Parliament of Victoria

Inquiry into Sexting
Table of contents

Preamble .................................................................................................................. 3
Contributors contact details................................................................................... 3
Recommendations .................................................................................................. 4
The incidence, prevalence and nature of sexting in Victoria .................................. 5
  What is sexting? .................................................................................................. 5
  Prevalence and incidence of sexting .................................................................. 5
  Nature of sexting ................................................................................................. 7
  Voluntary, or not? .............................................................................................. 7
  Notions of privacy .............................................................................................. 8
  Image use ........................................................................................................... 9
  Sexual offenders ................................................................................................. 9
  Sexting and cyberbullying – commonalities ......................................................... 11
  Risks to wellbeing ............................................................................................. 12
The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting ............................................................ 14
  Why campaigns are ineffective ......................................................................... 15
The eSmart response .............................................................................................. 16
eSmart Schools ..................................................................................................... 16
eSmart Libraries .................................................................................................... 17
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: .................................................................................. 19
Resources ............................................................................................................ 22
Preamble

The Alannah and Madeline Foundation welcomes the opportunity to make this submission to the Victorian Government’s Inquiry into Sexting.

The Alannah and Madeline Foundation is a national charity keeping children safe from violence. We care for children who have experienced or witnessed serious violence and run programs that prevent violence in the lives of children. We have broadened our remit to include enhancing wellbeing in the lives of children, with a particular focus on bullying and cyberbullying. We believe that children’s wellbeing is contingent on their being in safe, supportive relationships and environments.

We believe it is important that our society takes a balanced and thoughtful view on sexting, treating it with seriousness but not in an unnecessarily punitive fashion.

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The Alannah and Madeline Foundation: keeping children safe from violence
Recommendations

1. The Alannah and Madeline Foundation recommends that a large-scale longitudinal study be undertaken with results being released at pre-determined milestone to address gaps in our knowledge about the prevalence and incidence and effects of sexting in the State of Victoria.

2. The Alannah and Madeline Foundation recommends that the state of Victoria, together with other States, Territories and the Commonwealth develops consistent responses – legal and otherwise in our approach to non-consensual filming and distribution of sexual content.

3. The Alannah and Madeline Foundation recommends that Commonwealth and State laws are revised as to how they apply to children and young people’s use of technologies in the digital age. We believe that existing criminal offences and the application of the sex offenders register operate in an unsatisfactory way when applied to children and young people.

4. The Alannah and Madeline Foundation suggests that the Victorian Government considers the value of adopting a holistic cybersafety approach extending to the whole community, for example, the Foundation’s eSmart system.

5. The Alannah and Madeline Foundation advises that solutions applying to young people’s use of technology to send nude or semi-nude photographs be developed in consultation with the young people themselves.
The incidence, prevalence and nature of sexting in Victoria

What is sexting?

The Alannah and Madeline Foundation defines sexting (a combination of ‘sex’ and ‘texting’) as the ‘electronic communication of non-professional images or videos portraying one or more persons’ [self, or others] ‘in a state of nudity or otherwise in a sexual manner’ (Svantesson, 2011) which can then be forwarded to different media and audiences. Sexting can take place on a variety of digital technologies. For a generation used to instant gratification, it is a technology use that provides exactly that. Sexting is part of the broader discourse of online safety and digital citizenship for children and young people.

Sexting is of concern for a number of reasons. If the content shows an underage person, ‘the sender, receiver and any intermediary involved in the communication can be charged with child pornography offences under current Australian criminal law’ (Svantesson, 2011). It may have other legal ramifications in terms of criminal and/or civil law. It may have implications for the reputation, mental health and wellbeing of the young people concerned. In more serious cases, in particular where the effects of sexting result in self-harm and suicide, families and the broader community are also affected.

Young people themselves are often the creators of such images, their private sensual motivations being quite different to those who set out to create pornography or for reasons which may include coercion, harassment or cyberbullying. However, young people who commit what some see as the ‘deplorable judgement’ (Kreimer, 2011, 407) of sexting are sometimes themselves accused of producing pornographic images (e.g. Leary, 2008) certainly in the eye of the beholders, with a resultant ‘moral panic’ (Kreimer, 2011, 406) in various circles. However, in the view of other commentators, it is a victimless crime – if crime it be. It could be portrayed as the collision of hormones and technology, where the creator or disseminator has little control over images that can be sent and forwarded almost instantaneously, with possible serious legal implications. It seems unjust that this generation of young people can be penalised for acts no more rash than many committed by their progenitors because the outcomes are amplified by digital technologies.

