The Australian Council of Educational Research Response to the Inquiry into Sexting by the Law Reform Committee of the Parliament of Victoria

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1. The incidence, prevalence and nature of sexting in Victoria

There is a dearth of accurate research literature currently available on the incidence and prevalence of sexting. The involvement of minors and the sexual nature of sexting make it a difficult subject to research for ethical reasons.

A 2009 survey of 4770 students in years 5-11 from 39 independent schools in Victoria found that overall, 7.3% of girls had been asked to send a nude picture of themselves. This figure tended to increase with age: 9.3% of girls in Year 8, 14.8% in Year 9, 11.8% in Year 10 and 16.3% in Year 11 (Weldon, 2009). The survey was a convenience sample rather than a representative sample and no data was collected about the contexts in which girls were asked for such images, nor how many chose to comply.

A nationally representative survey of American youth (aged 12-17) found that 4% of teens who owned a mobile/cell phone admitted to having sent nude or nearly nude images of themselves to someone and 15% said they had received such material. Older teens were more likely to have sent such images (8% of 17-year-olds) and 30% had received an image on their phone (Lenhart, 2009).

Related focus groups revealed three main scenarios for sexting:

1. Exchange of images solely between two romantic partners,
2. Exchanges between partners that are shared with others outside the relationship and
3. Exchanges between people who are not yet in a relationship but where at least one person hopes to be (Lenhart 2009).

The use of the term partners here refers to two young people who have engaged in a relationship, usually of a romantic or social nature, for the purposes of companionship although they may not be co-habiting.

Some US research has suggested higher figures of up to 20% sending provocative images of themselves, and up to 31% having received such images (TRU, 2008; Cox Communications, 2007). One Australian survey of about 800 girls by Girlfriend magazine found that 40% of readers who responded to the survey had been asked to send a nude image of themselves (Walliker & Critchley, 2007). While this is not a representative sample, there does seem to be a trend of sexting and the solicitation of sexualised images amongst a reasonable percentage of older teens and, perhaps of more concern, this is occurring amongst younger teens as well.

Generally, and of pertinence to this inquiry, sexting amongst teens appears to be most common amongst teens who are or want to be romantically engaged. A
percentage of images are instigated by the sender rather than on request. Little research has been done on the extent to which teens who receive a request for a sexualised image of themselves are comfortable with an affirmative response. Some teens feel it is ‘no big deal’ to send such an image (Lenhart, 2009) and in a relationship there is presumed to be an element of trust. Nevertheless, it is also the case that some participants may feel obliged to acquiesce to a request by a boy/girlfriend if they consider the request a ‘norm’ or reasonable, and don’t want to discourage the relationship, and as such a participant may perceive pressure due to the nature of the relationship (rather than any deliberate manipulation by the requester).

Sexting generally is not the solicitation of sexualised images from minors by older adults for their sexual gratification, that is, the creation and possession of child pornography, based on the connotation of the meaning of child pornography, if not on the actual legal definition. Sexting appears most commonly to take place between those who know each other, rather than via online grooming. No doubt these things happen, but US research suggests that online-initiated dangerous contact or sexual assaults offline are rare (Wolak et al. 2006, 2009). Further, youth who met adults for sex generally know the offender’s age and sexual intent suggesting such solicitation is more accurately likened to the model for statutory rape. Such youth tend to be in the ‘at risk’ category (Wolak et al. 2008a, 2008b).

The main risk apparent in sexting is the distribution of the image(s) beyond the individual for whom, generally, it was solely intended, and the effect that this wider image(s) distribution has upon the victim. This may be of particular concern because the image could be distributed amongst a peer group, such as in a school setting, and could possibly go viral on the internet as it is shared further causing embarrassment and social damage.

2. The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting.

Awareness in this area has been rising for some time, alongside that of cyberbullying. Police and independent consultants and organisations in Victoria and Australia have become proactive, as have many schools, in addressing sexting as part of the wider issue of mobile and internet communication technologies, social networking, and general online behaviour.

There have been some balanced articles in Victorian newspapers and the Australian media, as well as reporting on specific cases of sexting and its ramifications (Carey, 2010; Lake, 2009; Noonan & Moscairtolo, 2009; Battersby, 2008).

The key message to get across is that as soon as anyone sends an image to a romantic partner, or allows an image to be taken, the sender has no control over what may happen to that image, either now or in six months time. The viral nature of the internet is difficult if not impossible to control.

