



20 October 2017

Committee Secretary  
Senate Environment and Communications References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By email:** [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee Secretary

The Digital Industry Group Incorporated (DIGI) welcomes the opportunity to make a submission to the Legal and Constitutional Affairs References Committee on the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying.

DIGI members include Facebook, Google, Microsoft, Oath and Twitter who collectively provide various digital services to Australians ranging from Internet search engines to digital communications platforms. These services and platforms facilitate new distribution, marketing and revenue generating channels for Australian businesses and content creators. They are also driving fundamental changes to the way that business is conducted and content is created and distributed.

DIGI thanks the Committee for the opportunity to make this submission. If you have any questions or require any additional information, please let me know.

Kind regards,

Nicole Buskiewicz  
**Managing Director**  
DIGI

# **DIGI submission on the adequacy of existing offences in criminal laws to capture cyberbullying**

## **1. DIGI and members are committed to online safety and wellbeing**

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. The Connected Continent II<sup>1</sup> 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. 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 prescribe how old you must be to use our services
- policies that outline what can and cannot be shared via our services
- tools that allow any of the millions of people who use our services to flag content to us that may violate our policies;
- we invest in tools that can provide additional protections for minors, and
- we invest in a reporting infrastructure that allows us to promptly review and remove any such content.

We are also cognisant of the fast moving nature of this industry and regularly review and evolve our policies to accommodate new products and features (e.g. live streaming).

We also invest considerably in education and awareness initiatives to promote the responsible use of online services across the board at both the DIGI and member level.

## **2. Specific DIGI and member safety initiatives**

DIGI members have specific policies that prohibit the use of their platforms and services for any kind of harassment or menacing behaviour like cyberbullying, reporting and takedown systems to remove infringing content, and undertake initiatives to promote safe online spaces for all users.

- Facebook:
  - Facebook's Community Standards<sup>2</sup> clearly state:

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

<sup>2</sup> <https://www.facebook.com/communitystandards>

- We don't tolerate bullying or harassment. We allow you to speak freely on matters and people of public interest, but remove content that appears to purposefully target private individuals with the intention of degrading or shaming them. This content includes, but is not limited to:
  - Pages that identify and shame private individuals,
  - images altered to degrade private individuals,
  - photos or videos of physical bullying posted to shame the victim,
  - sharing personal information to blackmail or harass people and
  - repeatedly targeting other people with unwanted friend requests or messages.
- We define private individuals as people who have neither gained news attention nor the interest of the public, by way of their actions or public profession.
- Facebook policies prohibit children under the age of 13 from joining the service.
- When a person enters a birth date that indicates their age is younger than 13, age gate technology blocks the registration and places a persistent cookie on the device to prevent the child from attempting to circumvent the age screen.
- Facebook also employs robust tools to protect minors from unwanted contact and solicitation.
  - For example, minors can only receive Messages on Facebook from friends or the friends of those friends, and not from strangers.
- Facebook uses privacy and visibility settings that take into account the unique needs of people between the ages of 13 and 17, and are more restrictive than the settings for adults in nearly all cases.
  - For example, a minor's sharing is automatically restricted to no more than the minor's friends.
  - Also, Facebook's "Tag Review" feature is automatically turned "on" for minors.
- Facebook provides report links throughout the site<sup>3</sup>. Specially trained representatives from Facebook's Community Operations Team will review the report and remove it if it violates Community Standards.
- Google/YouTube:
  - YouTube's Community Guidelines<sup>4</sup> prohibit any kind of threatening or menacing behaviour:

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<sup>3</sup> <https://www.facebook.com/help/reportlinks>

<sup>4</sup> <https://www.youtube.com/yt/policyandsafety/communityguidelines.html>

- Things like predatory behavior, stalking, threats, harassment, intimidation, invading privacy, revealing other people's personal information, and inciting others to commit violent acts or to violate the Terms of Use are taken very seriously. Anyone caught doing these things may be permanently banned from YouTube.
- If a user feels that content violates YouTube's policies, they can report it to YouTube for review in one of the following ways:
  - Flagging the video: A user may report hateful content that they think may violate community guidelines by [flagging the video](#).
  - Filing an abuse report: If a user has found multiple videos, comments, or an entire account that they wish to report, they can visit the [reporting tool](#), where they will be able to submit a more detailed report.<sup>5</sup>
- Users must also be 13 or over to create an account on any of Google's services.
  
