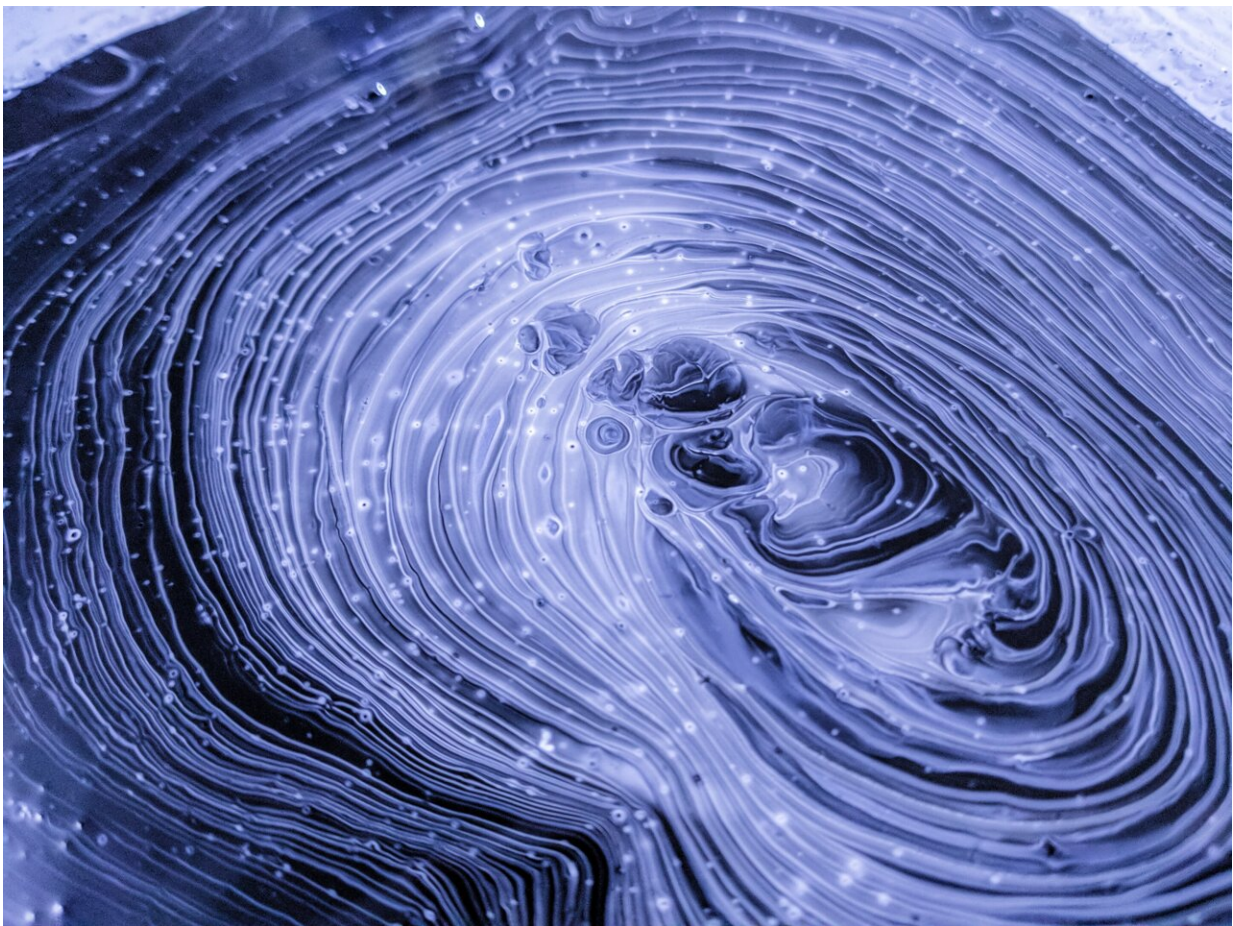


Opinion: Teenage sexting is not all the same – legislators should criminalise abuse, not sexual exploration

September 7 2015, by Nikki Godden-Rasul



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Now that so many teenagers have smartphones equipped with cameras it's inevitable that they're used to take pictures, sometimes regrettable pictures, and to share them with others. The problem is that this is not just often regrettable in their own eyes, but also illegal in the eyes of the law.

