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MySpace Is Also Their Space: Ideas for Keeping Children Safe from Sexual Predators on Social–Networking Sites

*Susan Hanley Duncan*¹

INTRODUCTION

- An Illinois man pled guilty to sexually abusing a minor girl he met on MySpace.²
- A 17–year–old Virginia Commonwealth University freshman was murdered by a man who found her by using her MySpace blog.³
- A New York man faces federal charges after he threatened to harm a 13–year–old girl and her family unless she exposed herself using a Web camera. He then posted the explicit images and the girl’s contact information on MySpace.⁴
- A teenage girl was drugged, raped, and had X–shaped markings carved into her pelvis by a man she met on MySpace.⁵
- A 17–year–old boy was sodomized by a 58–year–old man who held him hostage at his Georgia farm after meeting the boy on MySpace.⁶

The origins of these horrific incidents can be traced to a fairly new channel of Internet communication, social–networking sites. These sites, hugely popular with teens, provide unique and largely independent and unsupervised channels of self expression for adolescents and opportunities

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² CBS2Chicago, *Naperville Man Pleads Guilty in MySpace Sex Abuse*, Mar. 11, 2007, http://cbs2chicago.com/westsuburbanbureau/local_story_070105305.html.

³ J. C. Meyers, *Teens’ MySpace Web Site a Boon for ‘Predators’*, Feb. 13, 2006, <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20060213/NEWS/60213002/1002/NEWS01>.

⁴ MSNBC, *Cops: Teen Coerced to Expose Herself Over Web*, Dec. 5, 2006, <http://www.msnbc.msn.com/id/16047017/>.

⁵ Joe Garafoli, *Families of Sexually Abused Girls Sue MySpace*, S.F. CHRON., Jan. 19, 2007, at A1.

⁶ Greg Bluestein, *Bourne Boy Saved in Georgia After Text–Messaging Family in Mass.*, BOSTON GLOBE, Sept. 29, 2006, available at http://www.boston.com/news/local/massachusetts/articles/2006/09/29/bourne_boy_saved_in_georgia_after_text_messaging_family_in_mass/.

for them to “visit” with friends and make new ones.⁷ Yet the sites also present real dangers to today’s youth, the most serious being child victimization by sexual predators. The sites also make it easier for teens to engage in cyber-bullying and other destructive behaviors that harm families, schools and our society.

The rise in popularity of social-networking sites brings opportunities and challenges. Regulators, legislators, lawyers, school officials, child advocates and parents all grapple with how to address the many social and legal issues associated with these sites. Although there are many interesting issues, this article will only explore ideas on how to keep children, both teens and younger children, safe from sexual predators on social-networking sites, as this issue remains a primary concern for parents.

To emphasize the magnitude of the issue this article begins by defining what social networks are, explaining how they work, and tracing their ever-increasing popularity. Millions of users have already registered with these social-networking sites with thousands more registering weekly. Even the political, business and entertainment worlds increasingly embrace the social networking craze.

As currently operated, social-networking sites provide a vehicle for adolescents to engage in beneficial behavior that helps them explore their identity and practice socialization skills. But these sites also provide a forum for destructive and risky behaviors leading to harmful and often permanent physical and psychological damage. Part II of the article explores the benefits and dangers associated with these sites including disclosure of personal information, addiction to the Internet, risky sexual behavior, cyber-bullying, dangerous communities, and cyber-threats. Harassment, sexual solicitation and exploitation of children produce chronic and reoccurring effects on victims including depression, anger, guilt and other post-traumatic stress symptoms.

Part III of the article explores existing and proposed solutions. Although well-intentioned, many proposed legal and educational solutions fail. To understand why teens continue to engage in risky behaviors and why the solutions are ineffective, a review of the current literature explores adolescents as decision makers and why they take risks. Studies on brain maturation as well as other findings regarding adolescent risk-taking justify a revision of current safety approaches for social-networking sites. To be effective, solutions seeking to change behavior must contemplate different causes of risk-taking behavior. Current solutions fail to incorporate these social science and medical theories and instead rely on faulty assumptions.

⁷ Cox Communications Teen Internet Safety Survey, Wave II—in Partnership with the National Center for Missing & Exploited Children and John Walsh, http://www.cox.com/TakeCharge/includes/docs/survey_results_2007.ppt [hereinafter Cox Communications Teen Internet Safety Survey]. Survey of 1,070 young people ages 13–17 finding 71% of this age group have established an online profile, up from 61% in 2006.

As a result, these proposals do little to modify certain teens' risky behavior.

Acknowledging teens may still engage in risky behavior despite knowing the dangers, deterrence measures must also be incorporated into any action plan. Contemporary deterrence theories identify several inhibiting factors that impact a person's willingness to engage in behavior. These include traditional factors such as certainty and severity of punishment, and the additional factors of moral beliefs and peer associations. Applying each of these factors to the social-networking site issue may produce beneficial results.

The article concludes by offering additional solutions for keeping children safe based on this current research. A multi-faceted approach is necessary because different causes exist for risk-taking. Although separate articles could be written on each of these ideas, it is my hope to provide an overview in this paper which will spur dialogue about the different approaches. As part of the legal solution, social-networking sites should be encouraged to segregate different age groups but the burden should not be theirs alone. To further promote segregating age groups, children and adults should be punished for misrepresenting their age when registering on social-networking sites. Record companies adopted a fear of punishment strategy when deciding to sue individual file-sharers for copyright infringement. Only when the risk of punishment outweighed the benefits of the peer-to-peer sharing option did behavior change. These results offer hope that a similar strategy with social-networking sites may prove effective in changing teens' behavior.

Finally, legal sanctions alone fail to address the breadth of the problem. An education component must be implemented that both distributes information and helps change social norms. Developing more campaigns to educate teens on the risks, although appealing, rarely changes behavior since many teens already overestimate risks. That is not to say education should be eliminated. Instead it should be revamped to better educate parents on the risks associated with these sites and how to more effectively monitor children's computer use.

An opportunity also exists to use education to help change social norms and develop a climate that keeps children safe and discourages the types of behavior discussed in this article. Moral inhibitions and social norms deter people from committing certain acts. But perception of the social norms must be accurate, which is often not the case among teens in evaluating their peers' participation in high-risk behaviors. Changing these social-norms perceptions is not easy, but past social-norms campaigns provide excellent guidance on the steps necessary to communicate and endorse norms that foster positive and safe behaviors on social-networking sites.

I. SOCIAL-NETWORKING SITES—WHAT ARE THEY

Social-networking Web sites, increasingly popular on the Internet, arrived in the cyber world just a few years ago.⁸ The origins of these social networks can be traced to two Harvard students who created Facebook.com, one of the first of the now many social-networking sites on the Web.⁹ Wanting to make the student directory more interactive, these two entrepreneurial students developed a platform for students to share information and a social networking craze resulted.¹⁰ These Web sites allow users to post profiles, view other's profiles and participate in bulletins and blogs, all at no charge.¹¹

Competitors of Facebook.com popped up quickly and more social-networking sites are created daily. The Federal Bureau of Investigation estimates 200 different social-networking sites exist,¹² and *Forbes* magazine reports that MySpace.com hosts the most subscriptions.¹³ MySpace.com [hereinafter "MySpace"] hosts over 175 million registered profiles worldwide¹⁴ and more individuals view MySpace's site than view Google.com.¹⁵

8 Social-networking sites can be defined very broadly to include wikis, blogs, or any other place where people on the Internet meet to talk, share information, debate and socialize. In this article I am using a more narrow definition that focuses on sites like MySpace.

9 Matthew J. Hodge, Note, *The Fourth Amendment and Privacy Issues on the "New" Internet: Facebook.com and MySpace.com*, 31 S. ILL. U. L.J. 95, 97 (2006); See also Marcia Clemmitt, *Cyber Socializing*, 16(27) CQ Researcher 627 (2006) (Online socializing started much earlier with traditional e-mail).

10 Hodge, *supra* note 9, at 97.

11 MySpace, *Take the MySpace Tour!*, http://collect.myspace.com/misc/tour_1.html (last visited Feb. 8, 2008).

12 FBI, *Social Networking Sites Online Friendships Can Mean Offline Peril*, Apr. 3, 2006, <http://www.fbi.gov/page2/april06/socialnetworking040306.htm> [hereinafter *Social Networking Sites Online Friendships*].

13 Rachel Rosmarin, *TheirSpace*, FORBES, Feb. 12, 2007, available at <http://members.forbes.com/global/2007/0212/062b.html> (Although this article focuses primarily on MySpace, other popular social-networking sites include those used primarily by non-US users such as Friendster (37 million-popular in Southeast Asia), HI5 (50 million-popular in Mexico and Spain), Orkut (39 million-popular in Brazil), Cyworld (24 million-popular in South Korea), Piczo (23.5 million-popular in the U.K. and Canada) and Bebo (30 million-popular in the U.K. and Ireland)).

14 Linda Rosencrance, *MySpace Won't Turn Over Names of Registered Sex Offenders*, COMPUTER WORLD, Jan./Feb. 2006, <http://www.computerworld.com/action/article.do?command=viewArticleBasic&articleId=9019659>.

15 See Meyers, *supra* note 3.

Teenagers and younger children flock to MySpace despite the site's requirement that users be fourteen years or older.¹⁶ MySpace originally provided services only to adults but then lowered the age requirement to sixteen-year-olds and now fourteen-year-olds.¹⁷ Children often lie about their age, making it nearly impossible to accurately count the number of children on sites like MySpace.¹⁸ But we do know children twelve to seventeen spend a great deal of time on the Internet and in particular on social-networking sites.¹⁹ A study conducted by comScore Media Metrix shows teens spent an average of 1,233 minutes online during February, 2006.²⁰ Of that time, 262.5 minutes were spent on MySpace and 124.4 minutes on Facebook.com.²¹ Both of these figures increased from the previous year, with a 9% increase for MySpace and a remarkable 33.6% increase for Facebook.com.²² Time Warner Network (AOL) is the only site that occupies more of teens' time than MySpace.²³

The number of teens creating profiles continues to increase. A 2007 study conducted in partnership with the National Center for Missing and Exploited Children found 71% of the 1,070 teens interviewed reported having a profile on a networking site.²⁴ This number increased ten points from the year before.²⁵ Today more teens are posting comments on their own and friends' profiles instead of blogging.²⁶

Social networking, however, is not just for kids, and companies cognizant of this popular new trend hope to transfer the social-networking phenomenon to the business world.²⁷ Companies are creating new

¹⁶ See *Social Networking Sites Online Friendships supra* note 12; See also ROBERT P. DOYLE, THE CURRENT LEGISLATIVE CHALLENGE: DOPA AND THE PARTICIPATION GAP (2006), <http://www.ala.org/ala/oif/ifissues/dopa.pdf> ("One teen has said of the site, 'If you're not on MySpace, you don't exist'").

¹⁷ Danah Boyd, Address at American Association for the Advancement of Science: Identity Production in a Networked Culture: Why Youth Heart MySpace (Feb. 19, 2006), <http://www.danah.org/papers/AAAS2006.html>.

¹⁸ Andrew Totter, *Social Networking Websites Pose Growing Challenge For Educators*, 25 EDUC. WEEK 8, 8 (2006).

¹⁹ Michele J. Fleming, et al., *Safety in Cyberspace: Adolescents' Safety and Exposure Online*, 38(2) YOUTH & SOCIETY 135, 136 (2006) (Twenty-one million teens ages 12–17 use the Internet which is 87% of this age bracket).

²⁰ comScore Media Metrix, *The Score: Teens Highly Engaged Online*, Mar. 16, 2006, <http://www.imediaconnection.com/content/8691.asp>.

²¹ *Id.*

²² *Id.*

²³ *Id.* (Teens spent an average of 367.6 minutes on the Time Warner Network).

²⁴ See Cox Communications Teen Internet Safety Survey, *supra* note 7, at 15.

²⁵ *Id.*

²⁶ *Id.* Blogging dropped eight points from the year before.

²⁷ RUSSELL RESEARCH, CA/NCSA SOCIAL NETWORKING STUDY REPORT 4 (2006), <http://ibiblio.org/fred/stuff/SocialNetworkingReport.pdf> (found that nearly half of the over 2000 adults surveyed spent time on a social-networking site every week).

products to aid the collaborative efforts of employees and customers by allowing them to share “bookmarks, group discussions and tagging.”²⁸ Companies also access existing social-networking sites and investigate profiles, postings, and other content related to candidates for employment and existing employees. A survey conducted by the National Association of Colleges and Employers found 26.9% of companies surveyed checked a social-networking site or the Internet to find information about a job candidate.²⁹ Some companies also find the social-networking sites useful for research, for example, helping lawyers find witnesses.³⁰

Beyond teens and corporations, the entertainment industry recently tapped into the social networking craze. To build excitement about their show, the producers of *How I Met Your Mother* not only posted a fictitious blog of one of the characters on the CBS Web site but also created a profile on MySpace.³¹ Finally, politicians are utilizing this technology with all major presidential candidates incorporating MySpace pages into their campaigns.

So sure of MySpace’s continued popularity, media mogul and president of News Corp, Rupert Murdoch paid \$580 million in 2005 to purchase InterMix Media, owner of MySpace.³² Reports surfaced in 2006 that

28 Martin LeMonica, *IBM Warms to Social Networking*, Oct. 3, 2006, http://news.zdnet.com/2100-3513_22-6121874.html (IBM announced plans to build social-networking tools into its products); see also Ephraim Schwartz, *Analysis: Salesforce AppSpace Signals Major Shift in SaaS Moving From Data-Centric to Process-Centric Service Will Keep Traditional on Premise Vendors Up at Night*, Mar. 20, 2007, http://www.infoworld.com/article/07/03/20/HNappspace_1.html (Salesforce.com recently announced its new product, “AppSpace, a hosted portal environment that Salesforce executives like to call MySpace for the Business Web”); China Martens, *Salesforce.com Readies MySpace for Business: Hosted portal AppSpace will provide a secure space for collaboration*, PC WORLD, Mar. 19, 2007, available at <http://www.pcworld.com/article/id,129956-page,1/article.html>. Microsoft also created “a series of online communities for users of its Dynamics ERP (enterprise resource planning) and CRM (customer relationship management) applications, starting with a site for finance professionals to exchange best practices.” *Id.*

29 Institute of Management and Administration, Inc., *Cyber-Recruiting: Why Trouble May be Just One Mouse Click Away*, COMPENSATION AND BENEFITS FOR LAW OFFICES (2007).

30 Melody Finnemore, *Beyond Paperless*, 67 OR. ST. B. BULL. 17, 21 (Jan 2007).

31 Joe Rhodes, *A Fictional Video on MySpace Puts A TV Show’s Promotion Into Hyperspace*, N.Y. TIMES, Apr. 9, 2005, available at http://www.nytimes.com/2007/04/09/business/media/09sparkles.html?_r=2&adxn1=0&oref=slogin&adxn1x=1176208295-ceB43TfP5voKcNK9K7PHrQ&pagewanted=print (The profile centered upon one of the show’s main characters who secretly had been a pop singer, Robin Sparkles, in her youth. During one episode of the show another character “discovered” a video on MySpace supposedly made by a fan of Sparkles. The use of the social network site obviously worked. The Robin Sparkles fabricated profile now lists over 6,000 registered friends and after that episode the show’s ratings skyrocketed adding more than a million viewers. The producers used MySpace again in April 2007, using the site to show parts of a bachelor party that were too racy to show on television).

