

Blurred Lines? Responding to ‘Sexting’ and Gender-based Violence among Young People

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The emerging phenomenon of youth ‘sexting’ presents a range of unique legal, policy and educative challenges. In this article we consider four key issues in recent responses to youth sexting behaviours: (1) the definitional dilemmas surrounding the term ‘sexting’; (2) the inadequacy of existing legislative frameworks for responding to these behaviours; (3) the problematic messages conveyed in anti-sexting campaigns; and (4) the relative silence around gender-based violence in non-consensual and abusive encounters. We argue that the non-consensual creation and distribution of sexual images has largely been framed in public debates as a problem of youth naiveté, with the effect of censoring young women’s ‘risky’ sexual behaviour, and leaving unproblematised gender-based violence. We suggest that more nuanced understandings of sexting that distinguishes between the consensual and non-consensual creation and distribution of sexual images must inform legal, policy and education-based prevention responses to the misuse of new technologies.

■ **Keywords:** sexting, youth, sexuality, gender, violence, technology

Introduction

In November 2013, a flurry of media attention uncovered the existence of a group of young New Zealand men, aged 17 and 18, calling themselves ‘the Roast Busters’. These men allegedly group-raped drunk, underage girls, and then bragged about their exploits on a Facebook page. The Facebook page remained active for 2 years, and although the police knew about the site, no arrests were made. Moreover, Facebook did not shut down the site until the media broke the story about the group, and a number of victims came forward to tell their stories, despite the site clearly breaching Facebook’s terms and conditions. Although the site has since been removed, it is alleged that the photos, videos and messages are accessible via Internet caches or saved screenshots of websites. On the one hand, this may provide police with the requisite evidence to secure sexual assault convictions, yet on the other hand, it also demonstrates the difficulty of removing offending material once it is out in ‘cyberspace’.

The rapid shifts in communications technology and the opportunities these technologies provide for sexual communication and interaction (especially via Internet-enabled ‘smart’ phones and social networking sites) have led to widespread concern regarding the potential risks that these platforms pose to young people. In particular, the

phenomenon of ‘sexting’ (also known as nude ‘selfies’ or ‘noodz’) has received a great deal of attention in recent times (Albury & Crawford, 2012; Walker, Sancu, & Temple-Smith, 2011, 2013). Sexting is commonly understood to refer to the creation and distribution of sexually explicit text, video and/or picture messages, often via mobile phone and, increasingly via social media. Of course, there is nothing ‘new’ about taking sexual or intimate pictures, yet mobile and on-line technologies raise new concerns when such images can be easily taken and widely distributed without the consent of the subject, particularly when these images are of sexual assault, or where the images are used as a tool of blackmail, harassment and humiliation.

In this article, we focus on four key and interconnected issues in recent responses to youth sexting behaviours. First, we critically examine the term ‘sexting’ in order to advocate a conceptual and legal distinction between consensual and non-consensual forms. Second, we explore the scope of the criminal and civil law in Australia, which on the one hand serves to criminalise youth sexuality, but on the other,

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excludes criminal liability for some offences and provides impunity to offenders who create and distribute sexual images without the consent of the subject. We argue that the inadequacy of law's response to sexting has, in part, been informed by the problematic definitions of sexting, as discussed in the first section.

The third issue we discuss concerns the problematic messages of anti-sexting prevention campaigns that, like the law, tend to fixate on whether or not there was earlier consent to the creation of the image, rather than the lack of consent at a later point. We support other scholars who maintain that the effect is to censure young women's 'risky' behaviours and deny young people's sexual agency. Finally, the fourth issue we identify concerns the relative silence surrounding the relationship between non-consensual sexting behaviours and gender-based violence.