Prevalence and incidence of sexting

Australia has among the highest rates of mobile digital technology ownership and access. A Nielson report published in 2011 shows mobile internet penetration at 50 per cent and smartphones ownership reaching 35 per cent of online Australians. A study conducted by ACMA in 2008 showed that most
families (97 per cent) had mobile phones and other forms of mobile media, irrespective of socio-economic status. In 2011 (Nielsen, 2011), 51 per cent of Australians over the age of 16 owned a smartphone. Most (around 75 per cent) families have a computer although desktop and laptop ownership has declined slightly as smartphones and/or tablets have taken their place, particularly for younger users. The rise of video sharing is a particular concern – with social networking sites like Tumblr facilitating video blogging growing in popularity. In its 2011 worldwide study, Informa Telecoms & Media predicted that in five years’ time mobile phone users will, on average, consume 6.5 times as much video as they do presently.

Given such high – and increasing – levels of ownership of mobile technologies, it is not surprising that a report from the US (The National Campaign to Prevent Teen and Unplanned Pregnancy, 2008) reveals that 20 per cent of teenagers had sent or posted nude or semi-nude pictures or videos of themselves. Thirty-nine per cent of all teens had sent or posted sexually suggestive messages and 48 per cent had received such messages. Fifty-nine per cent of all young adults had sent or posted sexually suggestive messages. A report from 2009 (Associated Press-MTV poll) showed that ‘more than a quarter of the 1247 participants (ages 14 to 24) had been involved in some type of “naked sexting”.

Incidence is more difficult to determine. Allowing for differences and potential flaws in methodology, if we look at the increase in prevalence over a year – the time between the two studies – we find a five per cent increased incidence from 2008-9. We do not have reliable Australian figures but hypothesise that similar statistics would apply in this country.

In a nationally representative survey of those between ages 12-17 conducted on landline and cell phones, the Pew Research Center’s Internet & American Life Project found that four per cent of mobile phone-owning teens between the ages of 12 and 17 had sent sexually suggestive nude or nearly nude images of themselves to someone else via text messaging; fifteen per cent of mobile phone-owning teens between the ages of 12 and 17 said they have received sexually suggestive nude or nearly nude images of someone they knew via text messaging on their phones. Older teens were much more likely to send and receive these images; eight per cent of 17 year olds with mobile phones sent a sexually provocative image by text and 30 per cent received a nude or nearly nude image on their phone. Teens that paid their own phone bills were more likely to send ‘sexts’. Seventeen per cent of teens who paid for all of the costs associated with their cell phones sent sexually suggestive images via text while three per cent of teens who did not pay for or only paid for a portion of the cost of the mobile phone, sent these images. However, a study by Mitchel, et al (2012) found, ‘if sexting is defined as appearing in, creating, or receiving sexually suggestive rather than explicit images, 9.6 per cent of youth who used the internet in the past year were involved in this way’.

There is insufficient information specifically relating to the behaviour of youth in Victoria to make a definitive statement about prevalence and incidence. We can assume that figures are roughly equivalent to those found in the studies mentioned. More needs to be known. The Alannah and Madeline Foundation recommends that longitudinal studies be undertaken to more precisely determine the prevalence and incidence this behaviour.
Nature of sexting

For young people, digital connection, particularly via smartphone, is their ‘beating heart’ (Paretsky, S., 2011) and increasing numbers have access to it. Sexting is viewed in different ways by different groups in the community: by those who ‘sext’, by parents, educators and others, including the legal profession.

To whom do young people send sexually suggestive messages?

- 71 per cent of teen girls and 67 per cent of teen boys who have sent or posted sexually suggestive content say they have sent/posted this content to a boyfriend/girlfriend.
- 21 per cent of teen girls and 39 per cent of teen boys say they have sent such content to someone they wanted to date or hook up with.
- 15 per cent of teens who have sent or posted nude/semi-nude images of themselves say they have done so to someone they only knew online.
- 83 per cent of young adult women and 75 per cent of young adult men who have sent sexually suggestive content say they have sent/posted such material to a boyfriend/girlfriend.
- 21 per cent of young adult women and 30 per cent of young adult men who have sent/posted sexually suggestive content have done so to someone they wanted to date or hook up with.
- 15 per cent of young adult women and 23 per cent of young adult men who have sent sexually suggestive material say they have done so to someone they only knew online (National Campaign to prevent teen and unplanned pregnancy, 2012).

These figures have caused widespread alarm among parents, educators, policy makers.

Voluntary, or not?

