

# SEX, LIES, AND MYSPACE

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## I. INTRODUCTION

In the past few years, the popularity of social networking websites has exploded. The purpose of social networking websites is for people to have the ability to “expand their circles of friends.”<sup>1</sup> Several social networking sites have become household names—Friendster,<sup>2</sup> Facebook,<sup>3</sup> Xanga,<sup>4</sup> and Classmates<sup>5</sup> are just a few. MySpace.com (MySpace) is the most popular of this group and will be the focus of this Note.

A recent case provides an accurate description of MySpace:

MySpace.com is the most visited web site in the United States . . . MySpace.com is a “social networking web site” that allows its members to create online “profiles,” which are individual web pages on which members post photographs, videos, and information about their lives and interests. The idea of online social networking is that members will use their online profiles to become part of an online community of people with common interests. Once a member has created a profile, she can extend “friend invitations” to other members and communicate with her friends over the MySpace.com platform via e-mail, instant messaging, or blogs.<sup>6</sup>

Currently MySpace boasts over 90 million users,<sup>7</sup> more than 227,500,000 user profiles,<sup>8</sup> and approximately 250,000 new users daily.<sup>9</sup> MySpace is currently ranked the fifth most popular English language website, the fifth most popular website worldwide,<sup>10</sup> and it is currently the most popular website in the

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<sup>1</sup> Anick Jesdanun, *MySpace Building Tool to Block Sex Offenders*, MSNBC.COM, Dec. 5, 2006, <http://www.msnbc.msn.com/id/16056003>. The motto of MySpace, for example, is “a place for friends.” MySpace, <http://www.Myspace.com/> (last visited Mar. 7, 2008).

<sup>2</sup> Friendster, <http://www.friendster.com/> (last visited Mar. 7, 2008).

<sup>3</sup> Facebook, <http://www.facebook.com/> (last visited Mar. 7, 2008).

<sup>4</sup> Xanga, <http://www.xanga.com/> (last visited Mar. 7, 2008).

<sup>5</sup> Classmates, <http://www.classmates.com/> (last visited Mar. 7, 2008).

<sup>6</sup> *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 845-46 (W.D. Tex. 2007).

<sup>7</sup> 152 CONG. REC. H5886 (daily ed. July 26, 2006) (statement of Rep. Fitzpatrick).

<sup>8</sup> MySpace.com, user data as of Mar. 13, 2008. Jesdanun, *supra* note 1 (MySpace user accounts as of December 2006). The discrepancy between the number of users and user accounts can be explained by those users who maintain multiple profiles. For instance, a music band may have its own profile, a member of the band may have a separate profile related to his band membership, and that member may have a third profile only available to personal friends.

<sup>9</sup> Dawn Kawamoto, *MySpace Growth Continues Amid Criticism*, ZDNET.COM, Mar. 31, 2006, [http://news.zdnet.com/2100-9595\\_22-6056580.html](http://news.zdnet.com/2100-9595_22-6056580.html).

<sup>10</sup> See Traffic Details for: MySpace.com/

United States.<sup>11</sup> It has become a popular marketing tool<sup>12</sup> and a commercial goldmine.<sup>13</sup>

Before discussing any problems with MySpace and other social networking websites, it is important to recognize that these websites can be entertaining and cater to a vast age range of users:<sup>14</sup> eighty-seven percent of MySpace users are over age eighteen, and fifty-two percent are over age thirty-five.<sup>15</sup> Over 2.2 million bands, 8,000 comedians, and thousands of filmmakers maintain MySpace user profiles,<sup>16</sup> with many recognizable names because these users are on the top forty record charts, sell out comedy venues, or are part of a major film studio.<sup>17</sup> Additionally, other networking opportunities arise when students are connected through their school names, or members join one of the other numerous networking opportunities from poetry to computer programming.<sup>18</sup>

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[http://www.alexa.com/data/details/traffic\\_details?url=myspace.com](http://www.alexa.com/data/details/traffic_details?url=myspace.com) (last visited Mar. 7, 2008).

<sup>11</sup> Betsy Powell, *Suspect Used MySpace to 'Lure' Girl, 13; Teen Website Wildly Popular Police Say Man Posed as Gay Boy*, TORONTO STAR, July 12, 2006, at A01 (noting that MySpace was rated the most popular website according to reports released on July 11, 2006).

<sup>12</sup> See, e.g., MySpace.com – 300, <http://www.myspace.com/300themovie> (last visited Mar. 7, 2008). This is the official MySpace profile for the blockbuster “300.” The studio provided trailers, computer wallpaper, and a countdown clock until the movie’s DVD release date. *Id.* See also Patricia Sellers, *MySpace Cowboys*, FORTUNE, Sept. 4, 2006, available at [http://money.cnn.com/magazines/fortune/fortune\\_archive/2006/09/04/8384727/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2006/09/04/8384727/index.htm).

<sup>13</sup> Reuters, *MySpace to Offer Parental Notification Software*, MSNBC.COM, Jan. 18, 2007, <http://www.msnbc.msn.com/id/16671449>. MySpace.com was purchased by News Corp. in 2005 for \$580 million. *Id.* This was a small investment, since it is projected that MySpace “could be worth billions of dollars in the next several years.” *Id.*

<sup>14</sup> Sellers, *supra* note 12. See also MySpace, *supra* note 1 (providing opportunities to search for classmates, music, and movies).

<sup>15</sup> Sellers, *supra* note 12.

<sup>16</sup> *Id.*

<sup>17</sup> Information obtained by searching on MySpace.com. MySpace, *supra* note 1; Nate Dow, *Megastars in Space*, BOSTONHERALD.COM, Nov. 4, 2007, <http://www.bostonherald.com/business/technology/general/view.bg?articleid=1042444>.

<sup>18</sup> MySpace, *supra* note 1; MySpace Groups: Literature & Arts, <http://searchresults.myspace.com/index.cfm?fuseaction=groups.ListGroups&categoryID=19> (last visited Mar. 9, 2008); MySpace Site Search: Computer Programming, <http://sads.myspace.com/Modules/Search/Pages/Search.aspx?fuseaction=advancedFind.results&searchtarget=tms&searchtype=myspace&t=tms&get=1&websearch=1&searchBoxID=HeaderWebResults&searchString=computer+programming&q=computer+programming> (last visited Mar. 9, 2008).

Not surprisingly, an estimated twenty-four million children use the Internet,<sup>19</sup> and approximately sixty-one percent of those users report having personal profiles on social networking websites such as MySpace.<sup>20</sup> Profiles can contain “photographs, e-mail addresses, hobbies [and] other personal information.”<sup>21</sup> Moreover, a recent poll shows that eighty-seven percent of twelve to seventeen year olds “use the Internet on a regular basis.”<sup>22</sup> In other words, roughly two-thirds of twelve to seventeen year olds regularly maintain and access a profile on a social networking website.

As the popularity of social networking websites continuously increases, a problem has developed: approximately one out of five children using the Internet have received “unwanted sexual solicitations.”<sup>23</sup> According to the FBI, over the past ten years, child pornography cases have increased more than 2,000 percent.<sup>24</sup> Michelle Collins, a director at the National Center for Missing and Exploited Children (NCMEC), testified before a House of Representatives subcommittee that “[c]hild predators consider [social networking] sites to be an easy way to find child victims. They can use the information posted by children to forge a ‘cyber-relationship’ that can lead to that child being victimized.”<sup>25</sup>

MySpace prohibits users under the age of fourteen from registering for a user profile.<sup>26</sup> Although the numbers are fuzzy, roughly fifteen to twenty percent of MySpace users are minors between fourteen and eighteen years old.<sup>27</sup> That figure means

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<sup>19</sup> 152 CONG. REC. H5884 (daily ed. July 26, 2006) (statement of Rep. Upton).

<sup>20</sup> *Id.* at H5889 (statement of Rep. Biggert).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at H5884 (statement of Rep. Upton).

<sup>24</sup> *Id.*

<sup>25</sup> Rebecca Porter, *Lawyers, Advocates Look to Protect Kids from Web Networking Dangers*, TRIAL, Oct. 1, 2006, available at <http://www.thefreelibrary.com/Lawyers%2c+advocates+look+to+protect+kids+from+Web+networking+dangers.-a0153518270>.

<sup>26</sup> Terms & Conditions – MySpace.com, <http://www.myspace.com/Modules/Common/Pages/TermsConditions.aspx> (last visited Mar. 9, 2008). MySpace terms of use state that in order to be eligible to register for MySpace, “you represent and warrant that . . . you are 14 years of age or older.” *Id.*

<sup>27</sup> See Sellers, *supra* note 12; Anick Jesdanun, *Youths No Longer Predominant at MySpace*, MSNBC.COM, Oct. 5, 2006, <http://www.msnbc.msn.com/id/15147500>. In October 2006, comScore Media Metrix, a company that monitors online activity, reported that twelve percent of

that MySpace has between nine and thirteen million users that are between the ages of fourteen and eighteen. The problem does not directly arise with the age of the users, but the way that they represent themselves, the personal information that they provide, and the accuracy of the information. While MySpace prohibits users under the age of fourteen, the prohibition does not mean that children under age fourteen do not register for user profiles with false ages, nor does this mean that these children do not use their false profiles regularly. Minors become targets of sexual predators on MySpace by providing too much personal information.<sup>28</sup>

This Note will discuss the problem of minors using MySpace and the risk of minors becoming prey to sexual predators on the website. First, it will discuss recent developments with respect to MySpace and the major problem of a lack of age verification system. Next, it will examine the steps that the government and private citizens are taking to protect minors. Finally, it will propose a new technology that may solve more than just the problems with MySpace and the lack of an age verification system.

