

CDT Statement on the ISTTF Final Report

January 13, 2009

Supplemental Statement by CDT on the Final Report of the Internet Safety Technical Task Force (ISTTF)

The Center for Democracy & Technology (CDT) appreciates the opportunity to have served on the ISTTF over the past year. The Final Report appropriately concludes that the risks to children online are both more limited and of a different nature than the popular media has suggested, and that there is no one or group of technologies that will solve safety concerns. A critical conclusion of the Report is that legislatures and government officials should not mandate that social networks (SNs) implement online safety technology. The Report did not, however, spend much focus on the legal and policy concerns that would be raised by such a mandate.

Constitutional Concerns: A key threshold fact is that virtually all speech on social networks - even speech among minors or between minors and adults - is completely lawful and constitutionally protected, and predatory speech constitutes only a tiny percentage of the mass of vibrant, constructive speech that happens every day on SNs. Thus, any law or government mandate that would restrict or burden access to SNs would bear a strong presumption of unconstitutionality. Most of the technologies considered by the Task Force would, if mandated, erect unconstitutional obstacles to the ability of both minors and adults to access social networks or communicate online, and would also burden the constitutional right of online speakers to reach the broadest possible audience. Even minors have a constitutional right to be free from government interference with the ability to speak and listen to speech online.

First Amendment Framework: Under the framework set out in 1997 by the U.S. Supreme Court in the seminal *Reno v. ACLU* decision, online speech receives the highest level of First Amendment protection. Based on that decision, numerous courts over the years have struck down a broad range of laws that sought to protect minors online, because there are better and less burdensome ways to protect children. As this Task Force saw, there are a broad range of "user empowerment" tools that parents and caregivers can use to protect their children, and such tools (coupled with vital education of both minors and adults) represent a more appropriate and constitutional way to protect children in the online environment.

Privacy Concerns: Beyond the constitutional concerns that would be raised by a mandate to use a given technology, many of the technologies raise very serious privacy concerns, in particular by forcing the collection of sensitive data about minors and adults. A mandate to use such technologies could well do more harm than good.

AG Quotation in the Final Task Force Report: The Report includes a quotation from remarks that an Attorney General made to the Task Force about sex offenders on a social network. Although the Report briefly, and appropriately, explains why the quoted figures are not persuasive data, the assertions made warrant further analysis.

In Section II.C of the Final Report (page 10 in the printed version), an Attorney General is quoted as referring to the fact that one social network removed 50,000 registered sex offenders from the network. The Report appropriately places the remarks in context:

The Task Force has taken note of and discussed this process in carrying out its work this year. This topic is a complex and important one. Figures of this sort do not appear in the research section of this report below because they have not been verified through a peer-reviewed research process. Researchers note that much remains to be asked and learned about this topic, and that it is important to learn more about who these Registered Sex Offenders are and what they do online in order to address concerns about their online activities.

The "50,000 sex offender" figure, as well as misleading statistics suggesting that many minors have been sexually solicited online, commonly appear in press reports and the rhetoric of lawmakers, but

as the Task Force Final Report correctly shows, those much-touted numbers in fact do not translate into significant actual risk to the minors online. There are, without question, risks for minors online, but those risks are not significantly different than offline risks, and most minors are very safe in the major online social networks. As the Report details, the most significant risk online is for minors who already engage in risky sexual behavior offline.

Academics have identified a phenomenon that they call a "moral panic," referring to situations in which the media and policymakers overreact to a perceived risk or threat that in fact is not as great as it is popularly portrayed. A 2008 academic article applied the theories of "moral panic" to the furor over social networks and child safety. See Alice Marwick, "To Catch a Predator: The MySpace Moral Panic," *First Monday* 13(6): article 3 (2008), available online at <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2152/1966> [1]. In her article, Marwick analyzes the public anxiety about social networking and concludes that it is indeed a "moral panic" that reflects an overreaction to the actual threat that exists. She concludes:

the furor over MySpace is disproportionate to the amount of harm produced by the site. Indeed, the furor over online predators seems also to be disproportionate. Rather than focusing on nebulous "predators," it seems that parents, teachers, and social workers should emphasize identifying and preventing abuse in specific, local community settings. This fits Goode and Ben-El-Mechaieq's model of moral panics.

Adam Thierer discusses "moral panics" and the Marwick article in detail in "Technopanics and the Great Social Networking Scare," July 10, 2008, available online at <http://techliberation.com/2008/07/10/technopanics-and-the-great-social-networking-scare/> [2].

Marwick's conclusion- that the public concern about social networking is an overreaction to the relatively low risks that such sites in fact present - is precisely borne out by the findings of the Task Force's Research Advisory Board. It is critical that policy makers based actions on risks that actually exist, rather than on the risks that are hyped to generate ratings in the news media.

For more information on CDT's views of the ISTTF Final Report, contact Leslie Harris at lharris@cdt.org [3] or John Morris at jmorris@cdt.org [4], or at 202-637-9800.

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[1] <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2152/1966>

[2] <http://techliberation.com/2008/07/10/technopanics-and-the-great-social-networking-scare/>

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