

# Ending the shifting game: towards true responsibility for children's rights in the digital age

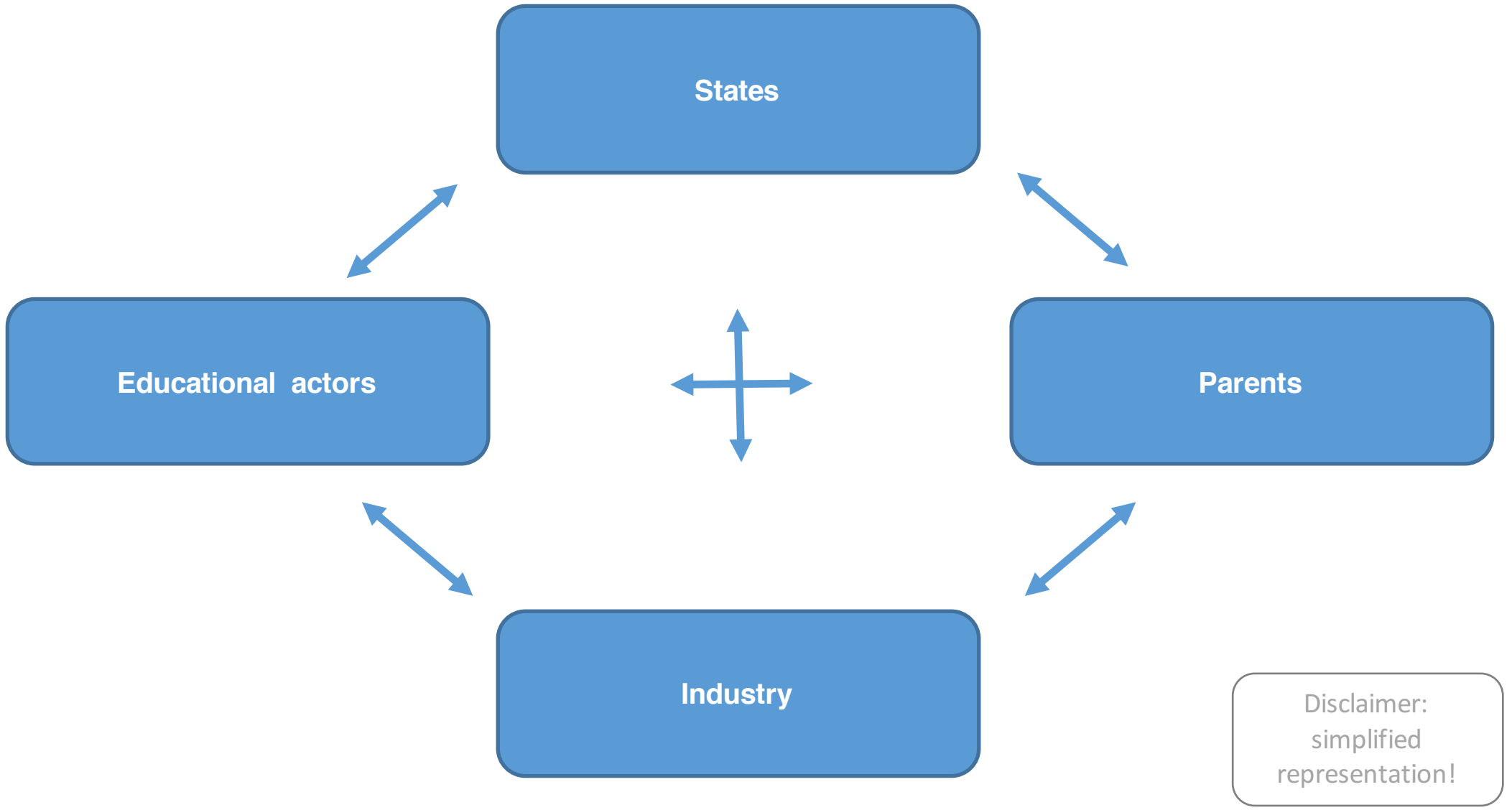
Children's and young people's rights in the digital age  
27 July 2016, London

