Risk-reducing regulatory strategies for the protection of minors in online social networks

Eva Lievens
EUROCPFR - Ghent
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Context

- PhD Research: Regulatory instruments for content regulation in digital media - A prospective study on the protection of minors against harmful content
- Postdoctoral research project (Research Fund K.U.Leuven, October 2010 - end 2011)
- Preliminary results
- Will be continued, also within the framework of other research projects in the area of social networks *(infra)*
Background

In less than seven years, Zuckerberg wired together a twelfth of humanity into a single network, thereby creating a social entity almost twice as large as the U.S. If Facebook were a country it would be the third largest, behind only China and India. It started out as a lark, a diversion, but it has turned into something real, something that has changed the way human beings relate to one another on a species-wide scale.

The Economist, Jan. 30th, 2010

- “Online social networks are changing the way people communicate, work and play, and mostly for the better.”
- “This is just the beginning of an exciting new era of global interconnectedness that will spread ideas and innovations around the world faster than ever before.”

Time, December 2010

EU Kids Online, January 2011

59% of all 9-16 year olds have a social networking profile.
26% of 9-10 year olds have a social networking profile.
# Social science classification of SNS risks

<table>
<thead>
<tr>
<th>Content – child as recipient</th>
<th>Commercial</th>
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<td>Pornographic or unwelcome sexual content</td>
<td>Racism, biased or misleading info/advice (e.g. drugs)</td>
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<td>Meetings strangers, being groomed</td>
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<td>Gambling, hacking, illegal downloads</td>
<td>Bullying or harassing another</td>
<td>Creating and uploading pornography</td>
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*Source: EU Kids Online: Hasebrink, Livingstone, Haddon, and Ólafsson, 2009, p. 26*
## Applicability of legal disciplines to risks

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<td>Human rights, privacy / data protection</td>
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Issues related to application of traditional legislation

• Territorial application

• Illegal ↔ harmful content/conduct
  – “What is illegal offline, is illegal online”
  – Terms & conditions
    • e.g. Facebook:
      – You will not post content that: is hateful, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.
      – You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory.
Issues related to application of traditional legislation

• Shift from provider-oriented to user-oriented media (traditionally: regulation imposed on providers)

- Changing roles of minors:

  from passive ‘victims’ to active creators, data controllers, perpetrators, journalists, editors, or even sellers?

  → Liability
  → Application of legislation to situations for which this legislation was not intended (e.g. sexting)

- Rights of others

  → Consent?
Legal & regulatory trends

- Old-school legislation challenged, especially in global, complex sectors
- Trend from centred to decentred forms of regulation / use of ARIs
- Media sector: less legislation, more ARIs
  - Rationale?

**Self-regulation**
- creation, implementation and enforcement of rules by a group of (private) actors with no (or at least minimal) involvement of actors that do not belong to this group (such as the government)

**Co-regulation**
- regulatory strategy which consists of elements of state regulation and elements of self-regulation
Regulatory initiatives related to SNS

JOINT STATEMENT ON
KEY PRINCIPLES OF SOCIAL NETWORKING SITES SAFETY

Become improving internet safety for children is a critical public policy objective. Facebook and the Attorney General agree to the following principles:

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<td>PRINCIPLE: Purpose</td>
<td>Objective for operation</td>
</tr>
<tr>
<td>PRINCIPLE: Trust</td>
<td>Techniques are necessary elements</td>
</tr>
<tr>
<td>PRINCIPLE: On-line</td>
<td>Rights important and must meet the particular</td>
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- The social networking industry must include and develop user feedback technology and services.
- The Task Force will evaluate existing technologies.
- The social networking services to be evaluated should be of reasonable effectiveness.
- The Task Force will conduct an evaluation of the services of its own.

Good practice: the providers of social networking are user-interactive

Updated 2010

Safer Social Networking Principles for the EU

COMMITTEE

Recommendation on measures regard

19 February 2009

This document will not be
Co document ne sera pas distribué
Safer Social Networking Principles

- Developed by 20 SNS providers in cooperation with the European Commission & NGOs
- Charter signed in 2009

**Principle 1**: Raise awareness of safety education messages and acceptable use policies to users, parents, teachers and carers in a prominent, clear and age-appropriate manner

**Principle 2**: Work toward ensuring that services are age-appropriate for the intended audience

**Principle 3**: Empower users through tools and technology

**Principle 4**: Provide easy-to-use mechanisms to report conduct or content that violates the Terms of Service

**Principle 5**: Respond to notifications of illegal content or conduct

**Principle 6**: Enable and encourage users to employ a safe approach to personal information and privacy

**Principle 7**: Assess the means for reviewing illegal or prohibited content/conduct
Safer Social Networking Principles

• Evaluation in 2010: significant room for improvement

  Less than half of the signatories make minors' profiles visible only to their friends by default; Only half of the tested sites ensure that minors are not searchable via search engines; Only 9 out of 22 sites respond to complaints submitted by minors asking for help.

