

Section 1 Sexting

Contents

[Overview](#)

[Suggested Approach](#)

[Legislation](#)

[A Case Study](#)

[Classroom Media and Support Material](#)

[Appendix](#)

[Reading](#)

Overview

Sexting is sending nude or semi-nude photos by mobile phone, or posting sexual images on social networking sites like Facebook or Myspace. The term was first coined in 2005 as the practice started becoming more evident in the social behaviour of young people and more frequently appearing in the legal system.

Sexting imagery frequently meets the legal definition of child pornography and in addition to the social issues that attend it there are also serious legal implications for individuals involved in the transmission or reception of this type of material.

Legislation surrounding socially unacceptable imagery of children was originally written with the intent to sanction individuals exhibiting paedophilic or child predatory behaviours. In the case of sexting between adolescents, clearly the behaviour does not fit either category. Therefore laws, with the possibility of very heavy sanctions, are being deployed against young people whose sexting activity, for whatever reason, comes to the attention of law enforcement agencies. (see appendix)

Police and the justice system can only act within the legislative framework that exists at the time, currently there is no legislation that makes a distinction between sexting as a potentially harmful social phenomenon and sexting as a criminal act against a child. In other words, there is no grey area of toleration within the law. Police have some discretion in whether to refer a matter for prosecution, but none once the legal system is engaged.

The social consequences of sexting in an interconnected digital world can be severe and long lived, the legal consequences, however, have the potential to destroy young lives irrevocably.

Sexting is not solely an act of digital exhibitionism and may involve dimensions of one or many of;

- Collection of child pornography
- Production of child pornography
- Sexual harassment
- Cyberbullying
- Criminal extortion
- Theft
- Digital security (such as [hacking](#), [malware](#) activity or [social engineering](#))

Advice on approach

This is a difficult and vexed issue and responded to without consideration has the potential to give a strong message to young people, particularly females that about associating human bodies with strongly negative emotions. This issue should be kept in mind at all times during discussion.

It is suggested that emphasis on the legal consequences carries fewer risks of providing an unhelpful take home message. Discussion of the facts of the legal situation carries fewer value judgements and encoded prejudices than a discussion of the social consequences.

Social consequences should most certainly be discussed but adults guiding the discussion should be;

- a) wary of injecting their own value judgements into the discussion and should use only open questions which draw out the thinking of young people involved in the discussion. And so....? How might you feel....? What do you think the result of that might be....? Avoid at all times questions which imply a position within the question e.g. Why is nudity bad? Why are young people sexually irresponsible?
- b) Careful to moderate the discussion so that ideas that pre-suppose that body images should be negative or in some way shameful are examined challenged and not merely accepted as doctrine.
- c) Be aware that, while in many cases, sharing of material may outwardly appear consensual; it can often be preceded by long periods of intense coercion, even to the extent of extortion. The producers of the material are therefore often victims of bullying, cyberbullying or malicious peer pressure as opposed to the instigators of the legal transgression. This is overwhelmingly perpetrated by males with females as the victim and reflects a wider culture of sexual objectification and misogyny frequently found in cyberspace. Adults guiding discussion are warned to expect the expression of highly chauvinistic, one-dimensional ideas from young people of both genders on this issue. "She was just a dumb slut" "What a 'ho", may well be common reactions to the female protagonists in the case studies. Again it is very important that these attitudes are examined and challenged in a neutral environment.

Megan's Story was an early video response by the AFP and ThinkUKnow to sexting. It focusses on shame and peer rejection as a result of exposure of young girls body as primary demotivators for engaging in sexting. While these are certainly valid as discouragements, making them the centre piece in this media also strongly conveys a message which is both highly patriarchal and reinforces negative cultural and body image stereotypes. Media such as this would be unsuitable for use as stimulus material in discussion that sought to avoid value laded positions. The link to Megan's Story is <http://www.youtube.com/watch?v=DwKgg35YbC4>

Legislation

Child pornography is generally defined as material that describes or depicts a person under 16 years of age, or who appears to be less than 16, in a manner that would offend a reasonable adult. (A table categorising offences involving child pornography by severity is included in the appendix. Click [here](#).) However, this definition is difficult to say the least. There is interaction between state laws and federal laws in relation to these issues and each have functionally different definitions of what constitutes pornography. However, once material has been transmitted over a public carriage system such as the internet or a mobile phone carrier it is also generally under federal jurisdiction.

