

# **SUBMISSION No. 106**

## **SUBMISSION TO THE JOINT SELECT COMMITTEE ON CYBER-SAFETY**

I apologise for the last minute submission to this enquiry. This enquiry has only been brought to my attention today (Thursday July 8, 2010) as a result of a reply to a letter I wrote to the Attorney General about online matters relating to hate speech against disabled people and the failure to prosecute a matter successfully in the legal system. This situation is the core of my submission, and the reality is that while it is very important to protect children from the nuances of the Internet, adults are also suffering in various ways.

### **1. ONLINE ENVIRONMENT**

It is very easy to discuss issues of key points of access to the Internet. All are important, particularly at home where access can be more or less tailored to suit one's needs. This can range from Internet Browser (Internet Explorer, Firefox and so on) and Email (Outlook Express, Outlook and so on) through to protection software such as virus protection and for children programs such as Net Nanny and the like. From this point of view I believe all that is possible to be done is being done – especially in public places like libraries and to a lesser extent Internet Cafes although I couldn't really comment on that in detail. Schools I believe may also be well covered. Of course, this doesn't mean everything is perfect – as that is the nature of the Internet. There will always be holes.

A key of online environment as far as I'm concerned is the content service provider. As much as government, parents of children and adult users themselves (such as myself), teachers, traders and even Internet Service Providers (ISP's as I will refer to them from hereon) provide the link, advice and so on – content service providers like My Space, Facebook, Twitter and Google are basically a law unto themselves. Especially Google with its products; You Tube and Blogger. All four of these and likely many other content providers are not based in Australia. This restricts Australia's ability to take any action to properly protect not just children but all those who are the victims of whatever happens online – particularly in civil matters.

### **2. PREVALENCE AND IMPLICATIONS OF THREATS TO CYBER SAFETY**

Abuse is everywhere. It's a practical fact, and speaking personally I blame the American Constitutional right to free speech. I don't have specific reference to it, but there was a case earlier this year where a schoolgirl in the United States was bullied online. I believe it may have been through Facebook but I'm not sure. The girl complained to her school, and the school rightly suspended the student responsible in order to put the brakes on the bullying. However – I was shocked to hear that the suspended girl took the school to court over the suspension, and under the First Amendment the suspension was ordered lifted!!

This basically means that any school student can engage in cyber bullying and be immune from punishment. The implications for this are plain to see I believe, and because the Internet has no real borders as such this is a very serious threat to online safety. I just wonder if this means that sexual grooming would also be a case of freedom of speech. One would assume not, but this precedent is alarming to say the least.

Content would be included in this because cyber bullying and cyber stalking isn't limited to real time as such. This brings up the content of blogs. One nasty piece of cyber bullying is hate speech. This can take several forms, but what I want to focus on is hate speech against disabilities – in particular the Autistic Spectrum. Hate speech is usually in a content provider's Terms of Service as prohibited

conduct, but getting the provider to comply with complaints is another matter. I cite Blogger and You Tube as examples of this – especially Blogger. In their Terms of Service for example, when you are defamed they will not act unless you have a court order stating that the content is defamatory. The whole idea of this is that they are not responsible for the content – but rather the person who put it there is. When a person who placed the content there is anonymous (this is a common situation on the Internet) that is impossible to prosecute. Equally if the person is not in Australia the ability to prosecute is similarly limited.

In May Google were taken to the Victorian Civil and Administration Tribunal for violations of the Victorian Equal Opportunity Act. A case was formed whereby they were exposing a disabled person to a detriment by allowing hate speech against them to be uttered on their Blogger product. However Google threw top lawyers at the case and had it struck out. Unable to afford a lawyer and not getting the information needed to run the case without a lawyer in the Supreme Court of Victoria – the case was dropped. The general matter of Google's poor conduct of the matter however has not been dropped, and I am bringing this situation to the committee's attention to see if it can help.

Individuals overseas can be dealt with – thanks in part to the precedent set in the High Court of Australia in 2002 in the case *Dow Jones v Gutnick*. In that precedent, it was stated in effect that content is published by an Internet Browser and nothing else. This means that when someone calls on a website through a browser, that is when it is published. So if I see something defamatory about me on my home computer – that is where the offence, or tort, occurred. When you consider that those on the Spectrum (especially those of school age) rely on the Internet for their social activity, the hate speech I have mentioned can be and is quite damaging. With rubbish like this going on (Autism being called a disease to be cured, and Autistics at all points of the Spectrum being called "brain damaged") it's no wonder people are not learning about disabilities in the way that they should – without the spectre of hate and misinformation hovering.

