



Online grooming: What changes with the new legislation?

The use of new technologies has considerably increased in recent years, particularly among young people. In Belgium, 96% of children between 12 to 18 years of age go online at least once a week, and 60% go online for at least two hours daily.¹ There are a variety of reasons young people go online including online games, videos, chatting, etc. New technologies open the field of amazing possibilities, but it is also important to educate young people about responsible use of the Internet.

According to an EU Kids Online survey network, 34% of children between 9 and 16 are added as a friend by a person they have never seen face to face and 15% of them have sent personal information to someone they did not know, and 26% have an open profile.² This is explained in part by the fact that children do not have the necessary maturities to use new technologies safely, which can be exploited by potential abusers.³ One such risk is the solicitation of minors for sexual purposes.

If this reality existed before, new technologies have further facilitated the sexual abuse of children. The Belgian legal framework provided insufficient safeguards for these new technologies and channels via which criminal acts can be committed. Therefore, a new legislation passed which sends a clear message to the public that the government takes the fight against child abuse seriously. These changes were also necessary in order to comply with European and international legislation.⁴

In this analysis, we will look at what the "online solicitation of minors for sexual purposes" means, what legislative changes have been made in Belgian, and lastly, the strengths and weaknesses of the bills passed. We will also look at the Proposal to amend the Criminal Code that ensure the protection of children against online grooming.

What is online grooming?

¹ Proposal to amend the Criminal Code to ensure the criminal protection of children against "grooming, October 2012, available at: http://www.senate.be/www/?Mival=/index_senate&LANG=fr

² Livingstone, Sonia, Haddon, Leslie, Görzig, Anke and Ólafsson, Kjartan, Rapport final EU Kids Online II, London School of Economics and Political Science, 2011, p. 16, available at: [http://www.lse.ac.uk/media%40lse/research/EUKidsOnline/EU Kids II \(2009-11\)/EUKidsOnlineIIReports/Final report.pdf](http://www.lse.ac.uk/media%40lse/research/EUKidsOnline/EU%20Kids%20II%20(2009-11)/EUKidsOnlineIIReports/Final%20report.pdf)

³ Council of Europe Convention of the Council of Europe on the protection of children against exploitation and abuse Sex, 2007, available at: <http://conventions.coe.int/Treaty/FR/reports/Html/201.htm>.

⁴ European Parliament and Council of the European Union Directive 2011/ 93 / EU of 13 December 2011 on the fight against sexual abuse and sexual exploitation of children and child pornography , available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

The online solicitation of minors for sexual purposes or “online grooming” (confidence building) has several key elements and can be defined as:

*“Actions deliberately undertaken with the aim of **befriending** and establishing an **emotional connection** with a child, in order to lower the **child's inhibitions in preparation for sexual activity** with the child.”⁵*

In the case of online grooming, predators befriend children on the Internet with the intent to sexually abuse them. They use the Internet as their main tool to connect with children. In most cases, the offender wants to be seen as a peer or an older person who can understand the child or someone the minor can trust. Predators often use a false identity. This communication tool is very safe and easy for predators to use because it guarantees full anonymity. The contact can be initiated through information about the child that is available online. Predators often use online discussion forums and social media websites that are very popular among children and youth. They can also use viruses or software malware to control minor computer and access their personal files. All information held by the abuser facilitates contact with young person, sometimes using other tricks to become their “friend”. These channels provide the means to relate to children and create interest.

After initial contact, predators try and build an emotional connection with the child. They target vulnerable, marginalized and isolated children, because they often react more to this connection and to the interests of another person. They can only reach these children that “allow” the contact or are not properly educated on the risks. This is why prevention and awareness of safe Internet use among young people is absolutely necessary. Predators are willing to build up trust and bond with the children over a long period of time, because this supports their grooming behavior. They play on, and misuse, the emotions of the child by saying things like, “I am special to you”, “I am the only one that can understand you”, “I am good to you, will you be good with me?” etc. This relationship can make the child dependent on the predator, which provides the predator with total control.

With a strong emotional connection, it is easier for predators to make an advance on the child. Once this connection is established, the predator seeks to reduce the inhibitions of the child in order to prepare them for sexual activity. Some examples include dragging the child into a discussion of intimate questions, showing him or her pornography to reduce reluctance in participating in sexual activities, or preventing the child from using adult protection. Indeed, the child may feel shameful in viewing images or the relationship he or she established with a stranger. According to INHOPE’s Definition of “online grooming”, predators may also become more active by using threats, blackmail, or giving gifts in exchange for benefits. This control over the child becomes an integral part of the grooming process and has devastating effects. It can cause irreparable psychological damage in children, even if physical sexual abuse did not actually take place.

⁵ INHOPE Definition of “online grooming”, INHOPE website, available at : <http://www.inhope.org/gns/internetconcerns/overview-of-the-problem/online-grooming.aspx>

Solicitation for sexual purposes can take several forms: a series of contacts over a long period of time to set up a trust, or a single contact involving sexual advances. In addition, a study conducted by an American research group also shows that online groomers are not a homogenous group, and predators regularly have a first offence. Offenders can be situational offenders, mainly between the ages of 18 to 25.⁶ The Internet provides an easy way to commit a crime like online grooming.

Belgian legislation

Until recently, Belgian laws did not recognize the solicitation of children for sexual purposes as a specific crime, whether online or not. This behavior could only be a crime and punishable by law by defining it as harassment, indecent exposure, affront to public decency, or temptation to commit such acts. However, this indirect sanction offered only partial protection for child victims and was not sufficient enough. Some changes in legislation were necessary in order to comply with the implementation of the Lanzarote Convention. The pressure to align with the European framework, as well as the lobbying of child rights NGO's like ECPAT Belgium, prompted the government authorities to act.