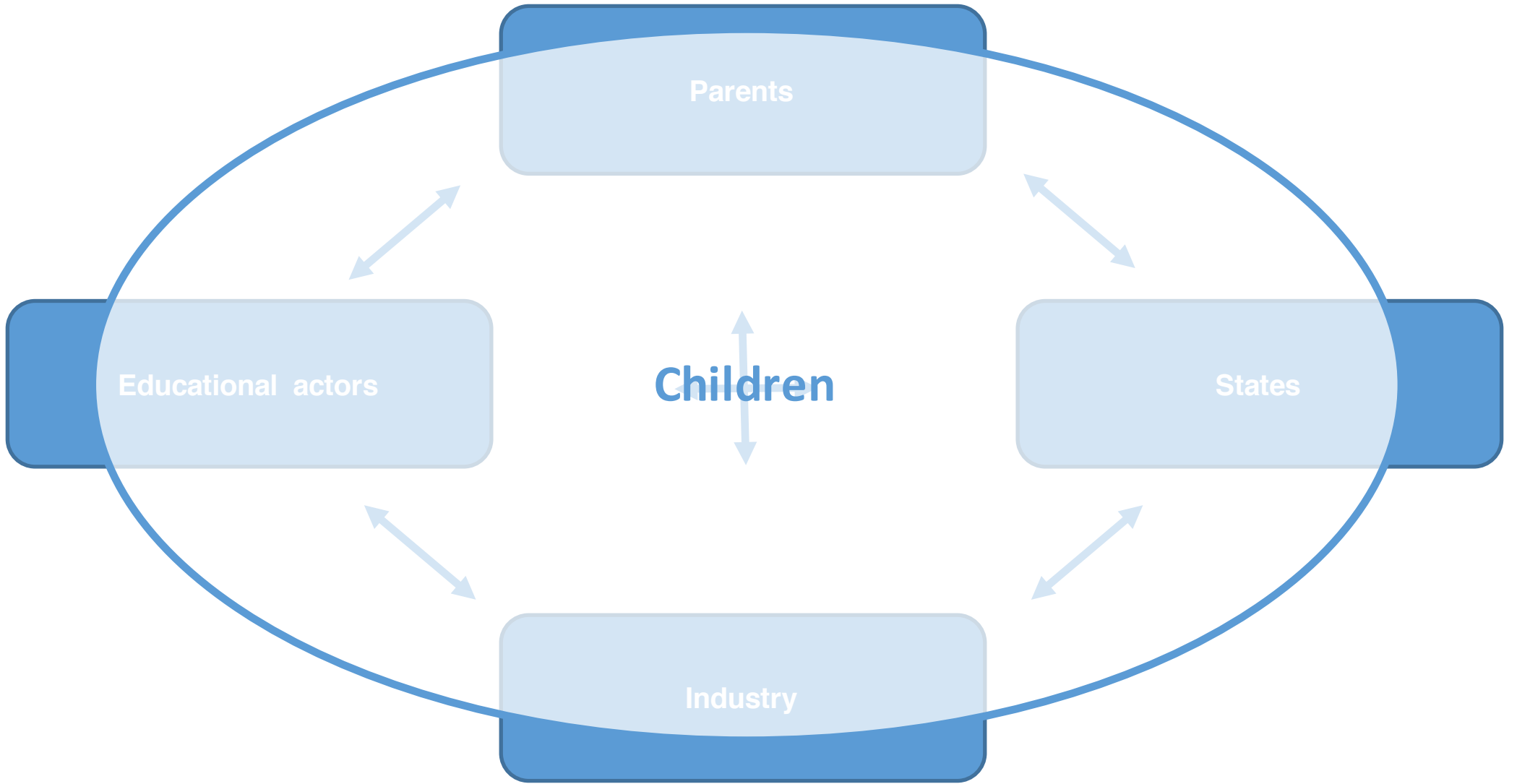


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