The paper is structured around these four issues. We draw on some of the key findings and recommendations of the recent Victorian Parliamentary Law Reform Committee (VPLRC) *Inquiry into sexting* (2013), as well as our own reflections based on preliminary data from a larger research project that investigates adult women's experiences of technology-facilitated sexual violence and harassment. While the project does not specifically explore the experiences of school-age young people, our preliminary findings regarding women's (aged over 18) experiences of technology-based sexual violence are instructive for framing responses to youth sexting behaviours.

What's in a name? Defining sexting

Sexting is a trend that was first reported in the media in 2005 to describe the sending of explicit text messages via mobile phones, and which later evolved to the sending of sexually explicit still and video images (as well as text messages) due to changes in camera capabilities on mobile phones (VPLRC, 2013). As a result of a raft of media reports that teenagers were being charged with child pornography offences, sexting has become the subject of much public and scholarly debate. Yet, currently there is little agreement as to exactly what constitutes 'sexting behaviours'.

Sexting was the focus of a recent Victorian Parliament Law Reform Committee inquiry, the first and only inquiry to date into sexting in Australia. The Inquiry defines sexting where a person:

creates, or consents to the creation of, the message or image for his or her own private use and/or the use of one or more other specific persons; or creates, or consents to the creation of, the message or image and without their knowledge and/or their consent the message or image is disseminated more broadly than the person intended. (VPLRC, 2013, p. ix)

This definition was also summarised as: '... the creating, sharing, sending or posting of sexually explicit messages or images via the Internet, mobile phones or other electronic devices by people, especially young people' (VPLRC, 2013,

p. 19). Although the Committee recognises sexting specifically among young people, it nonetheless acknowledges adult engagement in sexting behaviours. By contrast, Wolak and Finkelhor (2011) focus on sexting narrowly as a youth practice, with adults only being involved when images are received in the context of a sexually exploitative relationship with a young person. As such, Wolak and Finkelhor (2011) include two types of sexting: 'aggravated' (involving criminal and abusive elements – which may involve adults as perpetrators) and 'experimental' (young people taking pictures of themselves and sending them on as part of a 'romantic' exchange).

There are compelling reasons for advocating a broad definition of sexting. First, a broad definition might avoid some of the pitfalls recognised in anti-sexting campaigns (Albury & Crawford, 2012), including fixating on youth; failing to adequately account for the harm associated with some unethical, unlawful and criminal practices; and precluding acknowledgement of adult forms of both consensual and non-consensual sexting. Second, a definition that explicitly encapsulates the consensual *and* non-consensual creating, sharing or sending of sexually explicit messages or images might be useful for including a spectrum of consensual, coercive or exploitative behaviours, recognising that a distinction between consent and coercion is not always straightforward (Ringrose, Gill, Livingstone, & Harvey, 2012).

However, although there are, no doubt, blurred lines between consent and coercion that require problematisation, it seems inappropriate to label some behaviours as sexting, for instance, the Roast Busters Facebook example referred to earlier in the paper. It is also important that the consensual creation of a sexual image is kept separate from non-consensual and abusive elements; for instance, creating images without the consent or knowledge of the subject, and/or distributing to others the sexual image, again without the consent or knowledge of the subject. This narrow approach is useful for informing legislative responses to sexting so that consensual sexting among young people and among adults is not criminalised, but the creation and distribution of sexual imagery without the knowledge or consent of the subject, on the other hand, is made subject to civil or criminal laws.¹

Legal Frameworks: Criminalising Youth Sex or Sexual Violence?

The Victorian *Inquiry into sexting* sought to investigate, among other things, first, the 'extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting' (VPLRC, 2013, p. ix); and, second, the 'appropriateness and adequacy of existing

¹ Another option is to discard the term 'sexting' altogether, given that it is a media-generated concept and young people tend not to use it (Albury et al., 2013; Ringrose et al., 2012). However, the problem with this approach is that the term has garnered common understanding in public discourse and, as such, it may be a term that we are stuck with.

laws, especially criminal offences and the application of the sex offenders register, that may apply to the practice of sexting, particularly with regard to the creation, possession and transmission of sexually suggestive or explicit messages and images' (VPLRC, 2013, p. ix). The Inquiry made a number of recommendations in relation to the laws of sexting in both Victoria and Australia.

