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## MYSACE OR YOURS? THE IMPACT OF THE MYSPACE-ATTORNEYS GENERAL AGREEMENT ON ONLINE BUSINESSES

Chelsea Peters<sup>1</sup>

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### Abstract

On January 14, 2008, social networking Web site MySpace.com announced an agreement with the Attorneys General of forty-nine states and the District of Columbia aimed at increasing the safety of children online. MySpace.com and the Attorneys General created a "Joint Statement on Key Principles of Social Networking Sites Safety," which sets forth various principles and goals for improving online safety for children through new online safety tools, design and functionality changes, education tools, and law enforcement cooperation. This article closely examines the agreement between MySpace.com and the Attorneys General and attempts to determine whether any best practices have emerged regarding children's online safety that other businesses should consider implementing to avoid liability.

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### INTRODUCTION

<1>The public has recently become increasingly concerned with online predators' influence over children. In the face of societal pressure and a number of lawsuits, social networking sites like MySpace.com ("MySpace") are being encouraged to incorporate more safety tools into their site designs, such as identity and age-verification technologies.<sup>2</sup> In January 2008, MySpace reached an agreement with the Attorneys General ("AGs") of forty-nine states<sup>3</sup> and the District of Columbia to address issues relating to online safety for minors.<sup>4</sup> This article will look to the specific provisions of the Joint Statement on Key Principles of Social Networking Sites Safety ("Agreement") and related case law to predict the potential impact of the Agreement on MySpace and related online businesses. It will then describe the possible liabilities MySpace and similar businesses could face under the terms of the Agreement. This article will ultimately attempt to discern any emerging best practices that online businesses could follow to avoid liability.

### PROVISIONS OF THE AGREEMENT

<2>The Agreement separates its principles and goals regarding online safety for minors into four main categories. These categories include: online safety tools; design and functionality changes; education and tools for parents, educators, and children; and law enforcement cooperation.<sup>5</sup>

<3>The first category, "Online Safety Tools," emphasizes the principle that a safer online experience for children requires tools that "empower" parents, children, and educators.<sup>6</sup> In addition, this category states that online safety tools are important and must be effective in meeting the needs of each individual Web site.<sup>7</sup> In this section, MySpace agrees to organize an Internet Safety Technical Task Force ("Task Force") to evaluate existing safety tools and develop new tools, with special emphasis placed on the development of identity-authentication technologies.<sup>8</sup> Depending on its findings, the Task Force's formal report could potentially lead to an industry-wide code of conduct regarding the use of specific safety tools by social networking sites.<sup>9</sup>

<4>Category two, "Design and Functionality Changes," recognizes that developing site design and functionality improvements to guard children from inappropriate adult contacts and content must be a continuing effort.<sup>10</sup> MySpace has agreed to continue developing site design and functionality changes to protect its minor users.<sup>11</sup> Four goals are stated in this section, and specific policies for implementing these changes are found in Appendix A of the Agreement.<sup>12</sup> The four goals include: preventing underage users from using the site; protecting minors from inappropriate contact; protecting minors from inappropriate content; and providing safety tools for all MySpace users.<sup>13</sup> MySpace and the AGs have stated that they will continue to meet on a "regular basis" to discuss the implementation of design and functionality improvements.<sup>14</sup>

<5>The third category described in the Agreement is "Education and Tools for Parents, Educators, and Children." This category is centered upon the principle that a safe online experience for children requires educating parents, teachers, and children about the responsible and safe use of social networking sites.<sup>15</sup> To further this principle, MySpace agreed to devote resources to education, develop free monitoring software for parents, explore the prospect of establishing a children's e-mail registry, and continue involving itself in public service announcements.<sup>16</sup> MySpace also agreed to use its "best efforts" to acknowledge any consumer complaints it receives within twenty-four hours, and to report to the consumer the steps it has taken to address these complaints within seventy-two hours.<sup>17</sup>

