

Section 1:

Information for Schools Around the Sharing of Explicit Self-Generated Images



Introduction

The term 'sexting' was coined in early 21st century; it is a concatenation of the words sex and text. It was originally used to describe the exchange of sexual content, text and images, on mobile phones. In the last few years, it has come to cover the sharing of sexual text, video, and photographic content using mobile phones, apps, social networking services and other internet technologies. While technical definitions sometimes include the exchange of pornographic content, for the purpose of this guide we will focus on the sharing of explicit images that are self-created. Images in this case are both photographic and video content. In other words, we will focus predominantly on issues around the sharing of 'nude selfies' as they are called by young people.

This document seeks to inform school leaders and teachers on the practice of sexting by young people in Ireland. The purpose is to highlight considerations for schools, should incidents involving the sharing of explicit images occur. A school's role in these cases is primarily to protect and support the children involved and not to lead an investigation into the incident. This is a challenging, complicated, and sensitive situation for schools to address; not least because cases involving explicit images of minors could be considered criminal offences, according to the Child Pornography and Trafficking Act 1998. Prosecutions under this act can result in severe sanctions that can have a life-changing impact. For this reason we are keen to stress that information contained in this document does not constitute legal advice. Schools are advised to notify the Gardaí and seek specific legal advice when cases of this nature arise.



Key guidelines for addressing the topic of non-consensual sharing of explicit images with a class

1. It is advisable that teachers have completed the introduction to SPHE two-day course. It's important that teachers are aware of any possible issues that students in the class might have before commencing the Lockers programme.
2. It is good practice for teachers to liaise with the guidance counsellor and class tutor before teaching the Lockers programme. The school principal and parents should also be informed in advance.
3. Teachers should collaborate with their schools' Special Educational Needs (SEN) departments to ensure that the lessons and key messages are accessible to all.

More detailed best-practice guidelines are included at the start of the education resource.



Why should you care?


It's important that you are well informed when you encounter incidents involving the sharing of explicit images in your school. Unfortunately, when self-created images are shared non-consensually, the repercussions can seriously undermine the wellbeing of students in your care. Malicious sharing can be a form of cyberbullying while abusive sharing could indicate a child protection concern.

Explicit images can be shared in the context of an intimate relationship but also in different scenarios. People share intimate content as a way of attracting attention or flirting with potential romantic interests. Peer pressure can be a contributory factor in some young people's sexting. Students, particularly vulnerable students and those with weaker digital skills, might create intimate content unbeknownst to themselves when they forget to turn off cameras. In other, more worrying cases, students can be coerced, forced or tricked into creating explicit images of themselves.

It can be very distressing when explicit self-created images, initially exchanged in confidence, are shared without consent with a wider audience. Students who are the victims of non-consensual sharing (often referred to as revenge porn; a practice where sexting content is maliciously distributed, without consent, to gain revenge and cause public humiliation) or sextortion (a form of extortion where the criminal threatens to distribute explicit content of the victim unless the victim pays a sum of money or sends more explicit content) might suffer from depression or anxiety and could be in immediate danger.

As possessing or distributing explicit images of minors can be a criminal offence, you need to be very careful about how you handle incidents. The steps you take to resolve incidents can be at odds with how you deal with other incidents of cyberbullying. When addressing issues of cyberbullying it is sometimes recommended to keep the messages and posts as evidence of the bullying and always to record the incident, as detailed in the *Anti-Bullying Procedures*. The format of your records of incidents involving explicit images of children under the age of 17 should take into consideration that storage and dissemination of these images could be deemed an offence under the Child Pornography and Trafficking Act 1998.

When incidents involving explicit images occur you should refer the case to the Gardaí for investigation. You should also consult and work with the Tusla - Child and Family Agency to ensure the children involved receive the necessary support and protection.



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Background information and context

Why do children sext?

This has been the subject of a great deal of academic research in recent years. There are many reasons why children exchange explicit messages. Often messages are exchanged as part of a romantic relationship, as a means of furthering the relationship or as part of the initial flirting stage. Some children even describe sexting as a form of safe sex as “you can’t get pregnant from it and you can’t transmit STD’s”.¹ There are other reasons why children sext. Many of these motives conform to those that inspire other teenage behaviours.

1. **Sexual expression:** Children in romantic relationships sext as a way to further their relationships and as means of showing their trust in one another². They also use sexting as a form of flirting and as an incentive to start a relationship. Sexting can also be used to express one’s sexuality (whereas some people might use fashion to highlight their femininity or masculinity, others might post sexting images online).
2. **Communication:** Children sext to communicate with each other. Younger teens sometimes send sexually suggestive messages to platonic friends as a form of humour. For children in established romantic relationships, reciprocity can be the motivation for sending sexts as for every sext you send, you can expect to receive one in return.³ A feature of sexting that appeals to young people is that it is usually a private form of communication, safe from adult intervention.
3. **Attention/affirmation:** There have been numerous examples within pop culture of people who owe their celebrity status and subsequent fortune to a leaked sex tape. This has led some young people to believe that they may get spotted and secure a career as a model or television personality if they post provocative pictures online.⁴ Other young people use sexts to gain the attention, affirmation and admiration of potential romantic interests.
4. **Social and peer pressure:** Wider societal pressures contribute to some young people sexting. The ‘sexualisation of culture’ means that many young people feel there’s an expectation to look a certain way and be sexually active.⁵ This pressure extends to sending sexts. Peer pressure can further exacerbate the pressure on young people to sext.