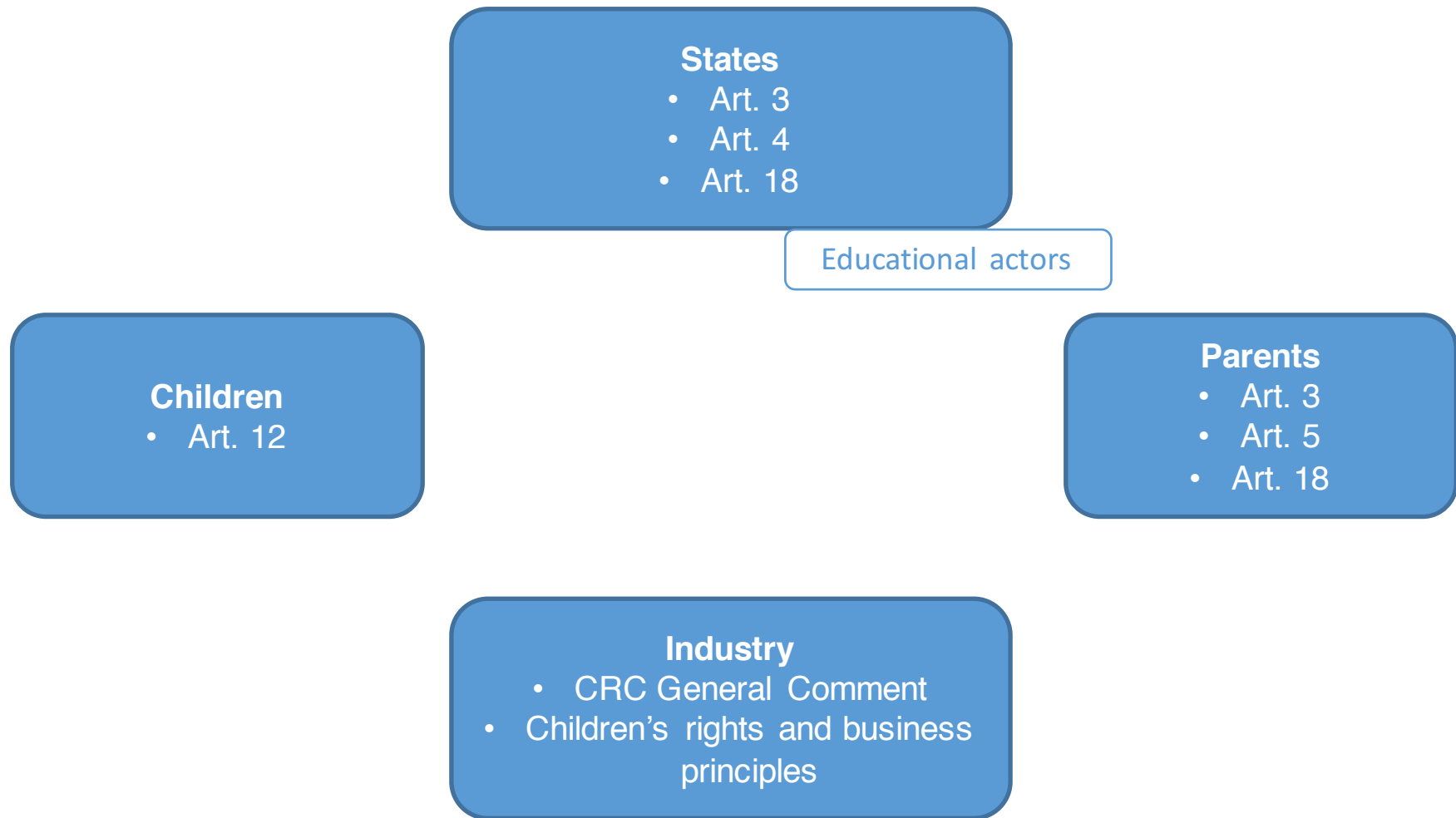
# Overview