## II. SEX, LIES, AND MYSPACE

Many of the complaints about MySpace revolve around sexual encounters that have taken place in person. One investigation turned up hundreds of MySpace profiles belonging to convicted sex offenders.<sup>29</sup> As this Note will later explain, virtually anyone can pose as an age other than their own on MySpace as long as they have a valid e-mail address and know how to use a computer.<sup>30</sup> As a matter of fact, one out of five American teenagers reports that he or she has received an unwanted online sexual advance.<sup>31</sup> Only about twenty-five percent of minors who have been sexually encountered or solicited on the Internet have

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MySpace visitors were less than eighteen years old. *Id.* That means that if there were fifty million MySpace visitors (and there appears to be more than that) in October 2006, than at least six million of them were between ages fourteen and eighteen. *Id.*

<sup>28</sup> Reuters, *supra* note 13.

<sup>29</sup> Jesdanun, *supra* note 1.

<sup>30</sup> See discussion *infra* p. 7 (discussing how an individual must only present a valid e-mail address and a birth date that would make them at least fourteen years of age to use MySpace.com).

<sup>31</sup> S. Res. 842, 109th Reg. Sess. (Fla. 2007).

told their parents.<sup>32</sup> Parry Aftab, a high profile U.S. lawyer specializing in Internet privacy and security law says that MySpace is “one stop shopping for sexual predators, and they can shop by catalogue” because profiles show pictures, interests, ages, and sexual orientation.<sup>33</sup>

Currently, four families are suing MySpace and its parent company, News Corp., in four separate lawsuits for negligence, recklessness, fraud, and negligent misrepresentation.<sup>34</sup> In each of these cases, fourteen or fifteen year old girls were sexually abused by adults that they met on MySpace.<sup>35</sup> In Texas, *Doe v. MySpace* made headlines when the family of a fourteen year old girl sued MySpace for a whopping \$30 million claiming that their daughter was sexually assaulted by a nineteen year old MySpace user.<sup>36</sup> The family alleged that MySpace took “absolutely no meaningful protections or security measures to protect underage users.”<sup>37</sup> The most shocking part of this Texas case was that the Plaintiff, “Julie Doe,” still pursued this lawsuit after admitting at a hearing that she was only thirteen years old at the time that she created her MySpace account<sup>38</sup>—a blatant violation of MySpace’s Terms of Use Agreement—<sup>39</sup> and that she represented her age as eighteen years old when she joined MySpace.<sup>40</sup> The lack of an age verification system, and Julie Doe’s failure to tell the whole truth on MySpace, led to the alleged sexual assault.

The real problem is not the sexual solicitation, but the lack of an age verification system. Everyone—children and adults—are lying about their ages and there is no way for MySpace or anyone else to verify the information. The problem is not new and was addressed in 1998 by the Children’s Online Privacy Protection Act (COPPA), which tried to preserve children’s safety by regulating the dispersal of children’s personal information on the

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<sup>32</sup> *Id.*

<sup>33</sup> Rob Stafford, *Why Parents Must Mind MySpace*, MSNBC.COM, Apr. 5, 2006, <http://www.msnbc.msn.com/id/11064451>.

<sup>34</sup> Associated Press, *Four Families Suing MySpace Over Assaults*, MSNBC.COM, Jan. 18, 2007, <http://www.msnbc.msn.com/id/16688909>. Each case was filed in the Los Angeles Superior Court and they are all being represented by the same law firms. *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Powell, *supra* note 11, at A01; *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 846 (W.D. Tex. 2007).

<sup>37</sup> Powell, *supra* note 11, at A01.

<sup>38</sup> *MySpace*, 474 F. Supp. 2d at 846.

<sup>39</sup> Terms & Conditions, *supra* note 26.

<sup>40</sup> *MySpace*, 474 F. Supp. 2d at 846.

Internet.<sup>41</sup> Because there was no actual way to verify that children were under the age of thirteen, many websites provided handy check boxes that politely asked users to check the box to verify that, in fact, the user was over thirteen years old, and presupposing that if the user was not over thirteen years old he or she would not be capable of checking the box.<sup>42</sup> For obvious reasons, the law did not work, and the age verification problem has grown.

Understanding how MySpace operates provides insight into the present problem. Any person who knows how to use a computer can go the website <http://www.myspace.com>. Then using a valid e-mail address, the person must simply enter a birth date that makes the user fourteen years old or older.<sup>43</sup> This procedure has recently changed, and is one step closer to age verification. In the past, MySpace would only issue an error message stating that the user's birthday was invalid.<sup>44</sup> Now, it will block the entire sign-up process. However, an intelligent user need only enter an age older than fourteen, and after the user confirms his or her e-mail address the user can begin to use MySpace.

When Dateline NBC interviewed Shannon Sullivan, the interview publicized what can occur without an age verification system in place. Shannon was only thirteen years old when she created her MySpace account.<sup>45</sup> Shannon was easily able to set her age as eighteen years old, and did not think twice about doing so.<sup>46</sup> By setting her age at eighteen, Shannon could communicate with anyone on MySpace, and her profile did not have to have the privacy setting activated. Since MySpace accounts were popular among her friends, Shannon did not see any harm in lying about her age to join in the fun.<sup>47</sup> She "honestly just thought it was [her] friends looking at [her profile]," so she included her name, address, and school—

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<sup>41</sup> 16 C.F.R. §§ 312.1, 312.2 (2007) (regulating the online collection of personal information from children under the age of thirteen).

<sup>42</sup> See, e.g., BRINT Global Knowledge Network – COPPA Rules, <https://www.brint.net/forums/register.php?do=signup&who=coppa&url=index.php> (last visited Mar. 9, 2008).

<sup>43</sup> MySpace, [Join MySpace Here, http://signup.myspace.com/index.cfm?fuseaction=join](http://signup.myspace.com/index.cfm?fuseaction=join) (last visited Mar. 9, 2008).

<sup>44</sup> *Id.* (any individual attempting to view this message need only input their information along with an invalid birth date).

<sup>45</sup> Stafford, *supra* note 33.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

everything a person would need to find Shannon.<sup>48</sup> MySpace did not delete Shannon's profile.<sup>49</sup>

MySpace is not entirely at fault for failing to delete Shannon's profile. One of the biggest problems with age verification is that, unlike adults, teenagers do not tend to have public records, so technology cannot easily rule out whether a fourteen year old is really fourteen, eleven, or thirty-five.<sup>50</sup>

Although it is very difficult to verify a minor's age, verifying the age of adults creates another issue. I created three MySpace profiles: a fourteen year old girl, a one hundred year old woman, and an accurate profile (a student in her late twenties) with the privacy setting turned on. My accurate profile was the only profile with pictures posted. All three profiles were in use for over six months.

Only thirty people viewed my one hundred year old woman profile (there is a counter that keeps track of viewings). I did, however, receive many e-mails soliciting sexy dating services—there must be a market for *much* older women!<sup>51</sup> MySpace quickly deleted many of these solicitations before I used the "report" option in the MySpace e-mail system.<sup>52</sup>

My personal, private profile received over 1500 viewings. Although users couldn't see anything about me with the exception of my age, hometown ("Somewhere in New York"), and small photo, I received some creepy MySpace e-mail messages about meeting up in person. Overall, MySpace was a very pleasurable experience, and I was able to get in touch with some long lost friends as well as several of my everyday classmates.

As a fourteen year old, I could not view other fourteen or fifteen year olds' profiles unless I became "friends" with them so that we were connected in the same network. I thought that perhaps I could network, so I became my fourteen year old

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<sup>48</sup> *Id.*

<sup>49</sup> See *id.*; see also Olga Kharif, *Big Brother Is Reading Your Blog*, BUSINESSWEEK, February 28, 2006, [http://www.businessweek.com/print/technology/content/feb2006/tc20060228\\_241578.htm](http://www.businessweek.com/print/technology/content/feb2006/tc20060228_241578.htm).

<sup>50</sup> Alison Hoover, *Keeping MySpace Safe*, WASH. TIMES, June 28, 2006, at A02.

<sup>51</sup> Many of these solicitations say something like, "SEE HOT SINGLES" with a picture of a scantily clad woman.

<sup>52</sup> At the top of each e-mail, MySpace provides two options: "Flag as Spam" and "Report Abuse." Once a user checks the appropriate box and submits the e-mail, MySpace will investigate the e-mail to see if it constitutes spam or abuse. If the e-mail falls into either category, MySpace will delete the offender's account and the offender's e-mails will be deleted from all users' inboxes.

nephew's friend, but I wasn't undercover or "cool" enough. I could, however, quickly change my age to sixteen, eighteen, or twenty-one.<sup>53</sup> Since most of the fourteen year olds were already posing as twenty-one year olds, my time as a fourteen year old was fruitless.

