



Just because it's public doesn't mean it's any of your business: Adults' and children's sexual rights in digitally mediated spaces

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Abstract

This article engages with media responses to the 2015 Ashley Madison hack (which largely exposed the sexual details of adult heterosexual men) and the 2014 'Fappening' hack (which exposed private sexual images of adult female celebrities). It draws on Petchesky's concept of positive sexual rights and Warner's framework of sexual ethics to reflect on the ways current educational and policy responses to 'teen sexting' (or sharing nude/semi-nude pictures) might change if young people's sexual rights were recognized as being similar (if not the same) to those of the adult victims of the 2014 and 2015 hacks.

Keywords

Human rights, sexting, sexual ethics, young people

Introduction

Since the mid-2000s, adults have expressed concern regarding children and young people's participation in cultures of 'mediated intimacy' (Gill, 2009), with particular anxiety focused on 'sexting' or the sharing of naked and semi-naked selfies via digital media. As Albury and Crawford (2012), Dobson and Ringrose (2016) and others have argued, this mode of discourse tends to frame the 'sexting teen' (most often presumed to be a heterosexual

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woman) as lacking agency or sexual rights while bearing individual responsibility for the public exposure (or ‘consequences’) of sexual self-representation.

In her 2006 book *Adult Themes*, Kate Crawford (2006) observes that within the contemporary Western cultural imaginary, the use of digital technologies (from mobile phones to iPods) can serve as a boundary-marker on the border of childhood and adulthood. Within this imagined space, the mature, responsible adult citizen uses his or her mobile phone as a working tool, that is, to conduct ‘business’ that need not be scrutinized or commented on by others. In contrast, children use their phones to play games or send selfies – to make public what could (or should) be private. Children, then, are legitimate subjects of surveillance, as their play makes them vulnerable to scrutiny. Yet in practice, both adults and children (i.e. those aged under 18) ‘play’ with digital technologies. New practices of sexual representation and interaction – such as the exchange of flirtatious self-portraits (selfies), explicit or pornographic images, and sexual chat – are enabled by a range of factors, including the ubiquity of mobile phone cultures, the popularity of social media platforms, such as Facebook and Instagram, and the proliferation of dating/hook-up websites and apps (such as Grindr and Tinder).

While recognizing the United Nations Convention on the Rights of the Child’s (UN CRC) (United Nations (UN), 1989) inclusion of all those aged under 18 within the category of ‘children’, this article draws specifically on Australian research with 16- and 17-year-olds (see Albury, 2016a; Albury et al., 2013; UN, 1989). This group (defined in this article as ‘young people’) are over the age of sexual consent but are still legally children, occupying a liminal position in Australian law. To reflect on the question of young people’s sexual rights in the digital age, I consider the contexts in which collective understandings of adults’ sexual rights (specifically, the reframing of ‘privacy’) are being visibly challenged and reshaped in relation to digital publics. To do so, I draw on Michael Warner’s (1999) framework of sexual ethics, which challenges the conflation of public expression of sexuality with inevitable shame. I further suggest that where young people are denied sexual rights (particularly rights to sexual information and sexual self-representation), they are excluded from an emerging ethical conversation.

I identify an ethical stance within media responses to the 2015 Ashley Madison leak (whereby hackers released personal information belonging to the clients of an online dating website that facilitates discreet affairs and sexual infidelity), echoing earlier responses to the 2014 hack of nude pictures of celebrities (including *Hunger Games* star, Jennifer Lawrence). A small but significant assortment of commentators challenged the presumption that the celebrities and Ashley Madison users ‘deserved’ to be publicly shamed and instead challenged readers to avoid gossiping about the hack in workplaces where colleagues were known to have been exposed (Lichfield, 2015).

In contrast, many cyber safety and ‘sext education’ (anti-sexting) campaigns still seek to deter young people – particularly young women – from mobile and online sexual self-representation by raising the spectre of non-consensual picture sharing: a sullied ‘digital footprint’ and inevitable public shame, tactics that (following Brown and Gregg, 2012) might constitute a pedagogy of regret. As I have suggested elsewhere (Albury, 2016b; Albury et al., 2010), this approach reflects a ‘negative’ model of children’s sexual rights, which excludes a positive right to access sexual information and a right to self-representation.

This article engages with the concept of sexual rights in order to focus on some of the gaps or disconnections in current 'sex education' discourses. It concludes by proposing new strategies that move away from gendered pedagogies of shame and regret, towards an ethical stance, in relation to both individual and collective expressions of sexual rights in the digital age.

Considering sexual rights

As Correa et al. (2008) note, the concept of 'sexual rights' is both historically specific and highly contested. Indeed, as Rosalind Petchesky (2000) observes, the term is 'the newest kid on the block in international debates about the meaning and practices of human rights' (p. 81). Correa et al. (2008) caution that notions of sexual rights (and sexual citizenship) can re-inscribe classification systems that distinguish humans-as-citizens from less-than-human deviants or 'outsiders' (p. 161). Correa et al. (2008) specifically identify "'promiscuous" youth' among categories of people whose citizenship and 'very humanity is called into question because they fail to conform to normative standards of sexual truth', thus 'justifying' legal, medical or moral interventions (p. 159).

