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4th March 2014

Submission in response to the public consultation for "Enhancing Online Safety for Children"

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About ACCE

The Australian Council for Computers in Education (ACCE) is the national professional body for educators (from early childhood to tertiary) as well as researchers involved in the use of digital technology in education. ACCE has representation from all states and territories plus international affiliations in many countries (http://acce.edu.au/about-acce/members-and-affiliations).

Response

The initiative for *Enhancing Online Safety for Children* is a step in the right direction. Children and their educators and caregivers are in serious need with respect to guidance and security when engaging with social media.

ACCE with its close connection to educators (Early Childhood to Tertiary), students, and researchers supports a holistic approach; arguing that change to regulatory frameworks, as well as procedures for rapid removal of harmful materials will be ineffectual unless coupled with education and guidance for the entire community, particularly children, caregivers and educators. ACCE is not only concerned for the welfare of young people who are victims of inappropriate or harmful materials, but also those others who are affected by content posted by young people, including their educators for whom the content could be harmful to their professional and personal identity. We need to bring to bear a concerted and well funded educational strategy to help young people make effective decisions when living out their lives in the public sphere of social media. This needs to be coupled with effective measures for rapid removal of materials for all individuals and all social media.

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In addition, the rapid change of technologies, the constant renewal within schools and curriculum and ultimately the curiosity and creativity of new generations of young people also means that the e-Safety Commissioner needs to be able to respond to the constantly changing environment, including dealing with new technologies and new practices that cannot be predicted. This means that the scope of the Commissioner needs to be broadly defined, have broad discretion on how to respond, while at the same time well resourced to keep abreast of such changes.

Defining children, the scope of complainant

The discussion document outlines a proposal for enhancing the online safety of children. However, the term "children" is not defined. The text (eg. page 13, 'Eligible Complainant') implies that the proposal considers children to be anyone who is under 18 years of age. This needs to be made explicit.

This is particularly relevant in the online services context, where many of the services are based in the US and therefore subject to the provisions of the Children's Online Privacy Protection Act 1998 (US) which regulates the online collection of personal information from children under the age of 13. Hence, many services such as Facebook restrict membership and use of their services to over 13s, an age restriction that parents and children frequently circumvent in order to facilitate perceived and actual social connectivity (eg to connect to children on a school trip, to communicate with their peers and relatives, to share family photos and events (boyd, Hargittai et al 2011).

Therefore some consideration needs to be given to the relevance of these age distinctions in an Australian context. At the very least, we recommend that the focus of the policy is for young people under the age of 18. We recognise the need to protect young people, and their particular vulnerability. However, the kinds of online safety issues this policy deals with are not limited to young people and at the same time many other users would benefit from a mediatory stage before criminal and civil actions are pursued. The rapid removal of materials, and the establishment of an agency such as the Commissioner that can guide and support this action, would benefit society. It does seem to be a waste of resources to establish a Commissioner whose office develops significant working relations with social media services and has the ability to process complaints and implement the rapid removal of harmful materials and restrict this assistance and support solely to minors.

Within education we do not refer to everyone under the age of 18 as children. It is unlikely a 17 year old or their caregivers are going to immediately realise that "children" applies to them. While the term children may be used in legal or regulatory contexts, it is not appropriate in this context. Consequently, even if the Commissioner was to only work with under 18s it is strongly recommended that the word "children" is not used. This also means that the title of "Children's e-Safety Commissioner" should be changed to something that is appropriate and respectful of the people the office serves.

Specific responses to key components of the discussion paper are included below:

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1. Establishment of a Children's e-Safety Commissioner

1.1. Functions of the commissioner

The establishment of the e-safety Commissioner is important to the welfare of Australian young people. Each state education department as well as many other organisations have developed resources around online safety. However, the volume of resources, variations in quality, currency of the information, and relevance to the particular age group of the students causes considerable confusion for teachers and caregivers. It is not sufficient to simply list a number of websites. Leadership in this area is needed to ensure a coherent, easy to understand, and functionally useful point of contact for guidance and victim advocacy.