The end result of my personal investigation was that MySpace was a fun and addictive way to keep in touch with friends, hear new bands, and get the inside scoop on new movies. If I wanted to, I could also break MySpace's rules: I could send inappropriate e-mails and lie about my age. MySpace never deleted any of my profiles. The only threat facing MySpace users that lie about their age is the following warning: "[y]our profile may be deleted and your Membership may be terminated without warning, if we believe that you are under [fourteen] years of age."<sup>54</sup> As for adults lying about their age, purporting to be between ages fourteen and eighteen, MySpace does not have a specific clause in their Terms of Use. MySpace simply states that: "By using the MySpace Services, you represent and warrant that [] all registration information you submit is truthful and accurate . . ." <sup>55</sup> Nowhere does MySpace state that it will delete a user's profile specifically for misrepresenting age.<sup>56</sup> I was not scared about lying, neither was Shannon on Dateline NBC, and neither are countless other people.

### III. STOPPING THE SEXUAL ASSAULTS, PREDATORS, AND MISREPRESENTATIONS ON MYSPACE

The National Center for Missing and Exploited Children (NCMEC) purports that an age verification tool is the way to make MySpace safer.<sup>57</sup> Unfortunately, "it is impossible to verify

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<sup>53</sup> I was surprised that when I became a fourteen year old, so that I could get into the eyes of a fourteen year old's world, *no one's* age was fourteen! They were all eighteen and up! Unfortunately, these are all kids that I personally know, and none of them are old enough to drive, so the fact that you can quickly change your age on MySpace before Mom and Dad come home is a well known fact.

<sup>54</sup> Terms & Conditions, *supra* note 26.

<sup>55</sup> *Id.*

<sup>56</sup> *See id.* Under <http://www.myspace.com/safetytips/>, MySpace has recently changed its Safety Tips to state that "[i]f you are over 18 and pretend to be a teenager to contact underage users, customer service will delete your profile." MySpace.com - Safety Tips, <http://www.myspace.com/safetytips/> (last visited Mar. 9, 2008). Without an age verification system, this is a very empty threat.

<sup>57</sup> Hoover, *supra* note 50, at A02.

the age of anyone younger than [eighteen].”<sup>58</sup> The types of records used to verify adult identities do not exist for teenagers because “[m]ost teenagers don’t pay taxes, own homes or make other major purchases in their own names.”<sup>59</sup> Since age verification is the problem, there are some possible solutions, but none fix or face the age verification problem head-on.

#### A. Sue

When a widespread remedy is unavailable (i.e., the technology has not been developed, legislation will be difficult), the best step that an individual may be able to take is to file a lawsuit. Bad publicity and monetary damages can make wrongdoers change their ways. In other words, if parents believe that their child’s in-person sexual assault is the result of MySpace lacking the proper precautions, then parents can sue MySpace. If litigation ensues, one of three things will most likely happen: (1) MySpace will settle quietly out-of-court; (2) MySpace will release a public statement about new safety technologies and settle quietly; or, (3) MySpace will fight the lawsuit stating that it is not liable for what occurs between its users. The first two possibilities may make the victim feel vindicated.

As briefly discussed in section II, several families have taken action against MySpace for sexual assaults that have taken place in-person. Adam Loewy, an attorney representing the plaintiffs in five separate MySpace lawsuits, equates suing MySpace to owning a private business.<sup>60</sup>

If you own a [skating] rink that allows both adults and kids, the skating rink is held liable for any inappropriate interaction between the kid and the adult . . . MySpace knew these things were occurring, they just chose not to do anything about it. The difference is that the actual crime occurred off the Internet, but we believe that liability extends to the Internet.<sup>61</sup>

Laura Gelman, associate director of the Center for Internet and Society at Stanford University, disagrees with Loewy.<sup>62</sup> Gelman believes that “although MySpace is liable for what occurs when users are on the site, the company cannot necessarily be

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Paula Lehman, *Building a Safer MySpace*, MSNBC.COM, Jan. 24, 2007, <http://www.msnbc.msn.com/id/16789338>.

<sup>61</sup> *Id.*

<sup>62</sup> See Hoover, *supra* note 50, at A02.

blamed for what users do offline.”<sup>63</sup> Case law concerning the Communications Decency Act (CDA) agrees with Gelman’s view.

*Doe v. MySpace* was dismissed in February 2007, supporting Gelman’s analysis.<sup>64</sup> Two of the claims, negligence and gross negligence, were dismissed with prejudice.<sup>65</sup> The fraud and negligent representation claims were dismissed without prejudice.<sup>66</sup>

### 1. The Communications Decency Act

The 1996 Communications Decency Act (CDA) grants broad immunity for content provided to “interactive computer service[s]” by third parties.<sup>67</sup> An “interactive computer service” is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.”<sup>68</sup> This definition encompasses MySpace and similar websites. The CDA grants immunity to “interactive computer service[s]” by holding “information content provider[s]” liable for the information that they publish.<sup>69</sup> An “information content provider” can be any user who posts or publishes information on a website.<sup>70</sup>

The purpose of the CDA is “to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum.”<sup>71</sup> “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>72</sup> In other words, the CDA only

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<sup>63</sup> *Id.*

<sup>64</sup> *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 852 (W.D. Tex. 2007).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 47 U.S.C. § 230(c)(1) (2000); Tresa Baldas, *Web Dating Industry is Target of Regulation*, NAT’L L.J., Sept. 15, 2006.

<sup>68</sup> 47 U.S.C. § 230(f)(2).

<sup>69</sup> *Id.* § 230(c)(1). An “information content provider” is defined as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” *Id.* § 230(f)(3).

<sup>70</sup> *See id.* § 230(f)(3).

<sup>71</sup> *Zeran v. AOL*, 129 F.3d 327, 330 (4th Cir. 1997). *See also* 47 U.S.C. § 230(a)(4).

<sup>72</sup> 47 U.S.C. § 230(c)(1). The other catch in the CDA is that § 230 (e)(3) does not prohibit states from making laws, but states cannot hold the provider of an

holds one person liable for conduct on a website—the person who is actually acting, not the service provider of the website itself. The CDA has been the subject of litigation similar to the MySpace cases discussed above.

In *Doe v. America Online, Inc.*, a man lured three male minors through Internet chat rooms and coerced the boys into engaging in sexual activity with each other.<sup>73</sup> The sex acts were videotaped and shown in other chat rooms.<sup>74</sup> The Supreme Court of Florida applied the CDA and considered the chat room's service provider to be the publisher of the video.<sup>75</sup> Since the service provider was the publisher and not the actor, the CDA barred the plaintiff's cause of action against the service provider.<sup>76</sup>

In *Zeran v. America Online, Inc.*, the Fourth Circuit Court of Appeals stated that the CDA “[b]y its plain language, . . . creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.”<sup>77</sup> In other words, a computer service provider does not have to take on the role or the liability of a publisher—a computer service provider will not be held responsible for traditional editorial functions.<sup>78</sup>

Congress' purpose in providing . . . immunity was thus evident. Interactive computer services have millions of users . . . The amount of information communicated via interactive computer services is therefore staggering. The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.<sup>79</sup>

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interactive computer service liable nor may a state create a cause of action. *Id.* § 230(e)(3).

<sup>73</sup> *Doe v. AOL*, 783 So. 2d 1010, 1011 (Fla. 2001).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 1013, 1017.

<sup>76</sup> *Id.* at 1017; 47 U.S.C. § 230(c).

<sup>77</sup> *Zeran v. AOL*, 129 F.3d 327, 330 (4th Cir. 1997).

<sup>78</sup> *Id.* at 331.

<sup>79</sup> *Id.*

MySpace can reasonably be considered to be a publisher, based on the definitions and application provided by *Doe v. AOL* and *Zeran v. AOL*. As a result, the plaintiffs in the sexual assault cases should not have a cause of action and MySpace should not be held liable. However, at least some people believe (including the lawyers litigating the MySpace sexual assault cases) that, even though companies are protected for online activities, these same companies may still be held liable for conduct that takes place off of the Internet and in person, such as rape or physical assault.<sup>80</sup> Just “how far [the CDA’s] protection goes is the new question.”<sup>81</sup> Anne Ramastry, a professor at the University of Washington School of Law, asked, “What happens when you go offline . . . when the harm was offline? It’s sort of a gray area and a novel legal question.”<sup>82</sup>

Anne Ramastry’s question may have been answered by the court in *Doe v. MySpace*. Throughout the *MySpace* opinion there were no surprises and there was no new language. The Court cited *Doe v. AOL* and *Zeran v. AOL* as well as the fact that:

The policy underlying the CDA is the promotion of ‘the continued development of the Internet and other interactive computer services . . .’ 47 U.S.C. § 230(b)(1). To ensure that web site operators and other interactive computer services would not be crippled by lawsuits arising out of third-party communications, the Act provides interactive computer services with immunity.<sup>83</sup>

If other courts follow this jurisprudence then MySpace will remain safe from litigation, and age verification will need to be more carefully examined.

### B. Federal Proposals

Congress proposed three approaches<sup>84</sup> to help protect minors on MySpace. First, in mid-2006, a group of Congressmen responded to the MySpace safety issues that had been in the news. The Congressmen,<sup>85</sup> mainly from mid-western states with

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<sup>80</sup> Baldas, *supra* note 67.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Doe v. MySpace, Inc*, 474 F. Supp. 2d 843, 847 (W.D. Tex. 2007).

<sup>84</sup> See discussion *infra* Parts III.B. & III.D. (discussing the third approach which deals with registered sex offenders). The most prominent action may be the Keeping the Internet Devoid of Sexual Predators Act of 2007 (KIDS). S. 431, 110th Cong. (2007); H.R. 719, 110th Cong. (2007).