32 BBC News, *News Corp in \$580m Internet Buy*, July 19, 2005, <http://news.bbc.co.uk/1/hi/business/4695495.stm>.

Yahoo was willing to pay almost \$1 billion dollars for Facebook.com.³³ The founder of Facebook.com had previously offered to sell the site for \$2 billion dollars to Viacom.³⁴ These sites command high prices in part because companies are eager to advertise on the sites. Google agreed to pay \$900 million dollars over three years to place text and banner ads on MySpace.³⁵ Mainstream companies including Target, NBC, and Proctor & Gamble also advertise on MySpace.³⁶

The presence and popularity of these social-networking sites will only increase as they are incorporated into the business world and extended to other technological outlets. Already companies, like AirG, are developing technology to extend the reach of social-networking sites to cell phones.³⁷ This is a natural transition since some content for user profiles comes from videos and pictures taken with cell phones.³⁸ Far from a fleeting teenage trend, social-networking sites have a strong future.

II. SOCIAL-NETWORKING SITES' BENEFITS AND RISKS³⁹

Teens utilize this technology in great numbers and people disagree whether their use should be encouraged, discouraged or something in between. The answer may depend on whether one views the benefits as outweighing the risks. Some scholars, although recognizing the potential for harm, think the media exaggerates the risks resulting in a moral panic.⁴⁰ This position

33 Kevin J. Delaney, Rebecca Buckman & Robert A. Guth, *Facebook, Riding a Web Trend, Flirts With a Big-Money Deal*, WALL STREET J., Sept. 21, 2006, available at http://online.wsj.com/article/SB115880835590769754.html?mod=home_whats_news_us.

34 Saul Hansell, *Yahoo Woos A Social Networking Site*, N.Y. TIMES, Sept. 22, 2006, available at <http://www.nytimes.com/2006/09/22/technology/22facebook.html?ei=5088&en=09f3d5e70aa0f977&ex=1316577600&partner=rssnyt&emc=rss&pagewanted=print>.

35 *Id.*

36 Steve Rosenbush, *Socializing for Dollars*, BUSINESS WEEK, Apr. 10, 2006, available at http://www.businessweek.com/technology/content/apr2006/tc20060410_028088.htm.

37 Daisy Whitney, *Social Nets the Next Step for Cell Video*, Feb. 12, 2007, http://www.airg.com/news/in_the_news/documents/TVWeek_02122007.pdf; see also <http://www.airg.com/company.htm>; Reuters, *Social Networking via GPS Phone*, May 18, 2007, available at <http://www.cellphonegps.blogspot.com/2007/05/social-networking-via-gps-phone.html>.

38 Whitney, *supra* note 37.

39 Children are not the only ones benefited and threatened by social-networking sites and many of the problems associated with these sites are not unique to children. Although not discussed in this article, many issues exist for both adults and children regarding social-networking sites.

40 See Boyd, *supra* note 17; See also JAMES KINKAID, *EROTIC INNOCENCE: THE CULTURE OF CHILD MOLESTING* (Duke University Press 1988) (argues child molestations make big news far out of proportion to their actual occurrence because although these scandals shock us, they bring out something sexual in us freeing us to talk about issues that would otherwise be taboo. This preoccupation with misguided sexuality allows us to ignore more pressing childhood problems of poverty, neglect and poor education); JUDITH LEVINE, *HARMFUL TO MINORS: THE PERILS OF PROTECTING CHILDREN FROM SEX* (Thunder's Mouth Press 2003) (warns against

too easily dismisses data concerning the number of predators on these sites and the rise of teenagers using them. And even though some data shows teens may be paying attention to safety messages, one study still reported that eight percent of teens surveyed had actually agreed to meet someone in person that they only knew online.⁴¹

Obviously these meetings may not result in sexual exploitation but the potential for harm is not imaginary or overblown. According to the Census Bureau 17,079,000 children from the ages fourteen to seventeen lived in the United States in 2005.⁴² If 70% had a profile (11,995,300) and 8% of them met someone they only knew online that would calculate to 956,424. Even if a small percentage of these children were actually solicited, molested or otherwise preyed upon that would still be a substantial number. North Carolina's Attorney General found more than 100 criminal incidents involving adults preying on children via MySpace in the first six months of 2007 based on media reports.⁴³ And as predators become more and more aware of these sites as well as opportunities the sites present, including predation, we can anticipate these numbers may very well increase.

Furthermore, the skeptics may be wrong because quantifying the exact number of children in danger is impossible since many of them do not report solicitations to parents or other adults. Regardless, knowing the exact number is not a necessary prerequisite to regulations. Using a formula for regulations that merely analyzes the likelihood of harm occurring misses the point. The gravity of harm if the risks were to occur must be part of the formula. Although the incidents discussed in the beginning of the paper may not be occurring daily, the trauma left after such an incident makes this an issue worth exploring even if it helps only a small number of children. Public health and safety concerns frequently require actions even though the likelihood of the harm occurring may be small.

As much as there may be a moral panic in the public about social-networking sites, there seems to be a counter-fear among some commentators and scholars of any solution other than better parental monitoring. They frame the issue as a choice between no regulations or a complete ban on MySpace. This is unfortunate because the benefits of the social-networking sites can be preserved while at the same time reducing some of the risks for teens. Multiple options exist besides an all or nothing

overreaction and overprotection regarding teenage sex and calls for common sense on pedophilia). *But see* PHILIP JENKINS, *BEYOND TOLERANCE: CHILD PORNOGRAPHY ONLINE*, (New York Univ. Press 2001) (argues public should be more concerned about the amount of child pornography on Internet).

41 *See* Cox Communications Teen Internet Safety Survey, *supra* note 7, at 17.

42 U.S. Census Bureau, <http://www.census.gov/compendia/statab/tables/07s0011.xls> (last accessed July 11, 2007).

43 Gary D. Robertson, *MySpace Finds 29,000 Sex Offenders*, July 25, 2007, <http://abcnews.go.com/print?id=3409947>.

approach. The next section of the article explores the benefits, risks and the harm that can result when risks become realities.

A. *Benefits Associated with Social–Networking Sites*⁴⁴

The Internet generally, and social–networking sites in particular, can be a positive influence on teens. Social–networking sites provide an outlet for teens to express themselves in their own unique ways.⁴⁵ In addition, they serve both as a meeting place for teens to interact with other like–minded people and as showplaces for a teen’s artistic and musical abilities.⁴⁶ Finally, students use these sites as tools to obtain information much like businesses and colleges use them in evaluating candidates and applicants.⁴⁷ For example, students applying for college visit profiles of that college’s students to view pictures and read blogs to determine whether the college would be a good fit.⁴⁸

1. *Practicing Social Skills.*—Part of the socialization process is developing a self identity that is accepted by peers. Profiles help teens develop their identities and they spend enormous amounts of time creating and changing their unique profiles. Users personalize or “pimp” their pages by selecting different backgrounds and layouts as well as selecting songs to be played when others access the profile.⁴⁹ A typical profile contains the user’s interests, details (orientation, hometown, zodiac sign), and pictures of the user and her friends, often in suggestive poses.

MySpace profiles also display blog or journal entries reminiscent of schoolgirl diaries, except unlike traditional diaries these can be open for public viewing depending on the privacy setting selected.⁵⁰ Interactive features allow the blogger “to attach an image of a CD they’re listening to, a book they’re reading, a movie they’re watching or a video game they’re playing” while writing the entry.⁵¹ These features help users better and more fully express their feelings and moods.

44 Kristin Stanberry, *When Kids Network Online: The Benefits and Risks*, <http://www.schwablearning.org/articles.aspx?r=1120&f=search> (last visited Feb. 9, 2008).

45 See DOYLE *supra* note 16, at 2; see also Sean Rapacki, *Social Networking Sites Why Teens Need Places Like MySpace*, YOUNG ADULT LIBRARY SERVICES 28, 29 (2007).

46 Adam Thierer, *Social Networking and Age Verification: Many Hard Questions, No Easy Solutions*, The Progress and Freedom Foundation, Mar. 2007, at 10, <http://www.pff.org/issues-pubs/pops/pop14.5ageverification.pdf>. See Totter, *supra* note 18.

47 Anne Macleod Weeks, *About Face The Other Side of Social Networking*, EDUC. WEEK, Mar. 14, 2007 (copy available from author).

48 *Id.*

49 Rapacki, *supra* note 45, at 29.

50 *Id.*

51 *Id.*

Users learn more about existing friends and make new friends through these profiles.⁵² Users are encouraged to sign others up to help them create a large network of friends.⁵³ Most users' profiles contain a section devoted to comments from friends.⁵⁴ These comments can serve as an ongoing conversation between friends. Teens can experiment with greetings, responses and other postings gauging reactions from their peer group.⁵⁵

2. *Defining/Guiding Social Interaction.*—Social-networking sites such as MySpace offer much more than just a repository of teen profiles. To help users meet other like-minded people social-networking sites support areas that focus on subjects of interest, such as the issues of “gay, lesbian, bi,” “fashion and style,” “literature and arts,” and “religion and beliefs.”⁵⁶ Chat room discussions occur on an equally diverse number of topics.⁵⁷ These more narrow groups connect teens with similar teens, helping provide a sense of belonging and support they may not feel in their own communities or schools.

3. *Creating Private Social Spaces.*—One of the benefits and risks of social-networking sites is they often are not heavily monitored by adults. This gives teens a place to explore and “hang out” without being closely watched by parents or other adults, as they might be in malls or arcades.⁵⁸ Much of a teen's life is within controlled spaces monitored by parents, teachers and other authority figures.⁵⁹ Having a space to go with just friends gives teens a place to visit and explore, helping them develop independence from their parents.

4. *Experimenting with Identities.*—The anonymous nature of the social-networking sites allows teens the opportunity to escape the stereotypes and images they have been labeled with in their communities and schools. Teens can have an identity online that they may not be willing to expose in real life out of fear of social stigma.⁶⁰ Strangers online do not necessarily

⁵² MySpace, *supra* note 11.

⁵³ *Id.*

⁵⁴ These comments appear as notes on the user's profile and anyone accessing the profile can read them. Most of them are two to three sentences long and range from entries such as “Long time no see. How have you been?” to inside personal jokes such as “nice touch with the double A.” Users may have hundreds of these on a profile.

⁵⁵ See Stanberry, *supra* note 44.

⁵⁶ MySpace, *Groups Home*, <http://groups.myspace.com/index.cfm?fuseaction=groups.categories&z=1> (last visited Feb. 9, 2008).

⁵⁷ MySpace, *Forum Home*, <http://forums.myspace.com/?fuseaction=forums.home> (last visited Feb. 9, 2008).

⁵⁸ See Stanberry, *supra* note 44.

⁵⁹ See Boyd, *supra* note 17.

⁶⁰ *Id.*

know if a person is overweight, non-athletic or shy. With much less risk than in real life, teens are free to be someone else.

B. Risks Associated with Social–Networking Sites

Despite these benefits, social–networking sites have a dark side. Because teens view their virtual lives as somehow more anonymous than real life they take risks they may not otherwise take. Teens' technological skills often far surpass their judgment and critical–thinking skills, making them more likely to engage in risk–taking behaviors. Their abilities to navigate the computer may make them over confident and less careful when confronted with new situations via the computer. Finally, research exists that the actual dynamics of looking at a computer screen, with its multiple sensory inputs and its fast changing images, impact teens' ability to think, making them more prone to taking risks.⁶¹

Risky behaviors associated with social–networking sites include unsafe disclosure of personal information, addiction to the Internet, risky sexual behavior, cyber–bullying, exposure to dangerous communities, and cyber–threats.⁶² Engaging in multiple risky behaviors online (e.g. sending or posting personal information, making rude or nasty comments, interacting with someone met online, talking about sex with someone online) increases a child's risk of online interpersonal victimization.⁶³ This victimization, especially sexual solicitation and exploitation, can result in harmful and often permanent physical and psychological damage to children.

Despite these serious risks, some parents fail to monitor teens' computer use with the same scrutiny as they do their non–virtual activities. Some parents, not as technologically savvy as their teens, are unaware of social–networking sites, much less their risks. Teens cultivate a degree of secrecy with their computer use, freely admitting they hide their accounts from their parents and use alternate e–mail accounts to open new accounts if their parents delete existing profiles. Over one–third (38%) of parents in one survey had not seen their teens' MySpace page and 43% did not know how often their teens were on MySpace.⁶⁴ Many parents do not seem to

61 Ilene R Berson & Michael J. Berson, *Challenging Online Behaviors of Youth Findings From a Comparative Analysis of Young People in the United States and New Zealand*, 23 SOC. SCI. COMPUTER REV. 29, 30 (2005).

62 Nancy Willard, *Social Networking, Part 2: A Toolkit for Teachers*, 13(4) MULTIMEDIA & INTERNET@SCHOOLS 18, 20 (2006).

63 Michele L. Ybarra, et al., *Internet Prevention Messages: Targeting the Right Online Behaviors*, 161(2) ARCHIVES OF PEDIATRICS & ADOLESCENT MED. 138, 142 (2007) (as children engage in four or more risky behaviors their odds of online interpersonal victimization drastically increase) [hereinafter Ybarra et al., *Internet Prevention Messages*].

64 See Clemmitt, *supra* note 9, at 628.

be discussing this issue with their teens either—62% have never talked to their teen about MySpace or its risks.⁶⁵

1. *Unsafe Disclosure of Personal Information.*—Teens disclose too much information in chat rooms and on social-networking sites. Social-networking sites are more dangerous than chat rooms because users share more identifying information and information placed on a profile maintains a level of permanency that is non-existent in chat rooms. Without ever speaking to a child, users of MySpace or Facebook.com can glean important personal information about a child by simply perusing registered profiles.⁶⁶ These profiles are much more accessible than trying to search for personal Web pages. Although the media, schools and parents try to educate adolescents, some teens still expressly include personal data such as addresses, names and schools on their pages.⁶⁷ Teens also unwittingly disclose identifying information in photos by, for example, wearing a shirt showing their school and class year. A study on teenagers' blogs "revealed that kids volunteer far too much information. Two-thirds provide their age and at least their first name; 60% offer their location and contact information. One in five offer up their full name."⁶⁸ Other teens confirm that they posted their school I.D.s and drivers' licenses.⁶⁹ Teens not only post identifying information but often information or pictures that depict illegal activities.⁷⁰ Consequently, law enforcement officers are now beginning to use these sites to help make arrests.⁷¹

Even if teens take appropriate precautions, their friends may expose them to risks. Nothing prevents teens from creating MySpace accounts for their friends. In addition, the ability of users to view a person's friends makes it relatively easy to uncover personal details omitted from another's

65 *Id.*

66 Julie Rawe et al., *How Safe is MySpace?*, TIME, July 3, 2006, at 34–36; see also Bob Sullivan, *Kids, Blogs and Too Much Information—Children Reveal More Online Than Parents Know*, Apr. 29, 2005, <http://www.msnbc.msn.com/id/7668788/>. But see Ybarra et al., *Internet Prevention Messages*, *supra* note 63, at 142 (suggests "sharing personal information . . . is not by itself significantly associated with increased odds of online interpersonal victimization").

