

## Policy Brief 4:

# AI in educational settings and data protection concerns



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### SUMMARY

While AI-based tools and applications are being promoted as a game changer for education, there is not sufficient awareness of their implications to children's right to data protection. With the General Data Protection Regulation being rather disappointing as regards protecting minors, and the proposal for AI Act (at least currently) merely qualifying AI in education as high-risk AI systems, it is time to take children's right to data protection more seriously.

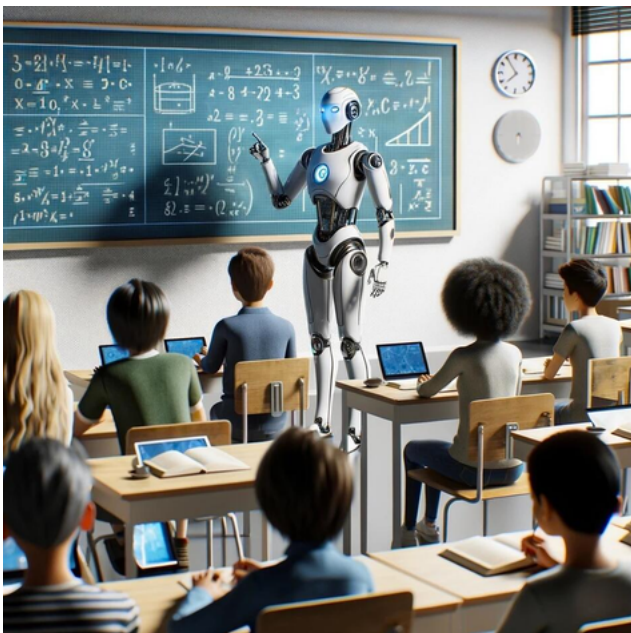


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### THE ISSUE

While there is no consensus amongst the experts as regards the definition of AI, there is little doubt that AI-based tools and applications are increasingly having an impact on education. AI brings opportunities as well as numerous challenges and threats to pupils' fundamental rights and freedoms, including their right to data protection.

Although "children merit specific protection with regard to their personal data" (GDPR recital 38), those data are far too often uncritically shared with or sold to commercial providers of AI-based or even merely apparently AI-based applications promising prodigious results. Those results, however, have been rarely demonstrated while one risks a redistribution of authority. It will no longer be schools or public authorities that decide on curriculum, but providers of AI-applications; it will no longer be a teacher who decides on learning activities in a classroom, but an algorithm.

Moreover, lack of transparency, bias, discrimination, and exclusion not only threaten children's data protection, but also undermine the foundations of democracy such as openness and the possibility of making informed choices. The research on AI in education with regard to such issues as transparency and explainability is scarce.

Finally, as shown by amongst others the results of the EdTech "AI Sandbox" of the French Data Protection Authority, CNIL, there is in general little knowledge on how to comply with data protection regulations when implementing EdTech in schools.

## MY RESEARCH

In my research on privacy and data protection, I focus on researching the consequences of deploying new technologies, such as AI, as well as on regulating AI, in particular in the sector of education. As a member of the Council of Europe's Expert Group "Artificial Intelligence in Education", I am involved in working on a proposal for a legal instrument that will regulate using AI in educational settings.

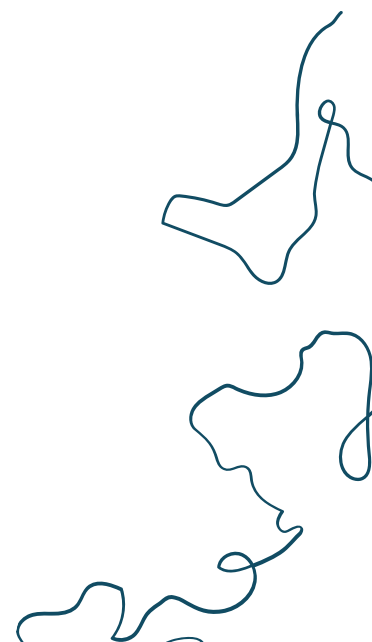
In 2021/2022 I was involved in a project "Activity data for assessment and adaptation" (AVT) where pupils' personal data were used for the purposes of learning analytics. The project was led by the Norwegian Association of Local and Regional Authorities (KS), the Centre for the Science of Learning & Technology (SLATE) at the University of Bergen (UiB) and the City of Oslo's Education Agency. As a data protection expert, I have analysed amongst others issues, the legal basis for processing of pupils' personal data with the view to identifying both the legal basis in the GDPR and the required supplementary legal basis in the national legislation (opplæringslova). The AVT project was selected by the Norwegian data protection authority, Datatilsynet, to participate in its first edition of "Sandbox for responsible AI".

Currently, I am involved in "EduTrust AI", a research project led by SLATE and funded by The Trond Mohn Foundation. The main goals of the project are: a) to identify layers of trust associated with the use of AI in the educational sector that considers the complex accountability relationships, b) to develop new knowledge, methods, guidelines, and tools for more reliable AI systems, c) to translate insights about legal, psychological and sociocultural determinants of trust into legal requirements, and d) to provide input for practicable frameworks related to the challenging questions surrounding the use of student data and AI systems in education.

## RESULTS AND RECOMMENDATIONS

EU policy makers must consider regulating the deployment of AI in educational settings. While the GDPR is technology neutral and does not specifically address AI, the current proposal of AI Act does not specifically regulate AI in education. Also, a general statement that the AI Act does not prejudice the GDPR does not provide any clarifications on their complex and critical relation and thus leaves scope for gaps and legal uncertainty.

As the GDPR disappoints in terms of providing an appropriate protection of children's right to data protection, EU policy makers must consider how this issue may be addressed at the EU level. Although a revision of the GDPR would be an immense task, one cannot ignore the challenges and threats raised by AI as they may profoundly affect Europe's next generations and its future.



## REFERENCES

The AVT project – exit report from the "Sandbox for responsible AI", <https://www.datatilsynet.no/en/regulations-and-tools/sandbox-for-artificial-intelligence/reports/avt--exit-report/>

Malgorzata Cyndecka, «Bruk og misbruk av personopplysninger om egne barn i sosiale medier i lys av barns rett til personvern i barnekonvensjonen artikkel 16» («Use and misuse of one's own children's personal data in social media in light of children's right to data protection and Article 16 of the Convention of the Rights of a Child») in: Fornes, I., Nylund A. Sperr A.K, Barnekonvensjonen i norsk rett. Prinsipper og praksis ("The Convention of the Rights of a Child in the Norwegian law. Principles and practice"), Gyldendal 2023, pp. 113-137.

## CONTACT THE RESEARCHER

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