- Microsoft:
  - By agreeing to these Terms [of Microsoft's Code of Conduct], you're agreeing that, when using the Services, you will follow these rules:
    - i. Don't do anything illegal.
    - ii. Don't engage in any activity that exploits, harms, or threatens to harm children.
    - iii. Don't send spam. Spam is unwanted or unsolicited bulk email, postings, contact requests, SMS (text messages), or instant messages.
    - iv. Don't publicly display or use the Services to share inappropriate Content or material (involving, for example, nudity, bestiality, pornography, graphic violence, or criminal activity).
    - v. Don't engage in activity that is false or misleading (e.g., asking for money under false pretences, impersonating someone else, manipulating the Services to increase play count, or affect rankings, ratings, or comments).
    - vi. Don't circumvent any restrictions on access to or availability of the Services.
    - vii. Don't engage in activity that is harmful to you, the Services, or others (e.g., transmitting viruses, stalking, posting terrorist content, communicating hate speech, or advocating violence against others).

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<sup>5</sup> More information: <https://support.google.com/youtube/answer/2801939?hl=en>

- viii. Don't infringe upon the rights of others (e.g., unauthorized sharing of copyrighted music or other copyrighted material, resale or other distribution of Bing maps, or photographs).
- ix. Don't engage in activity that violates the privacy of others.
- x. Don't help others break these rules.

b. Enforcement. If you violate these Terms, we may stop providing Services to you or we may close your Microsoft account or Skype account. We may also block delivery of a communication (like email or instant message) to or from the Services in an effort to enforce these Terms or we may remove or refuse to publish Your Content for any reason. When investigating alleged violations of these Terms, Microsoft reserves the right to review Your Content in order to resolve the issue. However, we cannot monitor the entire Services and make no attempt to do so<sup>6</sup>.

- To help keep children safer, adults and children can connect their Microsoft accounts in the same family. To add adults or children to your family, go to [account.microsoft.com/family](https://account.microsoft.com/family), select Sign in, and then Add. If you don't have a Microsoft account, select Create an account, then follow the instructions. When the family is set up, adults can block inappropriate websites, apps, and games, limit overall screen time, see reports of a child's activity, and add money to a child's account.
  - Microsoft also engages proactively in online safety programs such as ThinkUKnow and provides a number of online safety resources for children, parents, carers and educators to ensure that they and their families have a safe and productive online experience.
  - Microsoft's dedicated Online Safety portal<sup>7</sup> provides top tips for navigating the Internet safely and provides steps that families can take to help protect their devices, information, and children online.
- **Twitter:**
    - Twitter does not tolerate behavior that harasses, intimidates, or uses fear to silence another person's voice. If you see something on Twitter that violates these rules, please report it to us.
      - You can report content directly on Twitter through our in-app reporting tools by clicking on the icon located at the top of the Tweet<sup>8</sup>.
      - You can also report content to Twitter via [support.twitter.com](https://support.twitter.com).