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5. **Impression management:** Many young people take selfies or self-produced photos as doing so allows them to assert control over how they are represented to the wider world.⁶ You could almost say that selfies and sexting images are the self-portraits of the modern age. The selective and self-produced nature of sexts can provide young people with something of a protective front for when they're engaged in intimate communication.
6. **Accidental/reckless:** Some children have accidentally produced sexting content. This has occurred when children haven't realised that webcams on computers or handheld devices were in operation and got changed in view of the cameras. In a world where someone seems always to have a camera phone at the ready, it's easy to create and distribute sexting content recklessly and without thinking of the consequences.
7. **Coercion/blackmail and revenge:** Unfortunately there have been incidents where young people are coerced into creating and sending sexting content.⁷ Once a party has been sent one intimate image, this person can use this image to blackmail the victim into sending more images. There are cases where criminals have preyed on young people and used sexting content to extort large sums of money. In other cases, sexting content has been distributed by a spurned lover, looking to gain revenge on an ex-partner.
8. **Experimental:** As children grow up, it's reasonable that they might want to understand how their bodies are changing. Some children take pictures of their naked bodies to help them get a better view of their own bodies.⁸ They mightn't ever intend to distribute these images but, by legal definition, these personal images could be considered child pornography and could also become sexts, were the images to be shared.

Context for sexting

➤ Where does sexting occur?

It can be difficult to pinpoint exactly where teen sexting occurs for a number of reasons. Firstly, technologies and particular apps' popularity can be so transient that teens will have already moved onto the next big thing by the time adults catch up. Secondly, the majority of teen sexting is conducted privately and so is not especially visible.⁹

Access to smartphones certainly makes it easier for teens to sext.¹⁰ The free messaging services, such as WhatsApp, Viber, Snapchat and Facebook Messenger, make it very easy and cheap to share photos and videos with any person who has a smartphone or tablet. The move from texting to messaging services means that sexts are no longer limited to written content, as users do not incur the same charges that they once did for sending pictures. The rise of smartphones has also made sexting easier as smartphones can connect to the internet but do not require a wifi connection.¹¹

The fact that smartphones are personally held devices, makes them ideal for exchanging more intimate content. Young people might previously have been nervous about sending sexting images on a family computer or laptop, for fear that their parents would find out. Smartphones and closed messaging apps, now commonly available, give young people a greater sense of privacy. Parents often monitor and use some of the more established social networks. Young people prefer to use apps and services that are not being used by their parents/carers for sexting.¹²

The motivation for sexting can really determine the services that young people use for sexting. If the young people are in a private romantic relationship they might be more inclined to use a private messaging app or a video calling service. People in the early stages of a relationship or flirting with each other might prefer an ethereal app where the content "disappears" after a few seconds. Young people looking for attention and affirmation and seeking to conform to particular norms might post their provocative pictures on a public social network.¹³ Teenagers specifically looking for people with whom they can exchange sexts might turn to dating apps or particular social media platforms.¹⁴

Gathering numerous sexting images can improve a person's (often a boy's) status and standing within a peer group.¹⁵ These people persuade or coerce other young people into sending intimate images. These images are then stored in a folder on a phone or shared with friends in a private messaging group chat.

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◀ Who's involved?

For the most part, sexting takes place amongst peers. Sexting usually occurs in the context of a desired or established or romantic relationship with peers,¹⁶ often following a certain amount of persuasion and due to the pressure of social expectation.¹⁷

Both the *EU Kids Online* and *Net Children Go Mobile* research shows that older kids are more likely to have received sexual messages online. Whereas only 4% of 11-12 year olds had received sexual images, 22% of 15-16 year olds had. While the majority of kids surveyed were not upset by the sexual messages they received, girls were more likely than boys to have found the content upsetting.¹⁸

As well as being older, children who engage in sexting are also more likely to have partaken in a range of risky online and offline behaviours.¹⁹ It is also believed that sexting practices and experiences are influenced by culture, class, race, sexuality and gender.²⁰

There have been a number of unfortunate incidents where young people have been coerced into sending sexting images by professional criminal circles. These circles, often based in foreign countries, usually lead the young people to believe that they are speaking with a potential love interest. Once these criminals have received a number of explicit images/videos they use the images to blackmail the young person into sending large sums of money. These criminals threaten to share the private, intimate content online if the young person doesn't pay up.

➤ Consequences for wellbeing

Sexting is not a normal part of teenage life. It is an activity in which the majority of teenagers do not partake. It also must be said that sexting doesn't necessarily lead to harm. A part of adolescent development can include a newfound interest in sexuality and romantic relations.²¹ Sexting can be an expression of this interest.

At the same time, there are plenty of cases where sexting has gone wrong and the content shared in confidence has been misused. When this happens there can be serious, negative consequences for the wellbeing of those involved. In addition to significant social and psychological effects, there have been incidents where young people have died by suicide and where criminal investigations have resulted.

Sexting is not a normal part of teenage life.

Often times it can be difficult to draw the line between abusive sexting and cyberbullying as sexting can be coercive and linked to harassment, bullying and violence.²² While cyberbullying is the online risk that upsets children the most, the effects of sexting are quite similar to those of cyberbullying. Sexting can lead to paranoia and feelings of isolation²³, anxiety and shame that the pictures might be shared non-consensually. For teens who sext there is also a considerable fear of sanctions that might be imposed on them by parents and schools.²⁴ Often these fears and anxieties aren't actually realised.