It is not necessary to prove that a child depicted was in fact less than 16 years of age at the time the image was created. It is enough that they appear to be under that age. It is not necessary for the child to be naked or semi naked. Images that can be interpreted to convey primarily a sexualised message could well fall within the definition of child pornography even if the subject is fully clothed

Young people who produce explicit imagery and then transmit it can, and frequently have been, charged with producing child pornography with the same sentencing provisions as those engaged in paedophilic behaviour. A girl disseminating images she herself took, could, as well as having to deal with the social outfall, be charged with production of child pornography, face the possibility of a custodial sentence and being placed on the child sex offenders register for a long or even indefinite period after release.

Accessing or viewing explicit material involving minors constitutes possession of child pornography. Similarly, having illegal material on a phone, whether it has been viewed or not, constitutes possession of child pornography. Hence individuals not directly involved in the production or dissemination of the material may still be charged under the act. So for example a student sends out an email attachment with explicit imagery of themselves to a Hotmail group chat or an email list or broadcasts it publicly via Bluetooth from a mobile phone (a common practice for spreading images) the recipients of that material, even if no intent to procure it can be demonstrated, are still liable under the act.

This has serious implications for staff involved in the investigation of inappropriate material. The act makes no distinction about reasons for possession, only that law enforcement agencies and those indemnified by the Commissioner of Police are shielded from liability and prosecution. If a staff member copies the material for reasons of evidence, knowingly confiscates a mobile phone or laptop containing illegal material of this nature then they are in turn liable under the act to face prosecution for possession of child pornography. Extreme care should be exercised by student managers in this matter and evidence where possible should be transferred to Police as expeditiously as possible. See the following case study from the USA.

Ting-Yi Oei, the assistant principal of Freedom High School in Virginia, was arrested in August 2008 on charges of possession of child pornography and failure to report child abuse. The arrest came about after Oei was instructed to investigate rumours of students circulating nude photos of female classmates via their mobile phones. After finding the photo, Oei had the photo transferred to his mobile phone and onto his school computer to secure a record of the offence and to preserve the evidence. Although all the charges were eventually dropped, the legal battle and stress nearly ruined the life and three-decade career of the veteran educator. The lesson to be learned is that inappropriate images should not be confiscated or transferred onto personal or school property. Images can only be lawfully confiscated and held by the police.

The advice from Commonwealth government's *Cybersmart* initiative, similarly, is that, 'School staff must not in any way interact with sexting or other indecent images to avoid being charged with an offence themselves and to protect evidence if it is required. They should never forward, copy or print images. If images of minors are found it is advisable for the school to contact police or your education authority to seek advice.'

Original document [here](#)

A summation of the Victorian Crimes Act in relation to possession of child pornography can be found in appendix 1 or by clicking [here](#).

A summation of the Victorian Crimes Act in relation to production of child pornography can be found in appendix 1 or by clicking [here](#).

Case Studies

Excerpt from the Macedon Ranges Local Safety Committee report to Victorian Parliament

A teenage boy took a sexually explicit photograph of himself on his mobile telephone and sent it to his teenage girlfriend after having discussions of a sexual nature with her. The girl responded by recording a sexually explicit video of herself on her mobile telephone and sent this to her boyfriend. Sometime later, the teenage girl attended a party and informed another teenage boy that she had a sexually explicit video of herself on her mobile telephone. The teenage boy asked to see the video. The girl declined. Whilst the girl was distracted, the boy stole her mobile telephone, located the video and “blue toothed” it to his mobile telephone. This boy then sent the video to a number of other boys who then sent it on to other peers. The matter came to the attention of the secondary school at which the girl and the boys attended. The school elected to deal with the incident “in house” by speaking with the students involved and taking “statements” from them. On becoming aware of the incident and school response, a concerned parent of a friend of the girl in the video reported the incident to police.

Police Response

Police commenced an investigation and approached the school to ascertain what the incident was. There was some information provided by the school but there was a reluctance to provide statements and notes that had been obtained by the school during their investigation. This resulted in police having to resort to executing a search warrant on the school to obtain any evidence that was in their possession. The girl in the video and her parents were approached with regard to formalising a police response. The girl disclosed issues of self-harming, which elevated the police response to ensure that the impact on her as a victim was minimised. Subsequent to the formal investigation, police identified eight main students involved in the transmission and possession of the video. This resulted in these students being interviewed by police in the presence of their parents/guardians. They were interviewed for offences related to Possession of Child Pornography.

Known outcomes and follow up

Seven of the boys were dealt with by way of the police child caution program. The other boy was charged with Possession of Child Pornography owing to a previous caution for similar behaviour. This young person subsequently pleaded guilty at the Children’s Court and was placed on a ‘Ropes’ program without conviction. The victim was referred to counselling at school and local health service providers to work with her regarding her distress as a result of the incident, her part in the incident, and to work with her in relation to other mental health issues.