It is thought by some that participation in this activity might be only ‘voluntary’ in a certain sense: pressure to be part of the ‘group’ may constrain young people to be involved when they don’t really want to – “they choose to participate but they cannot choose to say “no”” (Ringrose, et al, 2012, 7). Many from these groups think young people send such images because they’ve been somehow pressured to do so by their peers, particularly males. This is not necessarily so. In the American study (2008), two-thirds of the teenaged female respondent girls said that sexting was a ‘fun and flirtatious’ activity that made them ‘feel sexy’. For others, sexting was seen as a form of initiation into the sexual culture. Young girls to whom Nina Funnell spoke in research she conducted saw this as a way they could control how much a boy saw, under what conditions and at what time (Funnell, N., NCAB conference 2012).
Sexting can be seen as part of the process of growing up and exploring sexuality – although obviously adults are also involved in sexting. Teenage sexual curiosity and experimentation has always been a fact of life and courtship customs have varied between societies and within societies over time. A recent phenomenon of teenage dating rituals is the incorporation of technology into this explorative and experimental stage. A study completed in America (The National Campaign to Prevent Teen and Unplanned Pregnancy) showed that, even though many adults condemn the behaviour as ‘stupid or unthinking … those who sent images had a detailed understanding of the personal and professional risks associated with electronically transferring naked images, suggesting that increased access to information alone is unlikely to curb the trend. In fact some teenagers surveyed chose to send images precisely because of the thrill they received from engaging in such dangerous, taboo behaviour (Funnell, N., 2009).

danah boyd argues that children’s freedom to roam in the physical world has been radically curtailed. While previous generations could ride bikes or walk to school or play outside unsupervised until dinner time, this generation is watched all the time. They have lost that thrill of being on their own until they are much older, and boyd suggests that for them, the internet can provide that open space, to test and explore and try out the outside world (The Age, 2012). boyd maintains that we need to provide young people with the tools to assess risks and make appropriate choices – to be safe, smart and responsible using digital technologies without adult supervision.

**Notions of privacy**

Once transmitted, images are beyond the creator’s control. However, young people might place a fundamentally different value on the notion of privacy. It is argued that the younger group (8-15 year olds) who are currently using social media (Radio National, 2010) have different notions of privacy regarding the sharing of information about oneself than are held by people in preceding generations. Those born before the war held personal information close as disclosure was thought to be ‘airing one’s dirty linen in public’ and they never discussed their lives with people outside the family – sometimes even within it.

It is debatable that all people subscribe to fundamentally similar notions of privacy, that is, that one controls information about oneself and shares it only to certain individuals. Young people have grown up in an environment where sharing sometimes quite intimate thoughts – and images – is seen as the norm. Private and public selves are entwined in ways it’s difficult for older generations to understand, “So they’re not embarrassed about some of the things that we think they should be embarrassed about because it’s an extension of the self that they’re used to having viewed” (Steve Jones, Communications Professor at the University of Illinois-Chicago, in USA Today, 2007).

Doing this via technology is actually much more hazardous for young people who, it is argued fundamentally misunderstand or fail to understand the nature of the applications they are using or the fact that content of various kinds is no longer their property – hence not ‘private’ (ABC Radio National, 2010).
Image use

Information is used by the owners and users of social networking sites for a number of purposes. Increasingly, though, it is felt across age-groups to be a form of ostracism not to belong to or use social networking; these platforms provide social currency for many adults, but especially for young people, whose social, academic or even professional life can be severely curtailed without it. Some parents even infringe the age restrictions by allowing their primary school age children to have a Facebook page (ABC Radio National, 2010). It is debatable whether a Year 6 student, even one effectively supervised by a responsible parent, would understand the ramifications of their actions sufficiently to protect their information, images and reputation online.

The risk to young people has to do with damage to their reputation resulting from information posted online and, because of its persistent, spreadable-by-others and searchable nature, the risk is permanent. Information might be searched to conduct a background check prior to employment or to assess the probity of an individual; a difference in values between searcher and searchee might mean that what one found hilarious or negligible the other finds reprehensible.

Facebook has recently changed the Terms of Service. While images on the platform are no longer owned by them, they reserve the right to show them to everyone publicly. It is therefore up to each user over 13 years of age to opt out of public posting and to enable or disable the available privacy settings. All privacy settings for accounts held by those over 18 are by default public, and they must ‘opt out’ or ‘enable’ settings to protect privacy. But just one person in a circle of friends has to have a full public profile, and others’ images and personal details are no longer private; as soon as they comment on your picture, it will appear on their wall and a notification will go out to all their ‘Facebook friends’ and be seen by them. Thus photos created by one young person and shared by another have the ability to be viewed and downloaded by untold numbers of anonymous and unseen users for a variety of purposes.