67 *Id.*; see also Michele L. Ybarra, Cheryl Alexander, & Kimberly J. Mitchell, *Depressive Symptomatology, Youth Internet Use, and Online Interactions: A National Survey*, 36 J. ADOLESCENT HEALTH 9, 10 (2005) ("a recent study reports that one-quarter of private-schooled 7th–12th graders have shared information about themselves, including their name, school, address, or phone online") [hereinafter Ybarra et al., *Depressive Symptomatology*]; Cox Communications Teen Internet Safety Survey, *supra* note 7, at 16 (study reports 64% post photos or videos of themselves online, 58% post information about the city where they live; 49% post the name of their school, 8% (one in ten) posted their cell number).

68 Sullivan, *supra* note 66.

69 Rhonda Goetz, *Is MySpace Stealing Your Child's Future*, Jan. 18, 2006, <http://ezinearticles.com/?Is-MySpace-Stealing-Your-Childs-Future?&cid=130750&opt=print>.

70 See Willard, *supra* note 62, at 20.

71 See Hodge, *supra* note 9, at 95.

profile. For example, Jane Doe may not list her school or hometown but three of her friends may list the information, making it relatively easy for a sexual predator to find her.

2. *Addiction to the Sites.*—No different from adults' fixation with e-mails and surfing the Web, teens say social-networking sites are "totally addictive."⁷² Risks associated with increased Internet use range from interference with children's academics and other activities to an increased risk of solicitation online.⁷³ Because of the interference with students' studies "[o]ne Roman Catholic diocese in Paterson, N.J., has forbidden its students to sign up for *MySpace* accounts at all, calling it 'an inappropriate use of their time.'"⁷⁴ More alarming than interference with academics, teens' addiction to social-networking sites amplifies sexual predators' ability to solicit minors online as well as teens' likelihood to engage in risky behavior.⁷⁵ In a study that surveyed both American and New Zealand girls, researchers confirmed that the more time a girl spent online, the more likely she was to engage in risky behavior.⁷⁶

3. *Risky Sexual Behavior.*—Some teens use social-networking sites for flirting and more dangerous sexual encounters.⁷⁷ Often users post very suggestive pictures and use provocative language on their profiles. A certain level of competition often exists among users to have as many friends as possible. This practice of seeking friends, known as "whoring" among teen users, leads teens to post suggestive photos or inappropriate blog entries to drive more people, even strangers, to their profile.

Too often teens have sexual discussions with other users, sometimes adults.⁷⁸ At least one study indicates 4% of underage Internet users talked about sex to a stranger.⁷⁹ Pre-adolescents, children ages eight to thirteen, also appear to be engaging in inappropriate sexual conversations without their parents' knowledge.⁸⁰ Chatting about sex is particularly dangerous

72 See Goetz, *supra* note 69; see also K.S. Yong, *Internet Addiction: The Emergence of a New Clinical Disorder*, 1(3) *CYBERPSYCHOLOGY* 237 (1998).

73 Nikki Anderson, *Local Teens Find Themselves Addicted to Social Networking Web Site*, April 14, 2006, <http://www.ledger-dispatch.com/printer/article.asp?c=183622>.

74 Irene E. McDermott, *I Need MySpace*, 14(4) *SEARCHER* 22 (2006).

75 See Chris Fullwood, Niall Galbraith, & Neil Morris, *Rapid Communication Impulsive Nonconformity in Female Chat Room Users*, 9(5) *CYBERPSYCHOLOGY & BEHAVIOR* 634, 635 (2006) (discusses that women participating in chat rooms may be more likely to be solicited); see also Berson & Berson, *supra* note 61, at 36.

76 See Berson & Berson, *supra* note 61, at 34.

77 See Willard, *supra* note 62, at 20.

78 See Totter, *supra* note 18.

79 Youth Internet Safety Task Force, *Official Report*, Dec. 20, 2006, at 6 <http://vapta.org/Health/ReportYISTFfinal.pdf>.

80 Joan D. Atwood, *Mommy's Little Angel, Daddy's Little Girl: Do You Know What Your Pre-*

because at this age children lack the cognitive skills necessary to process these conversations. The ultimate effect these conversations have on girls is uncertain, but recent research does confirm girls this age talk about sex on the Internet. One study examined the sexual activity reported by 1,300 pre-teen girls in an Internet chat room over a five-year period. The research revealed an alarming number of pre-teens who were well versed in sexual language and knowledge and willing to talk about such topics with strangers.⁸¹ At least 10% of the girls engaged in conversations with the researchers about sex and their experiences with sex.⁸² The girls willingly talked with the researcher even though he told them he was sixty years old.⁸³ Ninety-five % percent of them reported their parents did not know they had engaged in sexual activity or that they were talking about this with older individuals on the Internet.⁸⁴

Some will argue that youths develop social skills naturally by experimenting with verbal and physical expression in social settings and that expressions conveyed in cyberspace are no different and therefore require no new solutions.⁸⁵ The difference is that past generations experimented socially in person and, mostly, in public at diners, roller rinks and arcades. Practicing social skills on the Internet is more dangerous, however, because unlike these other venues, there is no face-to-face interaction that lets the teen modify her conduct based on the visual cues she gets from the other person. At the mall she probably would not flirt with a sixty-year-old man. In addition, teens usually use social-networking sites alone and without the benefit of their peer groups being present to help modify certain behaviors.

4. *Cyber-Bullying & Cyber-Threats.*—Social-networking sites provide a new pathway for the cyber-bullying that occurs on the Internet. One national poll reported that thirteen million children between the ages of six and seventeen have been cyber-bullied.⁸⁶ The harassing and threatening acts come in the form of e-mails, Web pages, instant messaging, text

Teens Are Doing?, 34 THE AM. J. FAM. THERAPY 447, 447 (2006).

⁸¹ *Id.*

⁸² *Id.* at 456.

⁸³ *Id.*

⁸⁴ *Id.* at 461.

⁸⁵ An interesting debate centers on whether differences between real life and cyberspace are so great that they require a separate and distinct discipline. To read the origin of this debate, see Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL F. 207 (1996) (supports no substantive legal changes to respond to the Internet instead arguing existing laws just need to be applied to new mediums); Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501 (1999) (disagrees with Easterbrook).

⁸⁶ National School Boards Association, *Poll Indicates 13 Million Children Have Been "Cyber Bullied"* <http://nsba.org/MainMenu/SchoolLaw/Issues/Safety/News/Pollindicates13millionchildrenhavebeencyberbullied.aspx> (last visited Mar. 12, 2008).

messages, and postings on social-networking sites.⁸⁷ The faceless nature of the comments contributes to a sense of anonymity that produces more crude, rude and inappropriate postings in comparison to face-to-face communications. Effects of bullying include feelings of embarrassment, denigration, and low self-esteem which have even led to suicide.⁸⁸

5. *Dangerous Communities.*—Groups on social-networking sites, while offering some benefits, also present great risks. Unfortunately, depressed children may associate with other at-risk children and accept and embrace troubling thoughts and unhealthy views.⁸⁹ In addition, a child may encounter sexual predators while on a social-networking site. Predators often use these sites to find children. The Department of Justice estimates “50,000 predators [may be] trolling for child sex victims [on the Internet] at any given time.”⁹⁰ Convicted sex offenders are easily located on MySpace.⁹¹ In just twelve days of using a software database of sexual offenders, MySpace reported identifying and deleting “a few thousand” profiles of convicted sexual offenders.⁹² Two months later MySpace corrected that number to 29,000 registered sex offenders on its site.⁹³

Anecdotaly, the media and law enforcement report one horrific incident after another involving children and sexual predators using MySpace as a meeting ground.⁹⁴ Although critics of any type of regulatory response think statistics on sexual solicitation on social-networking sites are misstated and over-reported by the media, a recent study reports thirteen percent (13%) of ten to seventeen-year-olds have been solicited online.⁹⁵ Over half of those solicitations (57%) were by adults.⁹⁶ Although the percentage of children solicited has declined six percent (6%) in the past five years, 3.2 million

87 *Id.*

88 Susan Hanley Kosse & Robert H. Wright, *How Best to Confront the Bully: Should Title IX or Anti-Bullying Statutes Be The Answer?*, 12 DUKE J. GENDER L. & POL'Y 53, 54 (2005).

89 See Willard, *supra* note 62, at 20.

90 U.S. Department of Justice, *Project Safe Childhood Protecting Children From Online Exploitation and Abuse 7* (2006) <http://www.projectsafechildhood.gov/guide.htm> [hereinafter *Project Safe Childhood*].

91 Jenn Shreve, *MySpace Faces a Perp Problem*, April 18, 2006, <http://www.wired.com/culture/lifestyle/news/2006/04/70675>.

92 Kenneth Li, *MySpace Deletes Sexual Predator Profiles*, May 16, 2007, <http://uk.reuters.com/article/UKNews1/idUKWEN814320070516>.

93 Gary D. Robertson, *MySpace Finds 29,000 Sex Offenders*, July, 25, 2007, <http://abcnews.go.com/Technology/wireStory?id=3409947> (MySpace gave no explanation why the number had so dramatically increased from earlier reports).

94 See *supra* notes 2–6, 12, 66.

95 Janet Kornblum, *Children Less Likely to Encounter Online Predators*, USA TODAY, Aug. 9, 2006, available at http://www.usatoday.com/tech/news/internetprivacy/2006-08-08-kids-online-survey_x.htm.

96 *Id.*

children still face unwanted solicitations representing a continual issue of great concern.⁹⁷ This decline is likely misleading because the number of children using the Internet in the past five years has increased and so the number of children solicited may not have actually decreased.⁹⁸

In addition these figures fail to reflect the many unreported solicitations. Only twenty-five percent (25%) of teens admit to telling parents when they are solicited and a smaller number of these are reported to police, the Internet Service Provider (ISP), or another authority.⁹⁹ In 2000 well over two-thirds of the teens (69%) and even a greater number of the parents (76%) did not know how to report a solicitation on the Internet.¹⁰⁰

Although not every sexual solicitation will escalate to sexual molestation, the solicitation itself harms children. Sexual solicitations typically begin with predators drawing their victims into their confidence by broaching sexual topics online, sending pornographic images and finally meeting the children.¹⁰¹ Each step of this grooming process gradually reduces the child's inhibitions, making it easier for the predator to exploit the child.¹⁰² Social-networking sites have made these initial interactions much easier for the predator.

C. Effects of Sexual Solicitation and Exploitation

Sexual solicitations and molestations impart harmful and long-lasting effects on children. Solicitations traumatize younger children more than teens.¹⁰³ When the solicitation is aggressive or occurs at a computer away from the home, feelings of distress worsen.¹⁰⁴ Aggressive solicitation includes situations in which the predator attempts to contact the child off-line either by mail, phone or in person.¹⁰⁵

A molested child experiences both physical and psychological damage. Physical trauma may include sexually transmitted diseases and broken, torn or bruised bodies.¹⁰⁶ In addition, many children experiencing sexual

⁹⁷ *Id.*

⁹⁸ Kimberely J. Mitchell, Janis Wolak & David Finkelhor, *Trends In Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet*, 40 J. ADOLESCENT HEALTH 116, 121 (2007).

⁹⁹ See *Project Safe Childhood*, *supra* note 90, at 6.

¹⁰⁰ Kimberly J. Mitchell, David Finkelhor & Janis Wolak, *Risk Factors for and Impact of Online Sexual Solicitation of Youth*, 285(23) J. AM. MED. ASS'N 3011, 3013 (2001).

¹⁰¹ National Center for Missing & Exploited Children, *Child Pornography Fact Sheet*, http://www.cybertipline.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451 (last visited Feb. 9, 2008) [hereinafter *Child Pornography Fact Sheet*].

¹⁰² *Id.*

¹⁰³ See Mitchell, Finkelhor, & Wolak, *supra* note 100.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *Child Pornography Fact Sheet*, *supra* note 101.

exploitation feel depressed, withdrawn, angry, guilty, or experience other psychological disorders.¹⁰⁷ These feelings often manifest in the form of nightmares, flashbacks, stomach aches, headaches, etc. Children are further victimized if photographs or videos of the abuse are posted on the Internet.¹⁰⁸

III. CURRENT EFFORTS TO REDUCE DANGERS

A. *The Legal Approach*

The special problems of social-networking sites illustrate the challenges of defining—legally and theoretically—the nature of the Internet. In particular, some scholars perceive the Internet as a type of space, virtual space, while others perceive the Internet as a forum or means of communication.¹⁰⁹ How courts classify the Internet impacts the level of scrutiny courts will apply when reviewing regulations. Failing to classify the Internet as a public forum greatly reduces First Amendment protections.¹¹⁰

An examination of these and other free speech issues in regulating social-networking sites requires separate in-depth treatment elsewhere. They are important but beyond the scope of this particular article. However, as illustrated by my discussion of how social-networking sites work and their potential dangers, these sites in particular are far more than merely avenues of speech. They are either a type of space where people meet electronically or a substitute for physical space where very real relationships are formed via the Internet. At the same time, though, the dangers are not merely the physical space substitution, but a combination of that characteristic and the unregulated ways in which relationships are formed without the accountability of physical presence and known identity. This next section of the article outlines previous and proposed laws that have attempted to deal with this technology and the unique issues that surround it.

1. *Background.*—Before social-networking sites existed, Congress passed several laws addressing the safety of children on the Internet. In particular, these laws sought to protect children from harmful and inappropriate material found on the Internet. These laws all faced legal challenges and

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Dan Cannon, *Cyberspace As Place and the Tragedy of the Digital AntiCommons*, 91 CAL. L. REV. 439 (2003); Julie E. Cohen, *Cyberspace As/And Space*, 107 COLUM. L. REV. 210 (2007); Mark A. Lemley, *Place and Cyberspace*, 91 CAL. L. REV. 521 (2003); Andrew L. Shapiro, *The Disappearance of Cyberspace and the Rise of Code*, 8 SETON HALL CONST. L.J. 703 (1998); Timothy Wu, *Application Centered Internet Analysis*, 85 VA. L. REV. 1163 (1999).

¹¹⁰ Dawn C. Nunziato, *The Death of the Public Forum In Cyberspace*, 20 BERKELEY TECH. L.J. 1115 (2005).

many were found to be unconstitutional because they were overbroad and not narrowly tailored to serve the government's purpose. The following chart provides an overview of the key legislation passed on this issue since 1996.

