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YAHOO!

14th January 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

The Digital Industry Group Incorporated (DIGI) welcomes the opportunity to make this submission and wishes to thank the Committee for considering the important issue of the non-consensual sharing of intimate images.

DIGI comprises representatives from Google, Facebook, Twitter, Microsoft and Yahoo!, and collectively we provide various digital services accessible by Australians ranging from Internet search engines to social networking services and other digital communications platforms.

The Digital Industry Is Committed to Safety & Well-Being

For the digital industry, the safety and well-being of the people who connect and engage via our services is our top priority. It is imperative that we work to ensure that people have a positive experience when using our services, otherwise we will not be able to realise our long-term goals and businesses. The Connected Continent II report confirms that the digitally enabled economy contributed \$79 billion to the Australian economy in the 2014 financial year and created the equivalent of \$75 billion in consumer benefits.¹ However, these benefits can only be fully realised if we as an industry work together with government and the community to mitigate any harm that can be caused by misuse of our services.

For this reason, across the industry, we have: policies that outline what can and cannot be shared via our services and which expressly prohibit the non-consensual sharing of intimate images; we have

¹ <http://www2.deloitte.com/au/en/pages/economics/articles/connected-continent.html>

tools that allow any of the millions of people who use our services to flag content to us that may violate our policies; and, we invest in a reporting infrastructure that allows us to promptly review and remove any such content. We also invest considerably in education and awareness initiatives to promote the responsible use of online services.

Before making detailed comments in response to the specific areas of the Committee's inquiry, we wish to encourage the Committee, in conducting its inquiry and preparing its report, to consider its focus to be on the nonconsensual sharing of intimate images and to reduce the use of the phrase "revenge porn" because this term gives a hue which, we believe, is disrespectful to the very deep distress and harm experienced by victims of this activity.

Specific Comments

We now turn to provide some specific comments in response to issues before the Committee, which are to consider, according to your Terms of Reference:

- "a. the phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm;
- b. the impact this has on the targets of revenge porn, and in the Australian community more broadly;
- c. potential policy responses to this emerging problem, including civil and criminal remedies;
- d. the response to revenge porn taken by Parliaments in other Australian jurisdictions and comparable overseas jurisdictions; and
- e. any other related matters."

We wish to reassure the Committee that, under the policies that govern what can and cannot be shared via our services, the non-consensual sharing of intimate images expressly violate our policies and will be removed when we become aware of them.

This type of non-consensual sharing typically violates our policies in several respects, firstly, because the content is shared with the intention to bully or harass the victim; secondly, because this type of content invades privacy; and thirdly, because such images frequently contain nudity.

By way of overview, the specific policies that prohibit the use of our services for non-consensual intimate images are:

- Under Facebook's Community Standards (<https://www.facebook.com/communitystandards>) content that "[shares] personal information to blackmail or harass people" is prohibited; restrictions are also placed on content that contains nudity; and our policies clearly state that "[t]o protect victims and survivors, we also remove photographs or videos depicting incidents of sexual violence and images shared in revenge or without permissions from the people in the images".
- In June 2015, Google announced that it would begin honouring requests from people to remove nude or sexually explicit images shared without their consent from Google Search results. This announcement is an addition to the existing policies that prohibit revenge porn on all Google-hosted platforms, including YouTube, Blogger, Google+ and Play.
- Microsoft will remove links to photos and videos from search results in Bing, and remove

access to the content itself when shared on OneDrive or Xbox Live, when we are notified by a victim. While people have been able to report to us in the past, we've set up a new web page to make it easy for victims to let us know about these particular photos and videos.² When we remove links or content, we will do so globally. For more

details: <http://blogs.microsoft.com/on-the-issues/2015/07/22/revenge-porn-putting-victims-back-in-control/>

- In March, 2015, Twitter further strengthened its non-consensual nudity policies in the Twitter Rules, reinforcing that users “may not post intimate photos or videos that were taken or distributed without the subject's consent.” Twitter also updated its abusive user policy to specifically mention “intimate photos or videos that were taken or distributed without the subject's consent.” As part of this effort, Twitter also streamlined its reporting tools to make the reporting of non-consensual nudity easier through a form in our Help Center.³ Those users who post non-consensual nudity will be asked to delete the content in question and may be permanently suspended from Twitter.
- Similarly, the Yahoo's Community Guidelines (https://policies.yahoo.com/us/en/yahoo/guidelines/index.htm?soc_src=mail&soc_trk=ma) expressly state, “Don't bully or harass members of the community. Yahoo communities aren't a place to harass, bully, abuse, impersonate, or intimidate others. This includes a zero tolerance policy towards sharing adult or sexualized content of another person without that person's consent (Non-Consensual Pornography). If you experience this, learn how to report it to our attention.” Additional information regarding resources and support are available at <https://help.yahoo.com/kb/flickr/SLN26123.html?impressions=true>. In addition, Flickr guidelines also expressly prohibit non-consensual pornography. See <https://www.flickr.com/help/guidelines>, which includes the following: “Flickr also has a zero tolerance policy towards sharing adult or sexualized content of another person without that person's consent (Non-Consensual Pornography). If you experience this, report it to us”.⁴ The reporting link is the same one as the Yahoo one.