The Victorian Department of Education and Early Childhood Development has been active in areas associated with online safety and their programs can be seen at http://www.education.vic.gov.au/healthwellbeing/respectfulsafe/curriculum/contexts/cybersafety.htm. However, specific instruction in the legal ramifications of
communicating sexually explicit material of self or others is not prominent. Anecdotal evidence suggests that many teenagers and parents would appear to be under the misapprehension that young people are protected by the law and are unaware that persons under the age of eighteen years could be prosecuted or penalised for engaging in sexting.

The national Department of Education, Employment and Workplace Relations (DEEWR) has coordinated a number of joint State, Territory and Commonwealth efforts to provide online advice and online resources for teachers, parents and students. These resources can be seen at http://www.deewr.gov.au/Schooling/DigitalEducationRevolution/Pages/Cybersafetyinschools.aspx and include the CyberSmart online service at http://www.cybersmart.gov.au/ developed by the Australian Communications and Media Authority (ACMA). The emphasis of these services is on cyberbullying and protecting individual identities although mention is made of sexting. However, sexting nor its severe implications are not prominent in these services.

3. The appropriateness and adequacy of existing laws
Consider these scenarios:

1. A boy, 14, approaches a female teacher having been sent an image of a girl in his class by another boy. In order to ascertain the nature of the issue, the teacher views the image, downloads it onto her computer as evidence and tells the boy to delete the image from his phone. The teacher then writes up the incident and contacts the relevant member of the executive.

2. A boy, 14, approaches a male teacher having been sent an image of a girl in his class by another boy. In order to ascertain the nature of the issue, the teacher views the image, then takes the boy and his phone to the principal who contacts the police.

3. A girl, 14, sends a nude image of herself to her boyfriend, 15, on request. The boy shows the image to his best mate, who asks for a copy. The boy sends the image on to his friend, who then sends it on to several other boys.

4. A girl, 16, sends a video of herself to her boyfriend, 17. He downloads the video to his computer where it is discovered and reported a year later (he is now 18) when the computer is sent for repair.

Under current legislation, the female teacher in the first scenario could face a charge of possessing child pornography. In the second, the boy, 14, could be charged with possession, and the boy who sent him the image with possession and dissemination. In the third scenario, the girl could feasibly be charged with creating child pornography, the boyfriend and the ‘best mate’ with possession and dissemination. In the final scenario, the adult boyfriend would face harsher penalties as an adult for possessing child pornography.

It would be useful for the law to recognise the role of parents and legal guardians, including teachers and other responsible adults, may have in managing cases of
sexting. This would include cases where school computers or home computers owned by a guardian are found to have images created or received by minors who know each other.

While the police have discretion, the options are either to warn those involved or to press charges. A warning may not be an adequate consequence, but under current legislation, pressing charges could have serious consequences. The issue lies at least in part in the inability of the law to consider the age and intent of the perpetrators. Child pornography becomes a problematic term when, for example, the ‘child’ is 15 and taking images of herself for the use of her boyfriend of the same age.

This is a difficult area. Quite apart from the legal consequences, the emotional and psychological consequences of sexual, nude or partially nude images being disseminated beyond the person for whom they were originally intended can be severe. As such, these images taken in private will always have the potential for devastating consequences unless they are deleted and so it may be unwise to legalise them in any form.

However, it would seem appropriate to modify the consequences and definitions to reflect the ages of those involved and the roles that they play. A girl who chooses to take and send such images should not be vulnerable to the charge of creating child pornography. The boy she sends it to should not be considered in the possession of child pornography (to him, the girl is a peer and an appropriate age, not a child). The boy who passes the images on to his friends should be open to a charge with considerable and appropriate penalty attached. His action is at least mean and designed to embarrass. It is certainly intentional and deliberate. Given his age and relationship with the girl, however, it may not be appropriate to charge him with disseminating child pornography: his age and that of the girl should preclude that characterisation of his act.

**Conclusion**

The use of digital technologies in education and by young people generally is prolific in Australia (Ewing & Thomas, 2010). Sexting does occur among people under the age of eighteen, most of whom are in education or training. The existing Australian law regarding pornographic images was legislated to protect children and young people. However, the use of digital technologies has provoked a range of new circumstances and incidences that need further consideration to adequately protect children and young people who engage in sexting. The law may need to be reviewed in order to take into account many new circumstances that can occur in order to protect children and young people who use digital technologies. Anecdotal evidence suggests that many parents and young people are unaware that the law may be severe in instances of sexting and so a concerted education campaign may be necessary.

However, of the utmost concern is the education of young people to act appropriately and ethically when using digital technologies, and it is the role of the law to protect them from inadvertent social and personal damage through sexting, and to sanction inappropriate behaviour.
References


Cox Communications (2007). Research findings: Teen internet safety survey, wave II.


