

World Data Protection Report

International Information for International Businesses

Monthly news and analysis of data protection and privacy issues from around the world

Volume 11, Number 12

December 2011

European Commission Finds Social Networks Can Do More To Protect The Privacy Of Minors

By Rohan Massey, of McDermott Will & Emery UK LLP, London.

On September 30, 2011, the European Commission published “Assessment of the Implementation of the Safer Social Networking Principles for the EU on 9 services: Summary Report” (the “Report”), the second of two EU reports this year to find that social networking sites could still do more to protect minors’ privacy.

In total, nine social networking sites were tested between March and June 2011 based on a “mystery shopper” technique, where researchers set up profiles of minors and adults to carry out the tests. Overall, the report looked at a number of platforms, specifically implementation of the Safer Social Networking Principles for the European Union by blogging and gaming platforms, photo- and video-sharing platforms, virtual worlds, platforms that have some social networking functionalities and platforms that allow the creation of personal profiles with the possibility of uploading blog entries, photos and updates.

Background

The Commission is currently reviewing protection of minors online from such risks as online grooming and cyber-bullying as part of the objective set by the Digital Agenda for Europe to enhance trust in the internet, and this Report is part of its commitment to support the industry’s self-regulatory initiative, as marked by the signature of 18 major social networking service

providers to the Safer Social Networking Principles in February 2009. The total number of signatories has now risen to 21.

The advent of social networking has effectively revolutionised communication methods, but such liberation ultimately harbours online dangers. As stated by Neelie Kroes, Vice President of the European Commission for the Digital Agenda: “Young people enjoy and derive great benefits from social networking online but are often not conscious enough of risks such as grooming. Social networking sites need to take seriously their responsibilities towards these youngsters”.

The Principles effectively represent the Commission’s attempt to harmonise social networking safety policies and procedures across the European Union in the hope of “making the internet a safer place for children through a combination of protective and empowerment measures”.

There are seven “Principles”, as follows:

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.
2. Work towards ensuring that services are age-appropriate for the intended audience.
3. Empower users through tools and technology.
4. Provide easy-to-use mechanisms to report conduct or content that violates the Terms of Service.

5. Respond to notifications of illegal content or conduct.
6. Enable and encourage users to employ a safe approach to personal information and privacy.
7. Assess the means for reviewing illegal or prohibited content or conduct.

The Report completes the findings of the second assessment phase, which was aimed at determining how well the signatories to the Principles were doing in implementing the commitments they had made in declarations submitted to the Commission back in 2009.

The Commission published the results of the first phase in February 2010, and in June of this year presented the first batch of findings of the second assessment on the implementation of the Principles by 14 signatories.

The Commission's Key Findings

'Raising Awareness'

All sites were evaluated as "very satisfactory" in relation to "raising awareness" (Principle 1). In all but one service, the sites provided safety information, guidance and/or educational materials specifically targeted at minors, parents and teachers. Although Windows Live provided safety information aimed rather more at parents or guardians, it was agreed that the information was also easily understandable by young people. For the most part, this information was found to be "age-appropriate, easy-to-understand and easy to find".

'Age Appropriate Services'

On "age appropriate services" (Principle 2), seven of the services were assessed as "very satisfactory", with the remaining two being evaluated as "rather satisfactory". The best services were those that did not allow registration of underage users, had effective mechanisms to prevent re-registration in place and did not have any "inappropriate content".

'Empowering Users'

As for "empowering users" (Principle 3), one of the main weaknesses was that the sites did not make it clear in their declarations if and/or how they would ensure that the default profiles of customers under the age of 18 had been set to "private". Only five of the sites were assessed as "very satisfactory", although none was found to be "unsatisfactory".

The Report found that those sites that effectively implemented their commitment to empower users did so by limiting the visibility of minors' personal information to users beyond the approved contact list and ensuring that minors could not be contacted by users outside their "friends". However, only two out of the nine sites had default settings so that minors' personal profiles were accessible only by their approved list of contacts, regardless of how much personal information was posted on their profiles. In respect of the other seven sites, it was found that this information might not necessarily lead to immediate identification of minors, but that it had the potential to do so. Further, only two sites ensured that

minors could be contacted by default only by friends via public or private messages.

In all the sites tested, minors could be sent friend requests by anyone. On six of the sites, minors' profiles could be directly accessed by friends of friends, and unregistered users could access minors' profiles via any blogs, videos or pictures which had been posted by the minor online. However, by default, in only one of the nine sites could minors' profiles be identified by name searches via internal or external search engines. Furthermore, specifically in respect of photo-sharing and video-sharing platforms, users' profiles were not the main point of entry or main point of interest of users. Rather, it was found that users often visit a photo or video stream rather than the actual user's profile.

'Easy to Use Mechanisms for Reporting Violations'

As for "easy to use mechanisms for reporting violations" (Principle 4), eight sites were assessed as "very satisfactory", as they provided user-friendly and effective reporting mechanisms, including a general report button and/or a report button next to user-generated content (for example, to flag inappropriate pictures, videos or comments). Further, the sites reacted promptly (in six cases, within 24 hours) to reports from minors and took effective action, such as deleting or age-restricting the flagged content, issuing warnings to users who had violated the Terms of Use, or guiding the complainant as to how to solve the problem by himself/herself.

'Encouraging a Safe Use Approach to Privacy'

As for "encouraging a safe use approach to privacy" (Principle 6), all the sites assessed offered their users (including minors) a range of privacy settings giving the user control over who has access to their profile. These privacy settings were found to be user-friendly and accessible at all times on all the sites assessed. Further, some sites offered users the option to set up privacy settings for specific pieces of content, whilst others provided privacy settings that allowed distinctions between different types of users, for example, "contacts", "friends and family", "VIP friends" and "all users". These categories could be used to allow or restrict access to certain types of content or activities.

However, some sites offered only limited privacy settings that "lacked complexity" and did not allow users to customise their privacy settings regarding specific people or specific content.

On the more positive side, all the sites assessed included supporting information on privacy settings to help users make informed decisions as to their settings and to instruct them as to how to set or change them.

Comment

Whilst many of the findings were positive, it would appear that the main concern identified by the Report was in connection with perhaps the most important of the seven Principles, namely Principle 3, "empowering users". Only two sites were found to have default settings

which made minors' personal and identifiable information visible by default only to their approved list of contacts, regardless of how much information about themselves was posted on their profiles. In the other seven sites, a considerable amount of personal information, including information added by users after registration, was found to be displayed by default to users beyond the minor's approved contacts list.

Although in only one of the sites could minors' profiles be found by name searches via internet or external search engines, access to minors' profiles by unregistered users was found to be far too easy in the majority of cases, for instance, once a minor's blog, pictures or videos were found (*e.g.*, via an external search engine), access was obtained.

The results of the two surveys of implementation of the Safer Social Networking Principles will be taken into account by the Commission in a comprehensive initiative to empower and protect children when using new technologies due later this year. Social networking sites clearly have more work to do if the Principles and commitments are to be complied with.

The Report can be accessed at http://ec.europa.eu/information_society/activities/social_networking/docs/final_reports_sept_11/report_phase_b_1.pdf.

Rohan Massey is a Partner in the IPMT Group of McDermott Will & Emery UK LLP, London. He may be contacted at rmassey@mwe.com.