As our policies make clear, we share the Government and community's concern to stop the non-consensual sharing of intimate images. In our experience, promoting the safety and well-being of Australians is best achieved when industry, Government and the community work together.

We encourage the Committee, before recommending any new legislation be implemented to criminalise this activity, to review existing laws under the Criminal Code as well as in tort, copyright and potentially defamation statutes to confirm if this activity is already covered. For example, Section 474.17 of the Commonwealth Criminal Code prohibits the use of a carriage service to menace, harass or cause offense.⁵ We also note that the Victorian Parliament passed legislation in 2014 that penalises

² https://support.microsoft.com/en-us/getsupport?oaspsworkflow=start_1.0.0.0&wfname=capsub&productkey=RevengePorn&wa=wsignin1.0&ccsid=635882580697885352

³ https://support.twitter.com/forms/private_information

⁴ <https://help.yahoo.com/kb/flickr/SLN26123.html>

⁵ See https://www.comlaw.gov.au/Details/C2013C00366/Html/Text#_Toc369269838

the distribution and the threat to distribute intimate images.⁶ Furthermore, the South Australian Government has just released draft legislation to target the non-consensual sharing of images.⁷ We urge the Committee not to duplicate remedies that are already available and to instead consider how these existing remedies can be better promoted to victims, and enforced by the law enforcement community and the judiciary.

If the Committee forms the view that legislation is required, we recommend an approach that focuses on malicious intent in order to target the most egregious behaviour and an approach that criminalises the specific act of uploading such images, such as California's Senate Bill 255 (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB255). A focus on malicious intent is consistent with the UK Amendment 103 that requires an intention of causing distress. We also note that in the UK, in addition to introducing legislation, the government also extended funding for a revenge porn hotline where victims can receive confidential support (Link: <http://www.revengepornhelpline.org.uk/>)

Given the industry's shared commitment to this issue, we further ask that any attempts to criminalise this activity include intermediary liability protection for service providers. Both the UK and Philippines legislation carve out (through an explicit exemption in the UK) activities undertaken by search engines and user generated content hosting platforms and we encourage the Committee to recommend a similar approach if indeed legislation is deemed to be necessary.

In addition, a legislative response should also take into account that minors who share consensually compromising photos should not be treated as violators of child pornography or statutory rape laws. This activity is better addressed through education, not criminalisation. In this respect, we support the sensitivity displayed in Victoria's Crimes Amendment (Sexual Offences and Other Matters) Act 2014 that ensures that non-exploitative peer-to-peer sexting is not subject to the serious consequences of conviction, including possible registration on the Sex Offenders Register.⁸

We also believe that addressing this issue cannot be done by legislation alone and that there must be a co-ordinated initiative across government, industry and the community to promote awareness of a sense of responsibility that should dissuade people from undertaking the non-consensual sharing of images and that there are serious consequences for doing so. As an industry we have supported the work of the California Department of Justice in the US to develop a cyber-exploitation portal (<https://oag.ca.gov/cyberexploitation#>), which provides resources for victims, tools for law enforcement, and additional information about policies and tools to seek the removal of such content. The portal also contains technology industry best practices to reflect the best practices that are adopted by the digital industry around this issue.

Finally, we encourage the Committee to consider measures that can enhance the education and expertise within law enforcement of this issue and how they can use the tools made available by our industry to seek the removal of these harmful content and also applicable laws that can be utilised to

⁶ See Section 25 of Part 6 of the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014 (VIC)* [http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e92000e23be/73A4F3B93BAA3547CA257D780015AC59/\\$FILE/14-074a.pdfbookmarked.pdf](http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e92000e23be/73A4F3B93BAA3547CA257D780015AC59/$FILE/14-074a.pdfbookmarked.pdf)

⁷ <http://www.agd.sa.gov.au/initiatives/proposed-sexting-offence-laws>

⁸ See *ibid*, Section 8.

punish those who seek to cause this harm.

We thank the Committee for considering our comments and look forward to the opportunity to collaborate further on preventing the non-consensual sharing of intimate images.

Kind regards,

Mia Garlick
Director of Policy
Facebook

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Samantha Yorke
Public Policy & Government Relations
Google

The Google logo, consisting of the word "Google" in its multi-colored, sans-serif font.

Jeremy Briscoe
General Counsel
Yahoo! ANZ

The Yahoo! logo, consisting of the word "YAHOO!" in a purple, serif font.

Julie Inman-Grant
Director of Public Policy
Twitter



Belinda Dennett
Corporate Affairs Manager
Microsoft

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