It is critically important that the e-safety Commissioner is focussed on a dual role of guidance and advocacy. The guidance role must be also considered in two parts (a) proactive education in schools and in the community, (b) support for those seeking specific advice, information and support. The guidance role in the policy document needs to be strengthened. It is currently not sufficient to meet the policy goal of improving online safety of young people.

Establishing an advice platform

The functions of the Commissioner (Discussion paper, p.5) indicates that the Commissioner will establish an "advice platform with guidelines for parents about the appropriateness of media content." The advice platform needs to be for parents, educators, the community and especially for young people. The platform needs to do more than simply identify what kind of content is appropriate, but rather provide guidance about staying safe, and importantly about what they can do if they feel unsafe or have been victims of cyberbullying or other harmful actions. It is important to note that people seeking advice from the Commissioner should not have to prove a case of complaint, but instead be free to seek information and guidance. Clearly, if they wish the Commissioner to proceed with a situation then the complaint needs to be established. It is important to realise that young people, and indeed those who care about them such as their educators and caregivers, are likely to not want to pursue a complaint unless they understand that the situation is something that can be redressed and the implications/consequences of pursuing that course of action. Consequences for victim and perpetrator, where the perpetrator is also a minor, may be equally important.

Establishing a research fund

We support this action. Research is needed. However, in addition to the three areas of research identified on page 5 we argue that research also needs to be conducted on how and why young people engage with others through the internet. For instance, why do young people engage in posting offensive or harmful materials in social spaces online? Why do young people who are the subject of cyberbullying continue to engage in those social media spaces? What is the connection between online, home and school bullying? What fundamental needs or pressures are involved in the drive to engage with each other online, to cause harm through this media, and conversely not seek help when victimised?

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Establishing processes of certification and school funding for online safety education

We support these actions. However, we do not support the generation of an online safety industry, that is, consultancies and others cashing in on the funding programme without themselves being certified as providing high quality service. There are many online resources as well as online safety training programs, but there is a lack of coherence. How will a school decide which program is the best (not simply the most accessible)? The Commissioner needs to either develop core resources including learning activities for such training programmes or will need to develop systems to certify trainers *and* their programmes.

A solution is to bring together the excellent but disparate resources and intelligence of the various state government education departments as well as other notable philanthropic organisations (eg. Alannah and Madeline Foundation) and consultants in the field to develop a core set of materials and activities that are regularly updated. These can form the basis of individualised programmes to be delivered in schools (by trainers or school educators themselves) and at the same time accessible by parents and the wider community. This could also serve another important role for the Commissioner, that of an advisory group to assist the Commissioner maintain currency in light of changing technologies and practices.

The impact of any education initiative is significantly lessened unless funding and considerable strategic thinking is invested in education for teachers, administrators, caregivers and the wider community. It is critically important to have the same frame of reference, the same language, the same understanding of what is acceptable and the knowledge of how to deal with problems. The most frequent advice given to young people today is if something makes you feel bad then talk to an adult. The problem is many adults, including educators, are not yet skilled to fully understand the problem, let alone knowledgeable of suitable courses of action.

We recommend that funding be provided to not only develop (and maintain) learning materials for young people, but also their caregivers and educators, and importantly, for pre-service teachers.

Coherent advice and resources

The Commissioner has a significant role in bring coherence to the many resources available to young people, caregivers and educators. There are many high quality resources and programmes currently available, but they need to be either amalgamated or integrated in a very clear way. It is not sufficient to simply provide a list of websites / contacts with brief descriptions. This does not help young people, nor does it help educators who are time poor and are already dealing with an overloaded curriculum. In this respect the e-safety commissioner's role is not just focussed on young people. There is an important role to provide a first point of call for all Australian residents.

1.2.   Establishment of the Commissioner

It is unclear why there is a strong focus on ensuring this role is separate from government (for example, option 4 is the tendering for an NGO to take over the role).

