chambers, or the Supreme Court, shall decide on the custody of the child, considering exclusively the best interests of the child. Parental authority is then exercised by the father and mother to whom custody has been awarded, with the exception of the other’s right of visit.
64. Therefore, the Law Reform Commission proposes that articles 372 and 372-1 be repealed and replaced by new ones. In this respect, article 372 would be worded as follows: -

Art. 372 « Les père et mère exercent en commun l’autorité parentale.

Toutefois, lorsque la filiation est établie à l'égard de l'un d'entre eux plus d'un an après la naissance d'un enfant dont la filiation est déjà établie à l'égard de l'autre, celui-ci reste seul investi de l'exercice de l'autorité parentale. Il en est de même lorsque la filiation est judiciairement déclarée à l'égard du second parent de l'enfant ou, dans le cas d'un établissement de la filiation dans les conditions prévues au chapitre I du titre VII du présent livre, lorsque la mention de la reconnaissance conjointe est apposée à la demande de l'Attorney-General.

L'autorité parentale pourra néanmoins être exercée en commun en cas de déclaration conjointe des père et mère adressée au greffe de la Cour Suprême ou sur décision du Juge en Chambre ».

65. The new article 372-1 would specifically target parents to jointly safeguard their minor child's image rights, in accordance with the right of respect to a private life enshrined under article 22 of the Mauritian Civil Code. The Commission recommends that the new article be written similarly to the French Civil Code, as below: -

Art. 372-1 « Les parents protègent en commun le droit à l'image de leur enfant mineur, dans le respect du droit à la vie privée mentionné à l'article 22.

Les parents associent l'enfant à l'exercice de son droit à l'image, selon son âge et son degré de maturité ».

66. The second *alinéa* of article 372-1 explicitly makes it a legal obligation for parents to involve a child in exercising his right to an image, according to his age and degree of maturity.

67. In addition, the Law Reform Commission recommends that the Children's Act 2020 be amended, by inserting a new sub-section (4) under section 7 of the Act, which concerns 'Parental responsibilities and rights', which could be worded as follows: -

7. Parental responsibilities and rights

(4) “Notwithstanding article 372-1 of the Code Civil, parents or legal guardians shall not share, post or distribute any identifying information of their child on any digital platform, unless it is in the best interests of the child.”

68. Consequently, the interpretation section of the Children’s Act 2020 ought to be amended in order to provide for the interpretation of the terms ‘*identifying information*’ and ‘*digital platform*’. Whilst ‘*identifying information*’ could be defined as including any image; video; biographical details concerning a child, ‘*digital platform*’ could be defined as including social media and online blogs.
69. However, the Law Reform Commission considers that where the child has provided his informed consent that his identifying information be shared or posted on digital platforms, taking into consideration the child’s age, degree of maturity and a sound understanding of its implications, or where such sharing is for legitimate educational, health or welfare purposes, with measures in place to protect the child’s identity and privacy, then such a prohibition would not apply. In this respect, the Commission has deemed it important that a further provision be included under section 7 of the Children’s Act 2020, that would cater for the two instances where the prohibition to display identifying information about a child on a digital platform would not apply.
70. Additionally, the Commission, taking inspiration from the French Civil Code, is of the view that a new article ought to be included in the Mauritian Civil Code, that would empower the Judge in Chambers to intervene in case a dispute arises between parents concerning their child’s image right and to prohibit one of the parents from disseminating any content relating to the child without the authorisation of the other parent. In this respect, the Commission proposes to repeal article 373-2 of the Civil Code and to replace it with a new one, and to insert a new article 373-2-1.

Art. 373-2 « La séparation est sans incidence sur les règles de dévolution de l'exercice de l'autorité parentale.

Chacun des père et mère doit maintenir des relations personnelles avec l'enfant et respecter les liens de celui-ci avec l'autre parent.

A cette fin, à titre exceptionnel, à la demande de la personne directement intéressée ou du Juge en Chambre, l'Attorney-General peut requérir le concours de la force publique

pour faire exécuter une décision du Juge en Chambre, une convention de divorce par consentement mutuel prenant la forme d'un acte sous signature privée contresigné par avocats déposé au rang des minutes d'un notaire ou une convention homologuée fixant les modalités d'exercice de l'autorité parentale.

Tout changement de résidence de l'un des parents, dès lors qu'il modifie les modalités d'exercice de l'autorité parentale, doit faire l'objet d'une information préalable et en temps utile de l'autre parent. En cas de désaccord, le parent le plus diligent saisit le Juge en Chambre qui statue selon ce qu'exige l'intérêt de l'enfant. Le Juge répartit les frais de déplacement et ajuste en conséquence le montant de la contribution à l'entretien et à l'éducation de l'enfant ».

Art. 373-2-1 « Le Juge en Chambre règle les questions qui lui sont soumises dans le cadre du présent chapitre en veillant spécialement à la sauvegarde des intérêts des enfants mineurs.

Le Juge peut prendre les mesures permettant de garantir la continuité et l'effectivité du maintien des liens de l'enfant avec chacun de ses parents.