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<sup>6</sup> More details about Microsoft Services Agreement can be found here:  
<https://www.microsoft.com/en-us/servicesagreement/>

<sup>7</sup> <https://www.microsoft.com/about/philanthropies/youthspark/youthsparkhub/programs/onlinesafety/resources/>

<sup>8</sup> For additional instructions on how to report individual Tweets, see here:  
<https://support.twitter.com/articles/20170408>

- Any accounts and related accounts engaging in the activities specified below may be temporarily locked and/or subject to permanent suspension.
  - Violent threats (direct or indirect): You may not make threats of violence or promote violence, including threatening or promoting terrorism.
  - Harassment: You may not incite or engage in the targeted abuse or harassment of others. Some of the factors that we may consider when evaluating abusive behavior include:
    - if a primary purpose of the reported account is to harass or send abusive messages to others;
    - if the reported behavior is one-sided or includes threats;
    - if the reported account is inciting others to harass another account; and
    - if the reported account is sending harassing messages to an account from multiple accounts.
  - Hateful conduct: You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or disease. We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories.
  - Multiple account abuse: Creating multiple accounts with overlapping uses or in order to evade the temporary or permanent suspension of a separate account is not allowed.
  - Private information: You may not publish or post other people's private and confidential information, such as credit card numbers, street address, or Social Security/National Identity numbers, without their express authorization and permission. In addition, you may not post intimate photos or videos that were taken or distributed without the subject's consent. Read more about our private information policy [here](#).
  - Impersonation: You may not impersonate others through the Twitter service in a manner that is intended to or does mislead, confuse, or deceive others. Read more about our impersonation policy [here](#).
  - Self-harm: You may encounter someone considering suicide or self harm on Twitter. When we receive reports that a person is threatening suicide or self harm, we may take a number of steps to assist them, such as reaching out to that person expressing our concern and the concern of other users on Twitter or providing resources such as contact information for our mental health partners.

- Users must be 13 years or over to create a Twitter account.
- Twitter also [announced](#) on 19 October 2017 that the company will be updating their approach to make Twitter a safer place and released a calendar of the upcoming changes that will be made to the Twitter Rules.<sup>9</sup>
- Oath:
  - Yahoo's Community Guidelines stipulate:
    - Don't bully or harass members of the community. Yahoo communities aren't a place to harass, bully, shame, impersonate, or intimidate others.
    - Don't behave maliciously. Members of Yahoo communities are not above the law, and they must conduct themselves consistent with our Community Guidelines and the Yahoo Terms of Service. Don't attempt to defraud, impersonate, threaten, harass or harm another user. Don't invade a user's privacy or span another user or the community. Don't try to trick people into sharing their personal information, steal anything (like copyright or trademarked material), or break into places you shouldn't be.
    - Yahoo has a zero tolerance policy towards sharing adult or sexualized content of another person without that person's consent (Non-Consensual Pornography).
  - Flickr's Community Guidelines stipulate:
    - Don't upload anything that isn't yours. This includes other people's photos, video, and/or stuff you've copied or collected from around the Internet. Accounts that consist primarily of such collections may be deleted at any time. Flickr also has a zero tolerance policy towards sharing adult or sexualized content of another person without that person's consent (Non-Consensual Pornography).
    - Don't vent your frustrations, rant, or bore the brains out of other members. Flickr is not a venue for you to harass, abuse, spam, impersonate, or intimidate others. If we receive a valid complaint about your conduct, we'll send you a warning or delete your account.
  - Tumblr's Community Guidelines prohibit:
    - Harm to Minors. Be thoughtful when posting anything involving a minor. Don't post or solicit anything relating to minors that is sexually suggestive or violent. Don't bully minors, even if you are one. Being a teenager is complicated enough without the anxiety, sadness, and isolation caused by bullying.

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<sup>9</sup> Twitter Blog, A Calendar of our Safety Work, 19 October 2017  
<[https://blog.twitter.com/official/en\\_us/topics/company/2017/safetycalendar.html](https://blog.twitter.com/official/en_us/topics/company/2017/safetycalendar.html)>.

