



Communications Law Centre, UTS

Submission to Joint Select Committee on Cyber-Safety:

Cyber-bullying

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Communications Law Centre, UTS

Executive Summary

1. There should be more services educating parents on the methods in which children interact, socialise and network over the internet and mobile phones to assist them more effectively to discuss cyber-bullying issues with their children.
2. Further support should be provided to the Australian Communications and Media Authority (“ACMA”) for its various cyber-safety and cyber awareness programs for schools, teachers, children, parents and the community at large.
3. State Crimes Acts should be amended to specifically incorporate the crime of online threats and assault.
4. Government bodies such as the ACMA should intensify their discussions with leading global social networking sites to form a 'code of practice and administration' in which networking sites would act independently as well as in conjunction with their users in taking down bullying content.

1. Introduction

1.1 The Communications Law Centre, UTS (CLC) is an independent, non-profit, public interest centre specialising in communications, media and online law and policy. We appreciate this opportunity to respond to the Joint Select Committee on Cyber-Safety's request for submissions relating to the impact of cyber-bullying on children.

2. The Role of Parents, Families, Carers and the Community

Parent Awareness Campaigns

2.1 Educational campaigns specifically in respect of social networking and communications tools available over the internet should be offered to parents and carers of children. These campaigns should aim to develop parents' and carers' understanding of the ways in which their children perceive and use the internet and provide them with the knowledge to protect their children to manage the risks more effectively.

2.2 Most adults approach computers as practical tools and some don't recognise the risks in using social media over the internet, whereas for children, the internet represents a lifeline to their peers¹.

2.3 CLC considers that lack of understanding by some parents with respect to the risks in their children's use of social networks increases the likelihood of their children engaging in or suffering from harassing behaviour online².

2.4 Parent awareness campaigns should aim to empower parents and carers to better understand the internet as a vital social networking tool for children, which is largely unregulated. CLC considers that with such awareness, parents and carers will be better able to engage their children in discussions on how the internet may be used more constructively and how to avoid adverse impacts on their lives.

Computer Placement within Homes

2.5 Surveys indicate that cyberbullying victims are cyber-bullied outside of school hours and, in many cases, at home.³

2.6 Some children may be more prone to engage in cyber-bullying and the sharing of illicit multimedia content which they know that parents and carers do not see.

¹ S Keith, ME Martin , 'Reclaiming children and youth', 2005, Reclaiming Children and Youth Winter 2005 p226

² ibid

³ McLoughlin C, Burgess J, 'Texting, sexting and social networking among Australian youth and the need for cyber safety education', 2009, available at: <http://www.aare.edu.au/09pap/mcl091427.pdf>

2.7 Parents should be provided with more information about effective supervision techniques that will reduce instances of cyber-bullying that originate or occur in the family home.

2.8 To reduce the likelihood of cyber-bullying in the form of illicit multimedia content, CLC recommends that parents and carers be advised to consider placing their family computers in the open living areas of the home.

2.9 As common forms of cyber-bullying occur over instant messenger and email, the positioning of computers in open family environments may not alert parents and carers to many types of bullying a child may experience. These forms of cyber-bullying could be better controlled and minimised by encouraging parents in the use of filter technologies and by engaging their children to discuss any concerns they may have regarding use of the internet⁴.

ACMA Awareness Campaigns

2.10 CLC commends the ACMA's community wide approach to raising awareness on the impacts of cyber-safety and the methods and programs available to victims.

2.11 CLC encourages the introduction of child focussed anti-bullying programs that are independently introduced by schools into their curricula.

2.12 CLC commends school initiated anti-bullying programs and considers that, coupled with the programs offered by the ACMA, children will thereby be further empowered to discuss and deal with cyber-bullying issues they may face.

3. Addressing the Issue of Anonymity

Law Enforcement

3.1 The ability to cloak one's identity over the internet is a significant factor that encourages cyber-bullying and other wrongdoing by both adults and children⁵.

⁴ S Keith, as above, at 226

⁵ McLoughlin C, as above, at 3

3.2 CLC considers that anonymity affords adults and children a unique opportunity to act on any anti-social impulses they might otherwise temper in public.

3.3 The ability of bullies to adopt pseudonyms allows them a greater opportunity to bully or commit cyber-crimes with a diminished fear of detection or punishment.

3.4 Children, in particular, are more likely to bully over digital media because they are able to hide their identities⁶.

3.5. Internet users especially children should be made more aware that in certain circumstances law enforcement may be empowered to ascertain their identities, insofar as nominating the computer which has been used to commit offences online.

4. The Australian Legal System

4.1 The opportunities for criminal acts in digital environments will continue to increase as the internet further becomes intertwined with the everyday lives of adults as well as children.

4.2 Australia's reluctance to legislate more specifically in relation to cyber-bullying is reflected in the USA where some states encompass cyber-bullying into general harassment law or within computer crime statutes⁷. Additionally, the USA Free Speech right is seen to be a barrier to extensive cyber-bullying legislation as it may curb the bullies' right to free speech in the USA.

4.3 In the case of cyber-bullying Australian legislation should provide clear and adequate recourse for victims.

The Crimes Acts

4.4 CLC recommends the offence of cyber-assault be specifically incorporated into legislation and strengthened to adequately protect consumers including children throughout Australia.

4.5 Currently, New South Wales is the only jurisdiction that explicitly criminalises cyber-bullying by school children into its Crimes Act⁸. Section 60E of the Crimes Act 1900 (NSW) makes it an offence where a person 'assaults, stalks, harasses or intimidates' any school staff or student while attending school. This wording, however, leaves bullying outside of school premises without the ambit of this section.

⁶ Strom P, Strom R, 'Cyberbullying by Adolescents: a Preliminary Study', The Educational Forum, Vol 70, 2007, at 22

⁷ Jameson S, 'Cyberharassment: Striking a Balance Between Free Speech and Privacy' 17 CommLaw Conspectus (2009) at 259

⁸ Butler D, 'Civil liability for cyber bullying in schools: A new challenge for psychologists, schools and lawyers', Australian Psychological Society 42nd Annual Conference, 2007, at 88

5. Cooperation of Social Networking Companies

5.1 Companies operating leading global social networking websites that are popular with children should take a more active role in filtering and taking down content available on their services that is abusive or hateful to registered users.

5.2 CLC recommends the ACMA and other community interest groups initiate discussions with leading social networking sites to establish a 'Code of Practice and Administration' under which social networking companies will actively filter and take down illegal content.

5.3 Social networking companies should more actively introduce and publicise to users reporting procedures under which users can report illegal content to website administrators for take down.

Professor Michael Fraser, AM
Director
Communications Law Centre, UTS

Ishan Karunanayake
Researcher
Communications Law Centre, UTS