

Article

Children's personal information and personal data protection under the laws of the EU, US and Vietnam

Tố Trang Lâm

Faculty of Law, Ho Chi Minh City Open University, Ho Chi Minh City 70000, Vietnam; trang.lamt@ou.edu.vn

CITATION

Lâm TT. (2024). Children's personal information and personal data protection under the laws of the EU, US and Vietnam. *Journal of Infrastructure, Policy and Development*. 8(14): 8143. <https://doi.org/10.24294/jipd8143>

ARTICLE INFO

Received: 23 July 2024

Accepted: 23 August 2024

Available online: 19 November 2024

COPYRIGHT



Copyright © 2024 by author(s). *Journal of Infrastructure, Policy and Development* is published by EnPress Publisher, LLC. This work is licensed under the Creative Commons Attribution (CC BY) license. <https://creativecommons.org/licenses/by/4.0/>

Abstract: The explosion of information technology, besides its positive aspects, has raised many issues related to personal information and personal data in the network environment. Because children are vulnerable to abuse, fraud and exploitation, protecting children's personal information and personal data is always of concern to many countries. From the concept and characteristics of personal information and personal data of children in Europe, the United States and Vietnam, it can be seen that children's personal information and personal data protection is very necessary in every country today. This research focuses on the age considered a child, the child's consent and his or her parental consent when providing and processing personal information or personal data of children under the laws of the EU, US and Vietnam. Therefore, the article proposes some recommendations related to the child's consent and his or her parental consent in protecting children's personal data in Vietnam.

Keywords: age; consent; children; parents; personal data; personal information

1. Introduction

According to recent statistics, by 2023, the world will have nearly 70% of the population using the Internet (Ani, 2024), including more than 175,000 children worldwide going online for the first time every day, there is a new child every half second (Unicef, 2023). Although digital technology opens up many opportunities for children to develop on the online platform, it also creates certain risks for them. Children can easily fall into the traps of strangers on the internet or access harmful content such as violence; being exposed to private information or personal data, being bullied online, being manipulated, harassed, defrauded, blackmailed, threatened or forced to participate in illegal activities. The United Nations Children's Fund (referred to as UNICEF) reports that one in five young people say that they have been victims of online bullying. In addition, statistics also show that more than 3 million accounts are registered on the 10 most harmful child sexual abuse websites (VNA, 2023). In 2022, 96% of children in the EU used internet services daily, compared with 84 % of the entire population, according to Eurostat (Eurochild, 2024). In the US, the rate of children from 3 to 18 years old accessing the Internet is quite high regardless of whether their parents had attained a bachelor's or higher degree (National Center for Education Statistics, 2023). In Asia, Vietnam has nearly 80% of the population using the Internet (Simon, 2023). According to a report by UNICEF, 83% of Vietnamese children aged 12–13 years old use the Internet. This number increases to 93% at the age of 14–15 years old. Based on a survey by the Ministry of Labor, War Invalids and Social Affairs in Vietnam, children use social networks from 5 to 7 hours/day (Ban, 2023). According to a report by the National Hotline for Child Protection (111), in 2022, nearly 420 calls were received about child protection in the online environment

and 18 notices about channels or video clips that had harmful effects on children. Figures for the first five months of 2023 show 128 calls and three notifications (VNA, 2023). However, only 36% of Vietnamese children, mostly aged 16–17, are taught about online safety (Ban, 2023). Furthermore, in Vietnam, it is customary for parents or relatives to automatically consider themselves as having the right to post images of their children's daily lives, from academic achievements, awards, to photos of children's daily activities. They also believe that banning children's personal information and images on social networks is unreasonable because that is the right of parents (Hong, 2024). The above statistics and habits in Vietnam show that protecting children in the digital environment, including children's personal information and personal data, is one of the most necessary issues today. Vietnam has recently promulgated one legal document related to personal data protection in general and children's personal data protection in particular. In Europe, since the development of the Internet in the 1990s, attention has been paid to the protection of personal data. However, regarding the consent for processing children's personal data, Europe still has to learn from the experience of the US (Milda and Eleni, 2017). In contrast to Europe and the US where the protection of personal data has been of concern for a long time, in Vietnam, until last year, on 17 April 2023, the Vietnamese Government recently issued the Decree 13/2023/ND-CP dated 17 April 2023 on personal data protection. The first part of this research presents the concept and characteristics of personal information and personal data in Europe, the United States and Vietnam. The following sections of this article mainly focus on the age considered a child, the child's consent and his or her parental consent when providing and processing personal information or personal data of children under the laws of the EU, US and Vietnam. Finally, this article proposes some recommendations related to the child's consent and his or her parental consent in protecting children's personal data in Vietnamese legal system today.

