APPENDIX ‘SEXTING’: PREVALENCE AND OPINION IN ADULTS

SAM PANG (EDITOR), HUGH BASTIAAN, ALI BESIROGLU, ALICIA BOOTH, JAMES CLARIDGE, JANE GREGORY, SASHA LYTAS, FIA WALKER, THOMAS WATKIN

ASSOCIATE PROFESSOR MOIRA PATERSON (CHIEF INVESTIGATOR)

This study was undertaken as part of the Monash University Law Students’ Society’s Just Leadership Program.

Introduction

Technical advancements in electronic communication have created modern issues with significant consequences. Sexting is one such phenomenon. ‘Sexting’ is a portmanteau of the words ‘sexual’, ‘sex’ or ‘sexy’, and ‘texting’, otherwise known as mobile phone messaging. However, ‘sexting’ can be defined more broadly as “the creating, sharing, sending or posting of sexually explicit messages or images via the internet, mobile phones or other electronic devices by people, especially young people”.¹

Sexting becomes controversial in two scenarios. The first is where the picture is unwanted by the subject, sender or recipient. The second is where those under 18 years old are involved as the subject, the sender or the recipient, due to issues of capacity to consent, child abuse, sexual exploitation and the image being classified as child pornography. The ability to record and disseminate this information can have the effect of ‘transforming fleeting youthful indiscretions into lasting mistakes’².

Studies into sexting have focused on youths or have been small scale. The organisation Beatbullying conducted a 32-question cross-sectional study of 2 094 persons aged between 11 and 18 years old on sexting and sexual bullying distributed through secondary schools in England.³ The study found 25% of participants had received offensive sexual images, 55% of which were issued via mobile phone, and 85% of which were sent from someone the recipient knew and largely from the opposite sex.

The oft-quoted cross-sectional study in 2009 by CosmoGirl.com, the National Campaign to Prevent Teen and Unplanned Pregnancy, and Teenage Research Unlimited (TRU) (‘the Cosmogirl study’) surveyed 653 teenagers, aged 13 to 19 years old, and 627 young adults, aged 20 to 26 years old, on sexting behaviours. The survey stratified participants according to the U.S. Census and weighted data according to demographic composition of teens and adults. It found 20% of teenagers and 33% of young adults send or post nude or semi-nude pictures or video of themselves.

However there are no large studies on the prevalence of sexting amongst adults. This information is important when examining the operation of the criminal law on an adult found to have engaged in sexting involving minors. No studies exist examining the opinions of the adult population on the punishment of sexting involving minors.

Most jurisdictions deal with sexting involving minors using pre-existing laws on child pornography. In states where a Sex Offender Register exists, this may result in mandatory registration. This is the case in Victoria, Australia, where this study is undertaken. No existing study examines the community perception of whether mandatory registration on a Sex Offender Register is appropriate for adults found guilty of conduct constituted by sexting involving minors, including whether a judicial discretion regarding registration ought to exist.

Objectives

The first part of this cross-sectional study inquires into the prevalence of sexting and sexting-like behaviours of people 18 years old and over. The second part seeks the opinion of participants on the legal treatment of persons engaging in sexting involving those under 18 years old, with particular emphasis on Sex Offender Registration.

The study is concerned with those residing in Victoria, Australia, with a view to informing the report Mandatory Registration for ‘Sexting’ Offences which will be submitted to the Parliament of Victoria’s Law Reform Committee in September 2011. However we believe the questions and results are applicable to at least the rest of Australia, and possibly also the United Kingdom and the United States.

We aim to recruit a significant proportion of participants from the university student population. We acknowledge this group is not representative of the general population, however the age group of this population makes them familiar with the issue, in touch with how sexting is culturally regarded amongst both minors and adults, and the most likely age to participate in sexting to minors.