Despite these caveats, Correa and colleagues see promise in the framework of sexual rights that emerged in the 1990s in response to feminist and LGBTQ (lesbian, gay, bisexual, trans and queer) activism. While previous rights frameworks had acknowledged rights to heterosexual marriage (incorporating elements of reproductive rights), this 'new human rights discourse [centred] around the body and its needs for security, health and pleasure' (Correa et al., 2008: 165). This approach was fraught as many state and non-government organizations that supported human rights in a sexual context primarily endorse 'negative' rights frameworks (in the sense of a right to protection from coercion and violence) as opposed to positive rights, such as a right to access sexual information or a right to experience sexual pleasure if one so desires (Correa et al., 2008: 212–213).

Petchesky (2000) notes these categories are not antithetical – that is, the ability to take pleasure in one's own body and desires is contingent on a range of 'ethical principles' (p. 91) and must be supported by 'enabling conditions and material resources', including (but not limited to) freedom from violence and sexual coercion (p. 97). Remarking on the difficulties encountered by feminists who sought recognition for (adult) women's sexual rights within international human rights frameworks, Petchesky (2000) asked,

why is it so much easier to assert sexual freedom in a negative than in an affirmative, emancipatory sense; to gain consensus for the right not to be abused, exploited, raped, trafficked, or mutilated in one's body, but not the right to fully enjoy one's body? (p. 88)

The same question might be asked in relation to young people in general – and young women in particular. Although Articles 13 and 17 of the UN CRC support young people's rights to access information, and to self-expression in a general sense, and Article 34 explicitly recognizes young people's right to freedom from sexual exploitation, the UN CRC does not recognize children's positive sexual (or digital) rights. Additionally, while there is currently a widespread recognition of the need for children and young people to develop digital literacies, explicit recognition of their positive rights (or 'freedoms to') is

largely missing from global Internet governance frameworks (Livingstone et al., 2016: 12). Furthermore, as Livingstone et al. (2016) observe, children and young people's rights to digital participation may come into conflict with their rights to protection, and rights to privacy may also be in conflict with parental or institutional child protection strategies that aim to monitor online spaces (p. 25).

Returning to Petchesky's (2000) conception of the 'ethical principles' and 'enabling conditions' for recognition of sexual rights, how might these be different for adults, children and young people? In particular, what kinds of conditions would enable the recognition of sexual rights for young people in the digital age? Writing in 2000, Petchesky (2000) observes the language of sexual rights (particularly positive rights) at that time was 'infantile (if not embryonic)' (p. 81). The same might be said for the language of positive or affirmative *digital* sexual rights more than a decade later. Arguing forcefully for a positive framework for sexual rights, Petchesky (2000) states that

the negative, exclusionary approach to rights, sometimes expressed as the right to 'privacy' or to be 'let alone' in one's desires and choices, can never, in itself help construct an *alternative vision* or lead to fundamental structural, social or cultural transformations. (p. 91)

She proposes that positive rights can only be recognized where there is universal recognition of sexual *autonomy* or *personhood*, which extends to 'children and youth as well as adults' (2000: 93).

Extending this argument to the digital age, such rights could not be contingent on complete privacy since the capacity for 'spreadability' (or copying and sharing) is an intrinsic aspect of contemporary digital culture (Jenkins et al., 2013). As the 2014 and 2015 data hacks discussed below demonstrate, privacy settings on digital platforms and apps are never absolute. For adults to insist that young people only have sexual rights where they are assured of *absolute* privacy can, therefore, be seen as a de facto demand for digital non-participation or abstinence (Albury et al., 2013).

Furthermore, in Australia,¹ as elsewhere, any sexually suggestive or explicit texts and pictures created by young people over the legal age of consent can potentially be classified by Commonwealth law as 'child pornography' – even when they are never shared (see Albury et al., 2013). In his commentary on the human rights implications of the criminalization of sexting, Alisdair Gillespie (2013) observes that the application of criminal laws to young people's consensual sexting practices is often justified as a deterrent, with the aim of protecting those aged under 18 from future shame or embarrassment (p. 628).

Article 13 states that 'the child shall have the right to freedom of expression' and extends this right of access to 'media of the child's choice (UN CRC, quoted in Gillespie, 2013: 632). While Gillespie (2013) suggests that this might appear to support adolescents' rights to sexual self-expression, it is qualified by caveats regarding 'public order' and 'public morals', and furthermore, 'it must be read in conjunction with Article 3(c) of the OPSC [Optional Protocol on the Rights of the Child]', which requires "'as a minimum" that producing, distributing, disseminating ... child pornography constitutes a criminal offence' (p. 632).