- Theoretical background to actors' responsibilities for children's rights: anchored in UNCRC & elaborated in policy documents
- Case-study: children's right to privacy and the GDPR

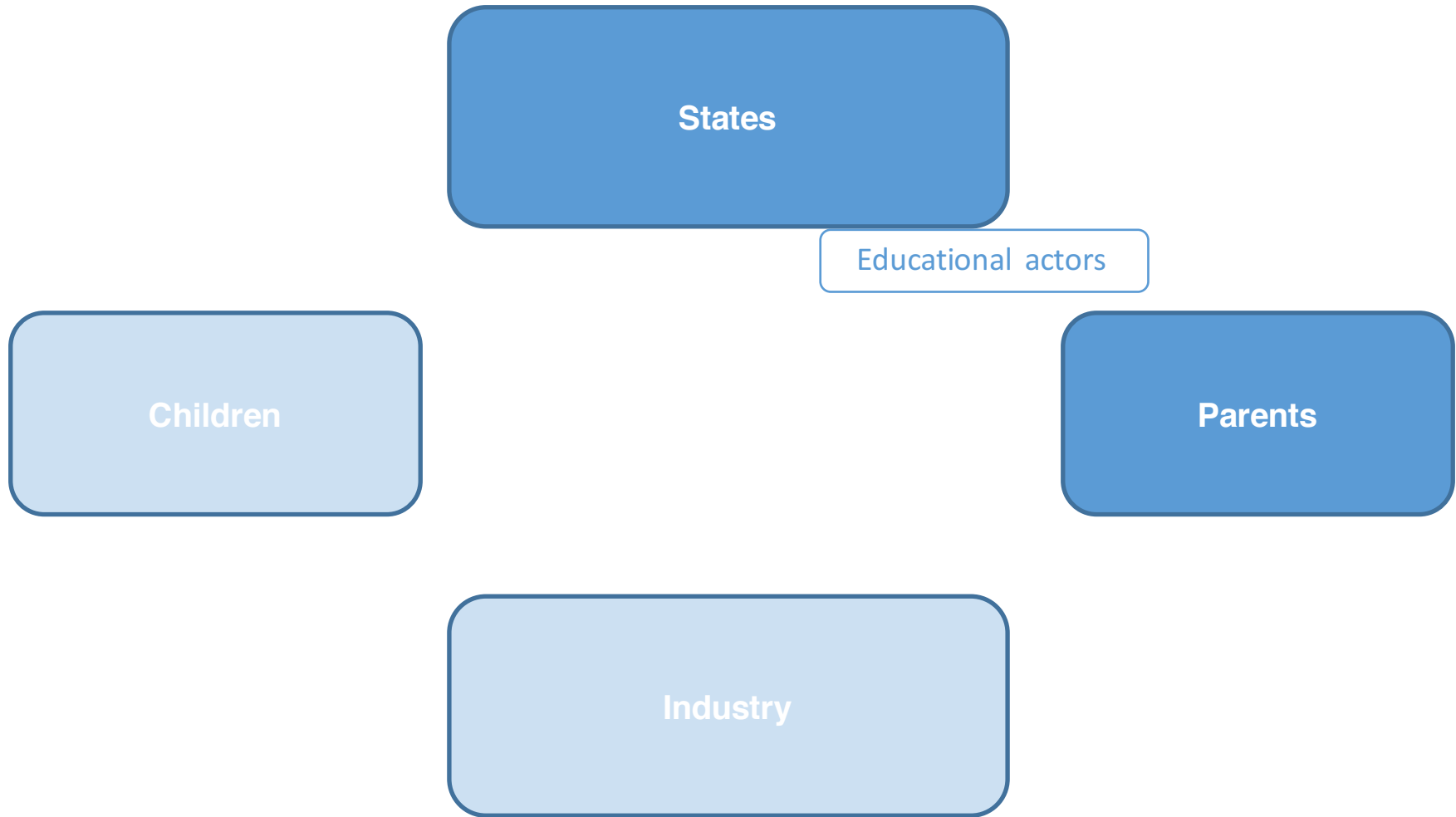




# United Nations Convention on the Rights of the Child (UNCRC)



# UNCRC



### Article 3, para. 2 UNCRC

**States Parties** undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her **parents**, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