---


5 Crimes Act 1958 (Vic) s 68, 69; Sex Offenders Registration Act 2004 (Vic) ss 3, 6, 7, 62(2); sch 2.
Methods

An anonymous, 8-minute, 31-question, cross-sectional survey was developed utilising the online software SurveyMonkey.\(^6\) The survey was in English only. Care was taken to avoid identifying and self-incriminating questions. The link to the survey was distributed by the administrators through webpages and Facebook groups, including those of university student societies of law students, medical students and arts students at Monash University, the Monash University Law Students’ Society’s Just Leadership program email, the Monash University Faculty of Law update email. It was also advertised in posters at Melbourne University, the Royal Melbourne Institute of Technology and Deakin University.

The survey was designed to exclude anyone under 18 years old. In addition, the explanatory statement asked participants to discontinue completing the survey if they became distressed while completing it. To minimise the risk of causing emotional harm, no particulars about past experiences were asked, questions were limited to very specific scenarios less likely to cause distress to former victims or perpetrators, and details of counselling services were provided to participants. To minimise the risk of encouraging criminal behaviour, we emphasised the current illegality of sexting involving minors. We also warned participants that any identifiable information provided to us concerning involvement in such conduct (for example, via the complaints mechanism) would be forwarded to the police.

The online survey software compiled data automatically. A student researcher collected it in Australia. The survey was anonymous and no identifying information or contact details were obtained. Only the researchers had access to the original data, which will be retained in the Monash University Faculty of Law for at least five years. Participants were advised that they could send any complaints about the research to a student researcher or to the Monash University Human Research Ethics Committee and that they could request a copy of this present summary paper.

This study received original approval from the Monash University Human Research Ethics Committee on 9 September 2011 and commenced on 21 September 2011. Results were collected 29 September 2011 in order to have these results ready for submissions to the Victorian Law Reform Commission and the Attorney-General of Victoria.

Results

Participants excluded

272 responses were recorded. Four responses were excluded due to the participant being under 18 years old.

Of the 268 left, one participant did not consent to participate in the survey according to the terms of the explanatory statement. Four participants (presumably including the two who did not provide appropriate consent) did not answer questions 2 to 6. There was progressive attrition with drops in response rates for every new page of questions, ranging from four participants not completing questions 2 to 6, to 53 participants not completing questions 30 to 31. Apart from the four participants who failed to complete question 2 on age, the results have been reported using an ‘intention to treat’-like analysis. That is, ‘no comment’ selections and participants that did not answer a question have been included as a separate category in determining the percentages. These two populations will make up the additional percentage listed in the results.

Demographics

37.9% of participants were male, 61.7% female and one participant listed as other.

The mean age of participants, with those under 18 years old excluded, was 23 years old, the median and mode age 21 years old, the oldest age 64 years old.

Camera phone usage

All results in this section were commented on, except those excluded. 96.6% of participants owned a camera phone. 88.6% of participants had sent an image of any content via mobile phones before, 71.6% between once a week and once every six months and 11.4% every day to every couple of days. 11.4% had never sent an image via mobile phone. 92% had received images via mobile phone, 73.5% between once a week and once every six months and 12.5% every day to every couple of days. 8% had never received an image via mobile phone.

Sexting behaviour

88.3% of participants had come across the term sexting before, 6.8% had not and 4.9% did not comment. 65.9% knew someone who had sent a sexually explicit, sexually suggestive or nude (‘SESSON’) image of themselves to a third person via mobile phone and 28.8% did not.

28.4% had sent at least one SESSON image of themselves via mobile phone to another. 18.1% had done so three or more times and 3.8% between 21 and 200 times. 66.3% had not sent a SESSON image.

18.9% had sent at least one SESSON image by other forms of electronic communication, including email, Facebook and Twitter. 9.8% had sent a SESSON image three or more times and 1.5% between 21 and 100 times. 75% had not sent a SESSON image via another form of electronic communication.
40.5% had received at least one SESSON image of someone else via mobile phone. 23.4% had received a SESSON image from the same person three or more times and 4.9% between 21 and 200 times. 53% had not received a SESSON image.