The key recommendations include: changes to outdated child pornography laws (often used in response to underage sexting); a new criminal offence to address the intentional, non-consensual distribution of an intimate image (for both young people and adults); and a new tribunal to address the harm that unauthorised sexual images cause to youths and adults alike.² As has been previously argued, current debates and responses to sexting have tended to conflate consensual sexual behaviour between two young people of consenting age with sexual harm in, and of, itself (Albury et al., 2013; Powell, 2010b), while failing to address the harm of *non-consensual* sexual image taking and distribution. This is exacerbated by our current laws on child pornography, which were not written with consensual sexting between minors in mind.

Under Australia state and territory laws, any image that depicts a person under 16 or 18 years of age in a sexual or sexually suggestive manner is considered child pornography, even though this does not always reflect the age of consent to sexual activity, which varies across different states and territories. As a result, a person who passes on, or receives, those images can be charged with a criminal offence and, in some cases, may be listed on a sex offenders' register. For example, in Victoria, if aged over 18 years, individuals face mandatory registration on the Sex Offenders Register, but if they are under 18, the court has the discretion to include them on the register (*Sex Offenders Registration Act 2004* (Victoria)).

The over-criminalisation of young people's digital communications has been discussed at length elsewhere (e.g. Albury & Crawford, 2012; Albury, Funnell, & Noonan, 2010; Salter, Crofts, & Lee, 2013), with researchers highlighting the ways in which laws have the effect of criminalising young people's sexual exploration and agency. For example, Lee and colleagues argue that 'alternative narratives of sexting involving young people are marginalised or rendered silent by moralising dominant discourse' (Lee, Crofts, Salter, Milivojevic, & McGovern, 2013, p. 36). Similarly, Albury et al. ask: 'What kind of model of intimate citizenship is offered to young people who are unable to create or access mediated images of themselves or their own sexual lives

without being cast as either victim or perpetrator?' (Albury et al., 2010, p. 10). Reforms to Australian criminal and civil law should then place *sexual consent*, rather than restrictions on freedom of sexual expression, at the centre. This is likewise an important lesson for cyber safety campaigns, where the effect has typically been to focus on youth naiveté rather than the ethics of creating and/or distributing a sexually explicit image without the consent of the subject.

Prevention Education: Cyber 'Safety' Campaigns

While there are ongoing legislative and policy debates regarding the appropriate response to sexting in particular, it is essential that a prevention agenda is also directed at this issue. Indeed, a key problem with current debates and responses to sexting is that they often blame the victim while minimising the role of others in perpetrating harm; for example, where an image has been taken and/or distributed without consent. This is particularly true of some prevention and education resources, which have clearly presented young women taking sexual images of themselves as 'stupid' or 'naive', but have ignored the role of others who distribute a sexual image without the knowledge or consent of the person pictured in the image or video. Indeed, many of the submissions received by the Victorian *Inquiry into sexting* (VPLRC, 2013) highlight the problematic messages conveyed in Internet or cyber 'safety' campaigns thus far.

A number of researchers have expressed similar concerns regarding the problematic and moralistic messages conveyed in anti-sexting campaigns (e.g., Albury & Crawford, 2012; Albury et al., 2010). The 2010 Australian government campaign *Think You Know*, is a pertinent example. It features a video title 'Megan's Story' which tells a story of a girl who has sent a sexual image of herself to a fellow, male student. As she sits down at her desk in class, it becomes apparent that the boy has sent on the image to his classmates, and the clip shows the other students (and the teacher) receiving the image on their mobile phones with looks of disappointment and disgust, directed not at the boy, but at 'Megan'. In this clip, no attention is given to the ethics of forwarding a private image of someone without their consent. The clip serves predominantly as a warning to young girls about the dangers of sexting. It reinforces an unrealistic message of abstinence (Powell, 2010a) and fails to acknowledge that young people have the right to explore their sexual identities in a safe environment. It also serves to blame the victim through shame, humiliation and guilt. This campaign (as well as others) fails to recognise the potential harm caused by the sharing of a private sexual image without the subject's (or even the receiver's) consent, nor does it acknowledge situations where young women (or men) are coerced into sending such images (Ringrose et al., 2012).