Sexual offenders

As Nina Funnell points out, ‘there is also the fear that such photos could fall into the hands of paedophiles as once those photos are online it is virtually impossible to control how they circulate or where they end up’ (ABC, 2011). We know about the possibility of paedophile predators using images for their own purposes through recent high-profiles cases like that of John Zimmermann. Zimmermann, through the promise of various favours, enticed young girls to send provocative pictures to him and then, through threats of exposure, forced girls, most aged between 12 and 15 to engage in sexual acts with him.

Victoria Police Acting Assistant Crime Commissioner Doug Fryer revealed that a new Taskforce, Astraea, will focus on the investigation and prosecution of child sex offenders. He urges parents to be aware of their children's activities on social networking sites, saying there was a growing trend of paedophiles using sites such as Facebook to groom and exploit children. The use of the internet to access and
distribute child pornography had also grown exponentially in recent years, he said. There are varying viewpoints about the extent of ‘stranger danger’ for young people who use digital technologies.

There appears to have been an exaggeration of (and hence an overreaction to) the dangers of new technology, especially those related to ‘internet stranger danger’ i.e., internet sexual predators (ISTTF, 2008). This conclusion is based on the outcomes from three American studies conducted by the Crimes against Children Research Center at the University of New Hampshire in Durham (Wolak, Finkelhor, Mitchell, and Ybarra, 2008). Two of these studies involved contacting 3,000 young internet users (10-17 years old) firstly in 2000 and then again in 2005. Another study involved 612 interviews with investigators from a nationally representative sample of agencies in the USA that deal with the internet. This conclusion has also been endorsed in the final report (released on January 31st, 2009) of the ISTTF (2008) entitled ‘Enhancing Child Safety and Online Technologies: Final Report of the Internet Safety Technical Task Force to the Multi-State Working Group on Social Networking of State Attorneys General of the United States. The ISTTF was a multi-state working group which consisted of attorneys general from many different states in the USA plus internet companies such as MySpace, Facebook, Yahoo!, Google and AOL.

Some of the more specific details of the conclusions from both the ISTTF report (2008) and the studies conducted by Wolak et al. (2008) include:

- Internet-related sex crimes are a very small proportion of sex crimes committed against young people. Sexual assaults against young people in the USA aged 13-18 actually decreased 52% from 1993 to 2005 according to official data.

- Internet predators are rarely paedophiles i.e., people who are sexually attracted to children below the age of 12 years. Internet predators tend to target young girls aged 13-17 years old or young boys of the same age who are uncertain about their sexual orientation. Young people of this age have more access to computers, more privacy and more interest in sex and romance. The offenders use internet a range of online communications to meet and develop intimate relationships with their targets. However in most cases, the young people who are targeted are aware they are conversing online with adults.

- Young people who respond to their overtures are more likely to have a pattern of risk-taking both off-line and online or a history of being abused as children.

- The main crime that follows from internet predation is that of non-forcible statutory rape, i.e., having sexual contact with a minor who is deemed by law to be too young to consent. This is a serious concern.

- Internet predators rarely trick or abduct their targets and although some pretend online to be the same age as their target they are often recognised as being older.

- Some of the targeted young people who respond to these sexual solicitations agree to in-person meetings but most appear to do so expecting to engage in some kind of sexual activity.

Many teenagers frequently interact safely online with people they don't know as part of the development of their identity. They clearly need to be made aware that it is risky to provide names, phone numbers and pictures to strangers and to talk online with them about sex. However, a study by Hinduja and Patchin (2008) analysed a publicly viewable sample of 1475 online user profiles of young people in
MySpace and found that only 8.8% revealed their full name, 57% included a picture, 27.8% listed their school and only 0.3% provided their phone number. Their conclusion was that the vast majority of the young people seemed to be behaving in a responsible way when using a social networking website.

Social networking sites have taken some steps to protect children including minimum age settings (although the age of users cannot be verified) creating special privacy controls for children, posting safety tips for parents and children on their websites, and allowing users to report misconduct. A number of laws at Commonwealth and State/Territory level have been enacted specifically to address the [use of] the internet to ‘deprav[ing] young people’ (Griffith and Roth, 2007).