39.4% had received a SESSON image by other forms of electronic communication. 22% had received such a SESSON image three or more times and 3.4% between 21 and 100 times. 54.9% had not received a SESSON image via some other form of electronic communication.

After receiving a SESSON image, 5.3% of all participants had sent it on to a third person. One participant had done so between 21 and 50 times and another more than 201 times. 86% had not forwarded a SESSON image to another person.

11.4% of participants had received at least one SESSON image of a friend from a third person via mobile phone. 4.5% had received such a message three or more times and one participant between 51 and 100 times. 82.6% had not received a SESSON image of a friend from another person.

13.3% had received such a SESSON image by other forms of electronic communication. 3.8% had received one three or more times and two participants between 21 and 100 times. 80.2% had not received such a message via other forms of electronic communication.

After receiving a SESSON image of a friend from a third person, 3.4% of all participants had sent it on to a fourth person, one participant between 16 and 20 times. 90.2% had not done so.

_Sexting involving minors_

77% believed sexting was appropriate in some circumstances and 18.2% did not.

51.5% believed an adult sending a SESSON image of himself or herself to a person under 18 years old was a crime and 42.4% did not. 87.9% believed adult sending a SESSON image of himself or herself to a person under 16 years old was a crime and 6.1% did not.

75.8% thought that an adult who sends or receives SESSON images to or from persons under 18 years should be put on the Sex Offender Register only sometimes. 8.7% thought registration should always occur and 9.5% thought registration should never occur.

3.8% thought that the legal consequences of an adult sending a SESSON image of themselves to a person under 18 years old should include mandatory placement on the Sex Offender Register, whereas 33.7% thought that a judge or magistrate should be able to decide whether or not to register them. 49.2% suggested that no sentence should include registration on the Sex Offender Register, with those responses ranging from 2.3% suggesting imprisonment alone, 24% a fine, 19.7% a warning and 3.4% no legal consequence.
42.8% believed it was a crime for an adult to receive and keep a SESSON image of a person under 18 years old with their consent and 43.9% believed it was not. 75.8% believed it was a crime to keep a SESSON image of a person under 16 years old and 11% believed it was not.

2.7% thought that the legal consequences of an adult receiving and retaining a SESSON image of a person under 18 years old should include mandatory placement on the Sex Offender Register, whereas 21.6% thought that a judge or magistrate should be able to decide whether or not to register that person. 62.5% suggested the sentence should not include registration on the Sex Offender Register, with those responses ranging from 4.2% suggesting imprisonment alone, 24.2% a fine, 20.1% a warning and 14% no legal consequence.

55.4% believed judges should have a choice in deciding whether or not to place a person under 18 years old on the Sex Offender Register for sexting to another minor and 31.1% did not. 55.3% believed the judge should have such a choice for a person under 18 years old who has sexted to an adult, and 31.4% did not. 72.3% believed a judge should have this choice for an adult who has sexted to a minor and 14.4% did not. Somewhat strangely, 51.5% believed a judge should have this choice for an adult who has sexted to another adult and 35.2% did not.

*Sexting involving minors discretionary factors and current law*

Participants were asked to comment on the situation where an adult receives and retains a SESSON image of a person under 18 years and the factors a judge should take into account favourably to the accused in deciding whether or not to put that adult on the Sex Offender Register. Responses concerning relevance of suggested factor were as follows—

- That the adult and the minor in the image were married (75.8% - yes; 7.6% no).
- That the adult was generally of good character with no previous criminal record (73.8% - yes; 9.5% - no).
- That the minor in the image was over 16 years old (73.5% - yes; 9.8% - no)
- That the adult was under 21 years old (71.6% - yes; 11.7% - not)
- That the minor in the image consented to the adult receiving the image (68.9% - yes; 14.4% - no).
- That the adult did not distribute the images to other persons (68.2% - yes; 15.2% - no).
● That the adult and the minor in the image were in a relationship (68.1% - yes; 15.2% - no).