Two new bills have been filed to protect children against risks concerning the use of new technologies: The proposal to amend the Criminal Code to protect children against cyber predators⁷ and the Proposal to amend the Criminal Code to ensure the criminal protection of children against "grooming" (confidence building for sexual abuse).⁸ The process resulted in the amendment of the Criminal Code by increasing the worth of offenses and crimes when accompanied by such acts as well as recognizing the criminal nature of grooming on the Internet. The characteristics, as well the strengths and weaknesses of these laws will be analyzed below.

1) General protection against the use of technology

The new general law that passed to protect children against online predators added a section within the Criminal Code, titled "Luring minors on the Internet for criminal or tortious purposes." This section introduced a new article punishing any person over 18 years old who is communicating via new technologies with a minor, with the intent to commit a crime or an offence. The offender must have used one of the ways below in order to simplify the connection with the minor:

⁶ Janis Wolak, David Finkelhor, Kimberly Mitchell, Trends in arrests of « online predators », Crime Against Children Research Center, University of New Hampshire, 2009

⁷ Gérard Deprez and others, Proposal to amend the Criminal Code to protect children against Predators , September 13, 2013 , Doc 5-2253 / 1 , available at : <http://www.senat.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=5&NR=2253&VOLGNR=1&LANG=fr>

⁸ Cindy Franssen et al, Proposal to amend the Criminal Code to ensure the criminal protection of children against "grooming " (confidence building for the purpose of sexual abuse) , 25 October 2012, Doc 5-1823/1, available at : <http://www.senat.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=5&NR=1823&VOLGNR=1&LANG=fr>

- When he lies or keeps silent on his identity, age and capacity
- When he specified the discretion of their communication
- When he offered a gift or any kinds of advantages
- When he used any other ruse

The protection offered by the new law is important because it made online contact with a minor an offense punishable by three months to five years in prison when one of the above conditions is proven and ensures punishment even if the contact does not lead to a physical encounter. With this law, the lawmaker has recognized that the mere online contact with a child becomes a crime (under these circumstances). Additionally, even when the minor pretends to be an adult, the predator can be penalized. The protection afforded by this law does not apply only to crimes or offenses of sexual nature, but also includes other types of offenses including sectarian recruitment, physical assault, and incitement to hatred, and misuse of personal data. The law therefore provides a far-reaching protection.

However, there needs to be proof of dishonesty and deceit, otherwise the article is not applicable. If it is not possible to show that the predator used deceit, this article is not applicable, which may be seen as insufficient because the use of deception is not always easy to prove. Another limitation of the law is that there must be proof of intent to commit a crime. However, intention is also difficult to prove. Simple harassment and insults might not fit easily into this category though they have significant consequences on the child such as self-esteem issues for example.

2) Protection against grooming

Besides this general protection, another law aimed specifically at soliciting minors has been adopted. This act introduces two new articles in the Criminal Code. Article 377 of the Penal Code amends sections of the Criminal Code on indecent assault and rape (Chapter V), the corruption of youth (Chapter VI) and public indecent behavior (Chapter VII). The penalty for the predator is now worse when seeking (online or not) a minor under the age of 16 years for the specific purpose committed. In this case, the minimum penalties provided by those sections can be doubled in the case of imprisonment or increased by two years.

Although this legislation is an improvement and provides a punishment specifically for grooming, the proposal has its limits. It only refers to the solicitation of minors through Information and Communications Technology and is only applicable when it concerns children under the age of 16, which are clear limitations. The application of this article does not require that the meeting took place. However, there needs to be proof of material acts leading to such a meeting (the determination of the date and place of meeting for example). Then the predator is liable to imprisonment for one to five years. This can again be very difficult to prove. While this legislation is a clear sign that the legislature is taking into account the new realities of technologies, and specifically penalizes soliciting minors sexual purposes, the law has its limits because of age limitations and the problem of providing material evidence for establish the meeting proposal.

Conclusion

The above two laws are a positive step in the protection of children against a particularly insidious type of offense, namely soliciting minors for sexual purposes. They fill a legislative gap and send a clear signal to potential abusers, since the attempt of sexual abuse via new technologies is now repressed and punishment does not require an actual meeting with the child. However, each law has limitations particularly with providing certain pieces of evidence, both for the intent to abuse, the use of cunning, and the attempt to establish a meeting. In addition, the new law on solicitation for sexual purposes is limited to children under 16 years while children 16-17 years of age are just as vulnerable.

It is also important to remember that prevention work is still needed for young people, so that they are aware of the risks associated with new technologies. In a world where everything changes quickly, instilling a "security" reflex is the best way to educate children on how to use new technologies and build resilience. Since January 2013, ECPAT Belgium has developed a project called "make-IT-safe"⁹ in order to strengthen the capacity of young people to protect themselves and ensure that their peers are also using new technologies responsibly. Via peer2peer methodology, young people are trained through professional materials that supports educating other young people on the problem of online grooming and encourages youth to take action. Many other initiatives exist in Belgium and Europe, such as programs "ClickSafe" Child Focus or those of the Federation Wallonia-Brussels to name a few.

This analysis was written in May 2014 by Lisa De Laet (trainee) and reviewed by ECPAT Belgium.

ECPAT Belgium is the Belgian member of ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes). The mission of ECPAT Belgium is to fight against sexual exploitation of children for commercial purposes: child prostitution, child pornography, trafficking of children for sexual purposes and child sex tourism.

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⁹ See website ECPAT Belgium, Project Make- IT- safe, available at: <http://ecpat.be/en/our-actions/project-make-it-safe/>