<sup>85</sup> Sponsor: Rep. Michael G. Fitzpatrick (PA); Co-Sponsors: Rep. Charles F.

suburban constituents, proposed a bill to protect children from the potential harm of “social networking” websites.<sup>86</sup> The bill, entitled the Deleting Online Predators Act (DOPA), blocks children’s access to “social networking” sites and chat rooms from certain locations.<sup>87</sup> MySpace is one of the main targets of this bill.<sup>88</sup>

### 1. The Deleting Online Predators Act

The Suburban Caucus Agenda, comprised of approximately five dozen Congressmen, was formed to deal with the concerns of the legislators’ suburban constituents.<sup>89</sup> One recurring issue that was consistently brought up was concern for the safety of children on the Internet; in particular, children who become the prey of Internet predators and pedophiles in chat rooms and on social networking sites, such as MySpace.<sup>90</sup> The statistics of victimized children is disquieting.<sup>91</sup> To deal with this problem, in May 2006, Rep. Michael Fitzpatrick (R-PA) proposed DOPA.<sup>92</sup>

DOPA amends the Communications Act of 1934 by requiring schools and libraries that receive federal funding (also known as

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Bass (NH), Rep. Melissa L. Bean (IL), Rep. Judy Biggert (IL), Rep. Marsha Blackburn (TN), Rep. Jeb Bradley (NH), Rep. Ginny Brown-Waite (FL), Rep. John Campbell (CA), Rep. Michael N. Castle (DE), Rep. Geoff Davis (KY), Rep. John T. Doolittle (CA), Rep. Thelma D. Drake (VA), Rep. John J. Duncan, Jr. (TN), Rep. Phil English (PA), Rep. Vito Fossella, Jr. (NY), Rep. Jim Gerlach (PA), Rep. Paul E. Gillmor (OH), Rep. Kay Granger (TX), Rep. J. D. Hayworth (AZ), Rep. Sue W. Kelly (NY), Rep. Mark R. Kennedy (MN), Rep. Mark Steven Kirk (IL), Rep. John Kline (MN), Rep. John R. “Randy” Kuhl, Jr. (NY), Rep. Kenny Marchant (TX), Rep. Michael T. McCaul (TX), Rep. Candice S. Miller (MI), Rep. Tim Murphy (PA), Rep. Todd Russell Platts (PA), Rep. Ted Poe (TX), Rep. Jon C. Porter (NV), Rep. Adam H. Putnam (FL), Rep. Mike J. Rogers (MI), Rep. John J.H. “Joe” Schwarz (MI), Rep. Pete Sessions (TX), Rep. John Shimkus (IL), Rep. Curt Weldon (PA), Rep. Jerry Weller (IL). Deleting Online Predators Act of 2006 (DOPA), H.R. 5319, 109th Cong. (2006).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> 152 CONG. REC. H5885–87, 5889 (daily ed. July 26, 2006) (showing how many Representatives believed that MySpace was allowing sexual predators to target children).

<sup>89</sup> 152 CONG. REC. H2310 (daily ed. May 9, 2006); The Suburban Agenda, <http://www.house.gov/kirk/suburban.agenda/pr060510.html> (last visited Mar. 10, 2008).

<sup>90</sup> 152 CONG. REC. H5883, 5884–87, 5889 (daily ed. July 26, 2006).

<sup>91</sup> For example, Rep. Mark Kirk (IL) stated that over 50,000 Internet predators are online at any given time. 152 CONG. REC. H2310 (daily ed. May 9, 2006).

<sup>92</sup> H.R. 5319, 109th Cong. (2006).

e-rate funding<sup>93</sup>) to prohibit access to commercial social networking websites.<sup>94</sup> Additionally, the Act would prohibit access to chat rooms in these schools and libraries.<sup>95</sup>

The purpose of the Act is to stop minors from: (1) easily accessing or being exposed to indecent or obscene material; (2) being subject to unlawful sexual advances, requests for sexual favors, or repeated offensive sexual comments from adults; and (3) accessing any other material that may be harmful to minors.<sup>96</sup> The Act would prohibit *all* social-networking websites and chat rooms, even those that have an educational value. However, an authorized person (such as an administrator) would be able to disable the protection for adults or children supervised by an adult.<sup>97</sup> The Federal Communications Commission (FCC) would regulate that area.

DOPA would require the FCC to take several steps. First, the FCC would need to create an advisory board.<sup>98</sup> Annually, the board would publish a list of offending sites that allowed sexual predators to have easy access to children's personal information and contact with children.<sup>99</sup> The advisory board would then issue an alert to consumers regarding use of the Internet by child predators and the potential dangers to children because of such use, including the potential dangers of commercial social networking websites and chat rooms.<sup>100</sup> Finally, the advisory board would establish a website that would act as a clearinghouse of information for parents, teachers, school administrators, and others regarding potential dangers posed by the use of the Internet by children.<sup>101</sup> The advisory board's website would give detailed information about "social networking" sites.<sup>102</sup> DOPA passed the House of Representatives on July 26, 2006, by 410 to 15 votes.<sup>103</sup>

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<sup>93</sup> E-rate funding is a program that allows schools and libraries to have telecommunications services (including the Internet) provided to them at affordable rates. See FCC – E-Rate, <http://www.fcc.gov/learnnet/> (last visited Mar. 10, 2008).

<sup>94</sup> H.R. 5319, § 2(a)(i)(II).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* § 2(a)(i)(I)–(II).

<sup>97</sup> *Id.* § 2(d).

<sup>98</sup> *Id.* § 2(e).

<sup>99</sup> *Id.* § 2(f).

<sup>100</sup> H.R. 5319, § 3(a)(1).

<sup>101</sup> *Id.* § 3(a)(2).

<sup>102</sup> *Id.*

<sup>103</sup> 152 CONG. REC. H5900 (daily ed. July 26, 2006). Seven members of the

DOPA is not the first law attempting to limit Internet usage in libraries. In fact, in 2001, Congress passed the Children's Internet Protection Act (CIPA).<sup>104</sup> CIPA differed from DOPA in that CIPA required e-rate funded libraries and schools to implement filtering devices for inappropriate sexual depictions.<sup>105</sup> DOPA takes CIPA a step further by blocking websites entirely, regardless of whether or not the content is actually harmful. DOPA can also be viewed as redundant because CIPA already requires harmful and obscene content to be blocked in e-rate funded locations. CIPA was effective, but the idea behind DOPA is that minors become prey when they enter chat rooms and social networking websites.

DOPA is not the ultimate answer to protect children from Internet predators. Rep. Fitzpatrick acknowledges:

Make no mistake, our children on the Internet are at risk. Predators will look for any way to talk to children online, whether through sites like MySpace, instant messaging, or even online games. The best defense against these people is to educate parents and children of the dangers that come along with the Internet and by protecting our children during the school day. There may be no one silver bullet solution to this problem, Mr. Speaker, but this legislation takes a strong step forward in deleting the presence of child predators online.<sup>106</sup>

One problem with DOPA is that DOPA uses e-rate funding as a law enforcement device as opposed to using the funding for its original purpose: "to enhance Internet access and bridge the digital divide."<sup>107</sup> Additionally, DOPA only protects children in e-rate funded schools and libraries—DOPA does nothing to protect a child in his or her home.<sup>108</sup> Rep. Ed Markey (D-MA) says that DOPA "proposes an ineffectual remedy."<sup>109</sup> If children cannot access "social networking" sites from school or local libraries,

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House either did not vote or were not present at voting. *Id.* Currently, DOPA was received in the Senate, read twice, and referred to the Committee on Commerce, Science, and Transportation. 152 CONG. REC. S8375 (daily ed. July 27, 2006). In February 2007, DOPA had to be reintroduced to the new session of Congress. H.R. 1120, 110th Cong. (2007).

<sup>104</sup> Children's Internet Protection Act (CIPA), 47 C.F.R. § 54.520 (2007).

<sup>105</sup> *Id.* § 54.520(c)(1)(i).

<sup>106</sup> 152 CONG. REC. H2311 (daily ed. May 9, 2006) (statement of Rep. Fitzpatrick).

<sup>107</sup> 152 CONG. REC. H5884 (daily ed. July 26, 2006) (statement of Rep. Markey).

<sup>108</sup> *Id.* at H5884–85.

<sup>109</sup> *Id.* at H5884.

they may go to an unsupervised location to access these sites and put themselves in danger.<sup>110</sup>

Organizations affected by DOPA also oppose the bill. The National School Boards Association (NSBA) released a statement stating its position that “the bill would not substantially improve safety of students, and would place an added and unnecessary burden on schools . . . [And] the legislation does not address the real issue of educating children about the dangers of the Internet and how to use it responsibly and wisely.”<sup>111</sup>

Another opponent to DOPA, the American Library Association (ALA), sent a letter to Congress listing various reasons not to pass the current version of DOPA.<sup>112</sup> The ALA views DOPA as being “overly broad and unclear” and its current application would “block[] access to many valuable websites that utilize th[e] type of communication [blocked by DOPA], websites whose benefits outweigh their detriments.”<sup>113</sup> The ALA agrees with other DOPA critics that “[e]ducation, not laws blocking access, is the key to safe use of the Internet.”<sup>114</sup> Furthermore, the ALA believes current local decision-making is effective enough not to have DOPA add requirements in addition to the requirements already imposed by CIPA.<sup>115</sup>

Overall, DOPA may have good intentions, but it is lacking in many areas. DOPA will not be the cure-all, end-all to protecting minors from sexual predators. First, many of the websites that would be blocked by DOPA do have an educational value.<sup>116</sup> More importantly, minors, especially teenagers, are more likely to use the Internet at home than at school or in public libraries.<sup>117</sup> Therefore, keeping minors away from these sites in

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<sup>110</sup> *Id.* at H5885 (statement of Rep. Stupak).