Girls are most adversely affected by sexting. Girls who sext are often referred to as 'sluts' and are ultimately denigrated by their peers.²⁵ There is a prevalent culture of victim blaming around sexting, with many people blaming the person who originally sent the images for any misfortune s/he endures. This practice was reported as being one of the most harmful in the *Net Children Go Mobile* research.²⁶ In addition to being subjected to oppressive beauty norms and placed under increased visual scrutiny through sexts,²⁷ girls are also more likely to suffer reputation damage as a result of sexts sent. The ubiquitous nature of the internet makes repeated sexual requests of girls easier. Also, disinhibition means that because people can't see their victims, they are more likely to send very sexually abusive messages. Unfortunately, females are usually on the receiving end of these messages.

Receiving explicit messages can be particularly upsetting, worrying and confusing for younger and more vulnerable children.²⁸ Sexting amongst very young children can be a sign that the children have been exposed to sexual behaviour or indeed been sexually abused.²⁹

Prevalence of sexting

There is no robust data available detailing the prevalence of sexting by young people in Ireland. There are international studies but they differ wildly. Some report high numbers of young people sharing sexual messages, while others report significantly lower numbers. Since studies have used different definitions of sexting, it is uncertain to what extent the practice actually happens.

The *Net Children Go Mobile* research carried out in 2013/14 found that 11% of Irish children aged 11-16, who used the internet, had received sexual messages or images within the last 12 months.³⁰ This figure was line with the European

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average. This study found that the likelihood of receiving sexual messages increased with age. While just 4% of Irish 11-12 year olds had received a sexual message, 10% of 13-14 year old children had and 22% of 15-16 year old children had.

A comparison between the *EU Kids Online* and *Net Children Go Mobile* studies shows that there has been little change in the proportion of children receiving sexual messages or images in recent years. However, the proportion of children who said they were upset by the experience of receiving sexual messages has doubled in Ireland (from 2% in 2011 to 4% in 2014).³¹

Children of a lower socioeconomic status (SES) are more likely to have received sexual messages and are also more likely to have been bothered by what happened. (8% of lower SES children were bothered, compared to 4% of all children).

Legal framework

There is currently no law in Ireland that specifically governs the act of exchanging intimate content online or the more problematic non-consensual sharing of explicit content.

➤ Child Trafficking and Pornography Act 1998

The sharing of explicit images of minors is captured by the Child Trafficking and Pornography Act 1998. This act was designed to protect children from exploitation. If sexual images or videos of a child (under 17 years of age) are shared or stored on a device the act can be invoked, provided the content shared meets the definition of child pornography. Self-produced explicit images exchanged by adolescents, under the age of 17, could be considered as child pornography.

It's useful to consider how the Child Trafficking and Pornography Act 1998 defines child pornography. It states:

“child pornography” means –

- (a) Any visual representation –
 - (i) That shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,
 - (ii) That shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person, or persons, or



The Children First Act 2015 states that where a teacher has reasonable grounds to suspect that a child is being harmed, the teacher must file a report to Tusla.


- (iii) Whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,
- (b) Any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,
- (c) Any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or
- (d) Any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3

In short, any photo, video or audio recording that shows a child engaged in sexual activity, or that focuses specifically on the genital region of a child is considered as child pornography. It is less clear whether content that is provocative rather than sexually explicit is illegal. Part (d) of the act could be interpreted so that almost any provocative content produced or sent by a child could be considered as child pornography. Ultimately only a court would decide if particular content could be considered illegal under this section.

All cases involving the creation, distribution or possession of explicit images of children are potentially criminal and should be reported to An Garda Síochána. The duty to notify the Gardaí in these cases would appear to be required by the Withholding of Information on Offences Against Children and Vulnerable Persons Act 2012.

Recent legislation, enacted in November 2015, further bolsters the reporting requirements that are placed on teachers (and other “mandated persons” who work with children). The Children First Act 2015 means that teachers have a legal obligation to file a report to Tusla - Child and Family Agency should they know, believe or have reasonable grounds to suspect that a child is being harmed, has been harmed or is at risk of being harmed. Teachers must also report disclosures made by a child.

The Child Trafficking and Pornography Act states that the creation, distribution and possession of child pornography are all illegal. This could be interpreted as meaning that anyone who creates, sends, shares, stores or even just receives explicit images of a child under the age of 17 could potentially be prosecuted under the 1998 Act.



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It's important to note that while it is not an offence for two people, both under the age of 17, to engage in sexual intercourse with each other,³² it could be an offence for them to record this activity.³³

In cases of self-generated explicit content or 'nude selfies', the person him/herself can be the creator, distributor and possessor of illegal content. The law in this area was designed to protect children from exploitation and not to criminalise their reckless acts. That said, approaches will differ from Garda Station to Garda Station. There is no protocol in place directing Gardaí on how to deal with 'nude selfies' of adolescents.

What are the punishments?

As the act was not originally intended to deal with 'nude selfies' of teens, but rather for people guilty of trading in child abuse images, the punishments for people found guilty under the act are harsh. Punishments include imprisonment, a fine and also placement on the sex offenders register.

With certain offences there is a discretion as to whether an individual is placed on the register (for example, where the two persons involved are similar in age). However, for the offences of creation, distribution and possession of child pornography no such discretion exists. Therefore, if a person is convicted of such an offence, that person will automatically be placed on the register for at least 2 ½ years.

Non-Fatal Offences Against the Person Act 1997 and Criminal Justice (Public Order) Act 1994

What is revenge porn?

Sharing explicit images of someone without their consent with the intention of causing harm could be considered harassment. Revenge porn is the popular term for the malicious distribution of intimate images, without consent of the person involved, to gain revenge and cause public humiliation. It most commonly occurs when a relationship breaks up and a jilted lover seeks to gain revenge on a former partner.

In 2015, revenge porn was made a specific criminal offence in England and Wales by a section of the Criminal Justice and Courts Act 2015. There is no similar law in Ireland, at the time of writing. However, the Law Reform Commission is currently reviewing the law on cyber-crime affecting personal safety, privacy and reputation, as part of the Fourth Programme of Law Reform.

