Online Reputation, Privacy and Young People: Lessons from Canadian Research

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Introduction

I'm Jane Bailey, a professor at the University of Ottawa Faculty of Law. Together with Dr Valerie Steeves, I co-lead a 7-year SSHRC funded partnership initiative called The eQuality Project, which is focused on understanding how big data practices online, especially targeted advertising, structure young people's online interactions and can set them up for conflict and discrimination. Today, I'll be drawing from research with Canadian young people:

- two recent studies of young people – one that we at The eQuality Project conducted for the Law Commission of Ontario on online defamation and the other that The eQuality Project co-conducted with MediaSmarts under a grant from the OPC;
- results from The eGirls Project (a 3-year project I co-led with Dr Steeves, which focused on girls and young women's online experiences); and
- results from MediaSmarts' Young Canadians in a Wired World study, reported on most recently in 2015-2016.

The key takeaways of relevance to this Committee from all of these studies are:

1. young people are concerned about reputational harm, and for girls and young women in particular, permanent reputational harm is *the* danger associated with networked media;
2. privacy – in particular mechanisms for controlling access to and use of their data is foundational to addressing these issues, particularly as they think about whether and how information they post or that is posted about them *now* may be used unfairly and out of context in the *future* in ways that interfere with their prospects for employment and maintaining healthy relationships; and
3. young people have strategies and norms to mitigate these dangers, but corporate practices and online architectures either make it difficult for them to implement those strategies or invisibly undermine them through machine-based processes such as algorithmic profiling for targeted advertising.

What policymakers should *know*: youth perspectives from Canadian research

Although young people actively seek out forms of online publicity, they are also particularly aware of complications introduced by that publicity. Because of this, they rely on a number of strategies to protect their online reputations, such as carefully crafting the photos they post of themselves, monitoring how they appear in photos posted by others and asking friends to intervene if someone posts negative comments about them. However, the commercial nature of networked media makes it difficult for young people to gain the control they want over their reputations.

In what I've come to think of as a "perfect storm" - digital architectures incent young people to shed data that is in turn used to profile and categorize them for purposes of targeted advertising involving predictions about who they are and who they ought to be that are often premised on

narrow mediatized stereotypes and presumptions about groups to which they belong. When young people try to reproduce these stereotypes in order to attract the "likes" and "friends" set up by platforms as numeric markers of success, they are opened up to conflict with others who monitor, judge and sometimes stalk them and their self-representations.

Given this environment then, what should policymakers *do*?

What policymakers should *do*: approaches informed by youth perspectives

1. ***Directly engage young people in the policymaking process.*** Our policy development models need to be reformed to require direct engagement of young people from diverse social locations as experts in the policy formulation process itself – because research to date suggests a serious gap between the policies set by adults and the lived experiences of young people. The Innovation Lab at Employment and Social Development Canada is an excellent working model of this kind of citizen engagement.

2. ***Look for responses that go beyond telling youth what to do and what not to do***. The young people in the research I'm drawing from today understood being involved in networked spaces to be an essential component of all aspects of their lives. And all indications in our social, economic and cultural worlds affirm that reality. In fact, we've spent billions of dollars and years of policy and program development trying to get them online and keep them there as part of our economic development plans. As such, advice like "just go offline" if you want to protect your privacy is both unrealistic and insulting.

3. ***Move beyond "informed consent" models.*** In the current environment of surveillance and prediction that is largely invisible to the user, traditional data protection models based on consent are not enough to protect young people's privacy and equality because in many cases no one can actually explain what machines are doing with our data. Further, and in any event, even if we *could* explain those processes, simple disclosure wouldn't be enough because networked technologies are now embedded in young people's social lives, their schools and their jobs. As a result, they have no choice but to accept the terms of use that purport to permit these practices even when they do not agree with them and cannot understand exactly what they mean.

4. ***Regulate platform providers to improve privacy and equality***. Many of our participants suggested that platform providers should not be permitted to keep young people's data in perpetuity in part because they recognized how this permanent cache of information opened them up to judgment and reputational harm that could affect them now and in the future. The potentially responsive regulatory options for addressing these issues include:

   (a) ensuring that the OPC has enforcement powers, as so many witnesses have already advised this Committee;

   (b) mandating greater accountability and transparency by service providers as a first step to better understanding how they are using our data to profile us and shape our online experiences according to that profile. How often is the profile based on discriminatory stereotypes and/or does it yield discriminatory outcomes that affect an individual's access to information, products and services based on presumptions made about a group into which they've been aggregated? This kind of profiling, which is machine-based, invisible to users

and often involves processes so complex they cannot be understood by human beings, can lead to discrimination on grounds that are currently legally prohibited, some of which could have serious implications for young people's life chances. Currently, it's very difficult to open the black box to find out what is happening, although we get glimmers from research projects. For example, research from ProPublica revealed discrimination in the price of SAT prep tests, such that Asian students were almost twice as likely to pay a higher price for the course because they are Asian or because they live in certain zip codes which capture Asian students from both high *and l*ow income areas. It may well be that the insights gained from requiring disclosure from service providers about these process will make it even clearer that the best option is to prohibit use of young people's data for purposes of targeted advertising – full stop.

(c) creating a legislative provision that better supports young people to protect their reputations now and in the future than do the current PIPEDA principles relating to accuracy and completeness, which are difficult to understand and to enforce, and too dependent on commercial "purposes" rather than human rights in their interpretation. Alternative models include:

> (i) **right of erasure** (eg California legislation that relates to information young people post about themselves);
> (ii) **right to be forgotten** (eg EU) which would simply give young people the opportunity to request a search engine to remove links to information about them that is no longer publicly valuable or relevant. Such a provision, if created, should also provide mechanisms for oversight and reporting of search engine's processes in responding to these requests.

(d) if we are simply too wed to the "consent" model to depart from it notwithstanding its obvious limitations, we could consider requiring service providers, *regardless* of their terms of service, to get separate, explicit consent from young people to use their personal information for targeted advertising and provide ongoing, easy opportunities to opt out of such a decision. While likely to be less effective than the first three options I've mentioned, this approach at least offers the possibility of interrupting the commercial cycle of presumed access to young people's data.

Conclusion

The current commercial "data for services" model of networked communications renders young people particularly vulnerable to discriminatory profiling and reputational harm that can have long-lasting impacts on their lives and life chances. It is time for adults to take responsibility for economic and social policy decisions that have resulted in the seamlessly integrated online/offline world that young Canadians now inhabit. Carrying out that responsibility requires direct engagement of young people from a variety of social locations in the policy development process, rather than just asking for the opinions of adults like me who've had the privilege of working with some of them.