● That the images of the minor were sent by that same minor (67% - yes; 16.3% - no).

● That no psychological harm was caused to the minor (65.5% - yes; 17.7% - no).

● 78.8% (or 94.5% with the non-response answers omitted) considered any other relevant circumstances of the case could be important (78.8% - yes; 4.5% - no).

Scenario 1 asked participants to comment on the following real-life case: “An 18-year old male was sent 4 uninvited images via text message of girls aged 15 to 18 years old, topless or in underwear. The ‘sexts’ were accidentally transferred to his computer. He pleaded guilty to possessing and making child pornography and received a good behaviour bond without conviction. He was however required by law to be registered on the Sex Offender Register for 8 years. 71.2% thought that sex offender registration in these circumstances was too severe, 9.1% thought it was appropriate and 1.1% thought that it was too mild.

Scenario 2 asked participants to comment on the following real-life case: “A 17-year old couple filmed themselves having sex. They broke up after the male turned 18, and he emailed 2 still images to 3 friends. He was charged with making and transmitting child pornography. He pleaded guilty and received a $1000 fine but was placed on the Sex Offenders Register for 8 years. 47.3% thought that sex offender registration in these circumstance was too severe, 31.8% thought that it was appropriate and 2.3% thought it was too mild.

Discussion

Selection bias

The term ‘sexting’ is used in the title, perhaps making the survey less attractive to those unfamiliar with the term. The participants’ knowledge of the term sexting was high at 88.3% and it is unknown if this is reflective of the general population. Research is needed to investigate whether this particular bias exists.

A significant proportion of participants were recruited online, including through social networking sites like Facebook, notwithstanding recruitment via posters. Further, the survey was undertaken using online software. It has been suggested that persons that engage in sexting are at an estimated two- to four-times more likely to complete online surveys when compared to telephone surveys, due to both showing a degree of comfort with sharing information using technology, and perhaps indicating
a certain personality type. However this phenomenon has been challenged and online surveys defended, as online surveys are more efficient in recruiting young adults generally, have a greater percentage pickup-rate from invitation to completion, and they are more comfortable for participants when asking sensitive questions. Some results withstand the two- to four-times estimate. However selection bias could have been corrected by using a Heckman correction, for example in stratifying participants according to census data or weighting data to reflect population demographics.

As previously recognised, university students, who represent a significant proportion of survey participants due to recruitment methods, are not representative of the general population, including due to age. However, the Cosmogirl study found a both a higher proportion of sexting in 20 to 26 year olds than in teenagers. The mean age of 21 years old falls within this age bracket.

Slightly higher percentages of sexting behaviour were expected as compared to the studies on minors due to the adults likely owning camera phones for a longer duration, having greater freedom with mobile phone usage and having spent a greater amount of time in sexual maturity. This effect would be balanced by sexting being a new phenomenon with aspects particularly attractive to youths.

**Attrition bias**

As discussed, results have been reported using an ‘intention to treat’-like analysis to account for the effects of attrition and ‘no comment’ selections, with the exception of the two participants who did not give consent and the further two who answered no further questions. This negates the effects of study dropouts, low response rate, withdrawal and protocol deviators on causing the results to be bias.

**Definitions and gender splits**

The study uses the term ‘sexually explicit, sexually suggestive or nude’ (or ‘SESSON’) in regards to images. It is noted there is difference between a sexually suggestive image and one that is sexually explicit or nude. This phrase was chosen to be broad as to include all images that could be regarded as child pornography, were the subject of the image a minor. In Victoria, this means engaging in sexual activity or depicted in an indecent sexual manner or context. The term semi-nude was not included due to some critics suggesting the sending of semi-nude images is not unusual behaviour due to this being very acceptable in media culture.