2. Methodology

After scoping searches of the literature, including the official legal documents in EU, the US and Vietnam and the other materials, a descriptive statutory approach through legal research is the first method applied in this article. In addition, the analysis of regulations related to personal information and personal data of children under the laws of the EU, US and Vietnam is also used in this study. Moreover, a comparative method is adopted throughout this article in order to compare the provisions of European, United States and Vietnamese laws related to the protection of children's personal information and personal data in every country. Firstly, the age of children in EU, the US and Vietnam is clarified in this study. Moreover, the child's consent in Europe and the parental consent in the US are compared with Vietnam on the same issue in this article.

The three main sources of law used for description, analysis and comparison are as follows.

Firstly, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the

processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Secondly, the Children's Online Privacy Protection Rule of 1998 (COPPA), a United States federal law, enacted on 21 October 1998 and effective from 21 April 2000.

Thirdly, the Decree 13/2023/ND-CP dated 17 April 2023 of the Vietnamese Government on personal data protection.

3. Results and discussion

3.1. Overview of children's personal information and personal data in Europe, the United States and Vietnam

Before studying the protection of personal information and personal data of children in Europe, the United States and Vietnam, it is necessary to know the concepts and characteristics of personal information and personal data in these countries.

3.1.1. Concept of children's personal data in Europe

The Internet, formerly known as ARPANET, was born in the 1960s as a means for government researchers to share information. However, more than 20 years later, 1 January 1983 is considered the day the Internet was officially born. When the Internet began to develop in countries around the world in the 1990s (Barry et al., 1997), the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data is adopted on 24 October 1995. Then, on 25 January 2012, The European Commission proposes a comprehensive reform of the EU's 1995 data protection rules in order to enhance online privacy rights and promote the digital economy of Europe. On 23 March 2012, the Article 29 Working Party adopts an Opinion on the data protection reform proposal. Two years later, on 12 March 2014, the European Parliament demonstrates strong support for the General Data Protection Regulation by voting in plenary with 621 votes in favor, 10 against and 22 abstentions, leading to the adoption of the General Data Protection Regulation. On 15 December 2015, the European Parliament, the Council and the Commission reach an agreement on the General Data Protection Regulation. On 2 February 2016, the Article 29 Working Party issues an action plan for the implementation of the General Data Protection Regulation. Two months later, there is the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (referred to as General Data Protection Regulation). On 25 May 2018, the European Parliament and the Council adopted the Corrigendum to Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. This is also the day the General Data Protection Regulation in Europe was applied until now (European Union, 2024). This regulation does not provide a separate definition of children's personal data. It also means that the concept of personal data under GDPR also applies to children. According to the Article 4 (1) of GDPR, "personal data means any

information relating to an identified or identifiable natural person”. An identifiable natural person in GDPR is “one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person” (Article 4 (1) of GDPR).

3.1.2. Concept of children’s personal information and personal data in the United States

Until now, the United States does not have any separate laws at the federal level on personal data protection, but this issue has been raised in many legal documents promulgated by each field and subject (Vu and Le, 2020). The first to be mentioned is California’s first privacy law, the California Consumer Privacy Act (referred to as CCPA) effective from 1 January 2020. Three years later, 2023 is the biggest year to date for US data privacy laws. Although federal legislation has not made much progress, many new state-level privacy laws took effect in 2023. Two acts will take effect on 1 July 2023, they are Connecticut’s Data Privacy Act (referred to as CTDPA) and Colorado’s Privacy Act (referred to as CPA). Utah’s Consumer Privacy Act (referred to as UCPA) will take effect on 31 December. The definitions of personal data may vary depending on state law in the US. However, these laws do not provide a separate definition of children’s personal data. According to CCPA, personal data means “any information that identifies, relates to, or could reasonably be linked with an individual person or their household”. CTDPA defines personal data as “any information that is linked or reasonably linkable to an identified or identifiable individual; and does not include de-identified data or publicly available information”. Based on CPA, personal data means “any information that can be linked to an identifiable individual, excluding publicly available information”. UCPA defines personal data as “any information that is linked or reasonably linkable to an identified individual or an identifiable individual” (Usercentrics, 2023).