Law	Year Passed	Subject Matter	Court Challenge	Result
Communications Decency Act (CDA)	1996	Made it a crime for <i>any</i> person to post material on the Internet that would be considered <i>indecent</i> or <i>obscene</i>	<i>ACLU v. Reno</i> , 521 U.S. 844 (1997)	Overtured
Child Pornography Prevention Act (CPPA)	1996	Banned sexually explicit pornographic images of children that "appear to be" or "conveys the impression" that a minor is depicted	<i>Ashcroft v. Free Speech Coalition</i> , 535 U.S. 234 (2002)	Overtured

Child Online Protection Act (COPA)	1998	Required commercial Web sites to collect a credit card number or other proof of age before allowing Internet users to view material deemed harmful to minors.	<i>ACLU v. Ashcroft</i> , 535 U.S. 564 (2002), <i>on remand to</i> 322 F.3d 240 (3d Cir. 2003) <i>Ashcroft v. ACLU</i> , 542 U.S. 656 (2004), <i>on remand to</i> 478 F. Supp. 2d 775 (E.D. Pa. 2007)	Supreme Court sent back to Third Circuit, which ruled COPA was unconstitutional. District Court granted permanent injunction.
Child Internet Protection Act (CIPA)	2000	Mandated public school and libraries to install filters.	<i>Am. Library Ass'n v. U.S.</i> , 201 F. Supp. 2d 401 (E.D. Pa. 2002), <i>rev'd by</i> 123 S. Ct. 2297 (2003).	Ruled constitutional by a plurality.
The Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT ACT)	2003	Seeks to correct flaws of CPPA banning virtual child pornography.	No challenges	

Enticing Children on line	1998	Made it a crime for any person to transmit the contact information of minors via the Internet with the intent to entice or solicit them to engage in sexual activity.	<i>U.S. v. Giordano</i> , 442 F.3d 30 (2d Cir. 2006)	Ruled constitutional (under the Commerce Clause).
Unsolicited material sent to a child	1998	Made it a crime for any person to transfer obscene material to a minor via the Internet.	No challenges	

In addition to these federal laws, states have also addressed the topic of children and the Internet. State laws include:

- Anti-spam laws that require labeling for adult-oriented materials sent to kids
- Funding of law enforcement initiatives that enhance officials' ability to prosecute Internet crimes
- Supporting educational approaches that teach children how to use the Internet wisely and safely
- Providing for schools and libraries to adopt reasonable use policies on the Internet
- Supporting industry initiatives and technological approaches to protecting children¹¹¹

Five states require Internet Service Providers and IT workers to report child pornography if encountered within the scope of their work.¹¹²

2. Laws Specific to Social-Networking Sites.—Besides protecting children from exposure to pornography and other harmful content on the Internet, there has been increased activity at both the federal and state level to

¹¹¹ See National Conference of State Legislatures, *Children & the Internet*, <http://www.ncsl.org/programs/lis/kidnet/about.htm> (last visited Feb. 9, 2008).

¹¹² See National Conference of State Legislatures, *Child Pornography Reporting Requirements (ISPs and IT Workers)*, Dec. 17, 2007, <http://www.ncsl.org/programs/lis/kidnet/reportreq0603.htm>.

address the issue of sexual predators preying on children in chat rooms and social-networking sites. In 2006 and 2007, federal and state legislators proposed several bills seeking to keep children safe on these popular new Internet sites.

a. *Federal Laws.*—

i. *Deleting Online Predators Act (DOPA).*—In 2006 Congressman Michael Fitzpatrick introduced a bill that would restrict children’s access to social-networking sites, like MySpace, in schools and libraries. Specifically, the bill attempted:

To amend the Communications Act of 1934 to require recipients of universal service support for schools and libraries to protect minors from commercial social networking websites and chat rooms.¹¹³

Although it resoundingly passed the House with a 410–15 vote, it failed to pass in the Senate and never became law.

Congressman Mark Kirk reintroduced the bill in February, 2007.¹¹⁴ As with its predecessor, it attempts to protect children from sexual predators found in “trendy” chat rooms and social-networking sites.¹¹⁵ The bill would require schools and libraries to certify that they enforce an Internet safety policy that protects children from accessing material that is obscene, pornographic, or harmful to minors.¹¹⁶ In addition, schools would have to limit access to chat rooms or social-networking sites to educational purposes accompanied by adult supervision.¹¹⁷ Likewise, libraries would be required to refuse minors access to these sites without parental permission and only after informing parents that sexual predators may use such sites to “prey on children.”¹¹⁸ The bill authorizes the Federal Trade Commission to define the terms “social networking website” and “chat room” within 120 days of the law’s enactment.¹¹⁹ Finally, the Federal Trade Commission would need to alert the public within 180 days of the dangers of sexual predators on the Internet generally and specifically with these type of sites.¹²⁰

ii. *H.R. 719 and S. 431 Keeping the Internet Devoid of Sexual Predators Act of 2007.*—This bill requires sexual offenders to register online identifiers, such as e-mail addresses or profiles on social-networking sites that could be shared with the social-networking sites, as part of the Sex Offender

¹¹³ H.R. 5319, 109th Cong. (as passed by House, July 26, 2006).

¹¹⁴ H.R. 1120, 110th Cong. (as introduced Feb. 16, 2007).

¹¹⁵ *Id.* § 2 (3).

¹¹⁶ *Id.* § 3 (a)(b).

¹¹⁷ *Id.* § 3 (a)(cc)(ii).

¹¹⁸ *Id.* § 3 (b)(cc)(ii).

¹¹⁹ *Id.* § 3 (J).

¹²⁰ *Id.* § 4.

Register and Notification Act.¹²¹ The social-networking sites could request this information from the Attorney General in order to screen new users or compare it to an existing database.¹²² The penalty for not complying with the act includes fines and up to ten years jail time.¹²³ The bill defines a commercial social-networking Web site as:

- a commercially operated Internet website that—
 - (A) allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users; and
 - (B) offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

iii. *H.R. 837 and S. 3499 Internet Stopping Adults Facilitating the Exploitation of Today's Youth Act (SAFETY)*.—Unlike the previous two bills that require action by schools, libraries or sexual offenders, this bill requires action by Internet Service Providers (ISPs).¹²⁴ The bill amends previous laws dealing with facilitating child pornography on the Internet and the reporting of child pornography by an Internet provider.¹²⁵ The section receiving the most attention is Section 6, Record Retention Requirements For Internet Service Providers. This section requires ISPs to retain personal identification information such as a name and address that can be linked to an Internet protocol address.¹²⁶ Both industry and privacy rights advocates object to the law.¹²⁷ The provision is modeled after a similar one adopted by the European Union last year.¹²⁸ One of the co-sponsors, Texas Senator John Cornyn, contends that this law would provide law enforcement a needed tool in prosecuting Internet sexual predators.¹²⁹

b. *State Bills and Proposals*.—To date, efforts by the social-networking sites to keep children safe have been insufficient. MySpace has not implemented age verification procedures, parental permission requirements or raised its minimum age. Even after identifying convicted sexual offenders on their site, MySpace at first refused to release the names

¹²¹ H.R. 719, 110th Cong. (as introduced Jan. 30, 2007); S. 431, 110th Cong. (as introduced Jan. 30, 2007).

¹²² *Id.* § 3.

¹²³ *Id.* § 2.

¹²⁴ H.R. 837, 110th Cong. (as introduced Feb. 6, 2007).

¹²⁵ *Id.* §§ 2–4.

¹²⁶ *Id.* § 6.

¹²⁷ *Id.*

¹²⁸ Ellen Nakashima, *Bill Would Make ISPs Keep Data On Users*, WASHINGTON POST, Feb. 13, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR20070212013337.html>.

¹²⁹ *Id.*

to state attorneys general. Frustrated by industry's response to parental concerns, many states have proposed legislation and although the proposals are varied, all would impact the owners of social-networking sites, the child and sexual predators.

i. *Laws Prohibiting Electronic Luring or Solicitation of Minors*¹³⁰.—Forty-three states specifically prohibit electronic luring or solicitation of minors.¹³¹ Some of these laws, however, only prohibit solicitation for children less than fifteen or sixteen years of age.¹³² The National Center for Exploited and Missing Children lists fifteen- to eighteen-year-olds as the age group most solicited.¹³³ Consequently, the Virginia Youth Internet Safety Task Force recommended changing Virginia's Code to prohibit sexual solicitation of anyone less than eighteen years of age.¹³⁴ The task force also recommended that a more stringent sentence should be given to a person who is five years or older than a victim.¹³⁵ Finally, the Task Force recommended amending laws to permit forfeiture of equipment used to solicit children online and making online solicitation of children a no bond crime.

ii. *Bills Requiring Parental Permission*.—A bill in Georgia makes it illegal for owners of social-networking sites to allow a minor “to create or maintain a profile Web page on a social networking website without the permission of the minor's parent or guardian.”¹³⁶ In addition, the bill requires Web site owners to give parents access to the minor's profile at all times.¹³⁷ The penalty for the first offense is a misdemeanor but second and subsequent offenses are treated as felonies with a one to five year jail sentence and/or a fine of not more than \$50,000.00.¹³⁸ A similar bill is pending in North Carolina.¹³⁹

iii. *Bill Prohibiting Access to Social-Networking Sites in Schools and Libraries*.—On February 9, 2007 Senator Matt Murphy from Illinois filed a bill seeking to prohibit public access to social-networking sites on all

¹³⁰ For a listing of these laws see National Conference on State Legislatures, *State Laws Electronic Solicitation or Luring of Children*, <http://www.ncsl.org/programs/lis/kidnet/lureminorlaws.htm> (last visited Feb. 9, 2008).

¹³¹ See LA. STAT. ANN. § 81.3 (2007); MICH. COMP. LAWS § 750.145d (2004).

¹³² NEB. REV. STAT. § 28–320.02 (Supp. 2006).

¹³³ See *supra* note 79, at 31.

¹³⁴ *Id.* at 31–32.

¹³⁵ *Id.* at 31.

¹³⁶ Ga. S. 59, 2007 regular session (Jan. 26, 2007).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ N.C. S. 132, 2007 regular session (Feb. 13, 2007).

computers made available to the public in libraries and public schools.¹⁴⁰ This proposed bill is even more restrictive than DOPA as it refuses all access regardless of parental permission or adult supervision.

iv. *Bill Requiring Special Internet Access Library Cards.*—An Oklahoma bill requires (1) on-site adult supervision of Internet usage; (2) filters that block obscene and pornographic material as well as “social networking Web sites that have the potential or likelihood of allowing sex offenders to have contact with any child under eighteen.”¹⁴¹ In addition, children ages thirteen to eighteen must have an Internet access card, which requires parental permission after warning the parent of the danger of sexual predators on these sites.

v. *Bill Requiring Age Verification by MySpace.*—Connecticut’s Attorney General, Richard Blumenthal, chairs a coalition of forty-four states that requested MySpace to adopt age verification procedures.¹⁴² In addition to requiring parental permission and access to these sites, the Connecticut bill requires social-networking sites “adopt and implement procedures to utilize independently obtainable information to confirm the accuracy of personal identification collected from members, parents and guardians at the time of registration on such Web site.”¹⁴³ In his testimony before the General Law Committee, Blumenthal urged the lawmakers to pass the proposed bill and contested the industry’s claim that age verification is too difficult and ineffective.¹⁴⁴ He notes “there is no excuse in technology or cost for refusing age verification. If we can put a man on the moon—or invent the Internet—we can reliably check ages.”¹⁴⁵

vi. *Law Requiring Sexual Offenders to Register.*—On March 21, 2007 Kentucky’s Governor signed into law a bill requiring all sex offenders to provide their “e-mail, instant message, chat and other Internet communications identities” in the list of registrant information provided to the sex offender registration system.¹⁴⁶ Any person “who knowingly provides false, misleading, or incomplete information is guilty of a Class

¹⁴⁰ Ill. S. 1682, 95th Gen. Assembly, 1st Reg. Session (Feb. 9, 2007).

¹⁴¹ OK H. 1715, 51st Leg., 1st Reg. session (Feb. 5, 2007).

¹⁴² Lindsay Martell, *MySpace Age Verification Bill Proposed*, Mar. 8, 2007, http://www.newsfactor.com/story.xhtml?story_id=1000096UHVmk.

¹⁴³ Conn. H. 6981, 2007 Reg. Sess., (committee substitute Mar. 8, 2007).

¹⁴⁴ *General Law Committee, An Act Concerning Social Networking Internet Sites And Enforcement of Electronic Mail Phishing and Identity Theft Laws* (Mar. 8, 2007) (testimony of Richard Blumenthal, Connecticut Attorney General).

¹⁴⁵ See Martell, *supra* note 142.

¹⁴⁶ KY. REV. STAT. ANN. § 17.510 (West 2006).

D felony for the first offense and a Class C felony for each subsequent offense.”¹⁴⁷

B. Education

In addition to legal solutions, a concentrated education campaign has been underway. Three campaigns developed by the Department of Justice, the Ad Council and the National Center for Exploited and Missing Children highlight the problems with social-networking sites:

- HDOP—Help Delete Online Predators: A campaign designed to educate parents about the risks of sexual predators online.¹⁴⁸
- Don’t Believe the Type: A campaign designed to educate teens about avoiding sexual predators.¹⁴⁹
- Think Before You Post: A campaign designed to educate teens on the dangers of posting personal information.¹⁵⁰

All of these campaigns contain print, radio and television components.¹⁵¹ The first campaign launched in 2004 used ads targeted to educate parents about online dangers and encourage greater supervision of their children. The following year ads targeted teens and warned them about establishing “blind” relationships. The third round, set to begin in the spring of 2007, targets teenage girls advising them of the dangers of posting personal information online. The Ad Council reports that parents viewing the first set of ads were more likely to speak with their children about Internet safety.¹⁵²

In addition to these multi-media campaigns, certain state laws have also required curriculums on Internet safety as part of their mandate requiring schools to have Internet authorized use policies.¹⁵³ One leading curriculum used by schools is the I-safe program, which has received bi-partisan support from members of Congress. Another well known Internet curriculum is the NetSmartz curriculum.¹⁵⁴

147 KY. REV. STAT. ANN. § 17.510(12) (West 2006).

148 National Center For Missing and Exploited Children, *HDOP: Help Delete Online Predators* <http://www.missingkids.com/adCouncil/> (last visited Feb. 9, 2008).

149 Cybertipline, *Don’t Believe The Type*, <http://tcs.cybertipline.com/> (last visited Feb. 9, 2008).

150 Cybertipline, *Think Before You Post*, <http://tcs.cybertipline.com/knowthedangers8.htm> (last visited Feb. 9, 2008).

151 The Ad Council, *On-line Sexual Exploitation*, <http://www.adCouncil.org/default.aspx?id=56> (last visited Feb. 9, 2007).

152 The Ad Council, *Ad Council and National Center For Missing & Exploited Children Launch PSAs To Help Protect Teen Girls From Online Sexual Exploitation*, June 8, 2005, <http://www.adCouncil.org/newsDetail.aspx?id=31>.