<6>The fourth category of the Agreement, "Law Enforcement Cooperation," emphasizes the principle that social networking sites and law enforcement officials must come together to deter and prosecute those who misuse the Internet in furtherance of crimes.<sup>18</sup> MySpace has agreed to work with the AGs to enhance law enforcement officials' ability to investigate and prosecute Internet crime.<sup>19</sup> In addition, MySpace agreed to establish a twenty-four hour hotline for law enforcement inquiries and to assign a liaison to address complaints received by the AGs about MySpace within seventy-two hours of receipt of the complaint.<sup>20</sup>

#### CONTINUING DIVERGENCE: AGE-VERIFICATION TECHNOLOGY

<7>Although the Agreement reflects two years of cooperation and compromise, MySpace and the AGs continue to disagree on a few online safety-related issues. The most contentious area of disagreement involves the feasibility of age-authentication and verification technologies. The AGs continue to insist that implementing these technologies is a feasible and necessary step toward achieving a safe online experience for children.<sup>21</sup> MySpace, on the other hand, argues that existing technologies are not yet capable of accurately determining and verifying the ages of social networking site users.<sup>22</sup>

<8>Proposed ideas for solving the problem of online age verification fit into four categories. The first category involves using a separate form of identification, usually a credit card or driver's license, to serve as an approximate age proxy.<sup>23</sup> The difficulty with this technique is that many children under eighteen are given credit cards by their parents or have access to their parents' cards.<sup>24</sup> Simply having a credit card does not guarantee that a person is over eighteen. Driver's licenses are equally problematic, as not all youth choose to get licenses when they are able, and no youth under age sixteen could be verified in this manner.<sup>25</sup> Birth certificates are subject to forgery, and logistically challenging: the certificates would likely need to be sent back and forth in the mail for accurate verification.<sup>26</sup> Some online safety advocates have proposed a "national ID card" system for youth, but implementing this type of plan would lead to significant administrative and privacy concerns.<sup>27</sup> In addition, if only U.S. databases are used for identity-verification purposes, social networking sites become for U.S. users only.<sup>28</sup>

<9>The second category of proposed techniques involves adults vouching for minors' ages. This could mean parents or guardians, schools, or third-party adults, such as religious organization heads or community leaders, vouching for minors.<sup>29</sup> Problems are evident in each of these possible solutions. The idea of parents vouching for their children is appealing to many, as it can be viewed as a kind of "technological permission slip" to access certain sites.<sup>30</sup> However, it is difficult to prove online that the adult vouching for the youth is actually his or her parent. Furthermore, not all parents want their children's access to community networking sites to be limited. The suggestion that schools use a school records database to vouch for minors' ages raises privacy concerns and administrative issues.<sup>31</sup> Finally, a system in which third-party adults vouch for minors would be difficult to regulate.

<10>Third, several services have been proposed, including those marketed by BirthDateVerifier.com and IDology, which use a variety of methods to verify a user's age.<sup>32</sup> BirthDateVerifier, for example, works by having users create an electronic "affidavit" through providing a sworn statement that they are above the age of majority.<sup>33</sup> Using digital signatures would produce a similar effect.<sup>34</sup> IDology works by creating "knowledge based authentication questions" that only the person the user is claiming to be would know, and then checking the answers to these questions against public record databases.<sup>35</sup> This

technique is not foolproof, as it may be possible for youth to find out the answers to questions about their parents, and youth who use their true identities are likely to have fewer existing public records than adults. These techniques raise serious concerns regarding protecting children's privacy; creating public databases filled with children's information could potentially lead to more problems than it would solve.<sup>36</sup>

<10> Finally, biological and biometric devices have been proposed for age-verification purposes.<sup>37</sup> Biological devices would identify users through fingerprints or retinal scans. This method would only be effective if it was coupled with age information in an outside database, which would raise the same privacy protection concerns mentioned above.<sup>38</sup> Biometric devices, like the product i-Mature, work by measuring the size and structure of the bones in a person's finger to approximate the person's age.<sup>39</sup> This method is appealing in that it does not involve identifying information or databases that raise privacy concerns. However, the technology is not yet precise enough to accurately determine users' ages for purposes of online safety.<sup>40</sup> In addition, youth with under-developed bones would likely "read" as being younger than they actually are. This drawback could lead to concerns under the Americans with Disabilities Act and result in revocation of the technology.<sup>41</sup> It is also unrealistic to expect all families to purchase and install the software necessary to run an age-verification system based on biological or biometric technology.<sup>42</sup> Moreover, increasing regulation through any of these techniques inadvertently increases the odds that users will begin visiting offshore versions of social networking sites that are outside the scope of U.S. regulation.<sup>43</sup>

#### POTENTIAL LIABILITY FOR MYSPACE

<10> Despite its Agreement with the AGs, MySpace could face future liability related to children's online safety in two ways. First, MySpace could face liability by failing to follow through on the stated terms of the Agreement. In addition, injured children and their families could potentially bring MySpace to court for breaching protective duties beyond the scope of the Agreement.