Particularly for children, one of the important laws on protecting personal data of these sensitive subjects is the Children’s Online Privacy Protection Rule (referred to as COPPA). COPPA is a US federal law, enacted on 21 October 1998 and effective from 21 April 2000. The Commission published an amended Rule on 17 January 2013 and took effect on 1 July 2013. Recently, Part 312 in the Title16 related to COPPA was last amended 16 August 2024. The primary intention of COPPA is to place parents in control over what information is collected from their young children online. COPPA was designed to protect children under age 13 and applies to operators of commercial or general audience websites and online services that collect, use and/or disclose personal information from and about children on the Internet (COPPA § 312.1 and § 312.2). The Rule also applies to websites or online services that have actual knowledge that they are collecting personal information directly from users of another website or online service directed to children (Federal Trade Commission, 2020).

Although COPPA does not mention the concept of personal data, it provides a definition of personal information. According to the definitions in COPPA § 312.2, a child’s personal information is understood as “individually identifiable information about an individual collected online”, including a first and last name; a home or other

physical address; a telephone number; a Social Security number; a photograph, video, or audio file where such file contains an image or voice; online contact information (means “an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier”) (COPPA § 312.2).

In conclusion, it can be seen that the common point of personal data and personal information of children under US law is any information that is linked or reasonably linkable to an identified individual or an identifiable individual.

3.1.3. Concept of children’s personal information and personal data in Vietnam

Until the early 2020s, Vietnam still did not have any legal documents on personal data, but only legal documents on privacy and personal information. Although it does not introduce the concept of privacy, the 2013 Constitution in Vietnam recognizes the principle of the inviolability of private life, personal secrets and family secrets (Article 21 of the 2013 Constitution). This principle is reaffirmed in the 2015 Civil Code as an individual’s personal right (Article 38 of the 2015 Civil Code). In addition, the principle of inviolability of private life, personal secrets and family secrets is also stipulated in the 2015 Civil Procedure Code (Article 13 (3), Article 15 (2), Article 78 (3), Article 80 (1) (e), Article 109 (2), Article 208 (3), Article 254 (2) and the Article 510 (1) (b) of the 2015 Civil Procedure Code). Along with regulations on personal privacy, Vietnamese law also regulates personal information. Article 3 of the Law on Cyber Information Security in 2015 defines personal information as information linked to determining the identity of a specific person. However, previously, on April 10, 2007, Decree 64/2007/ND-CP of the Vietnamese Government on the application of information technology in the operations of State agencies had a more detailed definition. According to the Article 3 (5) of the Decree 64/2007/ND-CP, “personal information is information sufficient to accurately determine an individual’s identity, including at least one of the following: full name, date of birth, occupation, title, contact address, address email, phone number, identity card number, passport number”. Decree 64/2007/ND-CP also stipulates personal confidential information, including medical records, tax payment records, social insurance card numbers, credit card numbers and other personal secrets. other cause (Article 3 (5) of the Decree 64/2007/ND-CP). In addition, the Law on Tax Administration in 2019 (Article 16 (4), Article 99 (1) of the Law on Tax Administration in 2019), Law on Insurance Business in 2022 (Article 11 (3), Article 129 (2) (i) and the Article 142 of the Law on Insurance Business in 2022)... also have certain regulations on personal information subject to confidentiality in related fields. Moreover, the Article 3 (13) of Decree 52/2013/ND-CP dated 16 May 2013 of the Government on e-commerce, amended and supplemented by the Decree 85/2021/ND-CP dated 25 September 2021, also defines “personal information as information that contributes to the identification of a specific individual, including name, age, home address, telephone number, medical information, account numbers, information about personal payment transactions and other information that the individual wishes to keep confidential”.

Currently, Vietnam still does not have a law-level document issued by the National Assembly on personal data. However, on 17 April 2023, the Vietnamese

Government issued the Decree 13/2023/ND-CP on personal data protection (referred to as Decree 13/2023/ND-CP). This is the first and only legal document in Vietnam on personal data protection. According to the Article 2 (1) of this Decree, “personal data means information in the form of symbol, script, digit, image or sound or in a similar form in the electronic environment which is affiliated to a specific person or helps identify a specific person”, including family name, middle name and first name; day, month and year of birth; day, month, year of death; gender; image; phone number; personal identification number; passport number and other information. Thus, in Vietnam, the concept of personal data now includes personal information. Since there is no separate definition of children’s personal data, the definition of personal data can be applied to children’s personal data.

From the analysis of the above concepts, it can be seen that the common point of European, US and Vietnamese laws on the definition of personal information and personal data of data subjects in general and of children in particular is any information relating to an identified or identifiable natural person, including first and last name; a home or other physical address; Social Security number and online contact information such as an audio file or video, etc.

