



# Bullying and sexting in social networks: Protecting minors from criminal acts or empowering minors to cope with risky behaviour?

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## Abstract

The availability and use of social networking sites creates both opportunities and risks for their young users. This article evaluates the applicability of the current legal framework to (cyber)bullying and sexting, two types of (potentially harmful) behaviour that are increasingly occurring between peers in the social networking environment. The analysis includes a mapping of applicable legislative provisions at the European and national level, an analysis of the Terms of Service of the largest social networking provider, Facebook, and an overview and assessment of self-regulatory initiatives that have been taken by the industry in this area in Europe. The ultimate goal is to identify a number of elements for a comprehensive strategy to ensure that risks of (cyber)bullying and sexting are dealt with in a manner that empowers young users.

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## 1. Introduction

Over the past ten years, the popularity of Social Network Sites (SNS) has increased spectacularly, attracting an extraordinary number of users, of which a significant proportion are teenagers. The acclaimed EU Kids Online study showed that in Europe 77% of 13–16 year olds are active on a social networking site (Livingstone et al., 2012). Even though most social network sites put the minimum age required to create a profile at 13,<sup>2</sup> the study also found that 38% of 9–12 year olds are already have a profile on SNS. According to recent statistics from the United States 73% of 12–17 year olds are active on Facebook (Pew Research Center, 2014). Social science research also increasingly shows that smart phones with social networking capabilities are more and more popular among young people “*suggesting they would ‘die’ without their phones, that phones and social networks play a ‘massive part’ in their relationships, and are shaping most aspects of everyday lives*” (Ringrose et al., 2012: 53). In May 2013, 47% of US teenagers was reported to own a smart phone (Madden et al., 2013).

The availability and use of SNS brings both opportunities and risks to their young users. As the Council of Europe put it in their *Recommendation on the protection of human rights with regard to social networking services*, SNS have “*a great potential to promote the exercise and enjoyment of human rights and fundamental freedoms, in particular the freedom to express, to create and to exchange content and ideas, and the freedom of assembly*” (Council of Europe, 2012: 1). However, the fact that SNS allow users to communicate through status updates, through messages on ‘walls’ or through instant messaging, to share photo or video fragments, and to connect with old or new ‘friends’, also entails a number of risks.

Whereas over the past fifteen years discourse related to child safety in the online environment often focused on grooming or inappropriate contact between adults and minors, social scientists increasingly argue that “*the success of e-safety campaigns is evident in teenagers’ awareness of practices to reduce online risk from strangers, and it is time to shift the focus towards reducing risk from known peers*” (Ringrose et al., 2012: 7). *Bullying and sexting* are two examples of (conduct)<sup>3</sup> risks originating from peers that may occur in SNS.

Although sometimes it is mistakenly assumed that the Internet in general, and social networks in particular, function within a legal vacuum, in reality a spectrum of different legal disciplines are applicable to SNS risks (Lievens, 2011). However, at the moment there is a lack of clarity about this as well as a lack of understanding by young people, parents, teachers (de Zwart et al., 2011) and policymakers. This article will analyse and assess the applicability of the current legal framework to bullying and sexting, taking into account existing legislation and case law, both at the European and national level. In addition the Terms of Use of Facebook related to these specific risks, as well as the commitment of SNS providers to address these issues, for instance through self-regulatory initiatives such as the EU’s *Safer Social Networking Principles*, will be examined.

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<sup>2</sup>The Statement of Rights and Responsibilities of Facebook stipulates that “[y]ou will not use Facebook if you are under 13”.

<sup>3</sup>For a classification of online risks (content – contact – conduct), cf. Hasebrink et al., 2009.

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