---


9 Crimes Act 1958 (Vic) s67A.

10 Terry Humphreys, Assistant Professor of Psychology at Trent University, Peterborough, Ontario, 2009. Statement in Carl Bialik, Which is epidemic -- Sexting or worrying about it? (2009) Wall Street
1.6 times as many females responded to the survey as males. The Cosmogirl study found girls were more likely to send or post nude or semi-nude pictures or video of themselves than boys. This study did not further stratify questions by sex or gender, including in the subject of the images.

**Participant behaviours**

A very high proportion of participants owned a camera phone, suggesting camera phones are now almost ubiquitous. A high proportion had sent and received an image via mobile phones.

The question on knowledge of a third party’s sexting was intended to normalise sexting and thus encourage disclosure about the participant’s own sexting.

The above statistic indicating that 28.4% of participants had sent a SESSON image of themselves to another person by mobile phone is similar to the finding of 33% by the Cosmogirl study. In fact, the 28.4% we found could be closer to 33% found by the Cosmogirl study, as the Cosmogirl study collated sexting by mobile phones with sexting by other forms of electronic communication, whereas our study split these. There could be a portion of the 18.9% found in this study that had sent a SESSON image of himself or herself to another via a different form of electronic communication that had never sent such an image by mobile phone. Further, it is unknown whether the Cosmogirl study adopted an ‘intention-to-treat’-like analysis\(^\text{11}\) of results, as our study did, so the ‘per-protocol’-like analysis statistic is 30%.

It is interesting that participants were more willing to share a SESSON image via mobile phone rather than via other forms of electronic communication. This may be a result of ease of technology, or there may be a perception that mobile phones are a more secure form of communication.

The existence of several participants involved in very frequent sexting was unexpected. This in part could account for the discrepancy between the higher proportion of those that had received SESSON images, and the comparatively lower frequency of the participants’ own sexting.

The statistics on those that had received SESSON images have no counterparts in the Cosmogirl study, and were surprisingly high at 40.5%. By comparison, the finding that only 5.3% of participants had shared a received SESSON image with a third party are at odds with the suggestion in the Cosmogirl study that 24% of young adult women and 40% of young men say they have had a nude or semi-nude image, originally meant for someone else, shared with them.

---

\(^{11}\) As discussed, the ‘intention-to-treat’-like analysis meant that the participants that responded with a ‘no comment’ answer or failed to respond were still included in the percentages, as to exclude attrition bias. This means percentages are lower than if comparing the results of just those that responded, a so-called ‘per protocol’-like analysis.
Sexting involving minors

The participants’ knowledge of the illegality in Victoria of an adult retaining a SESSON image of a person under 18 years old was poor. It is possible that the question could have been read by some participants as to requesting an opinion as to whether it ought be illegal, rather than knowledge whether it was illegal. The larger split for persons under 16 years could thus represent a misunderstanding of the law, or a greater value placed on protecting minors under 16 years old. It is noted that, strictly speaking, under 16 years old is also under 18 years old, so there may have been confusion where the latter was regarded as meaning 16 and 17 year olds alone.

The knowledge, or belief, that an adult sending a SESSON image of himself or herself to a person under 16 years old is illegal was excellent. 51.5% of participants believed that sending such an image to a person under 18 years old is illegal, this being an uncertain area of Commonwealth and Victorian law. It is interesting that this percentage is higher than the 42.8% who believed an adult receiving a SESSON image from a minor was illegal, this being a legally certain offence.

The following few questions were designed to overlap so as to allow for an assessment of consistency between answers.

Only a limited spectrum of options was available to participants regarding proposed sentences for sexting involving minors. Notably, Sex Offender Registration was given as an option only when paired with imprisonment. This was done deliberately to show the realistic options, being those involving imprisonment. Sentencing most often depends on the circumstances of the case, which could explain the high percentages in the options favouring something less than imprisonment. The participants’ lack of knowledge of the illegality of sexting to persons under 18 years in Victoria may account for the no legal consequence responses or these could be a manifestation of the participants’ opinion. It is noted the term ‘maximum sentence’ was not included, being the concept that was sought.