3.1.4. Characteristics of children’s personal information and personal data in Europe, the United States and Vietnam

Based on the characteristics of children, personal information and personal data of children have the following unique characteristics:

Firstly, the high sensitivity of children’s personal information and personal data including a lot of sensitive information such as health status, academic results, family information, photos... This information, if disclosed or used for the wrong purposes, it can seriously affect the children’s development and safety.

Secondly, the specificity of children’s personal information and personal data is unique due to their relevance to the children’s development process. The collection and processing of children’s personal information and personal data should be done carefully in order to avoid affecting the children’s physiological and psychological development.

Thirdly, the dependency of children who don’t have enough awareness and ability to protect their personal information and personal data. Therefore, children’s personal information and personal data protection require the cooperation of parents, guardians, schools and society.

Finally, there is the vulnerability of children who are exposed to abuse, fraud and exploitation. Therefore, children’s personal information and personal data need special protection in order to avoid being used for bad purposes such as sexual abuse, kidnapping, blackmail, etc.

From the above characteristics, it can be seen that protecting children’s personal information and personal data is extremely important. Children are vulnerable and their personal information or personal data, if disclosed or misused, can seriously harm their development and safety. Furthermore, misuse of children’s personal information and personal data can have long-term consequences, affecting their reputation and opportunities later in life. Therefore, protecting children’s personal information and

personal data is not only about protecting their personal information or data, but also about protecting children's privacy, safety and especially their future.

3.2. Age of children in the United Nations convention on the rights of the child, Europe, United States and Vietnam

Most countries in Europe, the United States and Vietnam have ratified the United Nations Convention on the Rights of the Child (referred to as UNCRC). That is the reason why it is first necessary to identify the age of children under the UNCRC before studying the age of children in Europe, the United States and Vietnam.

3.2.1. Age of children in the United Nations convention on the rights of the child

In 1989, world leaders made a historic engagement to the children of the world by adopting the United Nations Convention on the Rights of the Child. This Convention has been ratified by most countries in the world (Sarah, 2015). This is a Convention that combines all human rights, from civil, political, economic, social and cultural rights of children into a single document (Council of Europe, 2024). On 20 February 1990, Vietnam was the first country in Asia and the second country in the world to ratify the UNCRC (Ministry of Labor, War Invalids and Social Affairs, 2015). In Europe, most member countries such as England, France, Germany, Italy... signed and ratified the Convention in the early 1990s (United Nations, 1989). Although the United States signed the Convention in 1990, the United States is the only member state of the United Nations that has not ratified it after Somalia ratified it in 2015 (Sarah, 2015). According to the Article 1 of the UNCRC, "a child means every human being below the age of eighteen years". The majority is set at age eighteen, unless domestic law, it is attained earlier.

3.2.2. Age of children in Europe

In Europe, most member countries, including France (Article 388 of French Civil Code), Germany, Belgium, Italy... consider minors to be people under 18 years old (La protection des mineurs, 2024). In Spain, according to the Article 13 of the Personal Data Protection Law, "data pertaining to data subjects over 14 years of age may be processed with their consent, except in cases when the law requires the assistance of parents or guardians". In addition, the Data Protection Law in the Netherlands states that "in the case that the data subjects are minors and have not yet reached the age of sixteen, or have been placed under legal restraint or the care of a mentor, instead of the consent of the data subjects, that of their legal representative is required. The data subjects or their legal representatives may withdraw consent at any time" (Article 5 of Dutch Data Protection Law). Similarly, in Hungary, the Sub-section 3 of the Section 6 of the Hungarian Privacy Act clearly states that "the statement of consent of minors over the age of sixteen shall be considered valid without the permission or subsequent approval of their legal representative". Some debates about the age of children took place before the adoption of GDPR. Finally, there isn't a specific age for children in the GDPR (Milda and Eleni, 2017). According to Article 8 (1) of the GDPR, the child is below the age of 16 years. Member States may provide by law for a lower age for the purposes provided that such lower age is not below 13 years.

3.2.3. Age of children in the United States

In the United States, children are defined in the Immigration and Nationality Act (referred to as INA). The INA provides two different definitions of child. A definition of child applicable to the approval of visa applications, issuance of visas, and similar matters is set forth in INA 101(b). Children, according to this definition, can be up to under 21 years of age. A different definition of children applies to citizenship and naturalization. According to INA 101(b), a child of a United States citizen who is under 18 years of age (Federal Trade Commission, 2020). However, the COPPA in the United States only applies to children under 13 years of age (COPPA § 312.2). This article will focus on the protection of children's information under the COPPA in the United States. Although COPPA were updated in 2013 to enhance protection in relation to certain data collection and marketing techniques, such as behavioral advertising. However, it is argued that the "major, transformative changes in the digital marketplace" require a fundamental rethinking of COPPA, for example, expanding its scope to children 13 years of age and older (Montgomery and Chester, 2015). However, until now, it has not been amended or supplemented, COPPA only applies to children under 13 years old.