153 VA. CODE ANN. § 22.1–70.2 (West 2007).

154 NetSmartz, *NetSmartz Workshop*, <http://www.netSmartz.org/> (last visited Feb 9,

Finally, Internet providers include educational components on safety on their Web pages. For example, MySpace contains a safety section that includes tips for users and for parents. The site also includes links to other Web pages that deal with online safety issues.¹⁵⁵ To show its commitment to safety MySpace hired Hemanshu Nigam, a former Justice Department prosecutor, in 2006 to lead its safety efforts.¹⁵⁶

Follow-up research on these Internet safety ads is required because not all public education campaigns work. Past campaigns on illegal drug use, smoking and unprotected sex have not produced the desired results.¹⁵⁷ Current research finds campaigns may improve teens' "thinking about these phenomena but seldom change their actual behavior."¹⁵⁸ For example, the National Youth Anti-Drug Media campaign failed to live up to its expectations.¹⁵⁹ Originating in 1998, the campaign cost the government \$1.4 billion dollars.¹⁶⁰ One study reported that the anti-drug campaign did not change or have a direct effect on youth drug-related behaviors and may have actually "promoted perceptions among exposed youth that drug use was common."¹⁶¹ Teens seemed to particularly resist the ads encouraging parents to discuss drug use with their children.¹⁶²

A recent study analyzing youth-targeted and parent-targeted advertising sponsored by a tobacco company also found the media effort was ineffective in changing behavior.¹⁶³ The parent-targeted ads, not only were ineffective, but actually produced in children a stronger propensity to smoke.¹⁶⁴ Researchers traced this paradox to the development process of adolescents who want to make their own decisions.¹⁶⁵ The study also found the tobacco companies' youth-targeted ads ("Think. Don't Smoke")

2008).

155 MySpace, *MySpace Safety*, http://www.myspace.com/index.cfm?fuseaction=cms.viewpage&placement=safety_pageresources&csspage=4 (last visited Feb. 9, 2008).

156 Stefanie Olsen, *MySpace Reaching Out To Parents*, April 11, 2006, http://news.com.com/MySpace+reaching+out+to+parents/2009-1041_3-6059679.html.

157 Laurence Steinberg, *Risk Taking in Adolescence: What Changes, and Why?*, 1021 ANNALS N.Y. ACAD. SCI. 51 (2004).

158 *Id.* at 55.

159 Paul Armentano, *The Federal Anti-Drug Ad Campaigns Yields Only Disappointing Results*, NEWS-SENTINEL (Fort Wayne, Ind.), Mar. 12, 2007, at A8.

160 Donna Leinwand, *Anti-Drug Advertising Campaign a Failure, GAO Report Says*, USA TODAY, Aug. 29, 2006, available at http://www.usatoday.com/news/washington/2006-08-28-anti-drug-ads_x.htm.

161 See Armentano, *supra* note 159.

162 Wakefield et al., *Effect of Televised, Tobacco Company-Funded Smoking Prevention Advertising On Youth Smoking-Related Beliefs, Intentions, and Behavior*, 96 AM J. PUB. HEALTH 2154, 2159 (2006).

163 *Id.*

164 *Id.*

165 *Id.*

were not as effective as state-sponsored public health ads highlighting the serious health consequences of smoking.¹⁶⁶ The message by the tobacco companies tended to “clutter” the state-sponsored ads.¹⁶⁷

Studies specific to Internet safety education give further cause for concern about the efficacy of the education efforts, at least among certain subsets of groups. The Second Youth Internet Survey (YISS–2) concluded that the decline in the percentage of predatory youth solicitation on the Internet did not apply to minority children or children from less affluent households.¹⁶⁸ Researchers hypothesized that prevention messages are not reaching these households as well as they are reaching white, middle-class youth.¹⁶⁹ One reason for the discrepancy may be that, as a group, minority and disadvantaged youths are newer to the Internet and therefore not as cautious about online solicitations. Likewise, their parents may not be as knowledgeable about the risks associated with the Internet.¹⁷⁰ Additionally, the researchers hypothesize that computers in more affluent homes may be better equipped with technological devices aimed at keeping children away from problematic sites.¹⁷¹ More research in this area is needed to better determine the precise cause for this discrepancy. If data supports the finding that the message is not being communicated as well to this subgroup, policy makers need to rethink how the message is being distributed.

But just because the message reaches the targeted group does not necessarily make it effective. One study reviewing the I-Safe curriculum used by many schools found educational messages may not change behavior.¹⁷² Although the study found a positive and significant change in knowledge about Internet safety after participating in the curriculum, there was no corresponding change in behavior.¹⁷³ More research needs to be conducted because the children were not engaging in substantial risky behavior at the beginning of the study so significant change in behavior would not be expected.¹⁷⁴

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Mitchell, Wolak, & Finkelhor, *supra* note 98, at 122.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² SUSAN CHIBNALL, MADELENE WALLACE, CHRISTINE LELCHT, LISA LUNGHOFER, I-SAFE EVALUATION FINAL REPORT ii (2006).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

IV. WHY THESE EFFORTS ARE INEFFECTIVE

Research continues to unravel mysteries of the adolescent brain, psychology and behavioral decision frameworks. In a very recent study published in the *Psychological Science in the Public Interest* journal, researchers from Cornell and Temple universities attempted to weave together theories of adolescent decision making and risk taking scattered among many “disciplines (e.g. psychology, sociology, pediatrics, public health) and problem-specific professional communities (e.g., smoking, AIDS prevention, alcohol and substance abuse).”¹⁷⁵ The detailed monograph provides helpful insights into adolescents’ behavior. This research provides necessary background data that has yet to be incorporated in crafting effective solutions to keeping children safe from sexual predators on social-networking sites.

In addition, solutions have failed to incorporate elements of deterrence theory. Teens fear no punishment for misrepresenting their age when registering for these sites. As a consequence many of them are unlikely to change risky behaviors. A multi-faceted solution must incorporate deterrence theory concepts to motivate certain children.

A. Adolescent Decision Making, Risk-Taking and Changing Behavior

Adolescents are risk-takers. Some of their risky behaviors include unprotected sex, drug and alcohol use, smoking and unsafe driving.¹⁷⁶ Preventing or decreasing these behaviors in youth helps eliminate addictions and unhealthy patterns of behavior later in life.¹⁷⁷ Since risk-taking opportunities multiply as teens navigate new freedoms and social boundaries, adolescence presents a critical time for policy makers, parents and teachers to discover ways to influence teens’ responses to these risks.

Many theories attempt to explain why some teens may be unable to fully appreciate risks and make reasoned decisions.¹⁷⁸ Some of these focus on commonly held beliefs about teen personality traits. In the past, one common assumption was that teens are incapable of processing risks and responding appropriately because they seek thrills, feel invincible and are self-absorbed.¹⁷⁹ Recent research, however, questions this assumption about teens and instead proposes that greater attention should be focused

¹⁷⁵ Valerie F. Reyna & Frank Farley, *Risk and Rationality in Adolescent Decision Making Implications for Theory, Practice, and Public Policy*, 7:1 PSYCHOL. SCI. PUB. INT. 2 (2006) (contains over eight pages of references on adolescent risk taking).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Berson & Berson, *supra* note 61, at 30.

¹⁷⁹ *Id.*

on the different ways people, including teens, make decisions.¹⁸⁰ Different decision-making models, both traditional and contemporary, explain the various ways people make decisions when confronting risks. Teens may not approach all risks the same way, and decision-making models may operate differently in teens than in adults.¹⁸¹ Depending on a variety of factors, teens make decisions deliberately, reactively or intuitively.¹⁸² Teens can thus be classified “risky deliberators,” “risky reactors,” or “intuitive (gist-based) risk avoiders,” although they may deviate from their dominant decision-making approach in specific circumstances.¹⁸³

Certain teens never use a formalized decision-making process, but instead just react. Other teens forego formal decision making for certain decisions. In contrast, teens falling in the “risky deliberator” group use a traditional decision-making process, or goal oriented approach, which involves balancing options and consequences before making a decision.¹⁸⁴ Many variations of this model exist, but all balance the likelihood and severity of risks against benefits, resulting in a deliberate and conscious decision-making process.

Under this model teens engage in risky behavior if the perceived benefits outweigh the risks.¹⁸⁵ For example, investigators found children drink or smoke, despite knowing the risks, because they rated the benefits higher than the risks, while undervaluing or ignoring long-term consequences.¹⁸⁶ For teens, unlike adults using the same decision-making model, the perceived benefits factor becomes a stronger indicator than the risk factor in predicting continued risky behavior.¹⁸⁷ Neuroscience confirms that during adolescence teens may pay more attention to rewards than costs based on how their brain is developing.¹⁸⁸ Therefore an adult’s reasoned analysis of risks and benefits may be beyond a teen’s cognitive capabilities especially if teens tend to favor benefits and do not accurately perceive risks and benefits.¹⁸⁹

In contrast to the balancing model of decision making, some theorists hypothesize that decision making is based on an intuitive response rooted in

180 See Reyna & Farley, *supra* note 175, at 34 (finding “Despite conventional wisdom, adolescents do not perceive themselves to be invulnerable, and perceived vulnerability declines with increasing age”).

181 *Id.* at 33.

182 *Id.* at 6.

183 *Id.* at 33 n.8.

184 *Id.* at 16.

185 *Id.* at 28.

186 *Id.*

187 *Id.*

188 Laurence Steinberg, *Risk Taking in Adolescence New Perspectives From Brain and Behavioral Science*, 16(2) CURRENT DIRECTIONS PSYCHOL. SCI. 55, 57 (2007).

189 Reyna & Farley, *supra* note 175, at 32.

experience relative to the context in which the decision is made.¹⁹⁰ Instead of a reasoned approach based on conscious deliberation or choice, risk avoiders utilize a more intuitive approach to decision-making using gists or prototypes to aid with the decision. Gist is “a fuzzy mental representation of the general meaning of information or experience; a prototype is a mental representation of a standard or typical example of a category.”¹⁹¹

Under this theory, no balancing of risks occur “if there is a non-negligible chance of a catastrophic health-compromising outcome.”¹⁹² Risks should be avoided because the “qualitative possibility of catastrophe is sufficient.”¹⁹³ Mature decision makers perform better at this than adolescents because intuition results from experiences.¹⁹⁴ For example, adolescents took longer than adults to respond to questions such as “Is it a good idea to set your hair on fire?”; “Is it a good idea to drink a bottle of Drano?”; “Is it a good idea to swim with sharks?”¹⁹⁵

Advances in developmental neuroscience lend support to these decision-making theories. Scientists find little difference exists between teens’ logical-reasoning abilities and adults’ abilities.¹⁹⁶ In contrast, psychosocial capabilities such as “impulse control, emotion regulation, delay of gratification, and resistance to peer influence” take longer to develop.¹⁹⁷ Neuroscience research identifies two networks in the brain, a socio-emotional network and a cognitive-control network, which struggle against each other when teens make decisions.¹⁹⁸ The socio-emotional network responds to social and emotional stimuli and becomes very active during puberty, especially at times of heightened activity.¹⁹⁹ When teens are with peers or are emotionally stimulated, this network tends to overcome the cognitive-control network which develops at a slower pace.²⁰⁰ This new information about the natural maturation of teens’ brains helps explain why teens may choose to engage in risky behavior despite knowing its costs.

In summary, teens, as compared to adults, make less than ideal decisions. If teens use a traditional balancing-approach decision-making model they may inaccurately conclude that the benefits outweigh the risks because they weight the benefits too highly. They are also at a disadvantage using more contemporary decision-making models because they lack experiences that

¹⁹⁰ *Id.* at 12.

¹⁹¹ *Id.* at 1.

¹⁹² *Id.* at 32.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 32-33.

¹⁹⁵ *Id.* at 32.

¹⁹⁶ *See* Steinberg, *supra* note 188, at 56.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

would help form intuitions. Finally, the different parts of teens' brains do not develop at the same pace with the more cognitive control functions developing slower.

The current research on how teens make decisions provides insight into what strategies affect changes in behavior. With traditional balancing approach models, educating teens about "vulnerability, severity, benefits, and barriers" should produce change.²⁰¹ Theoretically, when teens learn that risks outweigh perceived benefits they should refrain from engaging in the behavior. But contrary to the theory that teens' risky behavior is due to a lack of awareness, research now indicates teens actually overestimate the risks.²⁰² Ironically, education efforts can cause risk taking to increase if teens are educated with accurate information showing the actual risk is less than their perception of the risk.²⁰³ As will be discussed more fully below, a change in the law to hold teens accountable for misrepresenting their ages on social-networking sites is necessary to present a risk of punishment that outweighs the benefits teens receive from social-networking sites. Otherwise, teens who rely on this deliberate decision-making approach will be unlikely to change risky behaviors.

Communicating risks and benefits will be even less effective for the risky reactor teens who use non-deliberate decision-making models and engage in unintentional, spontaneous risk taking.²⁰⁴ In those situations, especially with younger children with fewer life experiences, supervision and monitoring will better reduce the risk. Intuitive and reactive risk takers may also benefit from gist-based interventions, "interventions that stress automatic (non-conscious) encoding of cautionary cues in the environment."²⁰⁵ More research needs to be done with adolescents to determine how best to design and implement such interventions for the intuitive and reactive risk takers.²⁰⁶ Moral accountability and social norms, discussed below, will aid in making teens' choice to engage in safe behavior more automatic without the need for a calculated risk/benefit analysis.

B. Deterrence Theory

Effective solutions to social problems often incorporate a deterrence theory, yet this has not been the case in the social networking context.

201 See Reyna & Farley, *supra* note 175, at 17 n.5.

202 *Id.* at 29.

203 *Id.* at 32.

204 *See id.* at 18.

205 *Id.* at 33.

206 *See id.*; see also Mitchell J. Prinstein, Julie Boergers & Anothy Spirito, *Adolescents' and Their Friends' Health-Risk Behavior: Factors That Alter or Add to Peer Influence*, 26(5) J. PEDIATRIC PSYCHOL. 287, 295 (2001) (suggesting peer-led interventions may be an efficacious strategy for reducing adolescents' risk behavior).

Until laws incorporate punishment for misrepresenting age, many children, without fear of punishment, will continue to engage in unsafe behaviors. The possibility of punishment for at least a segment of teens will tip the scales, making the risks outweigh the benefits, ultimately altering their behavior. The risk of punishment will concurrently motivate parents to exercise greater supervision over their children's behavior.

A rich body of literature exists on the deterrence theory of punishment and whether or not it effectively changes people's behavior.²⁰⁷ Research suggests various factors contribute to a person's decision to forgo committing a crime. Some of these include moral beliefs, social disapproval of friends and parents, and a fear of punishment.²⁰⁸ Other researchers question the true significance of these three factors and argue one's past experiences play a more central role in crime inhibition.²⁰⁹ Low self-control and peer association have also been identified as important measures impacting likelihood or inclination for engaging in criminal conduct.²¹⁰

A classical deterrence theory assumes people weigh the costs and benefits and avoid behavior when the risks outweigh the benefits.²¹¹ Deterrence works when threat of punishment is perceived as certain (belief activity will be detected), severe (harshly punished) and swift (detection and discovery will occur quickly).²¹² Although complete support does not exist for the deterrence theory, its usefulness should not be dismissed in the social networking context.

