

e-commerce law & policy

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Good practice guidance on social networking

A Home Office Task Force on Child Protection on the Internet has recently issued good practice guidance for the providers of social networks and other interactive services. Hannah Sutcliffe, a Solicitor with Kemp Little LLP, examines how the recommendations are tailored to protecting children and young people using these services.

The Home Office Task Force on Child Protection on the Internet has recently produced a 'Good practice guidance for the providers of social networking and other user interactive services 2008' (the 'Guidance').

The recommendations in the Guidance set out how providers of social networking and other interactive websites can offer advice and security tools to the children and young people who use their services.

Best practice

The comprehensive list of recommendations can be found in the full Guidance¹ together with a useful good practice checklist². A summary of key recommendations is set out below.

Registration of users

When collecting and using personal information, a service provider must comply with its obligations under the Data Protection Act 1998, including informing users about who is collecting their personal information, for what purpose and how it will be processed. The user should, ideally, provide consent to this processing. Particular requirements also apply to the collection of personal data from minors, including obtaining informed consent or the consent of a parent or guardian, if possible³.

Site terms and conditions,

provided on registration and available subsequently, should draw to a user's attention what behaviour and actions are and are not acceptable, and should reinforce the impression that action will be taken by the service provider, in conjunction with law enforcement agencies if required, in the event of breach of the terms or of illegal activity.

Identity authentication

It is likely that many service providers will already have systems in place to deny access to site users below a minimum age of 13. This is not an English law requirement, but reflects US legal requirements which many providers choose to also apply to their service provision across the rest of the world. The Guidance recommends that specific measures could be used, such as placing a cookie on a known under-aged user's site, using search algorithms to identify words commonly used by younger children in order to identify users who may have lied about their age, and offering free downloadable parental control tools.

This also raises issues about how service providers track the identity and behaviour of users. The Guidance recommends that users should be asked to validate personal information and that IP addresses of site users should be captured, or cookies used⁴. By using these techniques, the complete anonymity of users is removed and by highlighting that the service provider has means of identifying the user, this should act as a deterrent to users who may otherwise have felt that they were anonymous and that their actions could not be traced.

Service providers should take reasonable steps to minimise the risk of children or young people accessing adult and age inappropriate content. These might

include making tools available which allow users to label or tag content as being 'adult', or using filters. 'Adult' sites or content should not be accessible to users under 18. Clearly this presents a problem in enforcing the restrictions and it is recommended that age verification methods could also be used, such as requiring a credit card number and evidence of account ownership.

User profiles and controls

The Guidance emphasises the service provider's role in providing safety information and advice for users, and tools to ensure that users are in control of their personal data. Information should be provided on registration, in welcome emails and through prominent, easily accessible links on the site.

Clear FAQ sections should inform users how to control privacy settings, how to change their settings and how they can control and moderate online content; for example, by blocking other users, by exercising control over content posted on their profile by others and even by offering an option to pre moderate content or comments.

Users should be aware of the implications of their chosen privacy settings, in terms of who can see their profile. For users aged under 18, the recommended default is that their profile should be 'fully private', accessible only to 'friends'. The aim of these recommendations is to ensure that users are educated about the potential dangers of sharing too much information, and are equipped to protect themselves.

Editorial responsibility and advertising

Some service providers will exercise a degree of editorial control over the content of the site.

The Guidance contains recommendations as to how this can be done responsibly. The Home Office has also produced a good practice guidance note for the moderation of interactive services for children⁵.

One recommendation is that service providers consider screening or reviewing materials such as photos or videos, to filter out offensive or inappropriate content. Obviously this will have a cost and time implication, as well as changing the character of the site and the degree of user autonomy on it.

Advertising displayed on a site should be screened to ensure that it is appropriate for the relevant audience. The British Code of Advertising, Sales Promotion and Direct Marketing⁶ and the Unfair Commercial Practices Directive will apply to advertising displayed on websites within the UK and the EU respectively. The importance of ensuring that appropriate advertising is used can also have commercial implications.

Facebook, a high profile social networking website, recently suffered bad publicity and a loss of advertising sales when it inadvertently placed a leading telecoms company's adverts next to those of the far right anti-immigration political party, the British National Party (BNP).

Search

The Guidance recommends that profiles of users aged under 18 should not be searchable (either using general search engines or the site specific search function) unless the user actively consents to this. This would mean giving users control over which search functions they could be found through. Search functions should also prevent users from searching using criteria such as age, location or sex that are sensitive or

There is no penalty if service providers fail to adhere to the Guidance

potentially detrimental to the user.

Reporting concerns, abuse and illegal behaviour

The Guidance states that it is vital that users of social networking sites have easy access to mechanisms which allow them to report concerns, abusive, illegal or suspicious behaviour and to complain about any offensive or inappropriate material. In the first instance, reports would usually be made to the service provider, who should deal with them effectively. Policies should also be put in place to enable service providers to share reports of potentially illegal or concerning behaviour with police or law enforcement agencies, so far as legally possible.

Service providers could consider putting in place mechanisms to obtain effective evidence of offensive or illegal behaviour, such as screen captures, as well as recording the online ID of the abuser and the date and time of the incident. Sites should contain clear links to relevant organisations such as child welfare charities, law enforcement agencies or confidential help lines.

It is interesting to note that the Government has also recently announced plans to prevent known offenders from using social networking sites by collecting offenders' email addresses and passing them to service providers. The practicalities of this are questionable - the offender could either fail to provide all relevant addresses or could give false information. However, the potential five year prison sentence may provide a useful deterrent to those offenders.

Conclusions

The Guidance contains comprehensive recommendations on best practice, but as the UK takes a self-regulatory approach to

the regulation of the internet, ultimately it is left up to individual service providers to determine how to apply this to their own businesses. This self regulatory approach also means that the Guidance is not legally binding, that there is no penalty if service providers fail to adhere to the Guidance and that no single body is tasked with enforcing the recommendations. The Guidance notes that the actions of service providers and site users will also be subject to general legal requirements, as in any other context, whether the user is an adult or a child. Data protection law and the criminal law will be particularly relevant.

Despite the self-regulatory status of the Guidance, there are encouraging signs that major providers will seriously consider these recommendations and will make efforts to implement them. Providers such as MySpace, Google, Facebook, Bebo and Yahoo! all contributed to the Guidance. If each implements at least some of the recommendations, then this will go some way to establishing a practical and widely used industry standard, offering protection to young and vulnerable users.

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1. <http://police.homeoffice.gov.uk/publications/operational-policing/social-networking-guidance?view=Binary>
2. At pages 64 - 68
3. http://www.ico.gov.uk/upload/documents/library/data_protection/detail_ed_specialist_guides/issues_paper_protecting_childrens_personal_information.pdf
4. http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/collecting_personal_information_from_websites_v1.0.pdf
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