Program

Tagged



When a group of high-school friends posts an online rumour about a rival, it sparks a chain reaction that leaves no one untouched. Cyberbullying, sexting, filmed fights and police action ensue—will these friends be Tagged forever? Raz was initially a bystander involved in cyberbullying but then reports what happened after reflecting on the consequences of what she and her friends have done. What would she do differently?

Will she be Tagged forever?

Click on the Tagged image to the left to begin

[Click this image to open the movie](#)

Character Interviews

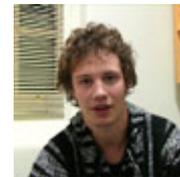
Click on the image of a character to view their interview



RAZ



KATE



JACK

Discussion Presentation, Questions and Answers

http://www.cybersmart.gov.au/~//media/Files/Tagged/2_Tagged_Slideshow.ashx

Please fill out the feedback form here:

<https://docs.google.com/a/cmcc.vic.edu.au/spreadsheet/viewform?formkey=dEFqR2VIU0szRHFJOXJ6MzB3ZWdUQXc6MQ>

Appendix**Table 2:** Categories of child pornography

Level	Description	COPINE Typology
1	Images depicting nudity or erotic posing, with no sexual activity.	Nudist (naked or semi-naked in legitimate settings/sources); Erotica (surreptitious photographs showing underwear/nakedness); Posing (deliberate posing suggesting sexual content); and Explicit erotic posing (emphasis on genital area)
2	Sexual activity between children, or solo masturbation by a child	Explicit sexual activity not involving an adult
3	Non-penetrative sexual activity between adult(s) and child(ren)	Assault (sexual assault involving an adult)
4	Penetrative sexual activity between adult(s) and child(ren)	Gross assault (penetrative assault involving an adult)
5	Sadism or bestiality	Sadistic/bestiality (sexual images involving pain or animals)

Source: Sentencing Advisory Panel 2002

Relevant Victorian Legislation**Crimes Act 1958 - SECT 70****Possession of child pornography**

70. Possession of child pornography

(1) A person who knowingly possesses child pornography is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

(2) It is a defence to a prosecution for an offence against subsection (1) to prove-

(a) in the case of-

(i) a film; or

(ii) a photograph contained in a publication; or

(iii) a computer game- that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+; or

(b) that the film, photograph, publication or computer game possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose; or

(c) that the accused believed on reasonable grounds that the minor was aged 18 years or older or that he or she was married to the minor; or

(d) that the accused made the film or took the photograph or was given the film or photograph by the minor and that, at the time of making,taking or being given the film or photograph, the accused was not more than 2 years older than the minor was or appeared to be; or

(e) that the minor or one of the minors depicted in the film or photograph is the accused.

(3) Despite subsection (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the minor was actually under the age of 18 years.

(4) Nothing in this section makes it an offence for-

(a) any member or officer of a law enforcement agency; or

(b) a person authorised in writing by the Chief Commissioner of Police assisting such a member or officer; or

(c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting such a member or officer-to have child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

Crimes Act 1958 - SECT 68

Production of child pornography

68. Production of child pornography

(1) A person who prints or otherwise makes or produces child pornography is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

(1A) It is a defence to a prosecution for an offence against subsection (1) to prove, in the case of-

(a) a film; or

(b) a photograph contained in a publication; or

(c) a computer game-

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+.

(2) Nothing in subsection (1) makes it an offence for-

(a) any member or officer of a law enforcement agency; or

(b) a person authorised in writing by the Chief Commissioner of Police assisting a member or officer; or

(c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting a member or officer- to print or otherwise make or produce child pornography in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

Reading

<http://www.theage.com.au/victoria/urgent-need-for-new-laws-on-sexting-20120728-233m0.html>

<http://www.heraldsun.com.au/news/victoria/children-as-young-as-10-send-sexually-explicit-pictures-by-phone-in-sexting-subculture/story-e6frf7kx-1226445148880>

<http://www.adelaidenow.com.au/children-on-sexting-charges/story-e6frea6u-1226023477975>

<http://cornwalls.com.au/sharing-knowledge/legal-updates/sexting-the-legal-implications.aspx>

<http://www.news.com.au/national-old/more-than-450-child-pornography-charges-laid-against-youths-aged-10-to-17-in-past-three-years/story-e6frfkvr-1226162162475>

<http://www.gizmodo.com.au/2011/05/police-threaten-sexting-teens-with-child-porn-charges/>

<http://www.smh.com.au/opinion/politics/the-law-on-sexting-leaves-our-teens-dangerously-exposed-20120603-1zq0q.html>