207 See Stephanie Carmichael, Lynn Langton, Gretchen Pendell, John D. Reitzel, & Alex R. Piquero, *Do the Experiential and Deterrent Effect Operate Differently Across Gender?*, 33 J. CRIM. JUST. 267 (2005); Hans F. M. Crombag, *When Law and Psychology Meet*, in CRIMINAL BEHAVIOR AND THE JUSTICE SYSTEM: PSYCHOLOGICAL PERSPECTIVES 1, 11 (Wegener et al. eds., 1989); Patrick J. Keenan, *The New Deterrence: Crime and Policy in the Age of Globalization*, 91 IOWA L. REV. 505, 521–23 (2006); Raymond Paternoster & Sally Simpson, *Sanction Threats and Appeals to Morality: Testing a Rational Choice Model of Corporate Crime*, 30 L. & SOC'Y. REV. 549 (1996); Deana A. Pollard, *Sex Torts*, 91 MINN. L. REV. 769, 812 (2007); Raymond Paternoster, Linda Saltzman, Gordon P. Waldo, & Theodore G. Chiricos, *Perceived Risk and Social Control: Do Sanctions Really Deter?*, 17(3) L. & SOC'Y. REV. 457 (1983); Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 468–78 (1997); Daniel W. Shuman, *The Psychology of Deterrence in Tort Law*, 42 U. KAN. L. REV. 115, 121 (1993); Dru Stevenson, *Toward a New Theory of Notice and Deterrence*, 26 CARDOZO L. REV. 1535, 1544 (2005); Daniel S. Nagin & Greg Pogarsky, *Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence*, 39 CRIMINOLOGY 581 (2001); Raymond Paternoster & Alex R. Piquero, *Reconceptualizing Deterrence: An Empirical Test of Personal and Vicarious Experience*, 32(3) J. RES. CRIME DELINQ. 251 (1995).

208 Stephanie Carmichael et al., *Do the Experiential and Deterrent Effect Operate Differently Across Gender?*, 33 (3) J. CRIM. JUST. 267–68 (2005) (describing study by Grasmick, H. G., & Green, D. E., *Legal Punishment, Social Disapproval and Internalization as Inhibitors of Illegal Behavior*, 71 J. CRIM. L. & CRIMINOLOGY 325 (1980)).

209 *Id.*

210 See Higgins, Wilson, & Fell, *infra* note 257, at 171.

211 *Id.* at 169.

212 *Id.*

Examining the role deterrence theory has played with other social issues illuminates whether the fear of punishment can play a role in changing behavior in the social networking context. In 2004 Professor George Higgins of the University of Louisville conducted a study analyzing the role of deterrence theory in the context of software piracy.²¹³ Professor Higgins hoped to close the gap in the deterrence theory and piracy software literature by conducting the first systematic study of how deterrence impacted this illegal practice. The research attempted to determine which of the factors prior investigators had identified (moral values, peer association, discovery by family, certainty, severity, etc.) contribute to a person's likelihood to pirate software.

Professor Higgins's survey of 382 college students and analysis supports previous deterrence theory research.²¹⁴ Specifically, he found shame, family disapproval and certainty of punishment to be important factors in discouraging piracy.²¹⁵ His findings on severity were not as conclusive, and he recommends future studies to better predict the impact it has on behavior in this particular setting.²¹⁶ Ultimately he concludes that deterrence can play a role in addressing software piracy and other computer crimes.²¹⁷

Higgins's study offers important insights for policy makers. Because certainty of punishment affects individual decisions, systems must be put in place to allow law enforcement to obtain information of violators. Professor Higgins suggests educational institutions should assist with that by reporting violations.²¹⁸ In addition, increasing certainty requires enough resources for these crimes to be investigated and prosecuted.²¹⁹ Finally, the message needs to be broadly disseminated for the public to appreciate the risks and punishments associated with piracy.²²⁰ Therefore any education component must not only illustrate why the behavior is wrong but also identify the punishment associated with engaging in the behavior.

The record industry has implemented a successful strategy of punishing individuals to deter others in the context of unauthorized file sharing associated with peer-to-peer computer networks. In his article exploring the rationality of the recording industry's decision to sue individual copyright violators who used peer-to-peer networks, Professor Matthew Sag argues that the industry's decision made sense and worked.²²¹ He

²¹³ *Id.* at 171.

²¹⁴ *Id.* at 177–79.

²¹⁵ *Id.* at 178.

²¹⁶ *Id.*

²¹⁷ *Id.* at 179.

²¹⁸ *Id.* at 178.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Matthew Sag, *Piracy: Twelve Year-Olds, Grandmothers, and Other Good Targets For The Recording Industry*, 4 *NW. J. TECH. & INTELL. PROP.* 133 (2006).

contends individuals will not change behavior even when they know it is illegal unless “a combination of the probability of detection and severity of punishment—outweighs its advantages.”²²² Accordingly, suing the end-users made sense because it would change the equation making the fear of punishment outweigh the advantages of obtaining music from illegal peer-to-peer file sharing networks.²²³

The goal of the record industry is to sell more records and make higher profits, not eliminate the peer-to-peer sharing networks for its own sake.²²⁴ Lawsuits aimed at marginal individual file sharers accomplish this goal because these individuals most likely will change their behavior because of the lawsuits and purchase records legally.²²⁵ This strategy appears to be working, at least with respect to illegal downloading. Respondents to recent surveys confirm that the publicity surrounding the lawsuits has contributed to their decision to cease obtaining music illegally.²²⁶

V. PROPOSED SOLUTIONS

A multi-faceted approach will best serve children because children make decisions differently and take risks for different reasons than adults. No easy solution exists for complex problems such as this one involving a span of ages and experiences. As a result, proposed solutions must be scrutinized to avoid unintended consequences that make the problem worse. Arguing for parental monitoring alone, an approach many critics of regulations take, ignores the theory and data underlying adolescent decision making. And because education efforts may not reach all children equally or change teen behaviors, other approaches are also necessary.

Federal and state legislation addressing social-networking sites have been proposed in an attempt to address the problem from different angles.

²²² *Id.* at 138.

²²³ *Id.* at 145.

²²⁴ *Id.* at 147.

²²⁵ *Id.* at 149.

²²⁶ *Id.* at 154; see also Ciara O'Brien, *RIAA Claims Illegal File Sharing "Contained"*, THE REGISTER, June 15, 2004, http://www.theregister.com/2006/06/15/riaa_filesharing_stats (suggesting illegal file trading is flat and legal digital downloads is up 77 per cent); Sean Michael Kerner, *Report: Digital Music Downloading Growing—Legally*, Jan. 19, 2005, www.internetnews.com/bus-news/article.php/3461571 (the lawsuits can account for some of the decline in illegal music downloading); *Survey: Illegal Music Downloading Declines*, Jan. 5, 2004, <http://www.techweb.com.wire/26803753> (reporting on Pew study that attributed decline in illegal downloading to the RIAA's aggressive lawsuits saying they have had a “devastating impact” on illegal file sharing). *But see* Brian Hiatt & Evan Serpick, *The Record Industry's Decline*, ROLLING STONE, Jun. 28, 2007, available at http://www.rollingstone.com/news/story/15137581/the_record_industrys_decline (arguing peer-to-peer file sharing is increasing); Farhad Manjoo, *Is the War on File Sharing Over?*, Jan. 15, 2004, http://dir.salon.com/story/tech/feature/2004/01/15/filesharing_tide_turned/index.html (both industry and its critics declaring victory with no agreement between the two on studies and statistics regarding file sharing).

Legislation has focused on the offender and the Internet Service Providers. Notwithstanding the constitutionality of these approaches or their overall merits, to date they have failed to adequately deter the children's behavior in misrepresenting age to establish an account and otherwise conducting themselves on social-networking sites. Laws are needed that "[limit] opportunities for immature judgment[s] to have harmful consequences."²²⁷ Limiting exposure to the conduct itself by segregating different age groups may be more effective than trying to change teens' views of their online conduct.²²⁸ Finally, current solutions overlook the role of moral accountability and social norms, which if accurately perceived, serve as powerful deterrents to unacceptable behavior.

A. *Legal*

The proposed and newly enacted social networking legislation is likely to come under constitutional attack. An examination of the free speech and other constitutional issues in regulating social-networking sites requires separate in-depth treatment elsewhere. They are important but beyond the scope of this particular article. But even if the bills survive the constitutional challenge, none of the proposals in Part III address changing the behavior of the child. Instead they focus on requiring ISPs, school officials and librarians to engage in activities that will better monitor children's access to social-networking sites or aid law enforcement in keeping sexual predators off the sites. Consequently, additional proposals remain necessary that specifically address the risky behavior of the child.

1. *Segregate the Sites.*—As previously discussed, the lure of social-networking sites stems from their role as an avenue for self-expression and interaction for teens. Additionally, this article has discussed the failure of existing and proposed legislation to address a fundamental problem of children's conduct in misrepresenting their age to gain access to these sites. One way to remove the impetus behind children misrepresenting their age is to provide children with the same social networking experience confined to an age-appropriate group. Presented with the options of lying about their age to gain access to a multi-age site or being truthful in gaining access to an area of a site frequented by their peers, at least some children will choose the latter. Segregating age groups would greatly reduce the risks.

Currently, social-networking sites such as MySpace place very minimal limits on communication between different age groups. The site's rules require users to be fourteen to register. Profiles set to ages fourteen or

²²⁷ See Steinberg, *supra* note 188, at 58.

²²⁸ *Id.* The author suggests raising the driving age, raising cigarettes taxes and more vigilantly enforcing laws concerning the sale of alcohol will be more effective than education campaigns in changing unsafe behaviors.

fifteen are automatically private. For children sixteen and older, MySpace displays all of the profile including all of the comments, blog entries and pictures the user or user's friends have posted unless the individual opts to mark the profile private.

The providers should establish more boundaries between the different age groups. Adults should never have access to children on these sites. Also, young teens should be segregated from older teens. One idea is to restrict sites to distinct age groups, e.g., one dedicated to twelve to fifteen-year-olds and another distinct and separate site for sixteen- to nineteen-year-olds. Adults twenty years or older should have yet a third site. Another approach would be to segregate by school class. For example, one site would be only for freshmen and sophomores and another for upper classmen. This has challenges associated with verifying the grade the child is in, but the idea is to try to prevent different age groups from mixing since their level of maturity and development vastly differ. If service providers refuse to make these changes voluntarily, federal legislation should be passed requiring this.

The importance of having these age divisions must not be underestimated. Age makes a difference. Twelve- and thirteen-year-olds do not have the necessary cognitive abilities to understand the complexity of the Internet, including its immediate ability to connect with strangers.²²⁹ They also lack the ability to process sexual messages appropriately.²³⁰ Legislatures recognize these developmental differences between ages in other areas. For example, specific laws exist specifying which ages and how many children can be in day care classrooms. These regulations acknowledge that developmental differences require separating five-year-olds from infants. The same considerations exist in the virtual world.

2. Make All Accounts Private.—Another way to substantially reduce the risks simply involves making all accounts private. Under the current system all accounts, except those of fourteen- and fifteen-year-olds, are public unless the users choose to make their profiles private. This system indirectly encourages individuals under sixteen to misrepresent their age so they receive privileges of older teens. Public profiles make it too easy for predators to locate minors. Limiting predators' access to children reduces the risk-taking opportunities. No parent would leave a child at a place where 50,000 sexual predators might be, yet public profiles do just that.

If all profiles cannot be private, then only adult profiles should be public. Many adults would not object to private profiles as they choose that option now. An adult wanting to request a public profile could do so but only after a screening process that verifies age. Interested adults could

229 See Hodge, *supra* note 9, at 630.

230 See Atwood, *supra* note 80, at 463.

make a request in writing with a copy of their driver's license and birth certificate. The profile would remain private pending MySpace checking this information against its database to confirm the person is an adult and is not a convicted sexual offender. Adding this safety layer would greatly improve the current system and make it much more difficult for sexual offenders to prey on minors.

3. *Punish the Violators of Age Requirements.*—Legislation should be passed that punish social network users misrepresenting their age. The statute could mirror current statutes prohibiting use of false identification when buying alcohol or tobacco underage. Society has determined that the public policy underlying keeping minors safe and healthy justifies punishing minors that try to circumvent the age restriction involved with purchasing these items. Risky behavior on the Internet, like using alcohol or tobacco, may lead to disastrous consequences for young people. Society should not treat dangers associated with computers any differently than it treats dangers connected with underage drinking or tobacco use.

Punishment for false identification varies from state to state but can include jail, fines and public service. Likewise, a range of punishments could be implemented for misrepresenting one's age when registering for a social-networking site with harsher penalties such as jail time and fines directed to the adult violator and required public service for underage minors. By changing behaviors of sexual predators and their victims this strategy can achieve important social welfare and public policy goals. The public is not outraged when minors are punished for trying to buy cigarettes or alcohol underage. To gain widespread acceptance, the public needs to be better educated that interaction with sexual predators on the Internet can be just as dangerous, if not more so, than children drinking and smoking.

Deterrence will only be effective if teens and adults who lie about their ages in an effort to gain access to segregated teen sites perceive the punishment as certain, severe and swift. Accomplishing this will require resources. The United States Department of Justice under Attorney General Alberto Gonzales had already made protecting children against computer-related offenses such as pornography and sexual solicitation a priority. To that end, the Department established Project Safe Childhood in May 2006, "an initiative that will coordinate federal, state, and local law enforcement efforts to prosecute predators and rescue their victims."²³¹ The components of this ambitious plan include training of federal, state and local law enforcement as well as increasing community awareness through education efforts.²³² This initiative provides the framework necessary for

²³¹ *Project Safe Childhood*, *supra* note 90, at i.

²³² *Id.* at 23.

also investigating and punishing social network users who misrepresent their age.

In addition, the National Center for Missing and Exploited Children, in conjunction with several federal agencies, state and local law enforcement and national task forces, already operates the CyberTipline.²³³ This reporting hotline takes all tips concerning possible sexual exploitation of children.²³⁴ As of January of 2008 Cybertipline has received over 500,000 tips of possible sexual exploitation.²³⁵ These tips are referred to the Internet Crimes Against Children (ICAC) task force program which often leads to investigations and arrests.²³⁶ Perhaps this or additional hotlines for ISPs and others with knowledge can be made available to report children and adults who misrepresent their ages when using social-networking sites.

Accurate age verification is one of the biggest obstacles to implementing this approach. Critics will argue that it is premature to implement this strategy until technology improves making age verification easier and more accurate. Even without highly effective age verification processes, obvious violators can still be detected and prosecuted which would serve the deterrent effect. MySpace reports that it already deletes profiles and terminates membership of anyone it believes to be less than fourteen years old. Law enforcement can work with MySpace in detecting, removing and punishing obvious offenders. For example, Detective William Greathead from the Pepperell, Massachusetts police force worked with MySpace to identify and delete over fifty-one profiles of underage children in his community.²³⁷ Working with other officers, Detective Greathead searched the site for obvious violators and easily identified them.²³⁸

Punishing children sends the message that age requirements are enforced. This approach raises fewer constitutional issues than other solutions because the burden for the ISPs is much less than requiring them to verify all ages. The ISPs contend that they already engage in

²³³ See Cybertipline, *supra* note 149.

