

# **Senate Standing Committee on Legal and Constitutional Affairs.**

## **Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010**

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# Misrepresentation of Age to a Minor online....

## ***Submission by Susan McLean***

An October 2006 study tour to the United States of America highlighted the growth in popularity of internet technology, especially with youth, which has seen cyber bullying and harassment emerging as the number one issue confronting the safety and well being of young people and the wider community. Together with associated technology including internet enabled mobile telephones, 'live' gaming sites, virtual worlds and the explosion of social networking sites such as Facebook and MySpace, today's youth have access to and are accessible by many millions of people worldwide.

Globalisation means it is just as simple to be on line to a person anywhere in the world, as it is someone in the next street. The unprecedented amount of personal information available on these sites makes them a perfect place for people who would happily identify their victims and gain their trust. Some of these people are adults, pretending to be teens in order to gain their trust and exploit them for their own gratification. This trust can then be used to lure teens into a false sense of security, making them vulnerable to grooming and enticement to meet in person, often for the purposes of engaging the young person in sex. Other identified dangers include exposure to inappropriate content, cyber bullying and harassment. Young people are not aware that their words

and or photos, which may have been intended for a small audience, sometimes find their way to a larger one, often with both unexpected and undesirable consequences.

Australian Bureau of Statistics (ABS) June 2009 shows that there were almost 8.4 million active internet subscribers in Australia. Figures from the OECD (Organisation for Economic co-operation and Development 2007) show that in excess of 72% of Australians have access to a home computer.

In April 2009 the Australian Bureau of Statistics reported that in the 12 months prior, *an estimated 2.2 million (79%) children accessed the Internet either during school hours or outside of school hours. The proportion of males (80%) accessing the Internet was not significantly different from females (79%). The proportion of children accessing the Internet increased by age, with 60% of 5 to 8 year olds accessing the Internet compared with 96% of 12 to 14 year olds. A higher proportion of children used the Internet at home (92%) than at school (86%).*

A 2005 survey of 742 teens (aged 13 – 18) and 726 tweens (aged 8 – 12) conducted by the Polly Klaas Foundation (USA) reported the following disturbing trends. 54% of teens admitted communicating with someone they've never met using an Instant Messaging program, 50% via email and 45% in a chat room. 16% of all respondents or one in eight youth aged 8 – 18 discovered that someone that they were communicating with online was an adult pretending to be much younger.

A detailed study in America by the National Centre for Missing and Exploited Children (NCMEC), 'On-line Victimization of Youth 2000 & 2005' Finkelhor et al, showed a disturbing trend in the incidence of internet offences against children, with 19 percent subjected to an unwanted sexual solicitation in the past year, 25 percent subjected to unwanted exposure to sexual material and 6 percent subjected to harassment and bullying, a trend that we are now seeing here. Many young people are being subjected to dangerous and inappropriate experiences on the internet. The offences and offenders are diverse and the primary vulnerable population is young people.

There is strong research evidence to suggest that adolescents in general and male adolescents in particular, are developmentally less able to make informed safety decisions about personal safety and security than are adults. The US National Institute of Mental Health (2001) reports that MRI studies are shedding light on how teens may process emotions differently than adults. These studies have shown the remarkable changes that occur in the brain during the teen years, and also demonstrate that the teenage brain is a very complicated and dynamic arena, one that is not easily understood.

The American Bar Association (ABA, 2004), Juvenile Justice Centre released a report that considered the new understanding of adolescent brain develop to explore the issue of criminal culpability. The article provides a useful and readily understandable précis of the latest research

understanding of adolescent brain development and decision making. It also helps us to understand why adolescents and young people are more prone to partake in risky behaviours by potential victims, thus making it harder for likely offenders to be able to victimise the target. The final tack is to provide capable guardianship, which can be understood as providing a police presence, or at the very least a perception of a police presence, in cyberspace.

The article quotes Jay Giedd, a researcher at the National Institute of Mental Health, who explains that during adolescence the *“part of the brain that is helping organization, planning and strategizing is not done being built yet.... It’s sort of unfair to expect [adolescents] to have adult levels of organizational skills or decision making before their brain is finished being built.”* Dr. Deborah Yurgelun-Todd of Harvard Medical School has studied the relation between these new findings and teen behaviour and concluded that adolescents often rely on emotional parts of the brain, rather than the frontal lobe. She explains, *“one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they’re doing.”* Also, appearances may be deceiving: *“Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature.”*

It is clear from this new understanding of adolescent brain development that children, adolescents and the developmentally impaired need extra protection from the dangers present in ICT.