#### Liability Under the Terms of the MySpace-Attorneys General Agreement

<11> MySpace has agreed to be held responsible for implementing the practices and principles set forth in the Agreement.<sup>44</sup> The AGs, while commending MySpace on its efforts, have also "not ruled out future legal action" if MySpace does not continue to make progress.<sup>45</sup> Several particular tenets of the Agreement, all containing vague language regarding standards, could lead to future liability if MySpace does not meet the obligations presented.

<12> First, the "Online Safety Tools" section of the Agreement states that "reasonable efforts" must be made by MySpace to explore and develop identity authentication technologies.<sup>46</sup> Although this "reasonable efforts" standard will be difficult to define, MySpace could face liability if it does not devote adequate resources to developing the desired online safety tools.

<13> Second, Appendices A and B of the Agreement describe the initiatives that MySpace has agreed to either "implement" (Appendix A) or "work to implement" (Appendix B).<sup>47</sup> Examples of the specific initiatives MySpace has agreed to implement include: "age locking," or allowing members to change their ages above or below the eighteen-year-old threshold only once before they are locked into that age range (above or below); automatically assigning users under sixteen a private profile; not allowing users over eighteen to add users under sixteen as friends unless they know the younger user's last name or e-mail address; and changing the default setting for sixteen and seventeen-year-old users' profiles from "public" to "private."<sup>48</sup> If MySpace fails to implement these Appendix A initiatives, the AGs will have a strong case for imposing liability. In contrast, the "work to implement" standard of Appendix B will render it difficult for the provisions and initiatives stated there to result in liability for MySpace.<sup>49</sup>

<14> Third, the "Education and Tools" section of the Agreement requires that MySpace devote "meaningful" resources to educate parents, teachers, and children about online safety through public service announcements, parental monitoring software, and establishment of a children's e-mail registry.<sup>50</sup> MySpace may face liability should it fail to meet the vague standard of "meaningful" resource allocation set forth in this section.

#### Potential Liability Outside the Terms of the MySpace-Attorneys General Agreement

<15> Even if MySpace follows the Agreement's specific terms, there is nothing indicating that following the terms of the Agreement will act as a defense against all liability, particularly suits brought by injured children and their families. However, recent case law and statutory clarifications appear to have limited this potential for liability considerably.<sup>51</sup> For example, the Fifth Circuit recently affirmed a highly publicized Texas District Court decision<sup>52</sup> establishing that there is no duty for social networking sites to

protect child users when online connections lead to offline victimizations or crimes such as sexual assault and kidnapping.<sup>53</sup> This seminal case involved a fourteen-year-old girl (Julie Doe) who was allegedly sexually assaulted by a nineteen-year-old she met on MySpace.<sup>54</sup> Doe alleged that MySpace knew online predators were contacting children, but did not act to stop this harmful contact from occurring.<sup>55</sup> Doe further argued that MySpace fraudulently represented that it maintained security measures to protect its younger users when in reality it did not.<sup>56</sup> Claims were made against MySpace and its parent company, News Corporation ("NewsCorp"), asserting negligence, gross negligence, fraud, and negligent misrepresentation.<sup>57</sup>

<16> Unfortunately for Julie Doe and other victims like her, the duty that she claimed MySpace had and breached has not been established as a legal reality.<sup>58</sup> No statutes or case law support the duty of care to which Doe referred, and it would be nearly impossible for the courts to impose one.<sup>59</sup> Were courts to attempt to impose a duty of care to protect children on social networking site operators, this would in essence make site operators responsible for the actions of all people logging onto the site and all site-related actions that take place in the outside world.<sup>60</sup>

