



## **Submission to the Victorian Law Reform Committee; Inquiry into Sexting**

**By Dr Amy Shields Dobson (Centre for Women's Studies and Gender Research, Monash University);**

**Dr Mary Lou Rasmussen (Education, Monash University);**

**Dr Danielle Tyson (Criminology, Monash University).**

**For any inquires regarding this submission, please contact:**

**Dr Amy Shields Dobson**

**Centre for Women's Studies and Gender Research**

**School of Political and Social Inquiry,**

**Monash University, Vic 3800**

**Tel: +61 9902-4069**

**E: [amy.dobson@monash.edu](mailto:amy.dobson@monash.edu)**

To The Executive Officer,

We wish to make a submission commenting on the following terms of reference:

2. the extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting;
3. the appropriateness and adequacy of existing 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 in circumstances where a person:
  - a. 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

- b. 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.

### **The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting**

#### ***Addressing gender stereotypes and gender equity issues to avoid reproducing social 'risks' and ramifications***

Recent government advertising and educational film campaigns in Australia (*Tagged* and *Think U Know*) that have sought to reach youth audiences and inform them about the legal, social and personal risks and consequences of sexting have, we assert, potentially played a part in *reproducing* gendered risks for young people. We suggest that there is a need to change our current conversations with young people about this issue, from ones focused on 'risk' and personal responsibility, to ones focused on ethics (Albury and Crawford, 2012), but also, urgently, on gender stereotypes and gender equity.

Young people's sexual self-presentations and interactions online have been suggested to be linked to cultural and media discourses about current social gender expectations. In research investigating young people's online self-presentation we can often see quite clearly the workings of traditional gender binaries in the ways young women and men represent themselves through social media and digital technologies, and also in the ways young women and men consume and/or circulate images of women via digital technologies (Grisso and Weiss, 2005; Elm, 2007, 2009; Bryant, 2008; Dobson, 2008, 2011a; Livingstone, 2008; Manago et al., 2008; Magnuson and Dundes, 2008; Ringrose, 2010; Ringrose and Eriksson Barajas, 2011; Ringrose et al. 2012; Moreno et al., 2009, 2011). As UK scholars note in their recent qualitative research into sexting practices, sexting is not a gender-neutral practice (Ringrose, Gill, Livingstone and Harvey, 2012, p. 7). This research suggests that sexist double standards forcefully persist around sexuality and sexual expression for teens. Teen girls are often pressured, by teen boys, to send or post sexual images of themselves. Yet girls who give in to such pressures are often perceived by teens of both sexes as sluts, as stupid

(victims), and as lacking the appropriate degree of 'self-respect' or 'self-esteem'.

Unfortunately these discourses are similar to those reproduced in recent government film campaigns (*Tagged, Think U Know*) that suggest that girls who engage in 'sexting' may have 'self-esteem' problems and require psychological help. This is what we mean in suggesting that government approaches focused on informing young people about the (heavily gendered) sets of risks around this issue may be contributing to the social problems faced by young people who engage in acts of 'sexting'. Ringrose, Gill, Livingstone and Harvey find that:

Sexting for girls can involve being subject to oppressive, radicalized beauty norms and hierarchies around feminine appearance and body ideals. Boys must negotiate competitive masculinity, where status can be generated in new ways via technology (such as soliciting, collecting and distributing peer-produced sexualised images of girls' bodies, which operate as a form of commodity or currency). It follows resources need to link sexting practices to an analysis of wider sexist gender relations and commercial culture, but also address the locally specific peer based forms that sexting takes. (Ringrose et al. 2012, p. 7)

Building on research and scholarship in the discipline of Criminology around gendered violence and sexual assault prevention (Carmody, 2009, Powell, 2009), we suggest the need to address the gender roles that potentially inform, or at least accompany, youth behaviour around mediated sexual communication. Powell (2010), for example, has suggested the need to address the gender roles and cultural climate that facilitate the circulation of images of young women's bodies in particular, often non-consensually, while peer 'bystanders' remain silent about such practices. Risk-awareness campaigns have been the dominant approach taken in current educational interventions into cybersafety, cyberbullying and 'sexting'. Teaching young people about the 'risks' of sexual self-imaging, of information sharing, and image-circulation can be seen as a way of addressing a symptom without addressing the underlying causes. Albury and Crawford have recently argued that government film attempts to educate and intervene in youth 'sexting' practices have perpetuated the sexist idea that girls themselves should be held accountable for the negative and highly gendered social consequences of a 'sext' gone viral; that is, spread beyond the intended recipient around the mediated peer community. As one blogger these authors quote puts it: 'Imagine a drink-driving ad that showed a pedestrian being run over, the car zooming away, and then a caption that said "Watch where you're walking,

pedestrians.” (Albury and Crawford, 2012, p. 3). As Powell points out in relation to the circulation of unauthorised sexual images, distribution of such images between peers is precluded by a social context that foregrounds such images as valuable social currency, as sought-after (Powell, 2010), and as a source of spectacle. As evidenced by Ringrose et al.’s UK research into high school ‘sexting’ culture, such image distribution is also perhaps precluded by a culture of quietude and acceptance around the sexual objectification, and often, harassment, of young women through comments about appearance and sexuality, body appraisal, and often pressure to display oneself sexually (Ringrose et al. 2012).