As a result of the problematic messages of anti-sexting campaigns, the Victorian Parliamentary Law Reform Committee recommended that the Victorian Government

² Additional recommendations made by the inquiry include: commissioning research into the sexting practices of children and adults in Victoria; integrated educational programmes around internet and communications awareness and safety in schools; training for teachers to promote cyber safety education; and shifting the focus of educational and media campaigns to include the behaviour of those who *distribute* images without consent rather than the person who initially created the image (see Victorian Parliament, 2013).

‘ensure that educational and media campaigns directed toward sexting focus on the appropriateness of the behaviour of people who distribute intimate images or media without consent, rather than on the person who initially creates the intimate images or media’ (VPLRC, 2013, p. xxiii). Indeed, it is important to engage both young men and young women in discussions about what it might mean to be an ethical user and consumer of technologies, and an ethical bystander. In addition, young men and women can be educated to become more critical consumers of images; to think about the images they encounter and whether it is ethical to send them on to their peers; and, additionally, to consider whether it might be appropriate and ethical to report the behaviours to an authority.

This is not to suggest that we should ignore educating young people about the potential for exploitation through Information and Communication Technologies (ICTs) or fail to caution them against potentially damaging representations in various online platforms. Rather, it is of serious concern that, to date, much of the ‘warnings’ have been far too reminiscent of ‘victim blaming’ discourses, as though there was only one party responsible for forms of sexual violence, bullying and harassment, whether via new technologies or otherwise.

New Media Technologies and Gender-based Violence

In addition to the experiences of school-age young people, the Victorian Committee was also careful to acknowledge and discuss issues in relation to adult sexting: ‘The Committee heard that young people are not the only people who engage in peer-to-peer sexting – many adults have also incorporated technology into their sex lives’ (VPLRC, 2013, p. 24). The Committee, for example, discussed the ways in which sexually explicit photographs and footage can be used in family or intimate violence contexts, citing a variety of submissions raising concern over this emerging issue:

This occurs most often in the context of a relationship breakdown, where a person may have originally sent their partner an intimate image of themselves willingly, or were happy for their partner to create the image, and the relationship has subsequently deteriorated. The nature of electronic communication makes the threat of releasing an intimate image or footage a powerful one – images can be posted online or transmitted to a large number of people quickly and easily. (VPLRC, 2013, p. 24).³

The concerns highlighted in submissions to the Inquiry are further reflected in the preliminary findings from our research project on adult women’s experiences of technology-

³ Submissions from: the Eastern Community Legal Centre (ECLC); Women’s Health West (WHW); and the Office of the Victorian Privacy Commissioner (OVPC). The OVPC, for example, noted in their submission that sexting has become ‘an increasingly popular method of abuse for teens in dating relationship’ (VPLRC, 2013, p. 26). WHW noted, too, that sexting in a family violence context affects older as well as younger women.

facilitated sexual violence and harassment. In interviews with 13 agencies across the women’s service and legal sectors, study participants have discussed the various ways in which communications technology and new media are being used to perpetrate and extend sexualised violence against women. In addition to the example given above, where originally consensual intimate images and videos might be later distributed by an ex-partner in an age of ‘revenge’,⁴ adult women are seeking support in response to other behaviours, such as:

- *Pressure to produce sexual imagery*: where a partner or potential partner pressures women into sending/recording sexual images or video, sometimes in the context of an already violent relationship, though other examples include pressure via online dating services and smartphone applications;
- *Blackmail*: where an ex-partner or a perpetrator of sexual assault threatens to release images if women do not remain silent about the violence;
- *Harassment*: where perpetrators of violence are able to intimidate victims through continued contact online, such as regularly posting on their Facebook page after an assault; and
- *Cyberstalking*: where smartphone applications and/or social media posts are used to track women’s locations, and/or threatening messages are sent to the victim whether online, through email or mobile communications.

