

Senate Select Committee on Cyber Safety

Inquiry into sexting by minors

AFP Submission

July 2013

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

Mandated reporting requirements, enhanced community awareness and the continued penetration of technology has meant teenagers in Australia are increasingly being reported to police for “*sexting*” — using mobile phones to create and distribute sexual images of themselves, their girlfriends, boyfriends and others.

Intimate pictures (also referred to as “selfies”) and videos can be distributed at a rapid rate and can be disseminated extensively. The distribution of a personal or sexual image can have immediate detrimental consequences for a young person when it is distributed to unintended recipients.

Further to this, the permanency of material posted online means it can have longer term consequences if that image reappears later in the young person’s life, as they attempt to enter the workforce, with many employers conducting meta data searches to examine a person’s digital footprint. The legal consequences can be just as dramatic, inadvertently staining young lives, well into adulthood.

Unfortunately for some young people, capturing the image, and pressing the ‘send’ button may at first seem like a bit of fun, but is often carried out with the absence of forethought of the consequences of their actions.

The realisation that once an image enters cyber space and it cannot be deleted, instead it is likely to be further transmitted locally, nationally and even across the world, is not something some young people comprehend. Young people need to ask themselves the question: “If you would not be comfortable showing certain photos at the dinner table or to your grandparents, why would you be comfortable sharing them online, sometimes with people you don’t even know?”

As part of the Australian Federal Police’s (AFP) responsibility in protecting children and young people and making them aware of the potential misuses of technology, it established a dedicated Cyber Crime Prevention Team in March 2008 within the High Tech Crime Operations (HTCO) Portfolio.

The main purpose of HTCO’s Cyber Crime Prevention Team is to develop and implement online crime prevention strategies (internal and external to the AFP), through education and awareness raising, and to empower the Australian community to safely navigate cyberspace.

A specific awareness raising product created by the AFP to address the issue of sexting was an educational video as part of the ThinkUKnow cyber-safety program. The video was launched by the then Minister for Home Affairs and Justice, the Honourable Brendan O’Connor during National Child Protection Week in September 2010.

The video is designed to raise awareness of the issue of creating and sending inappropriate images via mobile phones, known as sexting. The anti-sexting video “Megan’s Story” is available for downloading from the ThinkUKnow website www.thinkuknow.org.au and the ThinkUKnow YouTube Channel www.youtube.com/user/ThinkUKnowAUS.

The aim of the anti-sexting video is to depict a teenager’s experience of sexting and to explore the ethical decisions her peers are presented with in response to receiving the image. It highlights that once something is created in a digital

format and then shared, you lose control over who sees it and what they do with it.

The awareness raising video targeting the issue of sexting is the first of a suite of resources around sexting, targeting those more likely to be pressured into sending these images. The accompanying student and teacher lesson plans examine gender stereotypes and the role of the bystander in sexting activities in order to elicit students' critical thinking of this behaviour, and to create an understanding of respectful behaviour (see Appendix A for a copy of the lesson plans).

As at 9th July 2013, this video has had over 729,000 views and the AFP has received interest from overseas organisations to use this video to educate young people.

The AFP's HTCO Cyber Crime Prevention Team has always viewed the issue of posting inappropriate images as a primary concern amongst secondary school children and anecdotal reports on the incidence of sexting continue to be received on a regular basis, although few result in any formal action by the police (to be discussed later on).

Whilst new technology can be one part of the solution in addressing the problem of sexting, in some instances it can be considered as contributing to the issue. The development of some new applications for smartphones may be creating a false sense of 'control' in relation to the creation and sending of sexualised images. Youth have mastered how to override the 'temporary' existence of images that are sent through some applications, resulting in the sexualised images that are sent being retained by the receiver, thus enabling further sharing and distribution. There are also applications which allow you to save those 'temporary' images.

In order to address the issue of sexting, a multi-faceted approach is required whereby young people are educated on risks associated with sexting. They need to be made aware and understand that in some instances, those 'innocent' images which have been created and shared on the internet, have actually ended up in the collections of online child sex offenders.