²³⁴ National Center For Missing and Exploited Children, *Reporting Categories*, http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2447 (last visited Mar. 12, 2008) (Categories of reporting include: "Possession, Manufacture, and Distribution of Child Pornography, Online Enticement of Children for Sexual Acts, Prostitution of Children, Sex Tourism Involving Children, Child Sexual Molestation (not in the family), Unsolicited Obscene Material Sent to a Child, and Misleading Domain Name").

²³⁵ National Center For Missing and Exploited Children, *Cybertipline Fact Sheet*, http://www.missingkids.com/en_US/documents/CyberTiplineFactSheet.pdf (last visited Mar. 12, 2008).

²³⁶ See *Project Safe Childhood*, *supra* note 90, at 6.

²³⁷ Matt Gunderson, *Police Delete Minor Users From Website*, BOSTON GLOBE, Feb. 23, 2006, available at http://www.boston.com/news/local/massachusetts/articles/2006/02/23/police_delete_minor_users_delete_from_website/.

²³⁸ Telephone Interview with Detective William Greathead, Pepperell Massachusetts Police (May 16, 2007).

the practice of deleting known violators on their sites so few additional resources would be necessary to comply with this new directive. This serves as a viable short-term solution. Finding a long-term solution depends on developing accurate and efficient age verification mechanisms that withstand constitutional scrutiny.

4. *Notify Parents.*—Additionally, parents need to be notified when their children register for a social-networking site. Many parents have no idea their child has a profile which makes monitoring it extremely difficult. Children and predators know that MySpace does not always enforce its age limits, which only encourages children to ignore them. Knowing that MySpace routinely notifies parents about accounts will motivate children to be truthful about their ages and be more careful with their postings since their parents may ask to see their profiles.

Notifying parents could be accomplished by requiring any person signing up on a social-networking site to do so with a credit card. This solution has been suggested in the past as a method of age verification, but it may be seen as unworkable since children can surreptitiously use a parent's card. To close that loophole, a minimal fee could be charged to the credit card at the time of registration. If this were done, parents would notice the charge on the statement and question the child about the charge.

This approach will greatly increase parents' awareness and monitoring of their child's online activities. Although a recent opinion from the Eastern District of Pennsylvania regarding credit cards and COPA held them ineffective as age verification tools, that approach can be distinguished from this proposed solution.²³⁹ Under COPA, Web site owners had an affirmative defense to liability if they required a credit card to access content that was harmful to minors. Judge Reed found that credit cards could not verify age because many minors had access to credit cards and certain credit card issuers prohibit the use of their cards to verify age. Even if Judge Reed correctly held that multiple issues exist with credit cards being an age proxy, credit card statements can still put parents, or other adults, on notice that an individual using their card has signed up for MySpace. This notice provides parents the opportunity to delete the profile with MySpace or discuss with their child proper use of social-networking sites.

Rejecting this solution on the basis that some families do not have credit cards or that it will unfairly impact lower income families is too dismissive. Although some households do not have credit cards, this solution works

²³⁹ *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007). At issue in the case was the constitutionality of the Child Online Protection Act (COPA). Following a trial, the District Court held that COPA violated the plaintiffs' First and Fifth Amendment rights because it was vague, overbroad, not narrowly tailored to Congress' compelling interest and was not the least restrictive, most efficient alternative.

well based on the sheer volume of households with credit cards. Alternative methods could be devised for the relatively few households without credit cards or that prefer not to use credit cards for transactions online. For example, a simple application form could be filled out by the child and a parent. A governmental agency such as a library could witness and certify the parent's signature. The completed form with the requisite library stamp could be sent to MySpace. These alternative methods may be less convenient and take longer but do not necessarily chill free speech.²⁴⁰ Saving one child the pain and agony of sexual molestation would make the credit card solution supplemented with an alternative option very reasonable. And both of these proposals would significantly increase parents' awareness of their children's accounts providing more opportunities to discuss safety issues and appropriate online behavior with their children.

In the alternative, MySpace could require individuals to provide a home address when registering. The company can then mail letters notifying the adult in the house of the recent registration. Like the credit card statement, the letter provides notice to a parent. This approach can be modeled after the current practice of investment firms mailing out notices whenever a password or other information is changed for online accounts. False addresses can easily be sorted out by existing databases and profiles immediately deleted. Children may, in an effort to stay secret, register a real address but not their own address. Adults in the community would need to be educated about how to respond if they receive a letter at their address. Of course not all adults would contact MySpace, but the deterrent effect would still exist for many children if they knew there was a notification process.

B. Education

Legal regulations, although relatively simplistic, cannot be the sole answer. Some commentators and scholars will be against a regulatory approach because of their belief that threat of punishment will be ineffective in changing behavior. They will point to certain studies and literature that conclude threat of punishment only minimally changes behavior.²⁴¹ They will argue threat of punishment rarely alters behavior when only moderate

²⁴⁰ As mentioned earlier this article does not address the First Amendment issues even though these obviously would need to be analyzed in great detail before adopting any of these proposals. Certainly one of the issues will be whether such a regulation would chill speech and unduly burden protected speech in violation of the First Amendment. A distinction can be made between MySpace accounts and accessing porn sites since no fear of damaging one's reputation would be involved with MySpace accounts as it is with accessing pornographic Web pages. As a result, subscribers would be less likely to object to providing personal or financial information.

²⁴¹ Tom R. Tyler, *Compliance With Intellectual Property Laws: A Psychological Perspective*, 29 N.Y.U. J. INT'L L. & POL. 219 (1996-1997).

resources can be devoted to enforcing legal regulations and multiple opportunities for cheating exist.²⁴² Enforcing age restrictions on social-networking sites may likely fit in these two categories.

Others may prefer a non-regulatory strategy because they view the proposed regulations as an overreaction in light of the risk and too harsh on teens. An approach involving parental monitoring and changing social norms may resonate more strongly with them. This less intrusive approach keeps the legal regime out of an issue they may perceive as one for families not government. In their opinion, society will not favor or support punishments for children misrepresenting their ages on social-networking sites because it is not economically and structurally practicable or desirable on policy grounds.

Finally, because the Internet has a worldwide presence, a risk exists that U.S. laws may not apply or will be harder to enforce against non-U.S. entities.²⁴³ Some would argue that the complexities of jurisdictional issues and practical problems with this borderless technology prevent a legal solution from completely solving the problem.

Each of these reasons has some merit, but they should not negate a legal approach altogether. Instead, these concerns justify a multi-pronged approach that combines education, moral accountability and legal sanctions. Not all individuals respond to a sense of right and wrong, and for those that do, legal sanctions only underscore moral beliefs and social norms. But changing behavior will require not only laws and threat of punishment but also education components. Education can help change behavior by providing teens and parents with raw information about the technology and its risks. When designing Internet safety campaigns, policy makers and industry officials should pay careful attention to lessons learned from previous studies of ad campaigns on other behaviors. But providing information alone may not change any behavior and in some cases may encourage the behavior we want to discourage. Therefore education is also needed that helps create social norms or a moral climate that keeps children safe and discourages the types of behavior discussed in this article.

1. *Using Education to Provide Information.*—

a. *Educating Parents.*—Based on previous research findings, parent-targeted ads may not be the most effective at promoting Internet safety. As

²⁴² *Id.* at 223.

²⁴³ A rich body of literatures exists discussing jurisdictional and enforcement issues involving Internet laws. See Michael Geist, *Cyberlaw 2.0*, 44 B. C. L. REV. 323 (2003); Michael A. Geist, *Is There A There There? Toward Greater Certainty For Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345 (2001); Jack L. Goldsmith, *The Internet and the Abiding Significance of Territorial Sovereignty*, 5 IND. J. GLOBAL LEGAL. STUD. 475 (1998); David R. Johnson & David G. Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367 (1996); Amanda Reid, *Operationalising the Law of Jurisdiction: Where in the World Can I Be Sued For Operating A World Wide Web Page?*, 8 COMM. L. & POL'Y 227 (2003).

a result, the initial set of ads for the online sexual exploitation campaign ads targeted at parents urging better supervision may be less effective than the 2007 ads targeted directly at teens. Teens' tendency to disregard authority makes directly communicating with teens instead of parents the better approach.²⁴⁴

Although these media messages may be ineffective, parents still need to be educated. Parents' lack of knowledge and lackadaisical attitudes about social-networking sites must be rectified because parental monitoring and parental direction greatly impact all types of risk taking in adolescents.²⁴⁵ Parental involvement is particularly relevant to teens' behavior on the computer. For example, all the girls in one study that agreed to meet a stranger had never discussed Internet safety with their parents.²⁴⁶ A more recent study found teens who talked "a lot" with their parents about online safety were less likely to meet a stranger than those teens who did not discuss this with their parents.²⁴⁷ The study also found teens were less likely to give out personal information if they had talked with their parents about online safety.²⁴⁸

Although parents may have less influence with older teens as compared to the influence of their peers, parents still play a major role with younger children. Parental disapproval, even more so than peer disapproval, often tips the scale in inhibiting children from engaging in unacceptable behavior. Contemporary deterrence theories recognize the power shame, guilt and embarrassment play in a person's decision-making process. The risk of family members seeing suggestive pictures and sexually explicit language may motivate teens to engage in more appropriate and safer behavior.

Teens engage in less risky behavior when parents clearly communicate their expectations regarding tobacco, alcohol and drug use, sexual activity and gang membership to their children.²⁴⁹ Parents, lacking awareness and appreciation of social-networking sites, do not clearly express expectations and rules for their children's networking use. Therefore, parental supervision and communication serve an important role in framing a solution for safer social networking. Many commentators urge parental monitoring intervention as the silver bullet but fail to appreciate the nuances of timing,

244 See Mitchell, Finkelhor, & Wolak, *supra* note 100, at 3013-14.

245 Bonita F. Stanton & James Burns, *Sustaining and Broadening Intervention Effect, in REDUCING ADOLESCENT RISK: TOWARD AN INTEGRATED APPROACH* 193-200 (Romer, ed., Sage Publications 2003).

246 See Berson & Berson, *supra* note 61, at 35; see also Fleming et al., *supra* note 19.

247 See Cox Communications Teen Internet Safety Survey, *supra* note 7 (12% vs. 20%).

248 *Id.* (65% of those whose parents have not talked to them about online safety post info about where they live, compared to 48% of teens with more involved parents).

249 See Brent V. Nelson, Troy H. Patience & David C. MacDonald, *Adolescent Risk Behavior and the Influence of Parents and Education*, 12(6) J. AM. BOARD FAM. PRAC. 436, 443 (1999).

content and format.²⁵⁰ Investigators can help policy makers by continuing to research those issues by exploring at what age interventions should begin, the best way to complement parental interventions with other strategies, and what information parents need to be effective communicators.

The challenge to policy makers is to educate parents without risking teen backlash. Policy makers should consider distributing information through mediums other than mass ad campaigns. Information could be distributed at the work place, in parent newsletters sent from school or even included with tax forms. This approach ensures that parents and other adults receive the information without alienating the teens.

The information must include resources for adults including online resources and information sessions adults can attend to learn more about this issue. Many parents are shocked when they see the content of MySpace profiles. But more monitoring and better communication between teens and parents cannot occur until parents become better acquainted with this technology. Creating opportunities to educate parents in nontraditional ways needs to be systematically explored to a greater degree.

b. *Testing the Ads.*—Studies should be conducted comparing the efficacy of industry ads versus government ads. Different factors may have impacted the anti-smoking campaigns but this should likewise be explored in the Internet safety context to determine if too many ads clutter, dilute or confuse the message.

In addition, policy makers need to determine whether education campaigns would be more efficient if targeted and presented to identified groups, e.g. minorities and less affluent children who may not be getting the message. Another subset of children potentially at greater risk is children who are depressed. One study shows that depressed teens are much more likely to talk with online strangers than are their non-troubled peers.²⁵¹ This conclusion suggests certain education campaigns need to be directed more heavily towards at-risk children than other children. Identifying and focusing on troubled teens, however, raises a host of ethical issues and whether the benefits of doing so outweigh the harm.

The government should fund studies that focus on the latest education ads, “Think Before You Post,” to determine if it leads adolescent girls to change their posting habits. If teens become more knowledgeable yet continue risky behaviors, perhaps spending millions of dollars to fund these campaigns should be re-evaluated and these resources used differently (e.g., designing a more effective age verification process). Merely reciting the risks to these teens will not change their behavior because many of them do not use a rational-choice decision-making process that properly

250 See Stanton & Burns, *supra* note 245, at 199–200.

251 Ybarra et al., *Depressive Symptomatology*, *supra* note 67, at 17; see also Mitchell, Finkelhor, & Wolak *supra* note 100.

balances risks with benefits. Even then teens may overestimate the risks.²⁵² Campaigns that more accurately portray risks may decrease teens' existing perception of the risk, make them feel less vulnerable and inadvertently tip the scale in favor of the perceived benefits.²⁵³ Empirical studies need to be conducted to determine the effectiveness of the present campaign with teens' varying decision-making styles.

The content of safety messages should be studied. In a study funded by the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention, researchers found that most safety messages urge children not to talk to strangers.²⁵⁴ Communicating this information, however, ignores that one in three youths have unknown people on their buddy lists.²⁵⁵ The authors of the report suggest that instead of trying to change this widely accepted practice among teens, the better approach is to advise them to exercise caution when communicating with unknown people online.²⁵⁶

Advising a student might impede the development of inherent (gist-based) risk avoiders because it forces the individual to weigh the risks and benefits instead of avoiding this risk categorically. Policy makers and social scientists should discuss which messages should be broadcast, if different messages need to go to different ages, and how to avoid confusing the messages. Ideally teens would block any person unknown to them but some teens may more readily accept safety messages that acknowledge that they meet others online and that even though not all those people are predators, they should be careful when dealing with them.

In addition, the format and method of delivery of the education should be analyzed and optimized. Children need to be reminded regularly while they are using the computer about risks and safety precautions. Most education still occurs at school, not while children are on social-networking sites. Pop-up messages that contain warnings and safety tips that periodically appear on social-networking sites would aid parents and other adults who cannot supervise children throughout the day.²⁵⁷ Research should be conducted to determine if teens actually pay more attention to this format because of its similarity to instant messaging and the immediate relevancy to what they are doing at that moment.

Finally, researchers should explore at what age children should be educated about these risks. Young children increasingly use the Internet

²⁵² See Reyna & Farley, *supra* note 175, at 34.

²⁵³ *Id.*

²⁵⁴ See Ybarra et al., *Internet Prevention Messages*, *supra* note 63, at 138.

²⁵⁵ *Id.* at 141-42.

²⁵⁶ *Id.* at 142.

²⁵⁷ George E. Higgins, Abby L. Wilson, & Brian D. Fell, *An Application of Deterrence Theory to Software Piracy*, 12 (3) J. CRIM. JUST. & POPULAR CULTURE 166, 178 (2005) (suggesting a similar approach for educating individuals about software piracy).

and social-networking sites. Yet young children may not be capable of weighing the risks and benefits in a behavior decision-making process or possess the necessary intuitive responses due to lack of experience. For these children supervision remains more important than education. Adults must monitor their computer use and utilize technological tools, e.g. filters, to help remove the risks.