It is not up to schools to make a judgement on whether behaviour is illegal or not. Schools have a duty to notify the Gardai, who will then establish if harassment or extortion has taken place.

There are barriers to the non-consensual sharing of explicit images being prosecuted under section 10 of the Non-Fatal Offences Against the Person Act 1997 because of the definition of the term 'harassment'. For behaviour to be considered as harassment it needs to be 'persistent' and also a direct form of communication with the victim. This means that the once-off non-consensual sharing of an album of explicit images on a public website might not be considered a crime as the communication would be neither persistent nor a direct form of communication with the victim.

It is likely that the Communications Regulation (Amendment) Act 2007 will be amended to include electronic messages and communications by social media. In its current form, the act makes it an offence to send by telephone any message that is grossly offensive, or is indecent, obscene or menacing, or (b) for the purpose of causing annoyance, inconvenience, or needless anxiety to another person-(i) sends by telephone any message that the sender knows to be false, or (ii) persistently makes telephone calls to another person without reasonable cause. This particular issue is currently under review by the Law Reform Commission.

Again, however, it is not up to schools to make a judgement on whether behaviour is illegal or not. This call must be left to law enforcement agents. Schools have a duty to notify the Gardai, who will then establish if harassment or extortion has taken place.

◀ Data Protection Acts 1988 and 2003

The other legal principles to be considered when it comes to non-consensual sharing of explicit images are privacy and data protection. Under data protection law, individuals have the right not to have their personal data, including their image, collected and published without consent. Anyone who publishes private content online could be seen to be violating data protection laws and could have a civil lawsuit brought against them.

Current data protection laws are not, however, a very robust remedy to, or protection from, the problem of non-consensual sharing of explicit images. These laws offer compensation for damage done but do not protect the victim from damage that can occur immediately when the content is shared. Going through the data protection process takes time as online services (the data controllers) have up to 20 days to comply with any notice they receive from the Data Protection Commissioner.

➤ Children First Act 2015

This legislation was recently enacted to further safeguard children from harm. It is likely that cases of non-consensual sharing of explicit images will trigger mandatory reporting to the Tusla - Child and Family Agency.

The act states that “[a] provider of a relevant service shall ensure, as far as practicable, that each child availing of the service from the provider is safe from harm while availing of that service.” Relevant services include “a school or centre of education”. The act requires a relevant service to “undertake an assessment of any potential for harm to a child while availing of the service and to prepare a written statement (a “child safeguarding statement”) specifying the service being provided and the principles and procedures to be observed to ensure as far as practicable, that a child, while availing of the service, is safe from harm.”

The act states that where a “mandated person” (which includes a teacher registered with the Teaching Council) believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person, that a child— (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed, he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the Tusla - Child and Family Agency.

There are certain exceptions to the requirement to report (under Section 14(3)) where

- (a) a child between the age of 15-17 is involved in sexual activity with a person no more than two years older, and;
- (b) the mandated person knows or believes that there is no material difference in capacity or maturity between the parties engaged in the sexual activity concerned, and;
- (c) the relationship between the parties engaged in the sexual activity concerned is not intimidatory or exploitative of either party, and;
- (d) the child concerned has made known to the mandated person his or her view that the activity, or information relating to it, should not be disclosed to the Agency and the mandated person relied upon that view.

Schools should take a proactive approach and ensure that sexting is directly addressed. This way, should the courts extend the duty of care to cover such issues, schools will be in a much stronger position to show that they did meet the standard of care expected of them.

The act specifies certain sexual offences which are defined as sexual activity under the act. It does not include offences under section 5 and 6 of the Child Trafficking and Pornography Act. However, given the wide definition of harm in the Children First Act³⁴ coupled with the fact that “sexual abuse” is specifically defined as including “wilful exposure of the child to pornography”, it is clear that the Children First Act, 2015 will impose reporting duties on schools in instances of sexting/non-consensual sharing of explicit images.

This act has been passed but has yet to be commenced by the Minister at the time of writing.

◀ Civil law and the school's duty of care

A school must also note the potential exposure to civil law litigation which may arise on foot of the sexting/non-consensual sharing of explicit images. It is well established that a school owes a duty of care to its students and the duty extends to ensuring students are not exposed to a risk of injuries caused by bullying. Given the nature of non-consensual sharing of explicit images, it is at least arguable, that a school will be expected to take active steps in ensuring that its students are informed of the dangers and consequences of such activity. A school that ignores the obvious development of sexting and non-consensual sharing of explicit images in classrooms and in the school risks being found negligent by a court.

The courts have yet to consider the extent of the duty of care in respect of cyberbullying or sexting/non-consensual sharing of explicit images. However, schools should be aware that they do owe a duty to their students and they must ensure that the standard of care is reached in order to avoid a finding that they failed to discharge the duty. Whether the courts will include harm resulting from instances where there has been sexting/non-consensual sharing of explicit images, remains to be seen. Schools should take a proactive approach and ensure that the issue is directly addressed. This way, should the courts extend the duty of care to cover such issues, schools will be in a much stronger position to show that they did meet the standard of care expected of them and they did all that was reasonable (by educating the students and having strong, well-researched policies and procedures in place).

Implications for school policy

Your policy should clearly state that the sharing of explicit images is an unacceptable and absolutely prohibited behaviour, with serious consequences and sanctions for those involved.

Your anti-bullying policy could be amended to include the following line: The non-consensual sharing of sexting content always warrants a report, regardless of whether the teacher thinks the incident warrants a report.