<17> Section 230 of the Communications Decency Act ("CDA") provides in general terms that interactive computer service providers are not responsible for any third-party content, stating that, "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."<sup>61</sup> The district court in *Doe* concluded that the immunity provision of the CDA applied to the negligence and gross negligence claims Doe asserted, and that therefore, MySpace and NewsCorp did not have a duty to protect minor site users from sexual predators by instituting safety measures on their Web site.<sup>62</sup> Furthermore, the court held that no exception to Texas' general rule that a person has no legal duty to control the conduct of another person or to protect another person from the criminal acts of a third person applied in this case to the owner or operator of MySpace.<sup>63</sup>

<18> Doe argued on appeal that the immunity clause of the CDA relied on in the district court's dismissal of the negligence and gross negligence claims is inapplicable in this case because MySpace does not qualify as a "publisher" protected by the Act.<sup>64</sup> Doe also argued that section 230(c) does not protect MySpace against its alleged "failure to take reasonable steps to ensure minors' safety."<sup>65</sup> The Fifth Circuit affirmed the district court opinion, holding that Doe's negligence claims against MySpace were "merely another way of claiming that MySpace was liable for publishing the communications" because "[the claims] speak to MySpace's role as a publisher of online third-party-generated content" and are therefore barred by section 230(c)(1) of the CDA.<sup>66</sup> The Fifth Circuit Court noted that "courts have construed the immunity provisions in § 230 broadly in all cases arising from the publication of user-generated content."<sup>67</sup>

<19> This high-profile case, and the case of *Doe v. Sexsearch.com*, which followed the *Doe v. MySpace* opinion, demonstrate that courts are unlikely to impose a duty of care to protect minor users on social networking sites, even when there is a foreseeable risk of harm to the minor.<sup>68</sup>

## BEST PRACTICES FOR WEB SITES WITH COMMUNITY FEATURES

<20> According to NewsCorp, MySpace's parent company, the Agreement was "designed for industry-wide adoption," as "an ongoing industry effort is required" to protect children online.<sup>69</sup> Despite this sentiment, it will be difficult to hold other businesses liable under the tenets of the Agreement, because MySpace is the only Web site<sup>70</sup> that has expressly agreed to abide by the provisions set forth.<sup>71</sup> Certain statements made by the AGs, however, suggest the intent to apply the Agreement's principles to all social networking sites and businesses with community features.<sup>72</sup> For example, in the introduction to the Agreement, the AGs "commend MySpace for its efforts to address these issues," while also, "call[ing] upon other social networking services to adopt these principles."<sup>73</sup> This statement encourages other networking sites to follow MySpace's lead. However, if these sites do not comply with the criteria set forth for MySpace in the Agreement, there appears to be limited potential that they will face liability, especially considering the CDA's broadly-interpreted immunity clause, which may serve as a general defense to liability.<sup>74</sup>

<21> The Agreement, therefore, acquires its coercive force largely from the perception that as MySpace gains media attention and praise for its new safety practices, other businesses will follow MySpace's lead and adopt the same policies.<sup>75</sup> Unfortunately, this logic may not hold true—if other businesses are not required to assume the costs of developing new technologies and implementing new design and functionality changes, they are unlikely to do so.<sup>76</sup> However, if the AGs can lead other businesses to believe that their power extends to hold liable all social networking sites, these sites may begin implementing new practices to guard against liability. It is also possible that online businesses with community features similar to MySpace's will be influenced by guilt or fear of negative media attention.

Because the online safety of children is a relatively loaded issue, online businesses will likely want to appear as though they are doing all they can to protect our children from online predators and inappropriate content.<sup>77</sup> The AGs could harness this sentiment of moral responsibility to persuade similar businesses to follow the guidelines expressed in the Agreement. However, until a more widespread agreement is reached which creates a mandated code of conduct for the entire industry to follow, there is not likely to be much the Attorneys General can do to hold businesses other than MySpace liable.<sup>78</sup>