3.2.4. Age of children in Vietnam

In Vietnam, from the first Civil Code issued in 1995 until now, the age considered the boundary between minors and adults is 18 years old. Specifically, the Article 20 (1) of the 2015 Civil Code stipulates that an adult is a person aged eighteen years or older. According to Article 21 (1) of the 2015 Civil Code, a minor is a person under eighteen years of age. Vietnam's current document system on the protection of personal information and personal data, although mentioning children, does not introduce the concept of children. However, based on the Article 1 of the Children's Law in 2016, amended and supplemented in 2018, children in Vietnam are under 16 years old.

Thus, it can be seen that although regulations on the age of children vary from country to country, however, 16 years old is the milestone that countries in Europe, especially under the provisions of GDPR, and Vietnam takes it as the standard when defining children. In the United States, specifically, COPPA only applies to children under 13 years of age. This is fully consistent with the United Nations Convention on the Rights of the Child, which Member States, including Europe, the United States and Vietnam, have ratified.

3.3. Child's consent and parental consent in Europe, the United States and Vietnam

The collection and processing of children's personal information and personal data, in principle, requires the consent of the child data subject. However, because of the incomplete development of children both spiritually, physically and socially, in addition to the child's consent, his or her parental consent is also essential. Studying the child's consent and his or her parental consent when collecting and processing personal information and personal data of children in Europe and the United States is necessary to improve Vietnamese current law on the same issue.

3.3.1. Child's consent in Europe

In principle, personal data protection in Europe applies to everyone, including adults and children. The consent of the data subject as a legal basis for the processing of personal data is recognized in the Charter of Fundamental Rights of the European Union (referred to as CFR) and further in the Data Protection Directive (referred to as DPD) (Article 6 (1) (a) and Article 7 of DPD). Beside to privacy life in the Article 7, the CFR also mentions the protection of personal data as a separate right in the Article 8 of this Charter as follows.

“1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority”.

The GDPR maintains the consent of the data subject as one of the grounds for lawful processing of personal data (Article 6 (1) (a) GDPR). In addition to the Article 7 of GDPR, which regulates the conditions of data subject consent in general, the GDPR has reserved the Article 8 to address conditions applicable to child's consent in relation to information society services. The definition of consent in the GDPR remains very close to the DPD definition. According to Article 4 (11) GDPR, “consent of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”. The Article 29 Working Party has closely examined the concept of consent in the DPD, for example, when defining consent, articulating and testing the criteria for whether data subject consent is valid. According to the Article 29 Working Party, consent must be (i) an expression of the data subject (ii) freely given, (iii) specific and (iv) informed. Currently, these elements remain the same as the definition of consent contained in the GDPR. The GDPR clarifies in its definition of consent that the data subject must indicate his or her wishes by a statement or clear affirmative action (Article 4 (11) GDPR). Therefore, consent cannot be inferred from the data subject's absolute silence. Similarly, pre-ticked boxes or lack of any action on behalf of the data subject does not constitute consent (Recital 32 GDPR) (Milda and Eleni, 2017). Recital 32 GDPR states that an indication of the data subject's wishes may be provided

“by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data... If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.” (Recital 32 GDPR).

3.3.2. Parental consent in the United States

In the United States, the law requires operators to provide notice and obtain verifiable parental consent before collecting, using and/or disclosing personal information from and about children on the Internet. In addition, the operators must give “the parent the option to consent to the collection and use of their child’s personal information without consenting to the disclosure of his or her personal information to third parties” (COPPA § 312.5 (a) (2)). The main purpose of the COPPA is to help parents control what personal information is collected online from their young children. There is an opinion that this requirement “has placed parents in an increasingly diverse position, forcing them to evaluate a company’s data collection and marketing practices based on what they read in its privacy policy” (Montgomery and Chester, 2015). However, in reality, this has had a major impact on the development of the terms and conditions of many currently widely used global services such as Facebook, Google, Instagram, Snapchat, Twitter and other companies. Avoiding obtaining parental consent is one (or reason) why many online services set 13 years old as the minimum age to create an account or profile (Ingrida and Eva, 2019).