Reviewing and amending the code of behaviour and anti-bullying policy

You should consider amending your code of behaviour and anti-bullying policy to make specific mention of the sharing of explicit images and in particular the sharing of explicit images of pupils without their permission. You should clearly state that it is an unacceptable and absolutely prohibited behaviour, with serious consequences and sanctions for those involved.

If you are amending your code of behaviour, you should also outline the sanctions that will be enforced. A board of management may decide, as part of the school's policy on sanctions, and following the consultation process with the principal, parents, teachers, and students, that non-consensual sharing of explicit images of pupils in the school automatically incurs suspension as a sanction. However, a general decision to impose suspension for this type of behaviour does not remove the duty to follow due process and fair procedures in each case.

As noted in the *Anti-Bullying Procedures for Primary and Post-Primary Schools* "isolated or once-off incidents of intentional negative behaviour including a once-off offensive or hurtful text message or other private messaging do not fall within [the *Procedures*] definition of bullying and should be dealt with, as appropriate, in accordance with the school's code of behaviour". Sexting often occurs via private messaging services and so could fall outside the remit of the anti-bullying policy. For this reason it is especially important that sexting is addressed in a school's code of behaviour and also added to the school's anti-bullying policy. A single incident of non-consensual sharing can have a serious effect on a student and may constitute both harassment and the distribution of child pornography.

The *Anti-Bullying Procedures for Primary and Post-Primary Schools* note that "placing a once-off offensive or hurtful public message, image or statement on a social network site or other public forum where that message, image or statement can be viewed and/or repeated by other people will be regarded as bullying behaviour". When intimate content is distributed publicly, maliciously and without consent, the behaviour can be addressed under the anti-bullying policy. For example, your policy could be amended to include the following line: The non-consensual sharing of sexting content always warrants a report, regardless of whether the issue is resolved within 20 days and whether the teacher thinks the incident warrants a report.

A school's code of behaviour can apply outside of school time when the impact of a particular behaviour is felt in school and when the wellbeing of members of the school community is compromised.

Both the code of behaviour and anti-bullying policy can highlight the fact that all incidents involving creating, storing, or sharing of explicit images of children under the age of 17 will be reported to the Gardai and Tusla. Incidents should be handled under the child protection policy when a disclosure takes place, when there is a risk of harm or when there's a likelihood that abuse has taken place.

The board of management must ensure that members of school staff have sufficient familiarity with the school's anti-bullying policy and code of behaviour to enable them to apply the policies effectively and consistently, when required. Supports for staff should be appropriate to the individual's role. The board of management must also make appropriate arrangements to ensure that temporary and substitute staff have sufficient awareness of the school's code of behaviour and its anti-bullying policy.

You might also consider making changes to your school's Acceptable Use Policy.

◀ Applying sanctions for behaviours that occur outside of school time

As sexting is most likely to take place outside of school hours, it is important that schools specifically mention it in their policies, if they intend to impose sanctions on students. Usually, school policies and codes of behaviour only apply when students are in school or involved in school activities. However, a school's code of behaviour can apply outside of school time when the impact of a particular behaviour is felt in school and when the wellbeing of members of the school community is compromised. Schools have a duty of care for all students. If a behaviour has a particularly negative impact on students, schools can protect students by prohibiting this behaviour in their codes of behaviour.

As noted in the National Education Welfare Board's (NEWB) publication *Developing a Code of Behaviour: Guidelines for Schools*: "where a student is alleged to have engaged in serious misbehaviour outside school, when not under the care or responsibility of the school, a judgement would have to be made that there is a clear connection with the school and a demonstrable impact on its work, before the code of behaviour applies. The school authorities may need to get legal advice where the situation is complex".³⁵

Also, as part of the *Anti-Bullying Procedures* schools have a responsibility to deal with bullying that occurs within school and outside school if it has a negative impact on the student within the school.

Communicating changes to the code of behaviour and anti-bullying policy on the topic of sexting

The NEWB recommends that all members of the school community should be involved in the review and revision of school policies, and in discussions around acceptable behaviour.

It's important that parents and students are aware of the legal and other consequences of sharing explicit images of children and the school policy on this matter. This can be done when a student is first registered with a school by having the parents and students sign the code of behaviour, which has been amended to include specific mention of sexting as a prohibited behaviour. By signing the code of behaviour the parents agree that the code is acceptable to them and that they will make all reasonable efforts to ensure compliance with the code by their child.

The NEWB guidelines state: "A requirement that parents (particularly parents new to the school) sign the code of behaviour is not enough to achieve parental support for the code. A programme will be needed to help parents to understand the school's goals and standards, how they can assist in supporting their child and the help they can expect from the school if they need it. The Principal and Deputy Principal have a particular role in ensuring that there are additional communication mechanisms so that parents understand the norms and values underpinning the code and the importance of parental support for maintaining positive student behaviour"³⁶.

One way that schools can communicate changes to school policies on sexting and secure parental support for the policies is by holding information nights or meetings for parents on the topic, in addition to having them read and sign the policies. Information nights will give parents, of both new and existing students, an opportunity to learn about the topic and to engage with school personnel on the changes that have been made to the policies.



It's important that parents and students are aware of the legal and other consequences of sharing explicit images of children and the school policy on this matter.

Students with learning difficulties may need to be taught how to relate cause and effects of behaviour in more tangible ways, for example through pictures, film or role-play.

When the changes have been made, schools will need to bring the students up to speed on the amended policies. One of the ways of communicating changes to students is by having them use the code of behaviour as a basis for their own class charter. A class charter can help students to establish the forms of acceptable and unacceptable behaviour and to articulate these standards in a way that is easy for all students to understand. Upon the amendment of the code of behaviour, class charters might be amended to include the following: “I agree not to share images, video or other content online with the intention to harm another person”.