2. *Using Education to Change Social Norms.*—Because shortcomings exist with a classical deterrence theory and the rational choice model, scholars in many different contexts appreciate the role a social-norms component can play in addition to legal sanctions in deterring socially unacceptable behaviors.²⁵⁸ “Moral beliefs, peer pressure” and “fear of social disapproval” also motivate people to refrain from engaging in unacceptable behaviors.²⁵⁹ If individuals believe an action is morally wrong, they do not weigh the costs and benefits. Instead they have a more automatic response refusing to engage in the behavior because certain behaviors are seen as off limits.²⁶⁰ Moral beliefs and social norms, either alone or in conjunction with legal sanctions, deter a number of undesired behaviors including sexual assault, assault, academic dishonesty and drunk driving.²⁶¹

Social-norms theory contemplates that humans generally conform to how the majority behaves. In 1991 Bob Ellickson published his book *Order Without Law: How Neighbors Settle Disputes* which started an ongoing discussion in the legal community about what role social norms may play

258 See Katharine K. Baker, *Sex, Rape and Shame*, 8 DEPAUL J. HEALTH CARE L. 179, 211 (2004) (internalizing the moral wrong of date rape may require something besides legal sanctions which have not proven to be particularly effective); Maurice E. Stucke, *Morality and Antitrust*, 2006 COLUM. BUS. L. REV. 443, 449 (2006) (arguing a moral component is needed to combat antitrust crimes because punishment alone remains ineffective in deterring Sherman Act offenses).

259 Stucke, *supra* note 258, at 506.

260 See Raymond Paternoster & Sally Simpson, *Sanction Threats and Appeals to Morality: Testing a Rational Choice Model of Corporate Crime*, 30 LAW & SOC'Y REV. 549, 554, 572–73 (1996) (researchers found moral beliefs and self-imposed sanctions of feelings of shame also “served as a powerful independent restraint on corporate misconduct”); see also George E. Higgins & Abby L. Wilson, *Low Self-Control, Moral Beliefs, and Social Learning Theory in University Student's Intentions to Pirate Software*, 19 SECURITY J. 75, 86–87 (2006) (data collected from 318 college students confirmed individuals viewing piracy of software as morally wrong were not as likely to engage in that behavior); Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 473 (1997) (discussing change in hate speech norms and how legal sanctions also changed norms in the areas of sexual harassment, drunk driving, and domestic violence).

261 See R. Bachman, R. Paternoster & S. Ward, *The Rationality of Sexual Offending: Testing A Deterrence/Rational Choice Conception of Sexual Assault*, 26(2) LAW & SOC'Y REV. 343–372 (1992); H. G. Grasmick & D. Green, *Legal Punishment, Social Disapproval, and Internalization as Inhibitors of Illegal Behavior*, 71(3) J. CRIME & CRIMINOLOGY 325–335 (1980); P. Mazzeolle & A.R. Piquero, *Violent Response to Strain: An Examination of Conditioning Influences*, 12(3) VIOLENCE & VICTIMS 323–343 (1997); S. G. Tibbetts & D. Meyers, *Low Self-Control, Rational Choice and Student Test Cheating*, 23(2) AM. J. CRIM. JUST. 179–200 (1999).

in changing behaviors.²⁶² Ellickson's premise was that common-sense norms regulate behavior more than laws because the cost of learning the law and following it remains high for most people.²⁶³ Ellickson concluded that in tight-knit groups with members that frequently came into contact, social norms played a more important role in regulating certain behaviors than the legal rules.²⁶⁴ His case study of ranchers confirmed that disputes between them were settled by informal social norms instead of using the legal system.²⁶⁵

These informal social norms influenced people within tight-knit groups because the benefits of cooperating with others in the group produced positive results for individuals.²⁶⁶ In addition, individuals that cooperated could avoid shame or social sanctions from the group.²⁶⁷ His study left open the question of whether these social norms might be equally as important in affecting behavior among loose-knit groups.²⁶⁸ Individual behavior may be more difficult to change in loose-knit groups because changing behavior may not produce positive effects for the actor and there is no identifiable group that will sanction someone that does not comply.²⁶⁹

Addressing this precise issue in the environmental context, Professor Michael P. Vandenbergh examined whether social norms could impact toxic releases by individuals.²⁷⁰ Some would argue that norms would have little effect based on Ellickson's work which seemed to suggest close-knit groups were necessary for norms to affect behavior. Professor Vandenbergh asked whether social norms could affect burning barrels because it often occurred in isolated settings (not within a close-knit group) and any health or environmental harm may be too remote to outweigh the cost of time, energy and money it would take to stop burning garbage by this method.²⁷¹

262 ROBERT C. ELICKSON, *ORDER WITHOUT LAW HOW NEIGHBORS SETTLE DISPUTES* (Harvard Univ. Press 1991).

263 *Id.* at vii, 282–83.

264 *Id.* at 251, 282–83.

265 *Id.*

266 *Id.* at 283.

267 *Id.* at 209–10.

268 *But see* Michael P. Vandenbergh, *Order Without Social Norms: How Personal Norm Activation Can Protect The Environment*, 99 NW. U. L. REV. 1101, 1106 (2005). *See also* Michael S. Kirsch, *Alternative Sanctions and the Federal Tax Law: Symbols, Shaming, and Social Norm Management As A Substitute For Effective Tax Policy*, 89 IOWA L. REV. 863 (2004) (discussing the role social norms can play in tax enforcement); Lior Jacob Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-Swapping Networks*, 89 VA. L. REV. 505 (2003) (how to use social norms to address issue of file-swapping networks); Lior Jacob Strahilevitz, *Social Norms From Close-Knit Groups to Loose-Knit Groups*, 70 U. CHI. L. REV. 359 (2003) (arguing cooperation also exists in loose-knit groups).

269 Vandenbergh, *supra* note 268, at 1105.

270 *Id.*

271 *Id.* at 1110–11.

Although it would appear social norms would play little or no role in affecting these type behaviors, Professor Vandenberg eloquently argues that social norms can impact behavior in loose-knit situations even when the payoff to the individual is negative if the focus is on the activation of personal norms.²⁷²

Categorizing social-networking sites as a close- or loose-knit community is difficult because they have attributes of both types of communities. They consist of repeat players and strangers. There is a sense of anonymity yet social sanctioning and shame occurs on these sites. Because current research seems to find norms relevant to either group, precisely defining social networks as one or the other appears unnecessary other than to satisfy academic curiosity.

Changing behavior specific norms for social-networking sites may be more difficult than in other contexts, however, because teens often view the Internet as an alternate reality. Because they distinguish it from the real world, teens apply different rules to it. In addition, teens inhabit this new social world largely alone with no adult involvement or guidance in establishing rules. Social-networking sites have outpaced society's ability to create a system of norms, etiquette and morality for them. This may result in teens' decisions being based on little or no guidelines for this new social context.

However, knowing that social norms play a role in a person's decision-making process, the misconceptions or absence of well-defined social norms for social-networking sites provides policy makers, the research community and parents an opportunity to fill the void. Currently some teens do not view misrepresenting one's age in registering for the site, engaging in sexual conversations with strangers, or meeting people in person that they only know online as against social conventions. This seems in opposition, at least to some level, to their real world behavior. In addition, teens may have faulty perceptions about norms. For example, they may think everyone talks about sex or posts provocative pictures so they need to do that too. A social-norms campaign could help ascertain whether perceptions do differ from the norms and if so allow us to provide more accurate information to teens to help guide healthier online behavior.

Such social-norms campaigns have been effective with other behaviors, such as alcohol and drug use. Credited with starting the social-norms approach to substance abuse prevention and health promotion, Professors Perkins and Berkowitz research has concentrated on youth who as a group tend to be strongly influenced by their peers.²⁷³ They have found that with high risk and harmful behavior such as substance abuse, violence and bullying, many times people inaccurately perceive the problem

²⁷² *Id.* at 1106.

²⁷³ H. WESLEY PERKINS, A BRIEF SUMMARY OF SOCIAL NORMS THEORY AND THE APPROACH TO PROMOTING HEALTH (2006), <http://alcohol.hws.edu/Social%20Norms%20Summary.pdf>.

believing the destructive behavior to be the norm among peers.²⁷⁴ In fact, the majority engages in healthy attitudes and engages in responsible behavior.²⁷⁵ This overestimation of problem behavior, however, leads to very harmful consequences when teens engage in unhealthy behavior either because they think it is “normal” among peers or in an effort to fit into the group.²⁷⁶

The social-norms approach seeks to dispel the myths about the prevalence of problem behavior among peers by using “accurate information about the social context, in the form of positive group norms, to affect widespread behavior change.”²⁷⁷ Perkins and Berkowitz created this approach to try to correct college students’ misperceptions about peer drinking norms.²⁷⁸ In their study, they found college students believed their peers drank much heavier, both in frequency and quantity, than they actually did.²⁷⁹ This misperception resulted in students drinking more than they otherwise would.²⁸⁰ The researchers hypothesized that effectively informing students about actual drinking norms would decrease drinking among the targeted group.

The social-norms campaign began with gathering credible data about what the norms were among peers.²⁸¹ Media campaigns, interactive programs and other educational venues were then used to communicate the truth about peers’ attitudes and behavior.²⁸² This approach sharply contrasted with existing “scare” campaigns that focused on health risks and other dangers which proved to be ineffective since students “regard the negative consequences depicted as relatively improbable.”²⁸³ The social-norms approach was very successful in terms of exposure to the message, changing students’ perception of alcohol use among peers, and decreasing alcohol use.²⁸⁴

274 *Id.*

275 *Id.*

276 *Id.*

277 MICHAEL P. HAINES, ET AL., A GUIDE TO MARKETING SOCIAL NORMS FOR HEALTH PROMOTION IN SCHOOLS AND COMMUNITIES 6 (2005), <http://www.socialnormsresources.org/pdf/Guidebook.pdf>.

278 *Id.* at 6–7.

279 *Id.* at 6.

280 H. WESLEY PERKINS & DAVID W. CRAIG, A MULTIFACETED SOCIAL NORMS APPROACH TO REDUCE HIGH-RISK DRINKING: LESSONS FROM HOBART AND WILLIAM SMITH COLLEGES 29 (2002), <http://www.higheredcenter.org/pubs/hws.pdf> *see also* Haines, Perkins, Rice and Baker, *supra* note 277 at 13–14 (messages might say “8 out of 10 don’t smoke” or “How do you compare with most students? Most (60%) haven’t had any alcohol in the past 30 days”).

281 *See* PERKINS, *supra* note 273.

282 *Id.*

283 *See* HAINES ET AL., *supra* note 277, at 8.

284 *See* PERKINS & CRAIG, *supra* note 280, at 18–19, 23.

Similar results have been obtained with high school and middle school populations.²⁸⁵ The social–norms approach has also been successful with other social issues including seat–belt usage, sexual assault and homophobia.²⁸⁶ An effective social–norms campaign involves five stages:

1. Initial Planning Stage
2. Initial Data Collection Stage
3. Strategy Development Stage
4. Implementation Stage
5. Evaluation Stage²⁸⁷

Perkins and others have developed a step–by–step manual that includes case studies and other helpful tips for designing social–norms campaigns.²⁸⁸

It is beyond the scope of this article and my expertise to design a comprehensive social–norms campaign for healthy use of social–networking sites. However, government agencies and foundations should fund research that would ascertain what the social norms are, determine if teens accurately perceive these norms and then design effective channels to provide teens information about peer norms. Social–norms campaigns can be very influential when perceptions of the norm are different than the actual norm. Surveys like the ones used with the college drinking project can be designed to ascertain this information. Quite possibly a disconnect exists with social–networking sites, like drinking, which may lead teens to engage in risky behavior either because they think that it is normal or because they want to be accepted by their peers. Common sense tells us that the more teens engage in risky behavior, the more they are at risk of bad things happening to them. Not all teens that post provocative pictures or engage in cybersex will be molested by a predator, just as not all teens that binge drink or play drinking games will get hurt or die. But increasing the risky behavior because of faulty perceptions only increases the chances of real problems occurring.

A social–norms campaign is likely to have a much greater impact than educational campaigns that would try to scare children by solely focusing on the risks and dangers of social–networking sites. These and other creative strategies need to be explored at conferences such as the

²⁸⁵ S. Christensen & M. Haines *Communities Use A Social Norms Approach to Reduce Teen Alcohol and Tobacco Use: Two Case Studies* in *Selected Abstracts from the 2004 Conference on the Social Norms Model*, The Report on Social Norms: Working Paper #14 (Paper Clip Communications 2004).

²⁸⁶ ALAN D. BERKOWITZ, *THE SOCIAL NORMS APPROACH, RESEARCH AND ANNOTATED BIBLIOGRAPHY 6* (2004), <http://www.higheredcenter.org/socialnorms/theory/theory.doc>; see also P. Wesley Schultz et al., *The Constructive, Destructive, and Reconstructive Power of Social Norms*, 18 *PSYCHOL. SCI.*18(5), 429–34 (2007).

²⁸⁷ Haines et al., *supra* note 277, at 20.

²⁸⁸ See *id.*

Reducing Adolescent Risk Conference held in 2002. Academics joined with attendees from government agencies and foundations to discuss why adolescents take risks and strategies to reduce risks. Unfortunately, the social networking topic, probably too new, was not on the agenda which included presentations and discussions on gambling, tobacco, pregnancy, HIV/STD, and alcohol/drugs. Conferences like this should be repeated to enable the sharing of research and theories between multiple disciplines thus promoting comprehensive strategies.

CONCLUSION

The novelty and popularity of social-networking sites caught many by surprise. Some commentators predicted their popularity would be short lived with teens abandoning them for the next big craze. These predictions appear misplaced with social-networking sites growing rapidly and becoming part of mainstream culture. Although they have many benefits for children, multiple risks exist with social-networking sites, the most serious being exposure to sexual predators.

Keeping children safe while using social-networking sites remains a formidable challenge because teens' neurological development makes it difficult for them to avoid risks. In addition, not all teens make decisions the same way. Current behavioral and neuroscience research suggests current approaches to this problem may be ineffective in changing behavior.

A multi-faceted approach involving education, legal sanctions and social-norms components needs to be developed. Opponents of regulations, who urge education of risks as the sole strategy, ignore research indicating teens often overestimate, not underestimate risks but choose to engage in risky behavior nonetheless. Because traditional education focusing on risks and dangers may not be effective with certain teen decision makers or worse may even backfire, legal sanctions are necessary. Punishing children for misrepresenting their age serves as a powerful deterrent effect for other teens.

Social-networking sites should voluntarily, or if necessary be legislatively mandated, to segregate their sites. In addition, these sites should notify parents when a child registers for their sites either by requiring a credit card or sending a letter to the household. This would encourage parents to communicate with and monitor their teens, both of which have been shown to highly influence teen behavior.

Finally, social norms must be part of any solution. Often ignored, social norms play a powerful role in inhibiting unacceptable behavior. Thinking more about how to define and encourage accurate perceptions of social norms for social-networking sites may be very worthwhile in changing behavior and keeping children safer. Comprehensive programs involving schools, parents and the community in conjunction with legal sanctions

have the best chance of nurturing a change in social norms that benefits society and protects children.

