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Part I

Understanding Sexting by Young People

1

An Introduction to Sexting and Young People

Introduction

Young people integrate online and digital technologies into their everyday lives in increasingly complex ways. As McGrath (2009, p. 2) notes, '[y]oung people...see technologies (especially the internet) as a vital part of their social life and the building of their identity'. As mechanisms for socialising, education, relaxation, gaming, romance or communication between friends and peer groups, new technologies provide a key framework within which young people live their lives. Yet, the ways in which they incorporate romantic and sexual relationships and practices into this technology-dominated, virtual world has been relatively underexplored by researchers and, subsequently, it has become problematic for policymakers. Media and social commentators play an important role in drawing our attention to the intersections of digital technologies, sexuality and sexual practices of young people. However, such commentary has also seen these complex interconnections misunderstood and oversimplified. At the very core of contemporary debates around young people's online sexual practices, new technologies, social media, and childhood sexuality has been the phenomenon dubbed 'sexting'. While sexting has many meanings, which we critically explore in more detail below, it generally refers to the digital taking and distribution of images of a nude/semi-nude person through mobile phone or social networking sites.

There has been growing political, media and public concern about sexting in recent years, particularly sexting among children and young people. There have also been, in a range of jurisdictions, either reports of minors being prosecuted under child pornography or child abuse or child exploitation¹ laws for sexting-type behaviours. These two elements

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of sexting – practices and perceptions, and regulation and legislation – form the core themes of this book. However, before we pursue these themes in depth, we need to set the scene. This introductory chapter considers how sexting is defined, discusses a number of scenarios said to constitute sexting, and introduces some of the conceptual frameworks used in this book to analyse practices of sexting by young people,² and laws and regulations which seek to govern such practices. The chapter also outlines the nature and structure of our research project, some of the key arguments we will be making in this book, and introduces the structure and content of the chapters that follow.

Defining sexting: complexities, discourses and terminology

The term sexting is a portmanteau first created by the media that derives from a conflation of the phrase ‘sexy texts’. It was first used to describe the sending or receiving of sexually explicit text messages (Rosenberg 2011). However, the term has now expanded to include the digital recording of naked, semi-naked, sexually suggestive or explicit images and their distribution via mobile phone messaging, email, or through the internet on social network sites, such as Facebook, Instagram and YouTube (see, e.g., Joint Select Committee on Cyber-Safety 2011, [4.47]). As the Law Reform Committee of Victoria notes, the term sexting is evolving and ‘encompasses a wide range of practices, motivations and behaviours’ (2013, p. 15).

Thus, as Ostrager (2010, p. 713) notes, while sexting could be loosely described as a ‘more technological approach to sending a flirtatious note’ (see also Lenhart 2009), this scenario is only part of much bigger picture. The term sexting is now commonly attributed to the making and distributing of nude or sexual ‘pics’ within a wide range of quite different scenarios: from taking a picture of oneself and consensually sharing that image with a friend or intimate partner, to the non-consensual resending of an originally consensually made image to a third party or the non-consensual taking and distributing of the image, to simply uploading an explicit image of oneself onto a hard drive. Other scenarios include the recording of a sexual assault, or adults sending an explicit text to ‘groom’ a child (Law Reform Committee of Victoria 2013, p. 19). ‘Sexts’ may also be used as tools to harass, bully, threaten or even coerce a person to behave in a certain way. Depending on jurisdiction and the age of participants, these behaviours may or may not constitute

criminal offences. Thus, the complexities of sexting require a thorough investigation of the practices it encompasses as well as the motivations, relationships, and perceptions of the actors involved.

Sexting as a term has been particularly salient in popular media and political discourse. It has, in a sense, discursively captured the public imagination. Indeed, sexting among young people has become a significant cultural phenomenon, a topic of major media discussion and the target of concern by law and policymakers. Over the past few years, news media in Australia, North America, Europe and other Western countries have reported numerous cases of sexting where minors have used digital technology to manufacture and distribute sexual images of themselves and/or other minors, in some cases falling foul of child pornography laws. Populist responses to this behaviour have ranged from liberal commentators calling for the decriminalisation of sexting, to conservatives insisting that sexting should be considered a form of child pornography (see Weins and Hiest 2009, p. 2). Media reports and public discourse about sexting tend to gravitate between moralising statements about the inappropriateness of such behaviour by young people, and the emotional and physical harms engaging in sexting potentially cause for young people, to concern that the current legal frameworks in some jurisdictions wrongly allow for the prosecution of young people under child pornography laws. There are reported cases across jurisdictions internationally that have seen young people added to sex offender registries or facing other extreme punishments; outcomes that well may have a significant negative impact later in their lives (see Chapter 4). To an extent, the broad range of activities that fall under the definition of the term sexting means that there is a lack of clarity over the need for a legal response to it (Moran-Ellis 2012, p. 116).