- Harassment. Don't engage in targeted abuse or harassment. If anyone is sending you unwanted messages or reblogging your posts in an abusive way, we encourage you to be proactive and block the hell out of them. And if someone blocks you, don't attempt to circumvent the block feature or otherwise try to communicate with them. Just stop.
- Privacy Violations. Don't use Tumblr to deceptively obtain personal information. Don't post content that violates anyone's privacy, especially personally identifying or confidential information like credit card numbers, social security numbers, or unlisted contact information. Absolutely do not post non-consensual pornography—that is, private photos or videos taken or posted without the subject's consent.
- AOL's community guidelines stipulate:
  - Do not harass, abuse, or threaten another user. If you disagree with someone, respond to the subject and not to the person.
  - Do not use hate speech. Hate speech is unacceptable, and we reserve the right to take appropriate action against any account using the service to post, transmit, promote, distribute, or facilitate the distribution of content intended to victimize, harass, degrade, or intimidate an individual or group on the basis of age, disability, ethnicity, gender, race, religion, or sexual orientation.
  - Do not impersonate any person, business, or other entity. Doing so in an attempt to deceive, harass, or otherwise mislead another user is forbidden. You may not pretend to be an employee or representative of any of the Oath Inc. family of companies or affiliates.
- Users must be 13 or over to create an account to use Oath services.
- Users can report content that they believe violates Oath's policies through the report abuse tool within each product.

Since its inception, DIGI has been a partner of the Office of the eSafety Commissioner and is an active participant in its regular Online Safety Consultative Working Group (OSCWG) meetings, contributing to policy issues and initiatives around cyberbullying, image based abuse, and digital literacy and inclusion.

DIGI has also partnered with a number of government and youth organisations to promote tolerance and reject hate speech online. Most notably, in coordination with the Attorney-General's Department, we hosted [DIGI Engage](#), a youth forum for over 100 Australian youth focused on promoting diversity and respect in our society.

We are also exploring opportunities to better leverage our partnerships with organisations like the Alannah & Madeline Foundation, who have a number of high impact initiatives in the digital



literacy and education space, including their eSmart Digital Licence and eSmart Schools program.

As our policies and initiatives make clear, we share the Government and community's concern around menacing behaviour, including cyberbullying, on our platforms. In our experience, promoting the safety and wellbeing of Australians is best achieved when industry, government, and the community work together.

## **2. Existing legislative and regulatory measures to address cyberbullying**

### Social Media Service Tier Scheme

Social media platforms operating in Australia are already subject to the Social Media Service Tier Scheme<sup>10</sup> for the removal of cyberbullying material targeted at a child from a service, as well as a cyberbullying civil notice scheme. The Scheme is backed by legislation (*The Online Safety for Children Act 2015*) and covers social media sites that are accessible to children.

As discussed above, all DIGI members already have robust and well-established report and takedown systems in place for dealing with cyberbullying material. Thanks to these systems, those members with social networking services are able to effectively and expeditiously resolve complaints. DIGI also understands that to date no penalties have been levied under the cyberbullying scheme, which suggests the industry is acting above and beyond what is required by law and/or that the number of complaints are low.

### Other laws and schemes

Victims of cyberbullying are already able to take action under various laws and schemes in addition to the *Criminal Code Act 1995*, which are not mentioned in the Inquiry's Terms of Reference, including:

- the *Telecommunications Interception and Access Act*, which forbids the user of a carriage service for the purpose of threatening, abusing or harassing someone;
- the *Privacy Act*, which prevents the sharing of personal information without consent; and,
- the *Defamation Act (Cth and States)*, which provides civil remedies for people whose reputation has been diminished through the publishing of information about them.

In order to get a clearer picture of the problem and the number of people resorting to legal processes, it's important to know the exact number of cases brought forward under these existing laws. For this reason, DIGI contends that existing legislative frameworks are highly relevant to this consultation and should be reviewed before any new additional laws are considered.

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<sup>10</sup> <https://www.esafety.gov.au/social-media-regulation/social-media-service-tier-scheme>

### **3. *The importance of education***

DIGI believes that ongoing awareness-raising and education around existing methods of objectionable content removal are critical components in dealing with cyberbullying.

DIGI already shares links to member safety resources on our website, and we would be happy to explore further opportunities to raise awareness around the tools available on member platforms.