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The most sensible and cost effective response appears to be option 2: establishment of an independent statutory office with administrative support from ACMA. This would take advantage of existing expertise of ACMA and its well established links with government bodies such as the Australian Federal Police. It also facilitates a clear link between online safety initiatives for younger and older people as many of their concerns are the same, and even their ability and willingness to take action on their own behalf may be similar. Use of social media is becoming a lifetime habit, rather than an activity confined to young people. There should be some benefits to information and resource sharing.

2. Rapid removal of material that is harmful to a child from social media sites

Defining social media and participating social media services

The definitions offered in the consultation document are not sufficient. Both definitions in the consultation document are for "social networking sites" and are not directly transferrable as a definition for "social media" which is a broader umbrella term. Moreover by restricting the scope of the e-Safety Commissioner to a limited description of current technology the scheme is being set up to fail; quickly becoming obsolete and not serving the people it intends to support. The definitions of social networking sites are dated and refer essentially to earlier generations of SNS. Social media has become more 'experiential' since this time, for instance, individuals can now upload, share and re-mix photos, videos, and text immediately across multiple social media services from mobile devices 'capturing the moment' and then be constantly added to by those people who view and respond to those updates. The sense of connectedness has dramatically increased, with corresponding opportunities and risks. SNS are now much less focused on text based status updates, for example, Pinterest and Twitter. Chat is of course very important for the younger users (13-17 and younger) and the major attraction of SNS is the fact it provides "free" chat. There are also services such as WhatsApp, WeChat and Snapchat that have superseded more traditional social media and enable the distribution of content including photos.

However, there is no universally agreed definition of social media, which is understandable considering technologies are rapidly changing and the conventions, uses and cultures surrounding those technologies are equally constantly evolving (Henderson, Snyder & Beale, 2013). Often researchers, education departments and the media use social media interchangeably with terms such as Web 2.0, social networking sites, or simply the internet. However, these terms are not synonymous.

The term 'social media' remains the most useful because it has resisted definition, and importantly, is generic in nature. It has a lingua franca interpretation of technologies that incorporate a sense of social presence.

A commonly applied definition of social media is that by Kaplan and Haenlein (2010): 'a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user generated content' (p. 61). However this definition is also based on increasingly outdated understanding of technologies; in particular, the idea that content is created by the "user" rather than software systems developed to compile profiles and establish or reveal social networks largely independent of the "user". This has been seen many times such as when Google implemented a social media application called Buzz (a precursor to Google+) that put Gmail users frequently contacted people into a personalised network (Henderson, Johnson, Auld, 2013). Google wanted to offer users a hybrid experience of

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social networking and microblogging, however they had not realised that their users may not want their contacts to actually be able to see each other. As Rainie and Wellman (2012) noted: "all hell broke loose. People in discreet multiple love relationships were outed; psychiatric care relationships became visible." (p. 36). The role of SNS that record, trace, connect, and publish with a degree of autonomy from that of the individual whose information is being used has led the International Council on Human Rights Policy to note, "Today, the 'private man' is a public entity... that he controls only partly" (International Council on Human Rights Policy, 2011, p. 65). This is further evidenced in research involving young people and SNS. It was observed that research participants 'tagging' of friends in photos, automatic feeds from friends gaming and other activities, and comments from friends' friends, created data-rich profiles of those people largely independent of their knowledge or control (de Zwart, Lindsay, Henderson, & Phillips, 2011). Thus, it is important to consider that online data thought to be private or reasonably limited in accessibility can very easily become public through social media services (or systems drawing on social media services), even without the "user's" involvement.

Consequently we propose social media is broadly defined, not limited to social network sites which are increasingly becoming less significant than the social experience itself.