Before we outline the research and data covered in this book, we need to discuss the use of terminology. The term sexting is not commonly used by young people, even young people who engage in the practice, as discussed in Chapter 9 in this book. Rather, young people refer to forms of technologically mediated sexual communication as ‘nudes’, ‘dirty pics’, ‘nude selfies’ amongst other terms. Sexting, to them, is a term used by ‘out of touch’ adults (Weins 2014, pp. 3–8). Largely, we agree that the term is problematic because, as we will argue in this book, sexting fails to distinguish the full range of behaviours, scenarios, motivations and emotions that characterise technologically mediated sexual communications. Despite this, we have decided to use the term sexting throughout this book as it is the term commonly used in academic and public discourse.

About this book

This book investigates the phenomenon of sexting by young people. We examined this under-researched but emergent contemporary legal and social issue using an inter-disciplinary and multi-methods framework asking the question: Are current legal and policy responses to sexting appropriate and are they reflective of young peoples' perceptions and practices of sexting? As such, the research that informs this book had three specific aims: to document young people's perceptions and practices of sexting; to analyse public and media discourse around sexting; and to examine existing legal frameworks and sanctions around sexting and develop recommendations for appropriate and effective legislative policy responses to the practice. The research consisted of a three-stage research project: quantitative surveys and qualitative focus groups with young people, recording their views and experiences of sexting; a media discourse analysis aimed at capturing the tenure of public discussion about sexting; and an analysis of existing laws and sanctions that apply to sexting. Importantly, this research sought to give voice to young people on this topic – a voice that has long been absent from such discussion (Karaian 2012). In doing so we are not suggesting that laws must slavishly respond to the voices of young people. However, their voices can help us to understand their various motivations for, and practices and experiences of, sexting. This in turn can assist in evaluating the effectiveness and appropriateness of existing laws and how laws and policies might best develop to address sexting.

Structure of this book

This book has four parts. The first part, which includes this introduction, explores how we might understand sexting. To begin we provide an overview of key conceptual frameworks we use in the book to explain and theorise sexting practices, as well as to frame existing research and literature on the topic.

Part II discusses what we currently know about sexting. It examines media, law and policy, and educational responses to sexting as well as assessing the already available research into sexting by young people. Chapter 3 begins with an exploration of media representations of sexting. Our analysis focuses on Australian and New Zealand media reports since 2002, and explains the emergence of sexting in the media discourse. We ask how sexting rose to be such a newsworthy topic and outline some of the key themes that have emerged from the media coverage on sexting.

Chapters 4 and 5 capture law and policy responses to sexting in Australia and internationally. We first look in Chapter 4 at significant sexting cases, primarily in the United States but also Australia, the United Kingdom and Canada. This is followed by an overview of child pornography laws to help understand how sexting has been conceptualised by the law and policy makers and why it can be prosecuted as child pornography.

In Chapter 5 we inquire whether and why young people have been charged, or not charged, for child pornography offences. We also explore why there has been a reluctance to legally remove young people from the possibility of being charged with child pornography. The chapter discusses topics such as the age of criminal responsibility, barriers to prosecution, defences to child pornography offences, constitutional protections, and the exercise of discretion.

Chapter 6 turns to the educational responses to sexting. It provides an overview of key international, Australian national and state-based awareness-raising campaigns. We identify the predominant voices and discourses in these campaigns and offer a brief evaluation of these existing approaches.

The final chapter of Part II offers an overview of the current empirical research. We critically assess methodologies and research findings relevant to sexting and young people. In exploring existing responses to, and knowledge of, sexting by young people, Part II of the book provides the contextual background for Parts III and IV.

Part III of this book contains the detail and analysis of the results of our quantitative and qualitative research into young people and sexting. Chapter 8 begins by outlining the findings from the survey component of our project. This includes, among other things, exploration of: the prevalence of sexting; the relationships between sexting participants; gender relations and sexting; the motivations for sexting; and young people's understandings of the legal consequences of sexting.

The qualitative element of our research is outlined in Chapters 9 and 10. In Chapter 9 we discuss perceptions and practices of sexting. This includes: how young people negotiate their online identity and privacy; how they define sexting; how they perceive motivations for sexting among their peers; and how they perceive the prevalence of sexting among peers; as well as their views on the social consequences and impact of sexting. In Chapter 10 we present young people's views on criminal justice interventions around sexting, based on their reflections on two case studies of legal responses to sexting. Part III concludes

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with an overall analysis and discussion of the findings of our quantitative and qualitative research in Chapter 11.

Part IV of this book draws together the themes of the book in order to critique existing responses to sexting by young people and to make suggestions for alternative law and policy approaches. We offer some concluding thoughts on sexting practices by young people in Chapter 13.

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