<sup>111</sup> *Id.*

<sup>112</sup> See AMERICAN LIBRARY ASS'N (ALA), DOPA INFORMATION PACKET: A RESOURCE FOR LIBRARIANS & LIBRARY WORKERS 1 (2006), available at <http://www.ala.org/ala/yalsa/profdev/DOPAInfoPacket.pdf> (summarizing ALA points from letter, *infra* note 116, used during DOPA hearing in House on July 26, 2006).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* See *infra* Part III.C (discussing what states are doing to protect Internet users).

<sup>116</sup> See Letter from Lynne E. Bradley, Dir., Office of Gov't Relations, Am. Library Ass'n, to U.S. Senate (July 27, 2006), available at <http://www.ala.org/ala/washoff/woissues/techinttle/dopa/SenateLetter.pdf>.

<sup>117</sup> See NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT OF EDUC., COMPUTER AND INTERNET USE BY CHILDREN AND ADOLESCENTS IN 2001 22 (2003), available at <http://nces.ed.gov/pubs2004/2004014.pdf>.

public areas does not educate minors about the actual dangers of social networking websites like MySpace and DOPA, and will probably be a very ineffective deterrent. DOPA does not protect families in their homes, and service providers “vary widely in what they do to empower children and parents, how they report online predators to authorities, and actively seek and block illegal content from their networks.”<sup>118</sup> Moreover, DOPA will disadvantage children who do not have Internet access at home.<sup>119</sup> In light of this information, DOPA seems to be hastily written, yet the law casts its sponsors in a positive light because at least these Congressmen are trying to take action.

## 2. Data Retention

The second avenue that Congress is considering is mandatory data retention to retain activity logs of Internet users’ online activities.<sup>120</sup> The activity log would be based on an Internet Protocol (IP) address, which is a “unique four-byte address used to communicate with a device on a computer network that relies on the Internet Protocol.”<sup>121</sup> In laymen’s terms, an IP address is a unique address that can tell where something is coming from and where it is going to.

The idea is not new; it is already being used in similar situations in the European Union.<sup>122</sup> The executive vice-president of Fox Interactive Media (MySpace’s parent company) agreed with the idea of data retention for MySpace and the extra-added benefits: “As a media company, Fox is very committed to data retention . . . It helps us police piracy.”<sup>123</sup> Even the Bush

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<sup>118</sup> 152 CONG. REC. H5884–85 (daily ed. July 26, 2006) (statement of Rep. Stupak).

<sup>119</sup> Roy Mark, *Top Turkeys of the 2006 Legislative Season*, INTERNETNEWS.COM, Nov. 22, 2006, <http://www.internetnews.com/business/article.php/3645471>. DOPA received “Five Turkeys” from InternetNews.com:

In effect, [DOPA] denies minors in the nation’s schools and libraries a wide array of emerging Web-based learning applications and technologies. Worse, it further widens the digital divide since those children who have computers at home will be able to take advantage of the technology while those who don’t are left behind.

*Id.*

<sup>120</sup> Declan McCullagh, *Congress Targets Social-Networking Sites*, CNETNEWS.COM, June 29, 2006, [http://www.news.com/2100-1028\\_3-6089574.html](http://www.news.com/2100-1028_3-6089574.html).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

Administration is on-board, claiming that data retention would also aid in terror investigations.<sup>124</sup>

Data retention would help to track a user's suspicious activity on MySpace. Data retention could take one of two forms.<sup>125</sup> The first form would assign an IP address to an individual user for one or two years.<sup>126</sup> The second type would be much broader and would require recording the identities of e-mail correspondents, logs of who sent and received instant messages, and the addresses of the webpages that a user visited.<sup>127</sup>

The broader type of data retention is most likely the best candidate for MySpace and social networking websites. Currently, IP addresses are stored for thirty-one days on many websites.<sup>128</sup> If data were stored longer and identities and logs were tracked, sexual predators would be less likely to act because there is a greater risk of being caught. Essentially, storing IP addresses for an extended time period would act as a deterrent.

Either type of data retention will require users to pay a price for the protection: users will have to give up some privacy. Will this deter regular users, create a domino effect, and ultimately hurt social networking websites' business? Also, what is the cost of storing this information for a month, two years, or indefinitely?<sup>129</sup>

### C. Education

Seventy-six percent of minors and sixty-nine percent of parents do not know where or how to report incidents of sexual solicitation on the Internet.<sup>130</sup> Educating children, parents, and teachers about the dangers of social networking websites can easily be compared to sex and drug education in schools—even with education, there will still be some students who contract STDs, become pregnant, or use illegal drugs. Education will not save everyone.

In early 2007, five states proposed laws to implement educational procedures.<sup>131</sup> Education seems to be the most

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> McCullagh, *supra* note 120.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> S. Res. 842, 2007 Leg., 109th Reg. Sess. (Fla. 2007); H. Res. 597, 2007 Leg., 109th Reg. Sess. (Fla. 2007).

<sup>131</sup> The states are Florida, Texas, Illinois, New York, and California. *See infra*

popular attempt to protect minors from the sexual predators and other dangers on MySpace and other social networking websites. State educational programs are popular for two reasons. First, the educational programs proposed are relatively inexpensive.<sup>132</sup> Second, the interstate nature of the Internet could raise some constitutional concerns if a state tried to actually regulate social networking websites.<sup>133</sup>

In 2007, the Florida Congress proposed a bill that:

[E]ncourages parents and children to learn about the incidence of sexual abuse and the risks associated with online communication and urges parents to learn how to protect their children while they are online and how and where to report cases of sexual solicitation and exploitation which occur over the Internet.<sup>134</sup>

Texas has taken the Florida law a step further by proposing a bill requiring the Texas Attorney General to post educational materials on the Attorney General's website "designed to educate minors concerning ways to avoid becoming a victim or perpetrator of the offense of online solicitation of a minor . . ." <sup>135</sup> The website would be available for use in public school classrooms.<sup>136</sup> The proposal would make online solicitation of a minor a first degree felony in Texas.<sup>137</sup>

Illinois, New York, and California proposed similar, but

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Part III.C. Virginia has also proposed a law dealing with Myspace, but the Virginia law concerns convicted sexual offenders. *See* VA. CODE ANN. § 9.1-903 (2007). Several other states, including Michigan, have decided to tackle online dating websites first. *See* H.B. 5133, 2007 Leg., 94th Sess. (Mich. 2007). Online dating websites are a subset of social networking websites. New York was the first to pass a law dealing with any sort of social networking website. New York passed New York General Business Law § 394-c to aid consumers who purchased online dating services; it did not deal directly with users' safety. *See* N.Y. GEN. BUS. LAW § 394-c (Consol. 2007).

<sup>132</sup> *See, e.g.,* Assemb. 3418, Memo (N.Y. 2007), available at <http://assembly.state.ny.us/leg/?bn=A03418>; *see also* S. 120, 80th Leg., Reg. Sess., Fiscal Note (Tex. 2007).

<sup>133</sup> Baldas, *supra* note 67; *see also* Business Wire, *In Wake of Major Security Breaches at Data Providers, Dating Site/Social Networking Trade Group Announces Opposition to State Legislation Aimed at Regulating Online Dating*, Mar. 21, 2005, available at [http://www.findarticles.com/p/articles/mi\\_m0EIN/is\\_2005\\_March\\_21/ai\\_n13454772](http://www.findarticles.com/p/articles/mi_m0EIN/is_2005_March_21/ai_n13454772) (concluding that strict regulations, which are "often struck down by federal courts as unreasonable limits on interstate commerce, have a greater chance of passage when linked to issues like safety").

<sup>134</sup> S. Res. 842, 2007 Leg., 109th Reg. Sess. (Fla. 2007); H. Res. 597, 2007 Leg., 109th Reg. Sess. (Fla. 2007).

<sup>135</sup> S.B. 120 §§ 1(a)-(b), 80th Leg., (Tex. 2007).

<sup>136</sup> *Id.* § 1(b)(1).

<sup>137</sup> *Id.* § 3(f).

possibly more reasonable, bills to educate minors about protection from sexual predators on MySpace. The Illinois proposal would require instruction on Internet safety in every public school for both teachers and students.<sup>138</sup> Specifically, the instruction would include information on how to “report suspicious online encounters.”<sup>139</sup> The Illinois bill differs from New York and California because it specifies training for teachers.<sup>140</sup>

The New York bill requires all students in elementary and secondary schools to receive instruction in Internet safety that would “teach Internet security and . . . aid in the safety and protection of pupils from the potential dangers of the Internet, including . . . sexual predators.”<sup>141</sup> The New York bill does not specify what the curriculum would entail. Instead, the substantive material is left for the Board of Education or Board of Trustees in each school district to determine.<sup>142</sup> New York does have a complementary proposal that would aid school districts in the development of the required curricula.<sup>143</sup>

The California bill is much more specific than the New York proposal. The proposed California bill “would require the State Department of Education to develop and maintain Internet safety curriculum guidelines for use by local educational agencies . . . [And] also require the department to distribute the guidelines to [these] agencies.”<sup>144</sup> The education would actually take place in school, as opposed to the Florida and Texas plans where education is suggested or available but not required. California’s education would take place in both elementary and secondary schools and would provide pertinent information to protect minors from MySpace.<sup>145</sup> The Internet safety curriculum would include information on:

- (1) The importance of avoiding reckless conduct while visiting a social networking Web site or Internet chat room.
- (2) The importance of maintaining personal information and photographs private when interacting with strangers on the Internet.