Sexting and cyberbullying – commonalities

Sexting has commonalities with cyberbullying in the negative uses to which it can be put. We know from research (cited in Cross, et al, 2009) that adolescents are increasingly using technology to bully, a phenomenon referred to as covert or cyberbullying. Girls tend to use bullying via technology to ‘demean and exclude’ other girls, while boys are more apt to use it ‘to impose sexual harassment through the use of confrontational language in homophobic bullying of male peers and increased sexual harassment of females’ – which can take the form of ‘gender harassment, unwanted sexual attention, cyber stalking and sexual coercion’ (Cross, et al, 2009, 40). One can argue with conviction that some of these behaviours include the dissemination of others’ images without their permission.

The ease with which photos and videos are now produced, the speed at which they travel, combined with the permanence of multi-media once online has meant that young people’s private lives are now being shared and recorded in ways never seen or imagined before. There has been a rash of school suspensions and expulsions because of damage to reputations committed online. Sexting can be coercive and linked to ‘harassment, bullying and even violence’ (Ringrose, et al, 2012) and is one of the ways young people can use to covertly bully, harass and harm one another. Considerable research (Cross, et al, 2009) indicates that covert bullying has the potential to result in a range of harms for the victim: as a form of covert bullying, unauthorised forwarding of sexual messages for hostile reasons, we suggest that sexting can have many of the same effects, producing severe psychological, social, and mental health problems.

Of concern are the following figures.

- 40 per cent of teens and young adults say they have had a sexually suggestive message (originally meant to be private) shown to them and 20 per cent say they have shared such a message with someone other than the person for whom is was originally meant (National Campaign to prevent teen and unplanned pregnancy, 2012).
Consider the following scenarios

Scenario One

One morning, a group of students were sitting in the school library studying. One girl got up from the table. When she left, one of the boys at the table picked up her iPhone and started looking through the pictures. He found a topless picture of the girl who owned the phone. He clicked the "Post to Facebook" option, and the picture posted onto the girl’s own Facebook page. Her boyfriend and many mutual friends attend a different (private) school. At that school, the students all have laptops – and access to Facebook. Many students saw the topless picture and started making comments in a very short time after it was posted. All this happened before the girl got back to her study group. Later in the period, one of those students texted her and alerted her to what was on her site. The shame and humiliation caused by distribution of her image is intensified by the speed with which it spreads and the potential number of people who can view it.

Scenario Two

Two male students set up a site in the names of two female classmates that started with text which asserted that they were ‘horny, bi-sexual and looking for action’. A week later they downloaded pornographic images of two naked women having sex with each other, altered them so that photographs of the heads of the two female classmates were superimposed and then uploaded them. They then sent bulk emails to their friends giving them the link to the site.

Risks to wellbeing

Sexting poses emotional risks for some young people, as is portrayed through the Australian Communications and Media Authority (ACMA) short film ‘Tagged’, which makes the point that ‘what you do online could tag you for life’. The girl who posts images online without permission has her own intimate tattoo distributed vengefully. The trouble comes back to bite her, as it were, on the bum. The film ends on a note of subdued consolation. The girl who created the trouble is comforted: her intimate tattoo ‘[will] be old news soon’. But that’s not necessarily the case.

It is important for them to differentiate between ‘self-sexting (sending sexts of yourself) and peer-sexting (sending sexts of others, mostly one of your peers)’ (van her Hof and Koops, 2011). Trouble often ensues when relationships fail and private sexts become public. The highly publicised situation cited above involving Jessica Logan, victim of sexting who committed suicide when her nude picture digitally circulated throughout her school, is a case in point (Day, T., 2010). She was unable to deal with the emotional distress suffered. However, it might be argued that the boy who circulated her nude picture was also a victim of sexting. He ‘faced criminal charges for violating child pornography laws for the

1 Scenarios one and two supplied by Dr Michael Carr-Gregg
The nature of sexting is therefore contentious more in the uses to which it is put, rather than the activity itself. However these uses pose other risks to the individual – particularly young women. We know that ‘sexting is not a gender-neutral practice; it is shaped by the gender dynamics of the peer group in which, primarily, boys harass girls, and it is exacerbated by the gendered norms of popular culture, family and school that fail to recognise the problem or to support girls’ (Ringrose, et al, 2012, 7). Double standards still apply; boys who send pictures of their genitals or their involvement in a sexual act are heroic, whereas girls are maligned as ‘sluts’, ‘ho’s’.

It is easy to think of sexting as aberrant, even abhorrent and commentators from a number of discourses depict it in this way. However, commentators closer to the age of the doers tend to view this behaviour as more benign and part of an image-sharing culture in a sexually permissive society, one in which young people see sexualised images virtually everywhere they look. It is not surprising that they create their own sexual imagery, and perhaps unrealistic to expect that they live up to a higher standard than we set for the rest of society. The question arises whether a sexual image taken by a young person of him or herself can be considered pornographic. Public debate continues over whether the young people who create such images are victims or perpetrators.
The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting

Until we have a longitudinal study about the extent and effects of sexting it is not possible to estimate the effectiveness of existing awareness raising efforts and education about the social and legal effects and ramifications of sexting. There does not seem (from the figures quoted above) to be a lessening in the behaviour, in the short term, at least.