Finally, it is important that students have lessons focused specifically on the topic and that they learn how to live up to the standards expected of them.

Communicating policy changes to students with special educational needs

NEWB Guidelines for School: “Class teachers and specialist personnel (such as the Learning Support Teacher, Resource teacher, Special Needs Assistant) should check that standards and rule [changes] are communicated in a way that students with special educational needs can understand. It will be helpful to check for this understanding from time to time, especially where a student with special needs is acting in a way that would usually be seen as being in breach of the rules.”

“Teachers may need support in understanding how best to help a student with special educational needs to conform to the behavioural standards and expectations of the school. For some students, visual prompts and pictures may be needed. Some students may need opportunities to practise observing the rules, with feedback on their progress.”³⁷

“Students with learning difficulties may need to be taught how to relate cause and effects of behaviour in more tangible ways, for example through pictures, film or role-play. They may not be able to predict consequences as easily as their peers and so may be vulnerable.”³⁸

Referrals

School policies should clearly state that, in accordance with the *Children First* and the *Child Protection Procedures for Primary and Post-Primary Schools*, all incidents involving explicit images of children will be referred to the Gardaí and to Tusla - Child and Family Agency.

Considerations for dealing with an incident

School personnel have a supportive, not an investigative, role in dealing with incidents involving the sharing of explicit images of children. Schools should refer all cases of sexting to the Gardaí, who are in a better position to determine whether an offence has taken place and to lead an investigation. Schools should also seek their own legal advice, at the earliest possible opportunity. It can be useful for schools to refer to their management body (e.g. Education and Training Boards, Joint Managerial Body, Association of Community and Comprehensive Schools) as a source of legal support. The information contained in this document is not legal advice. Should a case be brought for prosecution, a school's actions in responding to the incident could be under scrutiny and the school personnel will need the support of a legal professional.

It is very important that schools create a supportive environment for students who are victims of non-consensual sexting. Schools should consider addressing any issues that arise through awareness campaigns and relevant relationship and sexuality education programmes. They should also help students affected access the various support services, including those offered by the school guidance counsellor and those offered by Tusla.

Disclosure

Policy should outline the protocols to be followed in the case of a disclosure about the sharing of explicit content from a student. The procedure to be followed should involve the normal child protection practices.

Here are the steps you should take if you or another staff member receives a disclosure from a student about the sharing of intimate content:


- 1. Listen supportively to the student.** A child making a disclosure could be very distressed and in a vulnerable position. It is important always to put the child first when receiving the disclosure. The teacher receiving the disclosure should be careful not to damage the trust the student has shown in confiding in the teacher. It is also important, however, that the teacher makes clear that in order to resolve the case other adults (notably the DLP and parents) will need to be informed. The teacher should listen compassionately and without making any judgement on what the child is saying.
- 2. Record the disclosure,** using the child's own words. It is the teacher's role to support the student, rather than

School personnel have a supportive, not an investigative, role in dealing with incidents involving the sharing of explicit images of children.

investigate the incident. However, in order to support the students involved appropriately, the teacher will need to establish certain facts about the incident. The child should not be questioned unless the details he/she is giving are unclear. The teacher should avoid using leading questions and instead should use open questions. When incidents of non-consensual sexting occur, it is likely that sanctions will be imposed both by the school and by the criminal justice system. These sanctions will likely be challenged in a legal way by the parents of the student involved. Schools will need to be very careful in how they handle and record the incidents and will need to seek their own legal counsel.

- 3. Avoid compromising the evidence.** Any incident involving the underage sharing of intimate content could potentially be a criminal matter. For this reason, how evidence is stored could have a bearing on a trial. Many schools reserve the right to confiscate phones and other electronic devices in their school rules. However, confiscating devices when incidents involving explicit images of children have taken place could potentially jeopardise a legal case. Schools should engage with the Gardaí, who have the expertise and facilities to preserve the evidence, at the earliest opportunity.

Schools should also ensure that there is a clear policy in place in respect of the school's right to search a student, or their property in cases where there is evidence that a serious criminal offence may have occurred. Schools should have such a policy in place for illegal substances (drugs, alcohol) and for dangerous articles (knives, weapons etc.) This policy should be expressly extended to cover instances where the school reserves the right to search a student where it is necessary to prevent the distribution of child pornography. Note that the search should only relate to the mobile device itself and not the data contained therein. The data searches should only be conducted by the Gardaí and a physical search of a student for a phone should only take place by a member of school staff where it is not practical to wait for the assistance of the Gardaí. Members of the Gardaí have specific statutory powers to stop and search, whereas members of the public do not have such powers and risk civil litigation if a search is carried out in a manner which violates the student's rights. It is essential that both students and staff are made fully aware of the policy.



It is very important that schools create a supportive environment for students who are victims of non-consensual sexting.

4. Inform the Designated Liaison Person (DLP), parents and Gardaí. When a teacher receives a disclosure about an incident of underage sharing of intimate content, his/her first point of contact is the school's DLP. The teacher should pass on an account of the disclosure to the DLP. The teacher and the DLP will then refer the case to the Gardaí for investigation and the DLP should seek advice from the Tusla - Child and Family Agency on supporting the students involved. In some cases, notably incidents of a grooming, coercive or harassing nature, the incidents will need to be referred to Tusla. In all cases of underage sharing of intimate content, the parents of students involved should be informed. The DLP should always record how the sexting incident was handled by the school, detailing any reports/referrals made.