Under COPPA (§ 312.5 (b)), existing methods to obtain verifiable parental consent include:

“(i) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;

(ii) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;

(iii) Having a parent call a toll-free telephone number staffed by trained personnel;

(iv) Having a parent connect to trained personnel via video-conference;

(v) Verifying a parent’s identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or

(vi) Provided that, an operator that does not “disclose” (as defined by COPPA § 312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent’s consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email”.

From the above regulations, it can be seen that the parental consent of children to the collection of children’s personal information in the United States can be expressed in writing, in print or electronically, even verbally. However, COPPA does not assume that silence or non-objection equates to consent.

Since GDPR is partly inspired by COPPA (Milda and Eleni, 2017), there are certain similarities between Europe and US regulations regarding the consent of children and their parental consent to online services in Europe and the United States.

3.3.3. Child's consent and his or her parental consent in Vietnam

In Vietnam, the Article 54 (1) and (2) of the Children's Law in 2016, amended and supplemented in 2018 clarify that "Relevant agencies and organizations shall propagate, educate and protect children while they participate into the network environment in all forms. Parents, teachers and caregivers of children shall provide education about knowledge and guidance on skills to children in order that they can know how to protect themselves on the network environment.

Agencies, organizations and individuals that manage or provide information and communications products or services and organize activities on the network environment must apply measures for ensuring the safety and personal secrets for children as regulated by the laws".

The Decree 56/2017/ND-CP dated 9 May 2017 of the Government detailing a number of articles of the Law on Children Law in 2016, amended and supplemented in 2018 has an entire chapter, which is Chapter IV, from the Article 33 to the Article 37, on the responsibility to protect children in the online environment, including communication, education and capacity building on child protection in the online environment; ensure safety for children in exchanging and providing information in the online environment; measures to protect children's confidential information and private lives in the online environment and measures to support and intervene in children being abused in the online environment. According to the Article 36 (1) of the Decree 56/2017/ND-CP, "when publishing private information of a child on a network, a provider of services in the Internet environment or a person shall obtain the consent of the child's parent(s) or caregiver and the child himself/herself if he/she is full 7 years or older; and shall ensure information safety for the child". Moreover, the Decree 13/2023/ND-CP dated 17 April 2023 of the Government on personal data protection affirms that "for the processing of personal data of a child, it is required to obtain the consent of such child, in case the child is full 7 years old or older, and the consent of the child's parent or guardian under regulations, except the cases specified in 17 Article of this Decree" (Article 20 (2) Decree 13/2023/ND-CP). The consent of the guardian is only required when the child no longer has parents or the parents cannot be identified, or the child has parents but both parents have lost their civil act capacity; both parents have difficulties in cognition and behavior control; both parents have limited civil capacity; both parents have their rights to the child declared limited by the Court; both parents do not have the conditions to care for and educate the child (Article 47 (1) (a) Civil Code 2015). However, guardianship issues are not within the scope of this article. Combining the above regulations, it can be seen that, on the principle of protecting the rights and best interests of children (Article 20 (1) of the Decree 13/2023/ND-CP), the provision and treatment of collecting personal data of children, in addition to the consent of parents, must also have the consent of the child if that child is 7 years old or older. In fact, 7 years old is considered a milestone marking changes in a child's personality, consciousness and thinking. However, although at this stage, children gradually become independent, they still need the companionship of family and relatives (Wendy, 2022). Because the age considered a child in Vietnam, as analyzed above, is under 16 years old, it can be understood that the child's consent and his or her parental consent when providing and processing the

child’s personal data if this child is from 7 years old to under 16 years old. In the case of child under 7 years old, the providing and processing of the child’s personal data are mainly carried out with his or her parental consent. However, unlike GDPR and COPPA, Vietnamese law does not introduce the concept of consent, nor does it mention the expression of consent of the child data subject and his or her parent. Whether the consent of the child and his or her parent required to be expressed in writing, in print or electronically; whether the child and/or his or her parent are able to express their consent verbally; whether the silence or non-response of the child data subject and his or her parent is considered consent, etc.

4. Conclusion

With the strong development of digital technology, protecting children’s personal information and personal data has been considered an urgent task and a top priority on international, regional and national agendas. Most countries in the world, including Europe, the United States and Vietnam, have recognized the right to privacy of all individuals in the common document on international human rights and children’s privacy through the United Nations Convention on the Rights of the Child. In Europe, although it has not issued an independent legal document, the GDPR on personal data protection has provisions specifically for the processing children’s personal data, which are under 16 years old. Unlike Europe, although the United States does not have a federal level document on personal data protection, COPPA, which only applies to children under 13 years old, is considered an important federal document on children’s personal information protection on the online platforms. In Vietnam, it was not until 2023 that there was an independent legal document on personal data protection. Although not a law-level document promulgated by the National Assembly, the Decree 13/2023/ND-CP marks an important turning point in Vietnam’s legal document system on personal data protection, including the personal data protection of children who are under 16 years old. In order to understand easily the children’s personal information and personal data protection under the laws of the EU, US and Vietnam, an overview of this research with the main variables of interest is provided in the **Table 1** below:

Table 1. Children’s personal information and personal data protection under the laws of the EU, US and Vietnam (summarized by the author).