Youth need to understand that this activity may adversely impact on their reputations and their 'brand' now and into the future. Most importantly, youth need to recognise that the creation and sending of inappropriate texts and images of a sexualised nature may constitute child pornography.

Sexting may also be considered a form of cyber bullying when nude images are uploaded and shared on the internet. The creation and dissemination of these images can trigger a school's mandatory reporting obligations bringing the matter to the attention of Child Protection Services and potentially the Police.

Education

Education needs to focus not only on those youth who are creating the inappropriate images/ texts and distributing them, but also on the responsibility of those who receive the texts/images, and who then decide to further distribute the inappropriate images. They are contributing to the issue, and should therefore be part of any solution.

Cyber Safety

The AFP's HCTO Cyber Crime Prevention Team plays a significant part in the education of youth on online risks including sexting. The AFP's cyber safety 'Friends and Followers 101' presentations are delivered to young people aged primarily between 11 and 18 (although on occasion, the presentation has been delivered to younger age groups). These presentations seek to educate children on the risks they can encounter online, exploring issues such as sexting, online grooming, cyber bullying, social networking, digital footprints and the importance of protecting their reputations and 'brand'. Importantly the Team develops solutions for what children can do to protect themselves and what to do if things go wrong.

In addition to the social and legal ramifications of sexting, one of the key messages delivered to youth is "Think before you post". The presentations also focus on delivering messages to the bystander – those who receive the image and are forwarded the image. There are three key messages:

1. It's not their image
2. It's not their face/ body
3. Therefore, it is not their choice or decision as to who to share it with.

Members from the Cyber Crime Prevention Team have attended and presented to 198 school and sporting groups in 2012 constituting 21,532 young people. In 2013, as at 7th July, the Team has delivered 132 presentations with an outreach of nearly 15,000 young people.

In some cases, the attendance of the Cyber Crime Prevention Team to present at a school has been a direct result of instances of sexting within the school. There has been about half a dozen instances whereby the Cyber Crime Prevention Team has presented at a school as a direct result of a sexting incident. In addition, ACT Policing members have recommended a cyber-safety presentation as a proactive response to address the issue to schools in the ACT. The school will then re-schedule these presentations on an annual basis.

Case Study:

A young girl aged 13 years sent a 'selfie' to her boyfriend. They broke up, and years later she finds out that the image is now being used to advertise a pornography website.

Case Study:

A group of young male students coerced two young female students from a different school to send sexually explicit images of themselves via mobile phones to one of the boys in the group. The girls sent the images under the understanding they would receive similar images in return from the boys. The boys did not send any images in return. The boy then distributed the images of the young girls to the other boys and to boys from another school. The boys' school became aware of the distribution of the images and contacted the Police. As part of the resolution of the matter, cyber-safety presentations have been delivered to most year levels at both schools and the students involved have been spoken to by Police. Although the matter has yet to be finalised, no charges are pending.

ThinkUKnow

The ThinkUKnow cyber-safety program is aimed at bridging the knowledge gap that exists between adults and young people when it comes to the internet and mobile technologies and to encourage a more open dialogue between them.

ThinkUKnow is a partnership between AFP, Microsoft and is proudly supported by ninemsn, DATACOM and the Northern Territory Police Force. It is anticipated that by the end of the year, all State and Territory Police will be on board in delivering this program to parents, carers and teachers across Australia.

ThinkUKnow has used a trained network of volunteers from partner organisations to deliver awareness-raising sessions to parents, carers and teachers across Australia to provide advice on helping their child avoid online risks and what to do if things go wrong.

The presentation covers cyber bullying, sexting, online grooming, scams, identity theft and other issues and is supported by online resources through our website www.ThinkUKnow.org.au

During 2012, 172 presentations were delivered to 6,174 parents, teachers and carers.