<22> In the unlikely event that other businesses will be held liable under the Agreement, a few provisions stand out as being more likely to bring about liability than others. First, the Task Force described in the "Online Safety Tools" section does not seem to pertain only to MySpace.<sup>79</sup> The Task Force will be devoted to developing online safety tools and technologies, with a specific focus on identity-authentication technologies.<sup>80</sup> The Agreement's statement that these new tools must "meet the particular needs of individual Web sites" suggests that the Task Force's findings will be extended to all social networking sites.<sup>81</sup> It seems plausible that certain tools or policies could be mandated across all related online businesses should the Task Force generate conclusive findings regarding the tools' efficacy.<sup>82</sup>

<23> Principles and policies described in the "Design and Functionality Changes" and "Education and Tools for Parents, Educators, and Children" sections seem narrowly tailored to fit the relationship between MySpace and the AGs.<sup>83</sup> It is unlikely that other businesses will be held liable for failing to implement any of the design or education-based policies without further action on behalf of the AGs to hold related businesses accountable for the tenets of the Agreement. On the other hand, the "Law Enforcement Cooperation" section states that, "social networking site operators and law enforcement officials must work together to deter and prosecute criminals misusing the Internet."<sup>84</sup> While this vague statement alone is probably not enough to make other social networking sites liable, it does suggest that the principles set forth in this section are intended to extend beyond MySpace. It is possible that the specific provisions of this section, including the twenty-four hour hotline for law enforcement inquiries and seventy-two hour response period, will eventually become part of a mandated code of conduct for all social networking site operators.<sup>85</sup> The current authority that the AGs maintain over social networking sites other than MySpace is primarily informal in nature. However, the Agreement has left open the possibility of generalizations to related businesses in a number of its provisions.<sup>86</sup>

## CONCLUSION

<24> It is unclear what the future will hold for MySpace and similar online businesses. While the Agreement suggests several avenues of imposing liability on MySpace and possibly other social networking site operators, its language remains vague in many areas. Notably, because the Agreement does not require MySpace to implement age-verification technology, the changes it does propose are feasible. It remains to be seen what the Task Force will discover in its examination of identify verification and authentication technologies. Further discussions and possible agreements are likely to result from the Task Force's efforts. However, at this time, few "best practices" have emerged regarding children's online safety for social networking sites and similarly modeled businesses.

## PRACTICE POINTERS

- Online businesses that provide social networking services likely to be attractive to minors should familiarize themselves with the MySpace-Attorneys General Agreement's guidelines and implement them to the extent feasible or appropriate to their product.
- Online businesses that provide social networking services should also monitor developments in age-verification technologies and other technologies that may have an impact on what constitutes "best practices" for the management of online social networking sites.

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## Footnotes

1. Chelsea Peters, University of Washington School of Law, J.D. program Class of 2009. Thank you to Professor Jane Winn of the University of Washington School of Law and Karen Horowitz, student editor, for their assistance and feedback. Thank you also to Professor James Nehf of Indiana University School of Law-Indianapolis for his helpful guidance and suggestions.

2. See Brian Stelter, *MySpace Agrees to Youth Protections*, N.Y. TIMES, Jan. 14, 2008, at B1, available at <http://www.nytimes.com/2008/01/14/technology/14cnd-myspace.html>.