### 3. AUSTRALIAN AND INTERNATIONAL RESPONSES

The fact that America in particular seem to think that they are a law unto themselves because of Freedom of Speech, and they seem intentionally oblivious to the damage this sort of attitude causes – lends itself to the idea that education just will not cut it. Filtering of this material is one option. I would certainly be considering shutting Google products off from Australia unless they start taking this a whole lot more seriously than they are. There should also be the option of shutting off sub domains until they are removed.

Regulation and enforcement though would be the preferred options, especially the latter. With the world having access to the Internet – clashes between countries on a question of law is inevitable. For example, I know through experience that the laws of defamation better protect the victim in Australia than they do in the United States. Criminal Codes also differ – even within Australia. For example I believe that Victoria is the only state that lists Internet Stalking as a criminal act (that may have changed since I last looked and I hope it has). There's no way a balance could be struck on regulation realistically across country borders – but at least we can get our own house in order in this regard.

Enforcement over country borders however should be made possible. Legal advice from overseas jurisdictions is next to impossible to get, and this places all Australians at a disadvantage. Enforcing action is something that I certainly need and I'm sure I'm not the only one.

#### 4. OPPORTUNITIES FOR CO-OPERATION

Personally I think there should be more open channels of communication between governments – and not just at a federal level either. The police can already use Interpol to link between jurisdictions for criminal matters. This should be expanded to civil matters as well, so protection options can be widened. Communication for example between human rights groups – such as (I use my own experience here) in Victoria, British Columbia and New Hampshire. And throw in California for good measure. There should also be co-operation in between the Attorney General's of each state in matters such as this. It has to be understood that what is right in one place is not necessarily right in another, and it also needs to be accepted as such. I'm not a fan of using the courts to put this point across but in my case I felt that I didn't have a choice.

Co-operation between the stakeholders across the world is essential to underpin proper solutions in both the short term and the long term to the issue of cyber safety.

#### 5. NEW TECHNOLOGIES

Technology changes in the area of computers and other communication devices are happening so quickly it's making the state of the art equipment from the beginning of the millennium look prehistoric. Keeping up with these changes is crucial – especially as it should also be considered that not everyone is right up to date. My own computer for example is dated 2005 and it struggles along. Luckily I don't call on much. It would certainly help if the National Broadband Network were as good as it is claimed making downloads quicker. One of my biggest problems is saving pages for evidence in court.

I am against a general filter system. If we do have a filtering system it has to be regulated heavily and constantly reviewed, and that may be impractical. I would suggest instead that the filtering be done by the individual on an as needs basis through their ISP. It should be compulsory for some sort of filter to be used on computers that children have access to. This would be a version of a Net Nanny, except that the filtering point wouldn't be on the computer itself but rather through the ISP. There's no reason why this couldn't work, and in fact I believe it would be more effective in the protection of children.

#### 6. ONLINE OMBUDSMAN

The last point of reference that I can contribute to is the idea of an Online Ombudsman. This is a great idea, and can provide another legal avenue to bring content providers like Google to heel when it comes to upholding their Terms of Service. It can also serve as an option for the issue of spam – a branch of the Australian Communications and Media Authority (ACMA) and their program Spam Matters. Persistent spammers can be brought to the attention of the Ombudsman and action could be taken through the appropriate channels.

The legislation covering this would be very important to get right, and give the Ombudsman certain powers of jurisdiction when it comes to content. I believe that the Gutnick case could well be useful in this regard. Expanding this decision into a workable visible law applying to the Internet in Australia could have the world sitting up and taking notice. If we get it right, we could set the standard for genuine and workable cyber safety – and the logical next step, isolating the big online criminals (terrorists, paedophiles and the like), becomes much easier to achieve so that we can catch these people and prosecute them to the fullest extent of the law.

## 7. SUMMARY

I admit that this was a rush job. As indicated I only got notice of this enquiry today, and I have done my best to cover the issues I wanted to bring to your attention.

If the committee wishes to speak with me I am happy to do so, but it would have to be in Melbourne. Money is short for me at present so a trip to Canberra at any stage in the next couple of months is just not an option. I am however very keen to see to it that Google at least are called to a count for allowing hate speech against those on the Autistic Spectrum, in spite of their own TOS prohibiting it.

I thank the committee for their attention.

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