A 14-year-old boy who took a naked selfie and sent it to a girl at school that he'd been flirting with recently found himself in hot water with his school and with the police. Both his and the girl's details have been added to a police intelligence database for making and distributing an indecent image. Indecent because, as an image of a minor, it's classified as child pornography under the [Protection of Children Act 1978](#).

The police investigating said [no charges were brought](#) as it was not in the public interest. But the boy was informed that this record may, despite the lack of conviction or charges, be revealed by advanced [criminal records checks](#). This could potentially ruin both of the [teenagers'](#) futures if their chosen careers involve working with children.

Criminal 'sexting'?

The case highlights the problems raised by smartphone-enabled "sexting" that is increasingly common among [young people](#), and yet, where the subject of the image is under 18, constitutes the creation and distribution of child pornography. Children are unnecessarily criminalised, and the broad scope of criminal law discourages schools from educating teenagers about when sharing sexual images may be harmful or a harmless part of teenage sexual exploration. Whether part of growing up or not, teens need to know that all sexting could be seen as potentially criminal.

This all-encompassing sweep of the law is recognised as a problem, so CPS guidance limits the prosecution of teenagers sharing images of

themselves when they are not causing harm to others. For instance, the approach of the [Association of Chief Police Officers](#) is to safeguard children over bringing prosecutions, and in this case the investigating police said [no one was arrested or interviewed under caution](#).

Nevertheless, as the school exercised its discretion to report the incident to the police [it was recorded as a crime](#). While the school says [pupils were informed that this was their policy](#), the boy in question says he was not aware of this, nor of the consequences of admitting his actions – something he did with police present and without any form of adult representation.

Teenage kicks that have lasting consequences

So now a 14-year-old's name appears in a police crime record, relating to a sexual offence no less, which could damage his future – even though no charge was brought against him. It's likely to be of little comfort that the [National Police Chief's Council](#) state that the decision to disclose this under future record checks is "carefully considered" and "in line with Home Office guidance".

This case also raises questions about the scope of offences involving the making and distribution of sexual or intimate images. In particular, how a provision in the Protection of Children Act regarding [child pornography](#), designed to protect children, is being used to criminalise them. The problem is that the law captures incidents that may not be harmful, and distorts the kinds of harm caused in particular circumstances. Teenage sexting is not a problem because it involves naked images of minors. It is a problem when the sharing of sexual images is used in an abusive way.

In this case, for example, if the boy sent the image with the intention of causing distress, as an act of harassment, then this would constitute

harm. Alternatively the boy in this case could be seen as the victim, as the girl who received the image shared it with others, either with the intention to humiliate or without thought to the possibility, and in any case without the boy's consent. This could constitute an offence under the new so-called "revenge porn" legislation. In fact this more accurately depicts the situation – of more immediate concern to the boy than his record is the humiliation he feels at school that numerous schoolmates have seen the image, and repeatedly refer to it. However, no such offence was recorded.

Criminalising young people for making or distributing such images without taking into account the context only serves to draw attention away from really harmful behaviour – either among teenagers, or from those who might prey upon them.

Young people need to be informed of the law, its implications for sexting, and understand what constitutes ethical and unethical behaviour involving the sharing of sexual images. The sharing of sexual images as harassment or abuse or as acts of "[revenge porn](#)" should be reported. Schools' focus should be to teach teenagers about healthy and harmful sexual relationships. It's particularly apparent that this often occurs in the context of abusive relationships which commonly involve a male perpetrator and female victim. The sexualisation of women and girls too, means images of them are treated differently to that of men and boys.

However, despite the importance of discussing these important issues with teenagers, institutional fear and cultural concerns around offences of a sexual nature and the wide scope of the law that criminalises all sexting as if it were the same too often means the education needed just doesn't happen.

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