5. Ensure the students receive the necessary support. A student is likely to feel distressed and will need pastoral support during the disclosure and following the event. The teacher should refer the student to the school's guidance counsellor and pastoral care system. The school should also inform the student's parents/guardians, unless doing so might put the child at further risk of harm. The school might also make the child aware of Childline's services (Phone: 1800 66 66 66, Text: 50101).

⏪ **Considerations for handling individual cases**


The following issues should be considered to ensure individual cases are handled appropriately:

People involved

What age are the people involved? If the child involved is very young, the sharing of intimate images might be a sign that there are risks to the welfare of the child. Sexual activity at a young age is an indicator that a child might have been abused or exposed to sexual activity. If the child involved is pre-pubertal, s/he cannot give consent to sexual activities and so the incident should be referred to Tusla.

Incidents of sexting among older students may not be cause for concern but as all cases of underage sexting are potentially illegal, these incidents will all need to be reported to the Gardaí for investigation. A student's parents should also always be informed when the school becomes aware that a student has been involved in sexual activity.

If the child involved is very young, the sharing of intimate images might be a sign that there are risks to the welfare of the child.



It is extremely important that schools do not copy, save or store any sexting content.

Was there an adult involved in this incident? If an adult was involved in the production or dissemination of the sexting material, illegal activity has taken place and the incident should be referred to Tusla and the Gardaí immediately.

Were other young people involved in creating/sharing the image? It is important to find out who else was involved as the welfare of other young people might be at risk.

Are the young people involved particularly vulnerable? Have they suffered abuse and could their actions be influenced by the behaviour of adults? When dealing with vulnerable children it is important to seek specific advice from Tusla.

Wellbeing

Does the student need immediate support or protection? The effects of non-consensual sharing on a person's wellbeing can be very serious. If a family member or friend has been involved in creating the explicit images, it may not be safe for the child to go home that evening. Tusla and the Gardaí should be contacted and their advice should be followed by the school. If the student is upset and distressed it might be advisable to draw on the services of the school counsellor, where possible. Support should also involve educating the student on how to deal with and prevent against incidents of online sharing going wrong.

Are you concerned about the wellbeing of other people involved? Do they need counselling/education? If other young people are involved, it is important that they too receive the necessary support. This might involve contacting the principal of a neighbouring school.



Some critical considerations

- Immediately inform the Gardaí and consult Tusla when made aware of an incident of sexting, involving minors.
- Do not send, save, print out or move from one device to another any sexting content involving minors. It is illegal to create, share or possess explicit content that features or involves minors and there is no exemption for school staff.
- Seek legal advice on how to handle any evidence brought to your attention.
- All records must be collected, stored and maintained in accordance with data protection legislation, The Data Protection Acts, 1988 and 2003. Due to the sensitive and personal nature of sexting incidents, any reports or records created regarding sexting incidents should be considered as highly confidential and placed in a secure location by the DLP. It is extremely important that schools do not copy, save or store any sexting content as to do so could potentially result in the school being implicated in the possession or distribution of child pornography.

➤ Referrals to other agencies

1. It's important to **inform the Gardaí**. They will establish if the sexting content could be criminal.
2. It will be necessary to get advice from **Tusla** on how to support students involved. If you suspect that a child might have been subject to abuse, school personnel will need to refer the case to Tusla and the Gardaí.
3. Inform **parents/guardians/carers** about the sexting incident and how it is being handled. This communication will need to be managed carefully, especially if school personnel have child protection concerns. Some parents mightn't be familiar with the term sexting while others might rush to the conclusion that their child is in the wrong for sharing the picture in the first place. Informing parents of incidents of sexting requires sensitivity. Parents might not have been aware that their child had been in a romantic relationship or they may have explicitly prohibited their child from having romantic relationships. Explain to the parents/guardians/carers that the student may require additional support and make sure the parents/guardians/carers know how to access the necessary support.
4. Contact **hotline.ie** to report child pornography or images/videos that show other illegal activity. All internet service providers, including social media services, have tools that can be used to report and have illegal content removed. All content that falls under the definition for child pornography is illegal and will be removed. Most social media services also prohibit the non-consensual sharing of intimate content ('revenge porn') and will remove it when they have been notified of its existence.

Awareness and prevention

◀ Curriculum integration

The topic of sexting is best addressed in the context of the SPHE classroom, and more specifically in the lessons that deal with the topic of Relationships and Sexuality Education. It could be addressed in the implementation of the curriculum both at junior and senior cycle levels. Teaching resources on the topic include this resource, from Webwise and B4UDecide, from the HSE Crisis Pregnancy Programme.

➤ Awareness and prevention

The role of the school in promoting awareness and in helping prevent the non-consensual sharing of intimate images should not be underestimated. School-based initiatives can either reinforce positive efforts of parents or help counteract their unsuccessful attempts to change unacceptable behaviour. A positive school culture and climate is vital in preventing harassment of any kind, in this case sexual and online harassment. In accordance with the *Anti-Bullying Procedures*, all schools must implement education and prevention strategies, including awareness raising measures, to address the topic of cyberbullying.

Measures to raise awareness and prevent non-consensual sexting should examine the different types of non-consensual and consensual sexting and should engage pupils in addressing problems when they arise. In particular, strategies need to help foster empathy, respect and resilience. Prevention and awareness raising measures should also focus on educating pupils on appropriate online behaviour, and on developing a culture of reporting any concerns about sexting. Prevention strategies should take particular account of the needs of pupils with disability or with SEN and also should take into account the age and gender of the students targeted

◀ Referral to support

All awareness raising campaigns should direct students to reputable sources of support. Education and awareness raising initiatives should highlight how the support available in the school can be accessed by students. Awareness raising efforts might also direct students to the list of helping organisations found in Appendix 2.