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<sup>138</sup> H.B. 660, 95th Gen. Assemb. (Ill. 2007).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> A.B. 3418, 2007 Assemb., 230th Sess. (N.Y. 2007).

<sup>142</sup> *Id.*

<sup>143</sup> A.B. 994, 2007 Assemb., 230th Sess. (N.Y. 2007).

<sup>144</sup> A.B. 88, 2007 Assemb., Reg. Sess. (Cal. 2006).

<sup>145</sup> *Id.*

(3) The importance of anonymity and avoiding in-person meetings.<sup>146</sup>

All of these states have good intentions and are trying to solve a tough problem. There does not seem to be the available technology to eradicate the problem of minors becoming the prey of sexual predators on the Internet. Mandatory education for *everyone*—educators, parents, and students—about the potential dangers may help to prevent minors from putting themselves in these situations, while enabling parents and educators with the tools that they need to monitor minors' behavior. Education may be the best answer until a technological solution can be developed and implemented.

Education would likely help to bridge the technology gap between parents and their children. Although a parent who has never pressed the power button on a computer will not become a whiz overnight, at least knowing about existing dangers may help. Of course, the problem of uninvolved parents who are either too busy or do not express much concern about their children's online activities will always exist. Education will not help these parents.

In the earlier example of thirteen year old Shannon posing as an eighteen year old, Shannon's mother, Margaret, was more than a computer novice (she runs the computer system at a private school).<sup>147</sup> Margaret had a computer filter on the home computer that showed that her thirteen year old had visited MySpace.<sup>148</sup> Margaret had never even heard of MySpace, and was very upset with her discovery that "[s]omebody looking for a kid could find a kid very easily."<sup>149</sup>

Parry Aftab recognizes the problem with the technology gap between the younger generation and their parents:

[Parents are] afraid of their kids. They somehow think because technology is involved, they're no longer the parent. Get real. You're the parent. If you don't like it, unplug the computer. If they don't follow your rules, no Internet at all. If you're not the parent and if you're not going to step in, no Web site on earth is going to be able to help your child be safe.<sup>150</sup>

Coupling education with assertiveness should help parents

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<sup>146</sup> *Id.*

<sup>147</sup> Stafford, *supra* note 33.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

regain control and bridge the technology gap. In the states that do not provide parental education, parents will need to take the initiative and learn on their own. The first step is to recognize that a problem exists. Unfortunately, education will still not be able to verify a user's age, it will, however, inform parents and teach them how to verify accurate age display. The Catch 22 is that parents still have to worry about all of the other users.

#### *D. Sex Offender Registries at Work*

Until this point, this Note discussed remedies with a recurring theme: each remedy avoids the real problem of the lack of age verification. Sexual predators know that ages cannot be verified on social networking websites and in chat rooms, so they take full advantage of the situation and hunt minors. Senators John McCain (R-Ariz.) and Charles Schumer (D-N.Y.) issued a joint statement concerning the safety of minors online: "Just like in our actual neighborhoods, sex offenders must make themselves known in our virtual neighborhoods as well . . . Millions of teenagers log on to websites like MySpace and they shouldn't have to worry about running in to these predators online."<sup>151</sup> Recent polls have shown that fifty-five percent of adolescents have posted a profile on a social networking website, and forty-eight percent of adolescents visit a social networking website every day.<sup>152</sup> Most of these adolescents are using MySpace. Actually, eighty-five percent of these adolescents are using MySpace,<sup>153</sup> where there is no age verification.

Fortunately, in late January 2007, the Senators McCain and Schumer, along with five members of the House,<sup>154</sup> introduced the Keeping the Internet Devoid of Sexual Predators Act of 2007 (KIDS) to the new Congress.<sup>155</sup> The KIDS Act seems more

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<sup>151</sup> Press Release, Sen. John McCain, Senators McCain and Schumer Announce New Legislation Creating First-Ever Email Registry for Sex Offenders (Dec. 7, 2006), *available at* [http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressRelease&ContentRecord\\_id=60B748CD-BC58-4833-8D5D-15C9C3132D40](http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressRelease&ContentRecord_id=60B748CD-BC58-4833-8D5D-15C9C3132D40).

<sup>152</sup> 153 CONG. REC. S1342 (daily ed. Jan. 30, 2007) (statement of Sen. McCain).

<sup>153</sup> *Id.*

<sup>154</sup> KIDS Act, S. 431, 110th Cong. (2007); KIDS Act, H.R. 719, 110th Cong. (2007) (listing Rep. Earl Pomeroy (ND), Rep. Paul E. Gillmor (OH), Rep. Anthony D. Weiner (NY), Rep. Steve Chabot (OH), and Rep. Nick Lampson (TX)).

<sup>155</sup> S. 431; H.R. 719; Roy Mark, *Senators Want More Protection for Social Networks*, INTERNETNEWS.COM, Dec. 8, 2006, <http://www.internetnews.com/bus->

sensible than DOPA. While DOPA tries to protect minors by limiting where they can access social networking websites and chat rooms,<sup>156</sup> the KIDS Act punishes the wrongdoers and tries to stop them.

The KIDS Act requires convicted sex offenders<sup>157</sup> to register and update their e-mail addresses, instant message addresses, and any other similar Internet identifiers.<sup>158</sup> The United States Attorney General will maintain a system allowing commercial social networking websites, like MySpace, to “compare the database of registered users . . . to the list of the electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry.”<sup>159</sup> If a convicted sex offender fails to register any Internet identifier, the offender faces punishment of a fine and up to ten years in prison.<sup>160</sup>

MySpace and other social networking websites are not required by the Act to obtain the information from the Attorney General’s system. Given the dismissal in *Doe v. MySpace*, and the rulings that the Communication Decency Act bars publishers, such as MySpace, from being held liable, there may be very little incentive for social networking websites to retrieve this information and check the information against their own records. Both MySpace and Facebook do endorse the KIDS Act,<sup>161</sup> so perhaps there is the fear of civil liability and the wish to keep users safe.

The KIDS Act does not just focus on convicted sex offenders. The Act imposes a punishment of up to twenty years imprisonment for “[a]ny person [eighteen] years or older who knowingly misrepresents their age with the intent to use the Internet to engage in criminal sexual conduct involving a minor, or to facilitate or attempt such conduct . . . ”<sup>162</sup> This part of the Act is analogous to an age verification system. Although the

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news/article.php/3648271.

<sup>156</sup> See discussion *supra* Part III.B.1.

<sup>157</sup> The sex offender is required to register under the Sex Offender Registration and Notification Act, 42 U.S.C.A. § 16901 (2007). Most sex offenders fall into this category.

<sup>158</sup> S. 431 § 2(b).

<sup>159</sup> *Id.* § 3(c)(1).

<sup>160</sup> *Id.* § 2(d).

<sup>161</sup> 153 CONG. REC. S1342 (daily ed. Jan. 30, 2007) (statement of Sen. McCain).

<sup>162</sup> S. 431 § 5(c).

KIDS Act does not completely eradicate the problem because minors can still say that they are eighteen or older, it is a start.

MySpace is taking additional steps to combat convicted sex offenders, and in December 2007, MySpace will offer technology to identify and block registered sex offenders.<sup>163</sup> Any user profile that matches a registered sex offender's identity will be deleted.<sup>164</sup> The database that MySpace plans on using will be updated monthly with information such as "name, age, hair color, height, scars and tattoos."<sup>165</sup> Image-recognition software is being considered to catch convicted sex offenders who do not use their real names.<sup>166</sup> Digitally altered photos may present a problem.<sup>167</sup> MySpace will not use the technology to verify the ages and identities of users to ensure that users are not adults pretending to be minors.<sup>168</sup>

The KIDS Act in conjunction with MySpace's new technology seems to be a positive step forward. Convicted sexual offenders will have to behave in accordance with the KIDS Act or they will face imprisonment. And, although not all sexual predators are convicted sex offenders, the second provision of the KIDS Act punishing those who misrepresent their age may act as a deterrent. The overall effectiveness of MySpace's software will have to be shown when it begins operating because digitally altered photographs and false information could easily foil MySpace's search software, and the software's developer will not provide a number or an estimate of the software's success.<sup>169</sup> Regardless, this remedy is the only one that actually focuses on punishing those who lie about their age for a bad purpose.

#### *E. Protection Offered by MySpace*

MySpace recognizes that not all of its users are there to make friends, so MySpace does make an effort to protect its users.<sup>170</sup>

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<sup>163</sup> Reuters, *supra* note 13.

<sup>164</sup> Jesdanun, *supra* note 1.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Computer software like Adobe Photoshop is easy to use and can alter any digital photo. With the popularity of digital cameras, it is easy to see why this may present a problem.

<sup>168</sup> Jesdanun, *supra* note 1.