21.6% favoured giving a judge choice as to placement on the Sex Offender Register in respect of an adult who retains an image of a person under 18 years old. This relatively higher result is consistent with the results from the question specifically concerned with judicial discretion with the Sex Offender Register and this offence, where imprisonment was not discussed.

The questions on whether a judge should have discretion for placement on the Sex Offender Register for an adult found to have sent a SESSON image of himself or herself to a person under 18 years were utilised for two reasons. It is noted that currently mandatory registration on the Sex Offender Register does not apply to this scenario and indeed it is legally uncertain whether it is a crime. The questions allowed comparison with the perception of sentences for adults receiving images from minors, as to examine whether the community perception of what is the graver offence accords with the legal treatment of these two offences. It is interesting that the participants perceived sending a SESSON to a minor as being more serious than receiving a SESSON from a minor. The questions also made data available should
this conduct become illegal with more certainty and the Sex Offender Register applied.

Negative answers to discretion questions 25 to 28 are important as no discretion could mean Sex Offender Registration should be mandatory or it could mean that offenders should not be able to put on register at all. This confusion is evident, as the results appear not to make sense, including question 28 where it has been previously said in the survey that an adult sexting to another adult is not illegal, assuming consent is not in issue. Despite this, the statistics still showed the considerable support for judicial discretion to exist.

**Discretionary factors and scenarios**

It is interesting that all discretionary factors received a highly positive response, particularly that other relevant circumstances ought be considered. Greater weight was attached to the minor and adult being married than to them merely being in a less formal relationship. In line with legalistic views of the criminal law, less support was given to the harm caused to the minor and to factors that relied on the minor’s consent or actions. It is interesting that ‘the adult is under 21 years old’ received so much support, given this factor would ordinarily have no significance.

The majority of participants felt Sex Offender Registration was too severe in both scenarios. It is unknown why participants were more sympathetic to scenario 1 than 2, however the difference could be the accidental storage and distribution by the offender in scenario 1 compared with the deliberate sharing of the images in scenario 2.

**Conclusion**

Sexting is a common. The results of this study on prevalence support the conclusions found in the Beatbullying study and the Cosmogirl study, albeit in an older population. Larger studies are needed to confirm this prevalence, including with study designs that recruit a wider age range of participants through advertisement other than online and which do not contain the word ‘sexting’ in the title. Such studies would benefit from a Heckman correction or similar tools that aid in formulating generalisations from study results.

Greater community education is needed regarding current laws on sexting involving minors. This is important if this behaviour is to be prevented and to avert injustices caused by mistake as to law.

The sending of a SESSON image by an adult of himself or herself to a person under 18 years old is perceived as more serious than receiving and retaining of a SESSON image of a person under 18 years old. This is despite it being legally uncertain whether sending such an image is in fact an offence, and offences governing this conduct not currently being subject to mandatory registration.
Judges ought have discretion as to those they choose to put on the Sex Offender Register in cases involving sexting to minors. This discretion could include factors such as whether the adult and minor are married, whether the adult was generally of good character, whether the minor in the image was over 16 years old and any other relevant circumstances of the case.

Acknowledgments

The student researchers acknowledge Associate Professor Moira Paterson at the Monash University Faculty of Law for her help with ethical approval, her willingness to act as the Chief Investigator for the project and her excellent editing skills. We thank Janet Cohen of the Monash University Research Office for her expedient help with ethical approval. We acknowledge Julianna Marshall and Matt Hearn of the Monash University Law Students’ Society’s Just Leadership Program for their leadership with the Program that lead us to this study.

Associations

All nine student researchers were involved in the Just Leadership program as students, are members of the Monash Law Students’ Society and are undergraduate students studying with the Monash University Faculty of Law. Five student researchers are members of the Monash University Arts Students’ Society. Sam Pang is a member of MUMUS. Coercion to complete the survey was minimised as we emphasised in the explanatory statement that participation was voluntary, that student researchers would not have knowledge whether or not any particular person had completed the survey, and that we would prefer for members not to tell us if they have completed the study.