Social Media & Reputation Management

AFP Social Media & Reputation Management presentations are delivered to professional sporting groups (athletes, training staff and their executive officers), AFP recruits, and Australian government departments highlighting the benefits and vulnerabilities of social networking, raising awareness of their own digital footprint and discussing mechanisms and methodologies to protect themselves and their identity online. The initiative follows a similar model as the Illicit Drugs in Sport framework encouraging sports men and women to become positive role models in the community and covers topics such as sexting, digital footprints and social networking.

During 2012 the AFP delivered 46 presentations to 2,044 individuals. In 2013, as at 7th July, the AFP has delivered 46 presentations to 2,842 individuals.

Cyber Safety Pasifika

Use of the internet in the Pacific is growing, particularly among children and young people. While ICT skills are being taught in many schools, very little attention is given to safety and security online.

Cyber Safety Pasifika is a cyber crime prevention initiative which is delivered to countries through the Pacific Island nations including Niue, Cook Islands, Samoa, Tonga, FSM, Nauru, Guam, PNG and Vanuatu. Since its pilot in 2012 there have been 84 cyber safety presentations to 17,887 children and young people. Cyber Safety Pasifika has also delivered 17 community cyber safety sessions to 362 community members. 20 officers from those countries have been trained in the presentations and a Cybersafety Pasifika website was established in May 2012 to provide additional information to the communities.

The program seeks to educate at risk communities in the Pacific on cyber safety issues such as protecting your identity, sexting, cyber bullying, online grooming and e-crime; improving the digital literacy of communities new to social networking and the internet. This program is an initiative of the Pacific Islands Chiefs of Police Secretariat, of which the Australian Federal Police is represented.

The appropriateness and adequacy of existing laws, especially criminal offences and the application of the sex offenders register, that may apply to the practice of sexting, particularly with regard to the creation, possession and transmission of sexually suggestive or explicit messages and images in circumstances where a person;

a. creates, or consents to the creation of, the message or image for his or her own private use and/or the use of one or more other specific persons; or

b. creates, or consents to the creation of, the message or image and without their knowledge and/or their consent the message or image is disseminated more broadly than the person intended.

Under current legislation, children who send explicit or nude images and those who receive the images may find themselves in contravention of various state and Commonwealth child pornography legislation.

Commonwealth Legislation

Part 10.6 of the Commonwealth Criminal Code Act (1995) makes it an offence to access, transmit, publish, possess, control, supply, or obtain child pornography through a carriage service. Similarly, in Queensland under s 210 of the Criminal Code 1899, New South Wales under s 91H(2) of the Crimes Act 1900, and s 69 and 70 of the Crimes Act 1958 in Victoria have similar child pornography legislation.

The Commonwealth Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 that came into force in April last year also impacts upon sexting as a criminal offence. Persons over 18 years of age who transmit indecent material to persons under the age of 16 may face criminal charges with a maximum penalty of seven years' imprisonment.

Sexting may well be an offence if the material is considered indecent according to the standards of ordinary people. The legislation also relates to online dealings in child pornography or child abuse material. The commencement of proceedings against a person under 18 years of age will, however, require the consent of the Commonwealth Attorney-General.

The penalties are as follows:

- Using a carriage service for child pornography material contrary to section 474.19 of the Criminal Code Act 1995 – 15 years.
- Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service contrary to section 474.20 of the Criminal Code Act 1995 – 15 years.
- Accessing child exploitation material contrary to section 474.22 of the Criminal Code Act 1995 – 15 years.
- Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service contrary to section 474.23 of the Criminal Code Act 1995 – 15 years.

Sexting may also fall under 'sexual harassment' under the Commonwealth Sex Discrimination Act 1984.

S28A of the Sex Discrimination Act defines 'sexual harassment' of a person harassed as:

- an 'unwelcome sexual advance'; or
- an unwelcome request for sexual favours'; or
- 'unwelcome conduct of a sexual nature', which includes making a statement of a sexual nature either orally or in writing, which a reasonable person would anticipate would be offensive, humiliating or intimidating for the person harassed.