The ease at which a person can create a false profile online, pretending to be someone other than their actual self is frightening and one that no-one seems to want to take responsibility for. There is no way to accurately age verify any internet user, the same way that there is no way for anyone using the internet to really know who they are engaging with unless of course they are known to them in real life. Adults, who for a variety of reasons, go online pretending to be a like minded teen, rarely have honest intentions.

- A Maryland man has admitted he posed as a teenage lesbian to trick a 15-year-old girl he met online into sending him sexually explicit photos. Michael Speelman, 52, of Adelphi, Maryland, went on to feign the suicide of "Lisa Stauffer" - his teenage lesbian alter ego - after she and the victim had established a romantic relationship. In online chats with the victim, Speelman then pretended to be the mother of his deceased alter ego and threatened to make the explicit photos public. The threats continued even after the victim said she now had a boyfriend and was "moving on" with her life. FBI agents searching Speelman's home recovered 38 nude pictures of the girl, who was identified only by the initials C.M. They also found other child pornography, including 10 movie clips of pre-pubescent minors and 10 explicit pictures that appeared to be self-produced by a girl estimated

to be between 12 and 15 years old. The confession is the latest cautionary tale to highlight the hazards of online chat involving teens.

- A few weeks ago, a Massachusetts man in his 40s was accused of posing as a 17-year-old boy to convince girls to send him nude videos of themselves. After a 14-year-old girl complied, Lawrence Joseph Silipigni Jr., of Saugus, Massachusetts posted the sexually explicit video online, where it eventually came to the attention of his victim.
- A case that received world wide attention was that of the tragic suicide of Megan Meier.....*he called himself Josh Evans, and he and Meier, 13, struck up an online friendship that lasted for weeks. The boy then abruptly turned on Meier and ended it. Meier, who previously battled depression, committed suicide that night.* The secret was revealed six weeks later: Neighbor, mother Lori Drew had pretended to be 16-year-old "Josh" to gain the trust of Meier, who had been fighting with Drew's daughter, according to police records and Meier's parents. According to a police report, Lori Drew said she "instigated and monitored" a fake account before Megan's suicide "for the sole purpose of communicating" with the girl.

Cases such as this are not confined to other countries.

In 2007, a South Australian teenager named Carly Ryan believed she had found the man of her dreams in a Texas-born, Victorian-based, 20-year-old "emo" named Brandon Kane. In reality, he did not exist. Brandon Kane was nothing more than "an internet construct" and had no more substance than a dream. Her true love was actually a "cyberspace alter-ego" created so that a

50-year-old man and his 19-year-old son could pursue a sexual relationship with Miss Ryan. Carly Ryan was murdered on the night of 19<sup>th</sup> February and the two men who allegedly constructed the fake MySpace profile were arrested and charged with her murder. Hidden by a fake internet name, he manipulated an infatuated teenage girl and his own son to orchestrate a brutal killing. On 21<sup>st</sup> January 2010, the older male was found guilty of murder. His 19yo son was acquitted.

The perceived anonymity and disinhibition provided by the impersonal interface that is the internet allows many young people to engage in behavior that they would not even consider in the real world. Legislation must be updated to correctly capture these online 'wrongs'. Whilst educational programs must be put in place to address the needs of young people, schools, parents and the wider community, it is the individuals and companies behind the creation of websites, social networking sites, and other relevant internet applications that must take the issue of the safety of their users, especially vulnerable young people *VERY* seriously. It is not good enough, that they try to deflect blame to others, and act on complaints so slowly and ineffectually that most people give up in frustration. Social networking 'giants' MySpace and Facebook have a social and moral responsibility to actively work towards a solution.

The very real issue of adults creating 'fake' profiles online in order to gain the trust of vulnerable young people which in many cases will lead to online solicitation must be openly and honestly discussed to ensure that prevention



strategies are either included in any existing school based programs or subsequently form an integral part of any personal safety program.

While education is vital, so too is comprehensive legislation. Law enforcement must be prepared to acknowledge the serious nature of online crimes against young people, especially where imposition and betrayal of trust occur. They too must have access to education in relation to the impact of these crimes, and any updated legislation. For those who will continue to abuse young people regardless, the processes must provide a clear passage for them to be presented before the courts. Penalties must reflect both the serious nature of these offences and community expectations.