3. All states except Texas have joined the Agreement. Texas Attorney General Greg Abbott stated that until MySpace and other social networking sites implement effective age-verification systems, he does not believe child site users can be adequately protected. See Caroline McCarthy, *Texas AG: MySpace Safety Plan is Smoke and Mirrors*, CNET NEWS.COM, Jan. 14, 2008, [http://www.news.com/8301-13577\\_3-9850057-36.html](http://www.news.com/8301-13577_3-9850057-36.html).
4. Joint Statement on Key Principles of Social Networking Sites Safety (Jan. 14, 2008), [http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008\\_01\\_14\\_myspace\\_agreement&csid=](http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008_01_14_myspace_agreement&csid=) (follow "Joint Statement on Key Principals of Social Networking Sites Safety" hyperlink).
5. *Id.* at 1.
6. *Id.*
7. *Id.*
8. *Id.* at 2.
9. See Adam Thierer, *Today's MySpace-AG Agreement*, THE TECHNOLOGY LIBERATION FRONT, Jan. 14, 2008, <http://techliberation.com/2008/01/14/today-s-myspace-ag-agreement/>.
10. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4, at 2.
11. *Id.*
12. Joint Statement on Key Principles of Social Networking Sites Safety (Jan. 14, 2008), [http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008\\_01\\_14\\_myspace\\_agreement&csid=](http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008_01_14_myspace_agreement&csid=) (follow Appendix A: Design and Functionality Changes hyperlink).
13. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4, at 2.
14. *Id.*
15. *Id.*
16. *Id.* at 3.
17. *Id.*
18. *Id.*
19. *Id.* at 3.
20. *Id.*
21. See Stelter, *supra* note 2.
22. See Thierer, *supra* note 9.
23. Adam Thierer, *Social Networking and Age Verification: Many Hard Questions: No Easy Solutions*, PROGRESS ON POINT, release 14.5, 16, 2007, [www.pff.org/issues-pubs/pops/pop14.5ageverification.pdf](http://www.pff.org/issues-pubs/pops/pop14.5ageverification.pdf).
24. *Id.* at 16-17.
25. *Id.* at 18.
26. *Id.*
27. See *id.* at 15-16.
28. See Leslie Harris, *MySpace: Coming of Age for Coming of Age: Critics Skeptical About Privacy Issues Raised by Age Verification on Social Networks*, ABC NEWS, Feb. 28, 2008, <http://abcnews.go.com/Technology/Story?id=4355851&page=1>.
29. Thierer, *supra* note 23, at 22.
30. *Id.* at 20.
31. See *id.* at 18-19.
32. See Boris Reznikov, "Can I See Some I.D.?" Age Verification Requirements for the Online Liquor Store, 4 SHIDLER J. L. COM. & TECH. 5 ¶¶ 22, 25 (2007), <http://www.ictjournal.washington.edu/Vol4/a05Reznikov.html>.
33. *Id.* ¶ 22.
34. *Id.* ¶ 22.

35. *Id.* ¶ 25.

36. See Thierer, *Peters: MySpace or Yours? The Impact of The MySpace-Attorneys General Agr*  
*supra* note 23, at 15.

37. *Id.* at 23.

38. *Id.*

39. *Id.*

40. See *id.*

41. See The Americans With Disabilities Act, 42 U.S.C. §§ 12101-12213 (2000). Although it is outside the scope of this article to discuss specific claims under this Act relating to biometric age-verification technology, it is plausible that claims could be made alleging discrimination on the basis of disability if some children are not able to access MySpace and other social networking sites as a result of age-discrepant or under-developed bone structure. See also Thierer, *supra* note 23, at 23.

42. See Thierer, *supra* note 23, at 23. Purchasing and installing biological or biometric software could prove to be a prohibitive cost to some families. Requiring that the software be purchased and installed might also be viewed as excessive state regulation over private household affairs.

43. See *id.* at 24.

44. See Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4.

45. Stelter, *supra* note 2.

46. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4.

47. Joint Statement on Key Principles of Social Networking Sites Safety (Jan. 14, 2008), [http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008\\_01\\_14\\_myspace\\_agreement&csid=](http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2008_01_14_myspace_agreement&csid=) (follow Appendix A: Design and Functionality Changes hyperlink or "Appendix B: Design and Functionality Initiatives" hyperlink.)

48. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4.

49. *Id.*

50. *Id.*

51. See *Doe v. MySpace, Inc.*, 528 F.3d 413 (5th Cir. 2008) (*petition for cert. filed*); *Doe v. Sexsearch.com*, 502 F. Supp. 2d 719 (N.D. Ohio 2007); Rebecca Porter, *Lawyers, Advocates Look to Protect Kids from Web Networking Dangers*, 42 ASS'N TRIAL LAW. OF AM. 16, 17 (2006).

52. Interestingly, Texas, where *Doe v. MySpace* originated, was the only state to remain outside of the MySpace-AG Agreement, with AG Greg Abbott arguing that the Agreement does not go far enough to improve online safety for child users. See McCarthy, *supra* note 3.

53. See *Doe v. MySpace, Inc.*, 528 F.3d at 418.

54. See Porter, *supra* note 51 (citing *Doe v. MySpace*, 528 F.3d 413).

55. *Doe v. MySpace*, 474 F. Supp. 2d 843, 848 (W.D. Tex. 2007).