These social media services encompass, amongst others, social networking services (eg. Facebook, Google+), blogs (eg. Blogspot), microblogs (eg. twitter), wikis (eg. wiktionary.org), forums (eg. minecraftforum.net), video sharing (eg. YouTube), image sharing (eg. Flickr), virtual worlds (eg. SecondLife), gaming platform with social media features including live chat (eg. Xbox Live), and massive multiplayer online role playing games (eg. World of Warcraft). These services are increasingly platform independent, having presence across devices and operating systems (eg. the same service such as Facebook can be accessed via web browser, mobile phone application, gaming platform such as XBox. In addition, these services are increasingly integrated with other services, such as "social plugins" that can embed social media profiles data on other websites. These services can also be mashed with other social media services so that the experience is no longer of a single service but rather a social context. Finally, the social media services can be accessed through applications not developed by the social media companies themselves. For instance, there are a variety of Twitter applications for mobile devices created and managed by third party companies that provide a customised experience of the social media, including additional features such as the incorporation of multiple social media services which ultimately provide a qualitatively different social media experience.

Social media is therefore now best characterised by "experience" rather than as a "site".Thus a list of sites becomes less useful as a regulatory or advisory tool. Behaviour can manifest and spread rapidly across a number of platforms.

In addition, the almost seamless integration of social media across devices and websites, and especially the amalgamation of social media services into essentially new social media experiences makes it difficult to identify where offending material resides and who has agency, let alone responsibility over the data. The confusion over where the data is stored, who controls it and how to engage with that service is even greater for younger people and problematically for their caregivers and educators who are not necessarily knowledgeable of the technology or its surrounding youth/digital culture.

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For these reasons, the definition of social media needs to be broad, giving the e-Commissioner flexibility in light of changing technologies, social practices and services. One of the responsibilities of the office should be remaining up to date with and identifying relevant services, sites and apps as new uses will emerge daily. The office will need to be able to add to and expand the scheme rapidly to take account of sudden uptake of such social media. The proposed definition is therefore not workable.

Focussing on "large" as a criterion will result in failure

In addition the restriction of the government's focus to "large social media sites" is clearly problematic and ultimately unhelpful. As already explained, "sites" is an overly restrictive frame for social media which is better explained as an experience that can transcend a single site or service, incorporating multiple services, some of which may be "large" and small. More importantly, the focus on "large" social media is incongruous with the intent of any online safety initiative or regulatory framework. For instance, the size of the social media service is not relevant in the examples of children suicides cited on page 4 of the discussion document. In these cases the children's social networks are miniscule in comparison to the entire social media network. Considering the rapidly changing technologies it is highly plausible that this same scenario could be played out in a new social media experience that would not fit the criteria of "large".

Focussing on "large social media sites" does not serve the interests of young people, caregivers or educators. The social media experience is not defined by the size of a social media company, its national corporate presence, or other definitions of "large". Scale of users is relevant in considerations of degree of exposure of materials such as pornography or defamation. However, in terms of the young person's 'life world', that is, the people who they know and interact with who essentially define the boundary of their 'world' can be relatively small and yet as seen on page 4 of the discussion document result in tragic outcomes.

The e-Commissioner's remit must not be limited to only "large" social media.

Complaint system- eligible complainants, form and process

There appears to be a disconnect with the aim of the complaint system and restricting who is eligible to make a complaint. In order to empower and protect themselves, children must have opportunities to directly seek help and/or make a complaint.

In addition, teachers and others who become aware of disturbing and harmful content should be able to make a complaint without first bringing that content to the attention of the victim who may be harmed by such an action. In the definitions provided in the consultation document, with respect to an 'eligible complainant' it is suggested that where the complaint is lodged by a parent, guardian or other adult the consent of the target child would need to be obtained. This may be self defeating. The child who is the target may not be aware of or willing to reveal the existence of the bullying. This requirement may limit the effectiveness of the scheme. It also requires the material to be brought to the attention of the target (if they are not already aware of it). We consider that:
- the child should be able to complain on his or her own behalf; and

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- an adult should be able to complain on behalf of a child (without necessarily bringing it to the attention of a vulnerable child).