What has been particularly striking for us is the overlap between the experiences of adult women (often in their 30s and 40s) and those of the teenage young women that the sexual assault service sector, in particular, is providing support to. For example, in addition to the now well-known issue of unauthorised distribution of what was originally a consensual sexual image, images being taken and distributed of indecent and sexual assaults is another pressing issue (Powell, 2010b). Sexual assault workers have also spoken to us about school-age young women who were subsequently harassed on Facebook by the young men who assaulted them, in order to silence them about the assault. Moreover, in some cases, victims are subject to further harassment and humiliation by their wider peer group as well.

Examples such as these make the importance of peer or ‘bystander’ education programmes all the more evident and urgent (VicHealth, 2012). In the context of a youth culture where exposure to sexual content, sending on received images and posting images of others on social networking sites are all increasingly normalised, it is important to engage young people in discussions about the ethics surrounding

⁴ Recent media coverage has labelled these behaviours, ‘revenge porn’, a label we are particularly uncomfortable with as it implies a level of consent and minimises the harm that distributing intimate imagery causes to victims.

the images that they take of others, or indeed the images that, once received, they choose to send on to others.

Moreover, these behaviours are not gender-neutral. While it is the case that both young men and women create, send and redistribute sexual images, there is ample evidence suggesting that it is sexual images of women and girls that are disproportionately created, sent and redistributed *without consent* (Bluett-Boyd, Fileborn, Quadara, & Moore, 2013; Powell, 2010b). Thus our frameworks, whether directed at legal responses, policies or education campaigns, must take as their core focus the inter-related issues of consent, the gendered nature of sexual violence and harassment, and the peer cultures that promote or condone sexual violence against women and girls.

Conclusion

The non-consensual creation and/or distribution of sexual images has largely been defined and framed in public debates, policy responses and legal discourse as a problem of youth naiveté, and sometimes more problematically as 'female stupidity'. Paradoxically, the simultaneous effect has been to criminalise young people's sexual exploration, censure young women's 'risky' sexual behaviours, and leave gender-based violence unchallenged and unchecked.

In order to avoid these problematic framings, we advocate that sexting practices should not be criminalised as child pornography except where there is a minor *and* adult involved. Where images have been created, appropriated or distributed *without consent*, we argue that these exploitative behaviours should be subject to civil or criminal sanctions. There are still many outstanding issues, including whether a new criminal offence should be created; and whether the existence of malice or recklessness should determine what behaviours would, in fact, be criminalised under Australian state and territory law. Further discussion is needed around the scope of both civil and criminal justice responses to a wide variety of behaviours that may come under the umbrella term of sexting.

The problematic definitions and framings summarised above have likewise been conveyed in 'anti-sexting' education campaigns; many of which have been directed largely at young women with a 'just don't do it' approach. Public education campaigns, we suggest, need to approach the issue of sexting with more complexity. Such campaigns need to engage more directly with the behaviour of bystanders who are actively involved in the re-distribution of intimate images but who also participate in the peer cultures that shame or humiliate girls and women when such images are made public. That this shaming is so effective and damaging to victims reflects the gendered nature of these behaviours and their impacts. In short, we as a society need to reposition the problem of sexting to its core issue of consent; where it is the behaviour of those who violate an individual's sexual autonomy (including over their sexual or intimate image)

that is shamed. Above all, it is important that legal, policy and educative responses to sexting, as well as other forms of technology-facilitated sexual violence and harassment, are grounded in the lived experiences of both adults and youth alike, in a constantly expanding and blurry technosocial world.

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