## Article 18 UNCRC

1. **States Parties** shall use their best efforts to ensure recognition of the principle that both **parents** have common responsibilities for the upbringing and development of the child. **Parents** or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, **States Parties** shall render appropriate assistance to **parents** and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.



States

Educational actors

Children

Parents

Industry

## CRC: General Comment on State obligations regarding the impact of the business sector on children's rights (2013)

At this juncture, there is no international legally binding instrument on the business sector's responsibilities vis-à-vis human rights. However, the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. **Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so.** In addition, business enterprises should not undermine the States' ability to meet their obligations towards children under the Convention and the Optional Protocols thereto.

## CRC: General Comment on State obligations regarding the impact of the business sector on children's rights (2013)

The Committee acknowledges that **voluntary actions** of corporate responsibility by business enterprises, such as social investments, advocacy and public policy engagement, voluntary codes of conduct, philanthropy and other collective actions, **can advance children's rights**. States should encourage such voluntary actions and initiatives as a means to create a business culture which respects and supports children's rights. However, it should be emphasized that **such voluntary actions and initiatives are not a substitute for State action** and regulation of businesses in line with obligations under the Convention and its protocols or for businesses to comply with their responsibilities to respect children's rights.

# Council of Europe

Committee of Ministers Recommendation on human rights and business (2016)

**Member States** should require that **business enterprises** respect the rights of children when operating within their territorial jurisdiction and, as appropriate, throughout their operations abroad when domiciled in their jurisdiction.

# Case-study: children's right to privacy and the GDPR

## Art. 16 UNCRC:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Individual autonomy

Also:

Art. 8 European Convention on Human Rights

Art. 7 & 8, and art. 24 EU Charter of Fundamental Rights

# General Data Protection Regulation

## Article 8: Conditions applicable to child's consent in relation to information society services

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of **parental responsibility** over the child.

**Member States** may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The **controller** shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

Recitals?

# GDPR: theoretical observations

- **States:** EU provides regulatory framework, Member States will (be able to) choose age, national DPAs will supervise
- **Industry:** will (have to) implement mechanisms to verify parental consent if they offer services to children under age chosen in MS
- **Parents:** will (need to) give consent in order to allow industry to process children's data
- **Children:** will benefit from the protection of their personal data (under age chosen) or will be able to consent themselves with processing (above age chosen)