We do know that although 75 per cent of those engaged in sexting are aware it can have negative consequences, this does not deter them (National Campaign survey 2008). This indicates that awareness campaigns which are primarily prohibitive and cautionary have little impact on young people’s care for their ‘digital reputations’. Telling young people to ‘think about it’ is not effective either: ‘the research is now showing us very clearly … that the teenage brain is fully developed in the mid-20s; there’re gender differences, girls’ brains seem to be developed round about 23, boys on a good day … 25’ (ABC, 2010).

The key question then becomes what can change young people’s attitudes towards their online behaviour so that they care for themselves and other people and do not engage in risks with their own and others’ reputations?

There is a great deal of information on the internet about the online form of covert bullying as well as information on sexting: ThinkUKnow, ACMA CyberSmart, Google, Kids Helpline, Victorian Legal Aid, Berry Street, Australian Federal Police (AFP) and Cybersafe Kids represent the many resources available. ACMA and AFP also provide lesson plans for use by teachers. However, it is unclear to what extent any of these materials have translated into behaviour change. One recent study suggests there is little if any change (Hemphill, et al 2011). The study details the findings of an ongoing longitudinal study of almost 800 Victorian students, which began in 2002 and is following the students through primary and high school from age 10 to 19 and will continue as the children enter adulthood. The study showed that 72 per cent of boys and 65 per cent of girls in year nine said they had engaged in relational aggression, a form of covert bullying, which includes spreading rumours about other children or excluding children from groups.

The study has several interesting implications for the ways our society addresses negative online behaviours, including, but not limited to, sexting. Children are apt to be less vulnerable to a range of negative behaviours if they are well connected with their family in year seven and have a good peer group and less likely to be cyberbullied if they are able to control their emotions in stressful or difficult situations. In our view, this implies whole-of-society approaches to respectful and ethical behaviours on and offline, employing a diverse range of strategies and embracing home, school and the wider community.
Why campaigns are ineffective

‘Campaigns’ based on community messaging via various media or short-term, limited-scope ‘magic bullet’ programs (Beer, Eisenstat & Spector, 1990) have little long-term effect on behavioural change. Our media-driven society has created a viewing audience suspicious of messages (Postman, N., 2006) that views news as a ‘stylized dramatic performance’ or as a form of entertainment, the veracity of which depends on ‘the impression of sincerity, authenticity, vulnerability or attractiveness of the [news] reporter [or anchor]’ (Postman, 2005, 102). However serious the message, it will shortly be punctuated by a series of commercials which will at best neutralise the information or render it immaterial. Postman writes about TV. What he says applies equally to digital media. It is worth expanding:

‘[T]he idea … is to keep everything brief, not to strain the attention of anyone but instead to provide constant stimulation through variety, novelty, action and movement. You are required … to pay attention to no concept, no character and no problem for more than a few seconds at a time’. (Robert MacNeil, executive editor and co-anchor of the “MacNeil-Lehrer News-hour” (Postman, 2004, 105).

If campaigns and short-term projects lack effectiveness how can we change a society’s mores – in this case toward sexting, but also toward the smart, safe and responsible use of digital technologies more generally? Policy responses need to address the issue in whole-of-community ways, that include educative, regulatory and, as a last resort, legal to address the needs of different members in ways that are appropriately targeted specifically to reduce online risks for young people and more generally to reduce risks for vulnerable young people.

A speaker at a recent Melbourne conference (Funnell, NCAB 2012) made the point that until we see sexting as embedded within the range of young people’s behaviour practices we will be unable to address it effectively. Young people themselves do not use the term sexting, but refer to the behaviour as sending a ‘selfie’ or ‘n00dz’ to others. Funnell does not see the practice as new, but rather as the latest manifestation of the socialisation practices of young men as depicted by a number of films: the development of webcams and mobile phones has merely put the practice into everybody’s hands.