Arguably one of the greatest vulnerabilities a child has is not having access to adult advice and support. A relatively small amount of training will provide the office of the Commissioner with sufficient skills to engage with children and young people in supportive and informative ways. Procedural measures can be adopted from a variety of other guidance services that already work with young people (eg. Lifeline, Kids Helpline, Headspace). For this reason we believe that the complaints system should be kept relatively informal and easy to access.

We agree that the rapid removal of harmful and offensive material is vital due to ability of material to go viral and be replicated and reproduced countless times. Therefore requiring a prior complaint to the social media provider may be counter productive. It should be sufficient for the Commissioner to determine in urgent cases that a contemporaneous complaint to the provider, perhaps made by the Commissioner, is sufficient. It would be counter productive to restrict the rapid operation of the complaint system with restrictive bureaucratic steps, where the welfare of young people is involved. Rapid decisions must be made regarding the potentially harmful nature of such material and 48 hours may be too long for a complaint to the provider to be resolved, given the strong possibility of viral distribution.

With respect to the complaints handling process outlined in the consultation documents, we consider that overall the two stage process is effective, subject to some suggestions for improvement:
- Complaints handling stage 1: the Commissioner should be able to determine the capacity and bona fides of the person bringing the complaint (standing). The process for complaints handling should require the Commissioner to determine the question of standing to bring the claim before passing it on the the social media site or the Commissioner may initiate the complaint.
- Complaints handling stage 2: the test contains both objective and subjective elements which seem reasonable.

This process should enable personnel working with the Commissioner to develop a working relationship with the various social media platform providers to facilitate rapid resolution of issues.

Compliance, penalties and enforcement

Clearly the current responses outlined on pages 10-11 are not targeting the problem of children and cyber-bullying and harassment, these responses are targeted at porn and other unsuitable (or illegal) content, but we are really concerned with material posted about children *by other children* (leaving aside parental involvement) therefore the material we are considering may fall well short of the threshold required, for example, for the ACMA scheme. This consideration needs to be factored into any complaints and enforcement regime.

The consultation paper also seeks feedback on how to ensure that a social media provider complies with its obligations to maintain a complaints handling and rapid removal of content scheme, noting that sanctions for non-compliance should apply. It is essential that such a system be developed appropriately and with a view to the broad range of users of such services. The opening comments of the consultation document include a statement that principles of freedom of expression in Australia must be respected. One of the limitations of a broad notice and take down scheme (which would be the net outcome of a safe harbour scheme) is that it can

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lead to a conservative policy of removing any contentious content.   Note also that a safe harbour scheme is directed at limiting the liability of the provider in the event of a breach of the legislation (eg in the context of content restrictions, limiting the liability of the ISP host to remove infringing or offensive material rather than be subject to a financial or other penalty). Care must be taken to ensure that such a scheme does not seriously restrict the freedom of speech of adults, nor the capacity of minors to discuss matters of importance to them in private. The focus of the scheme should remain on addressing inappropriate behaviour, bullying and harassment rather than content regulation.

The right of appeal to the AAT proposed in the consultation document appears effective and it is agreed that it should be with respect to reinstatement rather than removal, with the interests of the child being paramount.

3. Options for dealing with cyber-bullying under Commonwealth legislation

Options for a Commonwealth cyber-bullying offence

It is agreed that there is merit in creating a mid-level offence for cyberbullying however the limitations of this option are well noted on p 23. We agree that these limitations would need to be addressed.

Options for a Commonwealth civil penalty regime

The proposed civil enforcement regime appears more flexible in resolving conflicts and issues of potential harm/ risk. It should be kept in mind that the main purpose of this regime is to educate users, deter harmful content and to protect children. It is not to provide a basis for a litigious or compensation regime for those who feel that they have been harmed by such content/ conduct. There is some concern that the 'dispute resolution' and 'mediation' process referred to may suggest there is an element of dispute between eg groups of children and their families, which may result in protracted civil actions. This should not be the concern of the Commissioner. A protracted dispute process is likely to cause more harm to the target. The broad scope of this scheme is appropriate, for example, allowing complaints from teachers, etc. The Communications principles outlined in the NZ Bill appear sensible.

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