<sup>169</sup> *Id.* The technology's developer stated that the technology cannot catch everyone but "will be highly effective." *Id.* No estimate or number was provided. *Id.*

<sup>170</sup> In fact, MySpace.com posts the following warning when a new user is

Along with the solutions already discussed, MySpace uses a mixture of technology and user self-help for protection. One protection offered by MySpace can be considered a hybrid because it involves MySpace employees using technology to protect users as well as users helping themselves by reporting instances of violations.<sup>171</sup> Currently, one-third of the MySpace workforce scans, screens, and processes customer care issues.<sup>172</sup> Since MySpace employs only three hundred people,<sup>173</sup> roughly one hundred employees monitor the safety and security of over two hundred and fifty million users.<sup>174</sup> Although the number of employee monitors is extremely small in proportion to the number of users, MySpace recently hired a former federal prosecutor to head up their team.<sup>175</sup>

The second protection is a hybrid as well: MySpace has a link to safety tips at the bottom of every MySpace page,<sup>176</sup> and the same safety tips pop up for users with a box that must be checked that acknowledges that the user has read and understands the material. For example, when a user wants to make his or her profile accessible to all members of MySpace, the following warning message is displayed: "People aren't always who they say they are. Exercise caution when communicating with strangers and avoid meeting people in person whom you do not fully know. If you must meet someone, do it in a public place and bring a friend or trusted adult."<sup>177</sup> Unfortunately, this warning can be swiftly circumvented by simply checking the warning's corresponding box.

The third protection consists purely of self-help. MySpace is a free service and users and parents can delete profiles; however,

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signing up for a MySpace account: "Warning - Please be aware that MySpace is accessed by thousands of users every day; since you do not know every user on the MySpace site, exercise caution when posting personally identifiable information" (This information is based on author's personal use of the website).

<sup>171</sup> Dateline NBC, *MySpace.com on their Web Site Safety*, MSNBC.COM, Jan. 27, 2006, <http://www.msnbc.msn.com/id/11065999/print/1/displaymode/1098/>.

<sup>172</sup> *Id.*

<sup>173</sup> Sellers, *supra* note 12.

<sup>174</sup> Kawamoto, *supra* note 9.

<sup>175</sup> Gary Gentile, *MySpace Donates Tools to Block Predators*, MSNBC.COM, Jan. 31, 2007, <http://www.msnbc.msn.com/id/16910046>.

<sup>176</sup> MySpace, *supra* note 1.

<sup>177</sup> BestMySpaceProfiles.com, *Privacy on MySpace- Make Your Profile Private* (Jun.14, 2006), <http://www.bestmyspaceprofiles.com/serendipity/index.php?url=archives/22-Privacy-on-Myspace-Make-your-profile-Private.html&serendipity%5Bcview%5D=linear> (last visited Mar. 11, 2008).

deleting user profiles is difficult to do and may take up to 48 hours.<sup>178</sup> Ironically, once a user verifies on MySpace that he wishes to delete his user profile, he must also confirm his cancellation in e-mail.<sup>179</sup> This poses a problem for parents.

MySpace provides a special section in “frequently asked questions” about deleting children’s user accounts.<sup>180</sup> The section asks the parents to work with their child so that parents may login to the MySpace account and cancel it.<sup>181</sup> Then the parents and child will need to work together again to receive the confirmation e-mail in the child’s password protected e-mail account to verify account deletion.<sup>182</sup> If the parents do not receive the e-mail to verify deletion, they still need to be able to access their child’s MySpace account and delete all of their child’s information before MySpace will touch it.<sup>183</sup> This seems like a losing battle if a parent does not have an initial password or web address.

In a similar fashion, MySpace also provides a page of safety tips for parents.<sup>184</sup> Parents first need to be aware that their children are MySpace users. Parents then need to be computer savvy enough to locate the information and utilize it. For some parents, finding out that their children use MySpace is an ordeal in itself.

In a fourth hybrid solution, MySpace is considering distributing free parental notification software for parents to use.<sup>185</sup> The software, called Zephyr, gives parents the

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<sup>178</sup> I am very computer literate and MySpace savvy, yet it took me well over 45 minutes to figure out how to delete my profile. It was question number 64 under frequently asked questions. MySpace.com: Frequently Asked Questions, <http://www.myspace.com/index.cfm?fuseaction=misc.faq> (last visited Mar. 11, 2008); MySpace.com: How Do I Delete My Account?, <http://www.myspace.com/index.cfm?fuseaction=misc.faq&Category=1&Question=16> (last visited Mar. 11, 2008).

<sup>179</sup> MySpace.com: Safety Tips, Instructions for Deleting a MySpace Account, <http://www1.myspace.com/misc/RemovingChildProfiles.html> (last visited Mar. 11, 2008).

<sup>180</sup> MySpace.com: How Do I Remove My Child’s Profile From MySpace?, <http://www.myspace.com/index.cfm?fuseaction=misc.faq&Category=1&Question=38> (last visited Mar.11, 2008).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> MySpace.com: Safety Tips & Settings, Tips for Parents, [http://www.myspace.com/index.cfm?fuseaction=cms.viewpage&placement=safety\\_pagetips&sspage=2](http://www.myspace.com/index.cfm?fuseaction=cms.viewpage&placement=safety_pagetips&sspage=2) (last visited Mar. 11, 2007).

<sup>185</sup> Reuters, *supra* note 13.

information that their children use to represent themselves, such as age, name, and location.<sup>186</sup> Zephyr poses several problems. First, parents need to be able to access their children's computers and, once inside, parents would have to know how to use the software. Assuming the parents get the software up and running, another problem is created: What kind of relationship will the parents share with their children, once the parents start spying?<sup>187</sup> Although MySpace advocates using Zephyr, many other social networking websites, including Facebook and Xanga.com, are refusing to use Zephyr because of privacy concerns.<sup>188</sup> A final concern about Zephyr is that it may be possible for others (not parents) to monitor kids.<sup>189</sup> Zephyr seems like a solution for younger children, where a trusting relationship between parent and child does not pose much of an issue.

MySpace Chief Security Officer, and former Federal Prosecutor, Hemanshu Nigam, asked: "How do you analyze [forty-six states' sex offender registries with different criteria] and analyze them against our, right now, 135 million user profiles? . . . We came to the conclusion (that) there was absolutely no real way to do this in a real-time, scalable fashion."<sup>190</sup> But less than a year after the Chief Security Officer's original comment, Nigam told the press: "MySpace serves as an industry leader on Internet safety and we take proactive measures to protect our members . . . We provide users with a range of tools to enable a safer online experience."<sup>191</sup> He then went on to say that "Internet safety is a shared responsibility, requiring users to 'apply common sense offline safety lessons in their online experiences and engage in open family dialogue.'"<sup>192</sup> MySpace is planning to "back new legislation to require sex offenders to register their e-mail and instant-messaging addresses with the National Sex Offender Registry."<sup>193</sup> The information collected by the National Sex Offender Registry would be provided to MySpace and other social networking websites so that the websites could compare the information to

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<sup>186</sup> *Id.*

<sup>187</sup> Hoover, *supra* note 50, at A02.

<sup>188</sup> Reuters, *supra* note 13.

<sup>189</sup> *Id.*

<sup>190</sup> Jesdanun, *supra* note 1.

<sup>191</sup> Associated Press, *supra* note 34.

<sup>192</sup> *Id.*

<sup>193</sup> See Gentile, *supra* note 175.

user profiles.<sup>194</sup>

MySpace also discussed a plethora of future technology plans in the media. MySpace is even partnering with the National Center for Missing and Exploited Children (NCMEC) to issue Amber Alerts about child abductions (presumably through its bulletin system).<sup>195</sup> None of these ideas discuss age verification. Connecticut Attorney General, Richard Blumenthal, sensibly stated at the National Center for Missing and Exploited Children (NCMEC) conference that “if we have systems of restriction that depend on age, there needs to be age verification.”<sup>196</sup> In addition to partnering with NCMEC to issue Amber Alerts, MySpace could also spend resources developing worthy age verification technology that it could sell to other social networking websites.

#### IV. CONCLUSION: A NATIONAL IDENTIFICATION SYSTEM

Age verification is at the heart of the issue. Perhaps, the most reasonable proposed remedy is the KIDS Act. The Act is merely a proposal—it has not been passed into law. Moreover, there are still issues with the Act. For instance, an adult who lies about his age to seduce a minor can get into trouble, but a minor can still say she is over the age of eighteen. Technology does provide an answer to the age verification problem.

An at length conversation with a veteran computer programmer and researcher brought a reasonable solution to light.<sup>197</sup> He proposes that the federal government pass a law requiring that each person with a social security number receive an encrypted USB device.<sup>198</sup> The device would resemble commonly used USB flash memory drives.<sup>199</sup> These small and easily portable devices (many attach to a keychain) would function similar to website security certificates.<sup>200</sup> Whenever a

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<sup>194</sup> *Id.*

<sup>195</sup> Lehman, *supra* note 60.

<sup>196</sup> Hoover, *supra* note 50.

<sup>197</sup> Interviews with Bill Adams, T.J. Watson Research Center, East Fishkill, N.Y. (Nov. 2006-Mar. 2007). Bill Adams has over 35 years of experience including over 10 years at T.J. Watson Research Center.

<sup>198</sup> *Id.*

<sup>199</sup> A USB flash memory drive is a small device ranging usually from 16 MB to 2G that can store everything from word documents to photographs to music to computer programs. It makes the information easily transportable from computer to computer.