56. *Id.* at 852.

57. See Porter, *supra* note 51.

58. See *id.*

59. See *id.*

60. See *id.*

61. See 47 U.S.C. § 230(c)(1) (2008).

62. *Doe v. MySpace*, 474 F. Supp. 2d 843, 849 (W.D. Tex. 2007).

63. *Id.* at 851.

64. *Doe v. MySpace*, 528 F.3d at 419.

65. *Id.* at 417.

66. *Id.* at 418-20.



68. See *id.*; Doe v. Sexsearch.com, 502 F. Supp. 2d 719 (N.D. Ohio 2007) (holding that where the underlying basis for a claim against an interactive computer service is that a sexual incident would not have taken place had the service never published the minor's profile, the claim is barred under section 230 of the CDA and the interactive computer service is immune from liability).
69. Press Release, News Corp., MySpace and Attorneys General Announce Joint Effort to Promote Industry-Wide Internet Safety Principles (Jan. 14, 2008), [http://www.newscorp.com/news/news\\_363.html](http://www.newscorp.com/news/news_363.html).
70. On May 8, 2008, Facebook.com signed a similar agreement with the Attorneys General of the same forty-nine states which signed the original agreement with MySpace. While there are slight variations in the two agreements, Facebook will likely be subject to the same potential liabilities as MySpace. The Facebook agreement and a press release can be accessed at: <http://www.atg.wa.gov/pressrelease.aspx?id=19736> (follow "Facebook Joint Statement and Appendix" hyperlink).
71. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4.
72. Press Release, News Corp., *supra* note 69.
73. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4.
74. See Communications Decency Act, 47 U.S.C. § 230(c)(1) (2008) (providing that interactive computer services are not responsible for any content published by third parties.)
75. Press Release, News Corp., *supra* note 69 ("The Attorneys General praised MySpace for its efforts to date, the progress it has made in improving online safety and its continued efforts to make specific improvements over the coming months").
76. See generally STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 179 (2004).
77. Press Release, News Corp., *supra* note 69.
78. See Thierer, *supra* note 9.
79. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4, at 1.
80. *Id.*
81. *Id.*
82. See Thierer, *supra* note 9.
83. Joint Statement on Key Principles of Social Networking Sites Safety, *supra* note 4, at 2-3.
84. *Id.* at 3.
85. *Id.*
86. In addition, should other businesses fail to implement aspects of the Agreement, it is plausible that the Federal Trade Commission ("FTC") could become involved. The FTC has the power, under section 5 of the Federal Trade Commission Act, to take enforcement actions against persons, partnerships, or corporations that engage in unfair or deceptive trade practices. 15 U.S.C. § 45(a)(1) (2008). In recent years, the FTC has extended its enforcement power by filing complaints against businesses that have failed to employ "reasonable and appropriate" security measures, even in the absence of a statement that users' information will be kept private. See, e.g., Complaint, In the Matter of BJ's Wholesale Club, Inc. (FTC 2005), available at <http://www.ftc.gov/os/caselist/0423160/050616comp0423160.pdf>; Complaint, In the Matter of Geocities, No. C-3850 (FTC 1999), available at <http://www.ftc.gov/os/1999/02/9823015cmp.htm>; Complaint, In the Matter of Petco Animal Supplies, Inc. (FTC 2004), available at <http://www.ftc.gov/os/caselist/0323221/041108comp0323221.pdf>. The FTC maintains broad authority through section 5 to determine what constitutes an unfair or deceptive trade practice. In the future, the FTC could feasibly step in when children's online safety concerns arise and file complaints against social networking sites, under the theory that these sites violated section 5 by failing to employ reasonable and appropriate security measures to protect minor users' privacy. For more information on recent FTC enforcement actions, see Joel Hanson, *Liability for Consumer Information Security Breaches: Deconstructing FTC Complaints Against Businesses Victimized by Consumer Information Security Breaches*, 4 SHIDLER J. L. COM. & TECH. 11 (2008), <http://www.lctjournal.washington.edu/Vol4/a11Hanson.html>.