• Effectiveness? Incentive for compliance?

  “[t]hese Principles are aspirational and not prescriptive or legally binding, but are offered to service providers with a strong recommendation for their use”

• Use of ARIs:

  → Guarantees with regard to the prevention of certain risks and the protection of fundamental rights and values

Compliance with the legal framework !!!
## Use of ARIs in compliance with the broader legal framework

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<th>Fundamental rights</th>
<th>Freedom of expression</th>
<th>Article 10 ECHR</th>
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<td>Right to privacy</td>
<td>Article 8 ECHR</td>
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<td>Right to a fair trial</td>
<td>Article 6 ECHR</td>
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<td>Right to an effective remedy</td>
<td>Article 13 ECHR</td>
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<td><strong>Internal market</strong></td>
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<tr>
<td>Free movement of goods</td>
<td>Articles 34 to 36 TFEU [ex 28 to 30 EC Treaty]</td>
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<tr>
<td>Free movement of services</td>
<td>Articles 56, 57 and 52 TFEU [ex 49, 50 and 46 EC Treaty] + sector-specific provisions</td>
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<td><strong>Competition rules</strong></td>
<td></td>
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<td>Prohibition of anti-competitive agreements</td>
<td>Article 101 TFEU [ex 81 EC Treaty]</td>
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<td>Prohibition of abuse of dominant position</td>
<td>Article and 102 [ex 82 EC Treaty]</td>
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<tr>
<td><strong>Implementation requirements</strong></td>
<td>Freedom of choice of methods to implement directives</td>
<td>Article 288 para. 3 TFEU [ex 249 EC Treaty]</td>
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Compliance with fundamental rights

– **Freedom of expression** (article 10 ECHR)
– **Privacy** (article 8 ECHR)

- two very important rights, which children may invoke as well (UNCRC)
- ARIs within scope? articles deal with interferences by public authorities, will depend on level of government involvement
- not absolute, restrictions possible, if prescribed by law, with a legitimate aim, necessary in a democratic society
- issues: use of self-regulation / use of technology
Compliance with fundamental rights

– Right to a fair trial (article 6 ECHR)
  • fair and public hearing before a tribunal when dispute civil rights
  • bodies: judicial function, independent, impartial decisions
  • procedural guarantees
  • if this is not the case: (full) judicial review

– Right to an effective remedy (article 13 ECHR):
  • recourse against decision taken by ARB if rights are violated
  • remedy before a national authority
  • binding decisions
  • Peck v. UK: lack of legal power to award damages
Analysis fundamental rights

- No legal obstacles which lead to an *a priori* or absolute exclusion of the use of ARIs to protect minors against harmful digital content
- But... requirements
  - ARIs must be carefully structured: pay attention to *proportionality / procedural safeguards*
  - Applicability of certain provisions will depend on the level of government involvement
- With regard to the protection of minors the use of co-regulatory systems is preferable (symbiosis between the involvement of the government and other actors)
Elements for risk-reducing regulatory strategies

- Multi-stakeholder approach:
  - SNS providers: strengthen commitment, incentives?
  - Governments: monitoring & evaluation, enforcement?
- Proportionality
- Procedural guarantees
- Combine strategies aimed at illegal & harmful content/conduct but with different emphasis
  - Illegal:
    - implement & enforce legislation pragmatically & efficiently
    - consider new legislative initiatives (be creative!)
    - increase awareness & training of LE
    - improve cooperation SNS providers and LE
  - Harmful:
    - continue promotion of media literacy, education & awareness-raising
    - research into user-empowering & innovative transparency enhancing tools, peer-review instruments, easy-to-use reporting mechanisms and age-dependent accounts
What next?

Social networks: more than a hype!

SNS are exemplary of **paradigm shift**

- from mass media to mass self-communication
- from supply-driven to demand-driven markets

which raises a myriad of legal questions: privacy, illegal and harmful content and conduct, liability, enforcement of legal norms…

Future research

- EMSOC-project ([www.emsoc.be](http://www.emsoc.be))
- EU projects: Picos, Soclos
- Postdoctoral research project
- Project proposals

**Main objective**

Understand how **law** can cope with this **new social and economic reality**
Thank you for your attention!

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Postgraduate Studies in ICT & Media Law