Funnell believes that society’s response so far has been to see it as deviant, address it in didactic terms and to use prohibitive and prosecutorial responses. Her view and ours, is that these issues should be addressed not in the courtroom, but the classroom, beside and within lessons about respectful relationships and personal development.
The eSmart response

Education is clearly the key to changing attitudes. The Alannah and Madeline has developed an ambitious and comprehensive approach – eSmart – with the goal of promoting digital inclusion and smart, safe and responsible use of digital technologies.

eSmart is modelled on the multi-layered SunSmart campaign, and other well-known health promotion and social change programs. Community-facing messages (e.g. ‘Slip Slop Slap’) are backed up with organisational and community change interventions. These interventions create the environments in which it is easy and normal for individuals to make smart/healthy/self-protective choices.

eSmart Schools

Developed in conjunction with RMIT University, eSmart has the best chance of bringing a greater level of awareness to young people and their parents and the wider community including senior Australians. Like SunSmart, eSmart initially is anchored in schools, with a system to guide schools to introduce the right policies and practices that ensure their teachers, students, and families are equipped to be ‘eSmart’, a concept that encourages people to be smart, safe and responsible online and develops digital literacy and citizenship.

The eSmart Schools Framework and system designed to help schools change their culture and behaviours in relation to the use of digital technologies and enhance wellbeing. It:

- is a whole-school approach
- embraces technology’s benefits
- reduces students’ and teachers’ exposure to risk
- improves wellbeing and enhances relationships

eSmart encourages and supports the development of technology-rich learning environments where student voice and student-led activities are central. It reaches out to the parents and other family members, as well as the wider community through a dedicated domain of activity.

eSmart is not a system, framework or philosophy that works or interacts directly with children and young people. It is a model of school/organisational change and continuous improvement that works principally with school leadership and staff through the development of appropriate organisational structures, policies, relationships, pedagogy and curricula to improve the wellbeing and digital know-how of all members of its community. It is flexible and able to be adapted by settings as diverse as large southern state private schools to schools in remote indigenous locations.

eSmart relies on a shared workload and involvement of all key groups in decision making and implementation. It is considered essential that students, parents and other community members participate and that their ideas are respected.
eSmart Libraries

Recently, work has commenced on eSmart Libraries. Public libraries provide an excellent opportunity for supporting a digital inclusion strategy. Public libraries are by far the most heavily used community agencies in Australia. More than half of the population are public library members, and make over 110 million visits per year to 1,500 public libraries across Australia (ALIA 2009).

Computers are now the biggest visible sign of change in libraries today. Virtually every library in Australia now offers internet access. Latest figures show that libraries provide technology access to over 300,000 users per week (ALIA, 2009).

Public libraries provide a range of services across the age spectrum, from homework support to one-to-one help for seniors and other new users, including migrant groups. For those without computer or internet access in the home they are an important free or low-cost option.

It is expected that the rollout of the National Broadband Network will significantly improve library access to the internet and local governments, that are the major funders of public libraries, are cognisant of the need to provide improved access to technology within libraries as their already important role in providing access to technology for the Australian community is becoming increasingly significant.

eSmart Libraries will support the safe and responsible internet use of the whole spectrum of library users, as many users, including senior Australians are vulnerable to a range of risks in the online environment.

eSmart Libraries is a community capacity building strategy, equally applicable to all communities, including remote and indigenous ones. It will deliver:

- a framework for implementing a whole-of-organisation approach
- a dedicated website providing a central point for all the best information and case studies available
- evidence-informed strategies and approaches that have been evaluated for effectiveness
- a system for libraries to track report and share their own progress and activities
- acknowledgment of good practice through signage and other promotional materials when libraries reach set milestone.

Introduction of this framework will increase the capacity of library staff to support their community to become more skilled in the positive use of digital technologies.

A key attribute of the eSmart library strategy is the ability for each library community to adapt the framework to suit its own needs. The initiative avoids individual settings having to ‘reinvent the wheel’. It provides a system/framework and immediately accessible set of tools to enable libraries (or schools) to become cyber-safe. An eSmart library, whether it is a library in a remote indigenous community or an inner city library within a multicultural community is well-equipped to help its community participate in the world of digital technologies in smart, safe and responsible ways.

We are also in the early days of eSmart Homes: a framework to guide children, adults and seniors to the resources and information they need to know about cybersafety. The eSmart framework supports and guides families and households to implement cybersafety best practices, ensuring they can reap the benefits of technology while keeping safe online.
The other component of a comprehensive social change strategy like eSmart is a social marketing campaign to promote the desired cybersafety behaviours. The SunSmart campaign promoted “Slip Slop Slip” and the eSmart campaign aims to promote “smart, safe and responsible” use of technology.
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:

- 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.

By The Honourable Alastair Nicholson, AO, RFD, QC.

We think that existing criminal offences and the application of the sex offenders register operate in an unsatisfactory way when applied to children and young people.