Shelly Walker and colleagues suggests that talking with rather than at young people is essential in this area, (Walker, Sanci and Temple-Smith, 2011, p. 13). As Walker implies, young people may be unlikely to respond well to overly didactic, risk-focused warning campaigns because, as other research on youth and risk taking suggests, participating in risk-taking behaviours may be part of the appeal for young people in regards to a range of practices and behaviours like drinking, drug-taking and sex. From a media and cultural studies perspective, risk-taking has been associated with youth and used in marketing and advertising to produce a particular western cultural construction of ‘youth’ itself since the post-war era (Osgerby, 2008). Further, if we look into young people’s own performative constructions of identity through social network sites we can see the ways in which notions of ‘wild’ behaviour and ‘random’, ‘spur of the moment’, ‘spontaneous’ and fun ‘risky’ behaviour are integrated into their performed identities (Dobson, 2011; 2012). Campaigns that highlight ‘risk’ may be ineffective, and even counter-productive, when it comes to minimising harm around the distribution of mediated sexual communication for this reason.

But further, if government and educational campaigns continue to frame the issue for youth as one of personal responsibility and awareness of the ‘risks’ involved in sexting, *without making explicit the gendered and socially-constructed nature of such risks*, they risk intensifying the harms experienced by young people who engage in sexting practices. That is, if government and educational interventions approach the problem of viral digitally mediated sexual communication between young people from a framework that does *not* make explicit underlying social gender roles that potentially makes it socially risky for girls to participate in taking sexts and socially risky for boys *not* to participate in a culture of

pressure and coercion of girls, they risk reinforcing the gendered assumptions about girls' and boys' sexuality and social vulnerabilities that are part of the cause of social and psychological harms experienced by young people, in gender-specific ways, because of their participation in sexting practices. We therefore suggest the need to change our conversations with young people, whether through media campaigns or educational interventions, to ones that centrally question gender stereotypes and socially and cultural specific gender injustice and inequity around sexting practices.

**1. the appropriateness and adequacy of existing 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 in circumstances where a person:**

**a) 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**

**b) 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.**

***The difficulties of categorizing sexting and apprehending 'consent' in youth sexting practices: the importance of contextual information***

Youth sexting is a complex phenomenon that will likely challenge legal and social policy for some time. Current legal responses to sexting by young people are particularly concerning when one considers the complex and not-easily-categorizable nature, of 'sexting' practices among young people. Of the limited research that exists on the complexities sexting cases raise, what is clear is that:

Sexting episodes are very diverse and complex and cannot be categorized or generalized very easily. In some cases a youth takes pictures and sends them to an adult in what is an exploitative sexual relationship. In other cases, the taking and sending appears to be a feature of a developmentally appropriate adolescent romantic relationship. In still others, it may be hard to determine whether youth who exchange images are agreed about to what use the images may be put (Wolak and Finkelhor 2011 p. 9).

When large numbers of children and young people can potentially be prosecuted for offences designed to capture pedophiles the consequences can be devastating. Once these young people are classified as sex offenders, long-term consequences can mean that these young people's career trajectories are curtailed by their appearance on a child sex offences register. When such outcomes occur as a result of consensual sexual activity, undertaken as a minor, with other minors, clearly this is not in the public interest. It is not what laws against child sexuality online were meant to guard us against. The challenge to overcome here in addressing the failures of current legal responses to sexing is in acknowledging young people as sexual citizens and de-pathologizing young people's sexuality, at the same time as finding ways to address the harms that can result for youth from peer-pressurized cultural contexts in which sexting may occur, as well as non-consensual image or message distribution.