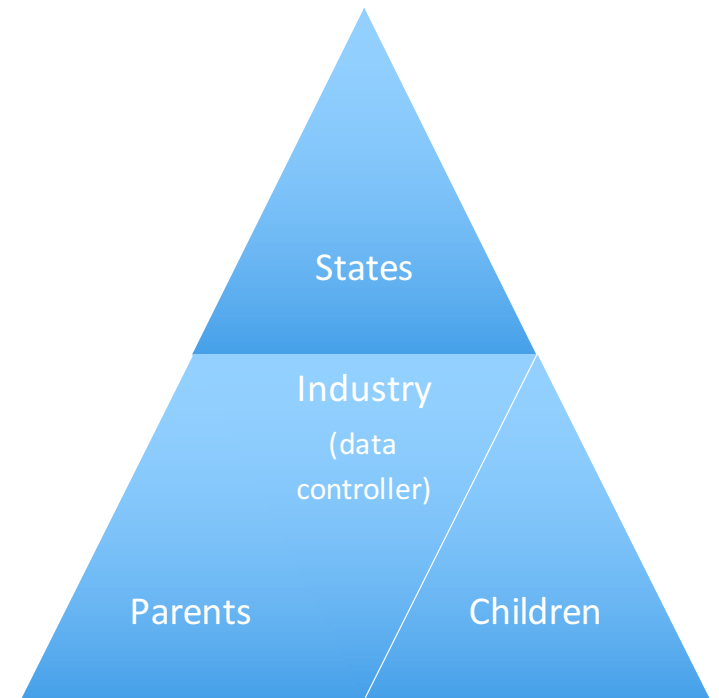
# GDPR: practical observations

- **States:** EU provides regulatory framework, **Member States will choose different ages across EU, national DPAs will supervise and be confronted with globally operational companies that will need to take into account varying ages**
- **Industry:** will have to implement mechanisms to verify parental consent, **may be confronted with different ages across the EU or will exclude use by children under chosen age**
- **Parents:** will **only be able** to give consent in order to allow industry to process children's data **if they are involved and digitally literate**
- **Children:** (under age chosen) will **depend** on consent of parents **or will try to circumvent parental consent verification or will be excluded from using certain information society services**



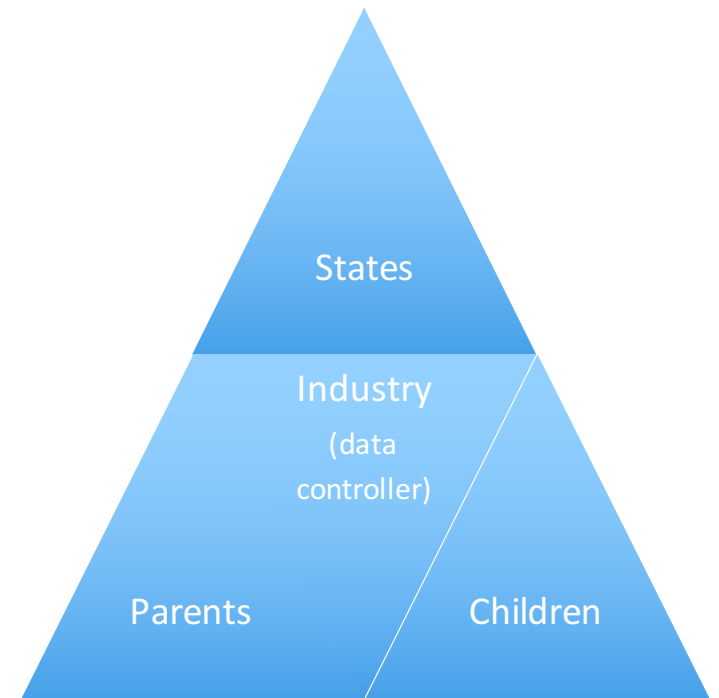
# When theory meets reality...

- What about...
  - ‘digital citizenship/literacy’ of parents?
  - impact on other fundamental rights of children, e.g. articles 12 & 13 UNCRC?! art. 24 Charter?
    - age? reality? art. 3 UNCRC?
    - also art. 32 UNCRC?
- ▷ Transparency of policy-making process?
- ▷ Participation of experts & children in policy-making process?!
- ▷ Children’s rights impact assessment in policy-making process?! (EU Agenda for the Rights of the Child - "fundamental rights check")



# When theory meets reality...

- What about...
  - ‘available technology’
  - ‘accountability’ of industry
    - ‘reasonable efforts’
- ▷ Transparency of industry policies?
- ▷ Children’s rights impact assessment of industry policies (cf. Unicef [Child online safety assessment tool](#) for businesses)
- ▷ Role of national DPAs!



# Way forward?

Regulation will apply from  
25 May 2018

- Call on EU MS governments to consider this issue very carefully ('ultimate responsibility')
- Dialogue with
  - Children!
  - National DPAs
  - Industry
  - Researchers
- Digital 'data' literacy



# Thank you!

Questions? Please do not hesitate to contact me!

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