Existing laws are broadly intended to protect children from the activities of paedophiles and others who obtain sexual satisfaction and sometimes financial reward from the sexual abuse and exploitation of children and the dissemination of images or messages depicting it to others. Willing recipients of such material are treated as having the same criminal responsibility. Offences of this nature are rightly regarded as being very serious and carry heavy penalties including the placing of the names of the individuals involved on the sexual offenders register.

Children under the age of 10 years bear no criminal responsibility but the same does not apply to children between 10 and 14, who are criminally responsible if it can be proved they knew that their actions were wrong. Children between 14 and 18 bear full criminal responsibility.

Unfortunately, the laws relating to child pornography are expressed in very broad terms which cause them to have the effect of targeting conduct by children and young people that were never intended to be dealt with in this way. The problem stems from the fact that the laws were largely enacted prior to the enormous expansion of the use of electronic media, particularly social media and its widespread availability to and use by young people, including quite young children.

This makes many children and young people very vulnerable. Young people who are barely over 18 are likely to be caught in the same net because not uncommonly sexting may occur between a person who is barely an adult and another who is almost one.
Although the situation can vary between individual children the age group concerned involves burgeoning sexuality, often involving quite advanced sexual behaviour between children from age 12 onwards. Usually these children have access to the electronic media through computers, mobile phones etc. and it is not uncommon for them to send sexually explicit messages and images to each other and disseminate them to others. Those so acting often do not know that it constitutes a criminal offence and in any event lack the degree of maturity to form a proper judgment as to whether the behaviour in question is appropriate or otherwise. Even when it is inappropriate any social evil associated with this behaviour is on a much lesser scale than the conduct at which these laws are aimed.

It is quite wrong for these children to be criminalised. While it is obvious that their names should not be placed on a sexual offenders register, the mere grant of a discretion to a court to not place their names on such a register is insufficient to overcome the problem. Instead the laws need to be redrafted in order to achieve their real purpose rather than operate as a catch all as they do at present.

Turning to the specific issues raised, we make the following comments.

We consider that where adults create, or consent to the creation of, a message or image of adults for their own private use and/or the use of one or more other specific persons it is difficult to see why this should constitute an offence.

If one or other of the participants further disseminates the material to others without the consent of the participants, this is a serious breach of privacy which arguably should give rise to actions for an injunction and damages. It is also arguable that it should be treated as a criminal offence also, albeit not one of such gravity as those associated with the dissemination of child pornography.

In the case of children creating or consenting to the creation of such sexually explicit material, then depending upon the age of the child/children involved it is again difficult to see why this should be an offence if the message or image is for their own private use and/or the use of one or more other specific persons who are also children.

If a child is below a certain age, (say 14) it would be appropriate for the law to provide that the child is incapable of such consent and an offence would be committed.

If it is done with the involvement of an adult, this should normally constitute an offence by the adult. However where the adult is for example under the age of 21, then other considerations should apply for the reasons mentioned above.
Where, in the case of children there is consent, but the message or image is disseminated more broadly than was intended, then the same situation should apply as in the case of adults.

What is needed is to design the law so that young people and children who are doing no more than expressing their sexuality should be exempted from its operation, or, if it is to remain an offence, it should be a minor offence.

Other possible ways of achieving this could be by amending the definitions of the relevant offences by exempting young people who are under a specific age where the person depicted is over a specific age. There is a precedent for such a provision in some provisions relating to unlawful carnal knowledge where an offence was regarded more seriously if committed by a person over a certain age in respect of a minor under a certain age.

For example there might be a provision exempting people who create or consent to creation of the message, image etc. who are themselves are under the age of 21 (18?) at the time of the creation etc., provided that the person(s) depicted are over the age of 16 (14?). The choice of the appropriate age is a matter for further discussion if this approach is taken.

Another or allied approach would be to more narrowly define the ingredients required to constitute the major offence and create a range of lesser offences of varying seriousness. There are precedents for this approach in relation to other laws; e.g. the varying grades of assault.

There is a strong case for the revision of Commonwealth and State laws to bring them into line with the realities of the electronic age and for this purpose to define how they should apply to children and young people. The retention of the present situation can only produce injustice and in particular to bring children and young people who have not committed any serious criminal offence within the purview of the criminal law.
Resources


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Cyber-safety expert, Specialist Consultant at the Centre for Strategic Education with 30 years’ experience in education

Helen Versey
Victorian Privacy Commissioner

Hugh Stephens
Youth Advisory Group, Victorian Privacy Commission and medical student

Dr Amanda Fraser
Department of General Practice, University of Melbourne

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