Prosecution

Prosecution information can be obtained from the Commonwealth Department of Public Prosecutions (CDPP). However, AFP records show the AFP has not charged any person under 18 years of age with 'sexting' type offences under the Commonwealth Criminal Code Act (1995).

The AFP, through its youth presentations and ThinkUKnow presentations highlights to young people that creating or accessing child pornography is an offence, even if you are a child yourself.

Currently the investigation methodologies and prosecution avenues of "sexting" offences are in their infancy. Due to a number of factors, such as available offences and ages of the victims, forward movement of formal prosecution needs to be carefully assessed and balanced before teens are labelled as "child sex offenders".

Current agreements within the justice system focus upon intervention (diversion), interview and education as opposed to formal criminal proceedings unless the behaviour is deemed as exceedingly predatory or malicious (such as in instances of 'sextortion').

In practice, the application of criminal law to sexting type offences is decided on a case-by-case basis and referred to State police for their discretion.

Age of Consent

Age of consent laws are designed to protect children and young people from sexual exploitation and abuse. Such laws effectively determine that children and young people below the age of consent do not have the emotional maturity to consent to sexual activities.

The age of consent is 16 years of age in the Australian Capital Territory, New South Wales, Northern Territory, Victoria and Western Australia. In Tasmania and South Australia the age of consent is 17 years of age. Queensland is the only state that makes a distinction between different forms of sexual activity and the age of consent. In Queensland, the age of consent for anal sex (referred to as sodomy in legislation) is 18 years of age, while the age of consent for all other sexual behaviour (described as carnal knowledge) is 16 years of age. Whilst there is little evidence to suggest difficulties in the prosecution of sexting related offences due to differences in the age of consent, uniformity in the age of the consent across the jurisdictions would ensure a consistent approach to the issue.

Mandatory Reporting

Where there is a concern that sexting amounts to sexual abuse, the legal requirement to report suspected cases of child abuse and neglect is known as

mandatory reporting. All jurisdictions possess mandatory reporting requirements of some description. However, the people mandated to report and the type of abuse for which it is mandatory to report varies across Australian states and territories

Schools have a responsibility in the prevention and reporting of child abuse. They must report to the Child Protection Service when they form a reasonable belief that a child has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse and if the child's parents or caregivers have not protected or are unlikely to protect the child.

The AFP is unable to comment as to whether an instance of sexting whereby a school has become involved has resulted in that school making a report to the relevant Child Protection Authority.

Application of Commonwealth Criminal Code Act (1995) to youth

Australian laws are intended to address the exploitation of children and promote the rights of children.

The Australian Government introduced new laws to strengthen Commonwealth child sex offences, including child sexual exploitation online and in travel and tourism. The new laws commenced on 15 April 2010.

Former Minister for Home Affairs and Justice Mr Brendan O'Connor has indicated that the laws are intended to target adult offenders committing offences involving the sexual exploitation of children. They are not designed to deal with interactions between young people, such as 'sexting' (press conference, 9/03/10).

However, the law does not attempt to exclude the sending by young people of child pornography or child abuse material from the proposed offences, as to do so may reduce protections for young people. It also does not exclude those malicious or exploitative instances of young people sending sexually explicit images of themselves or other young people.

Although some offences could potentially apply to young people, there is scope for law enforcement and prosecution agencies to take the circumstances of the particular case into account before proceeding to investigate or prosecute.

As a further safeguard, the consent of the Attorney-General is required before a person who is under 18 can be prosecuted for Commonwealth child pornography offences.

Of paramount importance is the prevention of the circulation of explicit images of minors, and the immediate and longer term consequences of actions associated with sexting. A multi-faceted response consisting of education, awareness raising and the application of either Commonwealth or State and Territory legislation are required to address the issue of sexting.

Any strategy to address this issue needs to ensure that youth are empowered to make informed decisions about themselves, including images of themselves, and how they want their 'brand' portrayed now and into the future.