Il peut, en cas de désaccord entre les parents sur l'exercice du droit à l'image de l'enfant, interdire à l'un des parents de diffuser tout contenu relatif à l'enfant sans l'autorisation de l'autre parent.

Il peut même d'office, ordonner une astreinte pour assurer l'exécution de sa décision ».

71. The Commission further proposes that a new article 374-2 be included in the Civil Code, which could be drafted as follows: -

Art. 374-2 « Lorsque la diffusion de l'image de l'enfant par ses parents porte gravement atteinte à la dignité ou à l'intégrité morale de celui-ci, le particulier, l'établissement ou le service d'aide à l'enfance qui a recueilli l'enfant ou un membre de la famille peut saisir le Juge en Chambre aux fins de se faire déléguer l'exercice du droit à l'image de l'enfant ».

CONCLUSION

72. The practice of sharenting represents a significant challenge in the digital age, one that straddles the domains of law, technology, and ethics. This Issue Paper has sought to illuminate the multifaceted risks posed by sharenting, including violations of children’s privacy, exposure to identity theft, cyberbullying, and other forms of exploitation. In doing so, it has underscored the urgent need for Mauritius to adopt a proactive legal framework that safeguards the rights of children while navigating the complexities of parental freedoms and responsibilities in an increasingly digital society.
73. A child has a rudimentary right to privacy. Thus, sharing a child’s images and personal details without their informed consent, could violate their privacy and which in turn could put them at risk of perilous consequences. A child’s exposure on digital platforms without their approval, also denies them the choice of not being on social media. While the parents’ action of sharing information about their children’s day-to-day activities, could momentarily be perceived as a non-malicious and customary one, yet it is highly likely to amount to lifelong repercussions for the child. Not only can excessive sharing of personal information about children, give rise to digital kidnapping, sextortion and cyberbullying but rifts may also be caused between a parent-child relationship, for not paying heed to a child’s choice of being featured in their parents’ online posts or not.
74. Such issues may particularly affect younger children, who might not be old enough to speak for themselves or those lacking the degree of maturity to be able to understand the possible implications of sharenting. Therefore, in this Issue Paper, the Law Reform Commission has analysed the concept of sharenting; its perilous consequences; anti-sharenting laws in France, Italy and Australia and has evaluated certain reform proposals of the Mauritian Civil Code and the Children’s Act 2020. The Commission has principally been inspired by the French Civil Code while making legislative proposals.
75. The analysis of existing Mauritian laws, including the Data Protection Act 2017 and the Children’s Act 2020, reveals commendable efforts to regulate digital and child-related issues but also exposes significant gaps in addressing the specific challenges

posed by sharenting. The absence of explicit legal provisions that impose a duty on parents to protect their children’s digital identities highlights the need for targeted legislative reform. Without such measures, children remain vulnerable to long-term harm, including the creation of an indelible digital footprint that may limit their future autonomy and opportunities.

76. Overall, it proposes that the Mauritian Civil Code be amended in order to incorporate the notion of private life into the definition of parental authority; to establish the joint exercise of the parents’ right to the child’s image; to allow a Judge in Chambers to intervene in case a dispute arises when one parent publishes or disseminates the child’s image without the authorisation of the other parent and as such to empower the Judge to prohibit same; prohibit a parent from publishing or disseminating the publication or dissemination of the child’s image and in allowing the possibility for a total or partial devolution of parental to a third party; a family member; a trustworthy relative, an establishment authorised to take in children or a departmental child welfare service, in case the dissemination of the child’s image by his or her parents significantly undermines the child’s dignity or moral integrity.
77. In proposing amendments to the Mauritian Civil Code and the Children’s Act 2020, this paper draws extensively on best practices from jurisdictions such as France, which has pioneered legislation aimed at safeguarding children’s image rights. The recommended reforms are grounded in the principles of balancing parental freedoms with the inherent rights of the child, emphasising the importance of informed consent, judicial oversight, and shared parental responsibility. These measures are not intended to penalise parents but to foster a culture of responsible digital behaviour that prioritises the best interests of the child.
78. Children, as individuals with distinct rights, must be afforded protection in both the physical and digital realms. The principle enshrined in Article 16 of the United Nations Convention on the Rights of the Child (UNCRC)—the right to privacy—serves as a cornerstone for rethinking the boundaries of parental authority in the context of sharenting. While the digital environment provides unprecedented opportunities for

connection and expression, it also demands heightened vigilance to protect vulnerable individuals, particularly children, from the unintended consequences of overexposure.

79. Ultimately, the fight against the perils of sharenting is not solely a legal endeavour, it requires a collective societal effort to raise awareness, educate parents, and instil a culture of respect for children’s rights. Through the proposed legislative reforms and complementary public education initiatives, Mauritius has the opportunity to establish a legacy of digital responsibility and child-centric governance, securing a safer, more equitable future for its youngest citizens. This document serves as both a call to action and a blueprint for change, urging policymakers to act decisively in addressing one of the defining challenges of our time.