	EU	US	Vietnam
Official legal documents	GPDR	COPPA	Decree 13/2023/ND-CP
Concept of children’s personal information and personal data	“Personal data means any information relating to an identified or identifiable natural person”. (Article 4 (1) of GDPR)	A child’s personal information is understood as “individually identifiable information about an individual collected online”. (COPPA § 312.2)	“Personal data means information in the form of symbol, script, digit, image or sound or in a similar form in the electronic environment which is affiliated to a specific person or helps identify a specific person”. (Article 2 (1) of the Decree 13/2023/ND-CP)

Table 1. (Continued).

	EU	US	Vietnam
Age of children	Child is below the age of 16 years. (Article 8 (1) of the GDPR) In Spain, children are under 14 years old (Article 13 of the Personal Data Protection Law). In Netherlands and Hungary, children are under 16 years old (Article 5 of Dutch Data Protection Law and Sub-section 3 of the Section 6 of the Hungarian Privacy Act).	COPPA in the US only applies to children under 13 years of age. (COPPA § 312.2)	Children in Vietnam are under 16 years old. (Article 1 of the Children’s Law in 2016, amended and supplemented in 2018)
Child’s consent and his/her parental consent when providing and processing personal information or personal data of children	The consent of the data subject is considered as one of the grounds for lawful processing of personal data. (Article 6 (1) (a) GDPR)	The operators must give “the parent the option to consent to the collection and use of their child’s personal information without consenting to the disclosure of his or her personal information to third parties”. (COPPA § 312.5 (a) (2)).	“For the processing of personal data of a child, it is required to obtain the consent of such child, in case the child is full 7 years old or older, and the consent of the child's parent or guardian under regulations, except the cases specified in Article 17 of this Decree”. (Article 20 (2) Decree 13/2023/ND-CP).

However, the current Vietnamese legal system on personal data protection was born many years later than GDPR in the Europe and COPPA in the United States. Therefore, studying GDPR in the Europe and COPPA in the United States is required to improve the current Vietnamese legal system on children’s personal data protection today. In that situation, Vietnamese law needs to give the concept of child consent and his or her parental consent and the methods to obtain their consent when collecting and processing children’s personal data. Moreover, with the rapid development of technology, regularly reviewing, amending and supplementing legal regulations to suit the situation of our society at each period is necessary not only for Vietnam, but also for other countries, including Europe and the United States. In addition, communicating, educating, and improving children’s knowledge about ensuring safety in the online environment is indispensable today.

Acknowledgments: The author would like to thank all those who have contributed significantly in completing this article.

Conflict of interest: The author declares no conflict of interest.

References

- Ani Petrosyan (2024). Global number of internet users 2005-2023. <https://internal.statista.com/statistics/273018/number-of-internet-users-worldwide/>
- Barry M. Leiner, Vinton G. Cerf, David D. Clark, Robert E. Kahn, Leonard Kleinrock, Daniel C. Lynch, Jon Postel, Larry G. Roberts, Stephen Wolff (1997). A Brief History of the Internet, Internet Society. <https://www.internetsociety.org/internet/history-internet/brief-history-internet/>
- Eurochild (2024). Child Safety and well-being online. Taken from Children’s Rights: Political will or won’t? Eurochild 2023 report on children in need across Europe.
- European Union (2024). The History of the General Data Protection Regulation. https://www.edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en#:~:

- text=In%202016%2C%20the%20EU%20adopted,as%20law%20across%20the%20EU
Federal Trade Commission (2020). Complying with COPPA: Frequently Asked Questions. <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions>
- Hong Nga (2024). Dangers of the habit of showing off children online, Dan Sinh. <https://dansinh.dantri.com.vn/vi-tre-em/nguy-co-tu-thoi-quen-showing-children-tren-mang-20240627134424260.htm>
- Ingrida Milkaitė and Eva Lievens (2019). Children’s Rights to Privacy and Data Protection Around the World: Challenges in the Digital Realm, *European Journal of Law and Technology*, Vol 10, Issue 1, 2019.
- La protection des mineurs (2024). Jusqu’à quel âge est-on considéré comme un enfant et un adolescent ?. <https://www.protection-of-minors.eu/fr/rquest/1>
- Law and Regulation (1989). United Nations Convention on the Rights of the Child.
- Law and Regulation (2000). Charter of Fundamental Rights of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
- Law and Regulation (2012). Charter of Fundamental Rights of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12012P%2FTXT>
- Law and Regulation (2016). General Data Protection Regulation (GDPR). <https://gdpr.eu/tag/gdpr/>
- Law and Regulation (2024). French Civil Code. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721?init=true&page=1&query=code+civil&searchField=ALL&tab_selection=code
- Law and Regulation (1998). National Archives, Code of Federal Regulations, Part 312—Children’s Online Privacy Protection Rule. <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>
- Law and Regulation (2013). Constitution in 2013.
- Law and Regulation (2015). Civil Code in 2015.
- Law and Regulation (2015). Civil Procedure Code in 2015, amended and supplemented in 2019, 2020 and 2022.
- Law and Regulation (2015). Law on Cyber information Security in 2015, amended and supplemented in 2018.
- Law and Regulation (2019). Law on Tax Administration in 2019.
- Law and Regulation (2022). Law on Insurance Business in 2022.
- Law and Regulation (2007). Decree 64/2007/ND-CP dated April 10, 2007 of the Government on the application of information technology in the operations of State agencies.
- Law and Regulation (2013). Decree 52/2013/ND-CP dated May 16, 2013 of the Government on e-commerce.
- Law and Regulation (2023). Decree 13/2023/ND-CP dated April 17, 2023 of the Government on personal data protection.
- Milda Macenaite and Eleni Kosta (2017). Consent for processing children’s personal data in the EU: following in US footsteps?, *Information & Communications Technology Law*, 26:2, 146-197. <https://doi.org/10.1080/13600834.2017.1321096>
- Ministry of Labor, War Invalids and Social Affairs (2015). Celebrating 25 years of Vietnam ratifying the UN Convention on the Rights of the Child. <https://molisa.gov.vn/baiviet/24042?tintucID=24042>
- Montgomery, KC & Chester, J (2015). Data Protection for Youth in the Digital Age: Developing a Rights-based Global Framework, *European Data Protection Law Review* 1(4), 277–291.
- National Center for Education Statistics (2023). Children’s Internet Access at Home. Condition of Education. U.S. Department of Education, Institute of Education Sciences. <https://nces.ed.gov/programs/coe/indicator/cch>
- News Department (2023). Vietnamese children use social networks more and more, VTV Online. <https://vtv.vn/van-hoa-giai-tri/tre-em-viet-nam-su-dung-mang-xa-hoi-ngay-cang-nhieu-20230202120512126.htm>
- Sarah Mehta (2015). There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US. <https://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens>
- Simon Kemp (2023). Digital: 2023. <https://datareportal.com/reports/digital-2023-vietnam#:~:text=The%20state%20of%20digital%20in%20Vietnam%20in%202023&text=There%20were%2077.93%20million%20internet,percent%20of%20the%20total%20population>
- Unicef (2023). Safer internet day 2023. <https://www.unicef.org/serbia/en/press-releases/safer-internet-day-2023>
- United Nations (1989). Treaty Series, Convention on the Rights of the Child, vol. 1577.
- US Citizenship and Immigration Services (2024). Immigration and Nationality Act. <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>

- US Citizenship and Immigration Services (2024). Chapter 2 - Definition of Child and Residence for Citizenship and Naturalization. <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-2>
- US Citizenship and Immigration Services (2024). I am the Child of a US Citizen. <https://www.uscis.gov/citizenship/learn-about-citizenship/i-am-the-child-of-a-us-citizen>
- Usercentrics (2023). Comparing US state-level data privacy laws. <https://usercentrics.com/knowledge-hub/comparison-guide-to-us-state-level-data-privacy-laws/#what-is-the-state-data-privacy-laws-effective-date>
- VNA (2023). Greater efforts to better protect children on cyberspace, Vietnam+. <https://en.vietnamplus.vn/greater-efforts-to-better-protect-children-on-cyberspace-post253787.vnp>
- Vu Cong Giao, Le Tran Nhu Tuyen (2020). Protection of rights to personal data in international law, laws in some countries and reference values for Vietnam, *Journal of Legislative Studies*. <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210546>
- Wendy Wisner (2022). 7-Year-Old Child Development Milestones. <https://www.verywellfamily.com/7-year-old-developmental-milestones-620704>