<sup>200</sup> Private companies produce these certificates. They are most commonly seen when a person is making an online purchase, usually in the form of a small padlock on the lower right hand corner of the computer browser. *See* Visa USA,

person makes a transaction over the Internet, the USB device would be required to verify personal information<sup>201</sup> at the website's discretion or as required by law.<sup>202</sup> The extent of each individual's responsibility for the USB device would be possession of their own device and devices belonging to their minor children, and a reporting requirement for lost or stolen USB devices. The individual responsibility is similar to the requirements currently in place for Social Security cards and credit cards.

The USB device would use the 128 bit encryption device that VeriSign and other trusted websites use.<sup>203</sup> VeriSign uses Secured Sockets Layer (SSL) technology that allows encryption of secure information, "contains unique, authenticated information about the certificate owner," and "is issued by a Certificate Authority that verifies the identity of the certificate owner."<sup>204</sup> Each individual USB device would possess all of these properties, similar to popular websites that use this technology, like Amazon.com.<sup>205</sup> Other companies, like E-trade, have already adopted similar USB technology.<sup>206</sup> E-trade's USB stick changes

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Online Shopping Protection,  
[http://usa.visa.com/personal/security/protect\\_yourself/online\\_shopping\\_protection.html?it=c|/personal/security/index.html|/img/text/lh\\_online\\_shopping\\_protection.gif#anchor\\_6](http://usa.visa.com/personal/security/protect_yourself/online_shopping_protection.html?it=c|/personal/security/index.html|/img/text/lh_online_shopping_protection.gif#anchor_6) (last visited Mar. 11, 2008).

<sup>201</sup> Personal information would only include that readily available to the Social Security Administration. Information would be specifically limited to name, address, and date of birth. See Social Security Online, Privacy Policy, [http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std\\_adp.php?p\\_faaid=223&p\\_created=956253272&p\\_sid=uzs\\_NoPi&p\\_accessibility=0&p\\_redirect=&p\\_lva=218&p\\_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9MTM5LDEzOSZwX3Byb2RzPSZwX2NhdHM9MCZwX3B2PSZwX2N2PSZwX3BhZ2U9MyZwX3NIYXJjaF90ZXh0PWxpbW10ZWQgdG8gbmFtZSswgYWRkcmVzcw\\*\\*&p\\_li=&p\\_topview=1](http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_adp.php?p_faaid=223&p_created=956253272&p_sid=uzs_NoPi&p_accessibility=0&p_redirect=&p_lva=218&p_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9MTM5LDEzOSZwX3Byb2RzPSZwX2NhdHM9MCZwX3B2PSZwX2N2PSZwX3BhZ2U9MyZwX3NIYXJjaF90ZXh0PWxpbW10ZWQgdG8gbmFtZSswgYWRkcmVzcw**&p_li=&p_topview=1) (last visited Mar. 11, 2008).

<sup>202</sup> Consumers and Internet users would essentially enter at their own risk because they would be fully aware whether their identity was being verified for each transaction.

<sup>203</sup> SSL Information Center SGC: True 128-Bit SSL Encryption from VeriSign, Inc., <http://www.verisign.com/ssl/ssl-information-center/strongest-ssl-encryption> (last visited Jan. 4, 2008).

<sup>204</sup> Secure Sockets Layer (SSL): How It Works, VeriSign, <http://www.verisign.com/ssl/ssl-information-center/how-ssl-security-works/index.html> (last visited Mar. 11, 2008).

<sup>205</sup> VeriSign, 1998 Annual Report (Apr. 15, 1999), [http://www.verisign.com/stellent/groups/public/documents/annual\\_report/verisign1998annualreview.pdf](http://www.verisign.com/stellent/groups/public/documents/annual_report/verisign1998annualreview.pdf) (last visited Mar. 11, 2008).

<sup>206</sup> E\*Trade Financial, Introducing the E\*Trade Complete Security System Featuring the Digital Security ID, [https://us.etrade.com/e/t/jumppage/viewjumppage?PageName=secureid\\_enter](https://us.etrade.com/e/t/jumppage/viewjumppage?PageName=secureid_enter)

the personal access code every sixty seconds.<sup>207</sup>

Often when discussing technology, the possibility of hackers hacking into the technology is a major concern. The USB device would be extremely hard to hack into or duplicate. At first blush, the idea may be that any hacker with a social security number would possess a device thereby being easily able to duplicate it and hack into people's information. Since each device uses a unique encryption, like Verisign, the hacker could only duplicate the USB device that he possessed. Verisign technology has not been hacked into yet,<sup>208</sup> so having a hacking disaster is unlikely.

This device would aid in protecting minors on MySpace and other social networking websites because its ability to verify a user's age.<sup>209</sup> Additional protection would exist if websites also required parental authorization through a parent's own device. Other benefits of the USB technology include protection against identity theft, credit card fraud, and even voter fraud by verifying a person's identity before allowing them to proceed.<sup>210</sup>

Although critics may argue that the USB device would be similar to "Big Brother" watching users' every move, the federal government can already track Internet users' activity via IP addresses. This device would not allow more than current tracking. The technology gap is also not at issue because people who do not use the Internet only need to bring their device with them for identity verification, where a trained user would plug-in the device and verify identity.

The benefits to such a device far outweigh the fear of Big Brother. In addition to fraud prevention and identity verification, this device would function as a national identification system. As opposed to a national identification card, the USB device would be much harder to counterfeit than the drivers license-like card due to the encryption.

All costs and implementation would be absorbed by the federal

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(last visited Mar. 11, 2008).

<sup>207</sup> *Id.*

<sup>208</sup> See SSL Information Center SGC, *supra* note 203, and Why SGC and Why VeriSign from VeriSign, Inc., <http://www.verisign.com/ssl/ssl-information-center/why-verisign/index.html> (last visited Mar. 11, 2008).

<sup>209</sup> As stated earlier, age verification is one of the biggest problems presented to MySpace and similar websites. See *supra* p. 6.

<sup>210</sup> USB readers are relatively cheap. If a person is required to bring their identification stick along with their driver's license to the voting booth, they may only vote once per stick. This cuts down on duplicate votes and voter fraud.

government. Costs would be merely dollars per person and the information is already available in the Social Security Administration's computerized database. Government implementation and issuance would also ensure that the federal government is the only place to get the device, cutting down on the possibility of fraud or a black market.

This solution appears to be the only one in which convicted sexual offenders can be stopped, minors must truthfully tell their age, and MySpace can be a safe place for every person over the age of fourteen to network. Unlike regulations, education, or sex offender registries, the USB device would be something that people would need to use, and without the device users would not be able to proceed online. Unlike tracking IP addresses, which are easy to duplicate and can be counterfeited, the USB technology is almost hacker-free.

Several options are available; the problem is finding a solution that people can agree on, be successful, and make people feel comfortable online. Anne Collier, co-author of "MySpace Unraveled," described the problem: "Because of its size, MySpace is going to become this societal guinea pig where this kind of behavior is exposed and necessary changes are made . . . The law hasn't caught up with the social Web."<sup>211</sup>

## V. EPILOGUE

Shortly before the publication of this article, MySpace, forty-nine states' Attorney Generals, and major cities' prosecutors, came to an agreement to protect children from sexual predators on the website.<sup>212</sup> This agreement occurred six months after a national announcement, when MySpace hired an outside company to find and delete the profiles of 29,000 sex offenders based on a database of sex offender registries from all fifty states.<sup>213</sup> Under the new agreement, in order to contact a child, a user must type in a child's address or phone number thereby verifying that the user actually knows the child.<sup>214</sup> Profiles of

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<sup>211</sup> Lehman, *supra* note 60.

<sup>212</sup> Anne Barnard, *MySpace Agrees to Lead the Fight to Stop Sex Predators*, N.Y. TIMES, Jan. 15, 2008, available at <http://www.nytimes.com/2008/01/15/us/15myspace.html?scp=3&sq=MySpace>.

<sup>213</sup> Brad Stone, *New Scrutiny for Facebook Predators*, N.Y. TIMES, July 30, 2007, available at <http://www.nytimes.com/2007/07/30/business/media/30facebook.html?adxnlnl=1&fta=y&adxnlnl=1200865567-UaQiRW5d7UfhLyKIN0LjoA>.

<sup>214</sup> Barnard, *supra* note 212.

users under the age of eighteen (as opposed to sixteen) will automatically be set to private.<sup>215</sup> More importantly, the agreement gives parents a degree of control in that it allows parents to submit their children's e-mail addresses to MySpace to stop their children from registering for the social networking website.<sup>216</sup>

Where there's a will, however, there's a way. Here, even after the agreement between the state attorney generals, prosecutors, and MySpace made the six o'clock news, thirteen year olds will know how to open up free e-mail accounts without their parents knowledge or consent on websites such as gmail.com, yahoo, and hotmail.com.<sup>217</sup> These e-mail addresses can be used for new over-eighteen MySpace profiles. Without a true age verification system in place, the same problems will reoccur.

What does the future hold for MySpace? At the current rate, every six months MySpace proposes a new solution to keep children, and all users, safe on its website. Without truly knowing who *most* users are, MySpace users will remain anonymous to those who run the site and unfortunately almost impossible to control. Identity verification over the computer is difficult without providing something like a credit card or driver's license number, and not everyone possesses one of these devices. Current trends on MySpace and other social networking websites require a uniform system of identity verification issued to everyone in order to protect all users.

*Sarah Merritt\**

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Both gmail.com and hotmail.com are free access.

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