Australian Government Educational materials such as *Talk Soon. Talk Often*, (Walsh, 2011) point to young people's use of social networking sites as a part of sexual development, noting that they will use online resources to "flirt, and gossip, and talk about what happened last night. They will want to belong and connect with a group. They will look up information about growing up, sexual development, and/or sex. They may also have close calls with 'creeps' who try to make contact with them, but most of their contact will be with local friends (Walsh, 2011, p. 17). This text encourages parents to recognize their children as developing sexual subjects thirsty for knowledge, and keen to interact with friends, and, sometimes, strangers. The same document advises parents to "Make sure they understand that sending nude photos of themselves or of someone else is likely to be illegal" (50). This causes a dangerous conundrum which sees young people's sexuality being surveilled and pathologized in ways that do not apply to their older siblings or parents who may also use online technologies to flirt, gossip and share explicit images. Sara McClelland and Michelle Fine, prominent US based sexuality researchers, argue caution 'about the ways that governing bodies intervene... [in] how young bodies come to imagine themselves as wanting, as citizens, and as full participants in the nation'. They warn against constructing young people's exercise of desire and pleasure as a threat to national security (McClelland, & Fine, In Press). The crux of the problem is that the law currently pathologizes *everything*

*to do with child sexuality* on the internet and through digital communication technologies. This is a significant social and legal issue which can lead to the criminalization of young people who are engaging in consensual sexual activities. Although, in the context of mediated sexual communication via peer digital networks, we acknowledge that lines between the consensual and the non-consensual are often rather blurry. Attempting to clarify such lines *within specific contexts*, and ensure that harms ensuing from peer sexual pressure and non-consensual image distribution do not go unpunished, is a key issue here.

As legal scholars have advocated in the American legal context, the law needs to distinguish between sexting scenarios a where minors takes a sexually explicit image of her or himself and sends it to someone else, where it is clear that no minor was harmed or assaulted in the actual taking of the photograph or in its initial transmission to a willing recipient, and scenarios where coercion or blackmail may have been involved in the original taking of the picture, and significant harms result from its further unauthorized dissemination (Calvert 2009, p. 61-62). This is a very difficult job, especially when sexting practices occur in the context of often pressurized youth cultures. Thus, legal responses to sexting scenarios require a detailed understanding of the context in which the original image-taking, and its further distribution, took place.

In their recent study of children, young people and sexting, Ringrose, Gill, Livingstone & Harvey (2012) argue that 'sexting' is best understood as a phenomenon that cannot be easily reduced to a single experience or activity. They note also that drawing distinctions between consensual and non-consensual activity and deliberate vs accidental exposure are very difficult for researchers and young people to make. They found that 'much of young people's talk, therefore, reflects an experience that is pressurized yet voluntary – they choose to participate but they cannot choose to say "no"' (Ringrose et al., 2012, p. 7).

Teachers and legal advocates for children and young people note that within school cultures practices of sexting are sometimes part of games people play – for instance, photos of body parts are circulated and young people try and guess to whom the image belongs. The popularity of such games, and the pressure on young people to participate, suggests that they are often oblivious to the legal consequences of such sexual games, or they are unable

or unwilling to resist peer pressure to participate. However, if such images come to the attention of adults or teachers, it is currently difficult under the law to practice discretion once young people have been charged with possessing 'child pornography' and their guilt has been established. The difficulties of distinguishing between wanted and unwanted sexual communication and image distribution is compounded by the fact that 'sexting' is a practice that is linked to mediated social networks that are permeable, unpredictable and viral. So the locations in which young people are engaging with one another sexually easily move beyond their control. In this social and technological context, the difficulties in apprehending 'consensual' and 'non-consensual' participation are great and the ability for context-based police discretion in responding to incidences of sexting is crucial.

It is also reported that there are currently inconsistencies between states in the policing of children and young people's production and reception of child pornography. Young people reported to the police in such predicaments are currently more often cautioned in Queensland, than they are in other states (Vic, NSW), and this means they are less likely to record a conviction and appear on the child sex offenders register (Law Report, 2012). Surely this type of police discretion is fundamental to ensuring that laws designed to protect children do not criminalize children and young people engaging in peer-to-peer sexting practices.

Law reform is urgently needed to prevent the unnecessary criminalization of children and young people. On the one hand, the importance of recognizing young people as sexual subjects has been noted internationally. Australian, New Zealand and UK researchers have argued the importance of expanding conceptualization of young people's sexual health to include a focus on activity and participation including pleasure. (Bale, 2010; Allen et al, In Press). It is possible to see how concerns about young people as sexual subjects has led to the criminalization of young people's own engagement in sexual activities that are commonplace in youth cultures. On the other hand, it is important to acknowledge the gendered and sexualized pressure that many young people may be under in terms of their participation in sexting. Further, situations where images are distributed without consent beyond their original intended recipient(s) can result in serious harm (Walker, et al. 2011). How the law responds sensitively to the pressures that young people face to participate in

the taking of sexting self-images, and sometimes also pressure to distribute such images beyond intended recipients, is a difficult yet crucial issue.

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