Endnotes

- 1 danah boyd, "Teen Sexting and Its Impact on the Tech Industry," presentation at *Read Write Web 2WAY Conference*, New York, NY, 13 June 2011.
- 2 SPIRTO, "Self-produced sexual images: Context and consequences. A summary of research findings," *Self Produced Images Risk Taking Online*, accessed 26 November 2015; available from http://www.spirto.health.ed.ac.uk/download/website_files/SPIRTO_Summary_20InterviewsAnalysis_FINAL.pdf
- 3 Julia Lipmann and Scott Campbell. "Damned If You Do, Damned If You Don't...If You're a Girl: Relational and Normative Contexts of Adolescent Sexting in the United States." *Journal of Children and Media*, 8:4 (2014): 378.
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- 6 Giovanna Mascheroni, Jane Vincent and Estefania Jimenez, eds, "Girls are addicted to likes so they post semi-naked selfies: Peer mediation, normativity and the construction of identity online," *Cyberpsychology: Journal of Psychological Research on Cyberspace* 9 (1) (2015): article 5, 2.
- 7 Ringrose, 7.
- 8 danah boyd, "Teen Sexting and Its Impact on the Tech Industry," presentation at *Read Write Web 2WAY Conference*, New York, NY, 13 June 2011.
- 9 *Ibid.*
- 10 Giovanna Mascheroni and Andrea Cuman, *Net Children Go Mobile: Final Report* (Milan: Educatt, 2014), 32.
- 11 Jessica Ringrose, Rosalind Gill, Sonia Livingstone and Laura Harvey, "A qualitative study of children, young people and 'sexting': a report prepared for the NSPCC," (2012), 27.
- 12 *Ibid.*, 27.
- 13 *Ibid.*, 13.
- 14 SPIRTO, "Self-produced sexual images: Context and consequences. A summary of research findings," *Self Produced Images Risk Taking Online*, accessed 26 November 2015; available from http://www.spirto.health.ed.ac.uk/download/website_files/SPIRTO_Summary_20InterviewsAnalysis_FINAL.pdf
- 15 Ringrose, 13.
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- 17 SPIRTO.
- 18 Brian O'Neill and Thuy Dinh, *Net Children Go Mobile: Full findings from Ireland* (Dublin: Dublin Institute of Technology, 2015), 45.
- 19 Jessica Ringrose, Rosalind Gill, Sonia Livingstone and Laura Harvey, "A qualitative study of children, young people and 'sexting': a report prepared for the NSPCC," (2012), 15.
- 20 *Ibid.*, 25.
- 21 Julia Lipmann and Scott Campbell. "Damned If You Do, Damned If You Don't...If You're a Girl: Relational and Normative Contexts of Adolescent Sexting in the United States." *Journal of Children and Media*, 8:4 (2014): 373.
- 22 Ringrose, 7.
- 23 Charlotte Aynsley and others, eds., *'Sexting' in schools: advice and support around self-generated images*, 20.
- 24 SPIRTO, "Self-produced sexual images: Context and consequences. A summary of research findings," *Self Produced Images Risk Taking Online*, accessed 26 November 2015; available from http://www.spirto.health.ed.ac.uk/download/website_files/SPIRTO_Summary_20InterviewsAnalysis_FINAL.pdf
- 25 Ringrose, 7 and Lipmann, 379.
- 26 Giovanna Mascheroni and Andrea Cuman, *Net Children Go Mobile: Final Report* (Milan: Educatt, 2014), 32.
- 27 Jessica Ringrose, Rosalind Gill, Sonia Livingstone and Laura Harvey, "A qualitative study of children, young people and 'sexting': a report prepared for the NSPCC," (2012), 46.
- 28 Ringrose, 15.
- 29 Charlotte Aynsley and others, eds., *'Sexting' in schools: advice and support around self-generated images*, Annex 2.
- 30 Brian O'Neill and Thuy Dinh, *Net Children Go Mobile: Full findings from Ireland* (Dublin: Dublin Institute of Technology, 2015), 45.
- 31 Giovanna Mascheroni and Kjartan Ólafsson, *Net Children Go Mobile: risks and opportunities. Second edition* (Milano: Educatt, 2014), 68.
- 32 There is immunity from prosecution for a female who is under 17 and engages in sexual intercourse with a male who is under 17, following a provision made by the Supreme Court in *D. (M.) (A Minor) v Ireland* [2012] IESC 10. Section 3 of the Criminal Law (Sexual Offences) Act 2006 states "No proceedings for an offence under this section against a child under the age of 17 years shall be brought except by, or with the consent of, the Director of Public Prosecutions."
- 33 Hallissey, Brian, "Sexting and Hate Speech Online," presentation at *Digital Bullying: Legal and Security issues surrounding Cyber Safety*, Dublin, 9 October 2014.
- 34 "Harm" means, in relation to a child— (a) assault, ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child's health, development or welfare, or (b) sexual abuse of the child, whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.
- 35 National Educational Welfare Board, *Developing a Code of Behaviour: Guidelines for Schools*, (National Educational Welfare Board, 2008), 55.
- 36 National Educational Welfare Board, *Developing a Code of Behaviour: Guidelines for Schools*, (National Educational Welfare Board, 2008), 58.
- 37 National Educational Welfare Board, *Developing a Code of Behaviour: Guidelines for Schools*, (National Educational Welfare Board, 2008), 38.
- 38 National Educational Welfare Board, *Developing a Code of Behaviour: Guidelines for Schools*, (National Educational Welfare Board, 2008), 61.

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