However, as Gillespie (2013) notes in his reading of the UN CRC in conjunction with the European Convention on Human Rights (ECHR), given that a range of studies have

found that many young people view sexting as an aspect of sexual expression, the criminalization of self-produced content can be seen as disproportionate, *particularly* when such content is produced by those who are above the age of consent (p. 641). Gillespie (2013) concludes that while young people are certainly vulnerable to exploitation, the criminalization of consensual sexting is not only unjustified but also constitutes ‘arbitrary interference from the state’, breaching Article 8 of the ECHR (p. 636). Furthermore, the application of child pornography laws in this context can be seen to breach ECHR Article 10, which not only guarantees rights to self-expression but also suggests that ‘all forms of expression are capable of protection’ and that any over-ruling of this guarantee must be ‘proportionate’ (2013: 632, 634).

Given the vexed position of young people (particularly young women) within sexual rights frameworks, it is unsurprising that their sexual expression within digital spaces is met by high levels of concern among educators and policy-makers. In contrast, it is only when adult heterosexual men are aligned with an additional, pathologized identity category (such as *sex addict* or *cheat*) that they appear in either popular commentary or literature addressing sexual privacy. They would seem to be largely unproblematic digital citizens and, by extension, unproblematic sexual citizens, whose rights to digital sexual expression are not subject to debate. As I outline below, when the gendered dimensions of both sexual rights and rights to digital participation are challenged, the contrast between adults’ rights and young people’s rights comes into focus.

Ashley Madison, workplace ethics and adults’ rights in the digital age

In August 2015, global news media reported that hacked user records (including email addresses) from the online ‘cheaters’ dating site Ashley Madison had been publicly released by a group calling themselves The Impact Team (Klinkenberg and Frenkel, 2015). Within hours, websites had been launched with searchable databases, allowing public access to the e-mail addresses and other personal details of users registered to the site. Within days, media outlets including *BuzzFeed*, *MarketWatch* and *The Daily Beast* were posting accounts from journalists and others who had searched the databases for the names of family members, current and ex-spouses and government employees (Anand, 2015; Cushing, 2015; Stern, 2015).

The *Washington Post* published what appeared to be a ‘how to search’ story, with links to websites hosting the hacked information (Dewey, 2015). However, while the *Post* article offered access to all relevant databases, it also reflected on the ethics of searching, noting that one site, *Have I been Pwned* [sic], only offered users the option to search for their own names, blocking the access of ‘suspicious spouses’ and ‘nosy co-workers’ (Dewey, 2015). As the online debate continued as to whether Ashley Madison users ‘deserved’ to be exposed, the conversation moved beyond a consideration of the ethics of searching for hacked or leaked information to incorporate reflections on the changing nature of sexual privacy in mediated environments. Two articles in particular, authored by journalists Kashmir Hill (2015) and Gordon Lichfield (2015), signalled what seemed to be an implicitly rights-based approach to the hack. These articles addressed neither the hackers nor the original producers of hacked sexual material, but

the ‘bystanders’, that is, the workmates, friends and partners of those whose private sexual information had been made public.

Hill’s (2015) article first acknowledged the concerns of suspicious partners of (potential) cheaters, but quickly moved on to reflect on the proliferating culture of leaking or hacking private (and sensitive) information:

There have been many, many data dumps of late that have become publicly searchable. You could go to Imgur and see celebs’ nudes after the iCloud hack. You can go to Wikileaks to peruse the emails of Sony Pictures employees. But with the Ashley Madison dump, it’s not the secrets of the rich, famous and powerful that we’re seeking out but secrets from our communities: ... [those of] people that we know ...

The hacked ‘celeb nudes’ referred to here were posted on a range of social media platforms in late 2014, roughly 12 months before the Ashley Madison hack. The event, which came to be known as ‘The Fappening’, was significant in that it provoked an intense debate regarding adults’ rights to digital sexual privacy. Comedian Ricky Gervais was roundly condemned for suggesting the actresses whose pictures had been leaked could have ‘prevented’ the hack by not taking pictures in the first place, and numerous celebrities and commentators asked web users to refrain from viewing or sharing the images that had already been made public (Isaac, 2014). Following the leak, journalists and commentators also challenged smartphone, website and app developers to take increased responsibility for user security, shifting the focus from the victims of the hack to the systemic weaknesses that allowed it to happen (Hartzog and Selinger, 2014; Manjoo, 2014).

Viewed collectively, these articles frame the ‘problem’ of the leaked pictures as a breach of adults’ rights to sexual expression (including sexual self-representation via digital devices) and a breach of their sexual privacy. Similarly, the ethical question posed by Hill was not whether Ashley Madison users were wrong to join the website or whether they deserved to have their ‘indiscretions’ publicly exposed. Rather, it was the more complex question of whether we (their loved ones, friends, workmates or relatives) need to know about the details of other people’s sexual lives, and further, how that knowledge might affect us. ‘As someone’s neighbour or colleague or relative’, Hill (2015) asks, ‘do you really want to invade their privacy and know whether they were on this site? Do you want to have that knowledge in the back of your mind?’.

Lichfield’s article addressed the ethics of what might be termed ‘sexual visibility’ in contemporary digital publics. In his advice to those whose workmates might have been exposed as part of the Ashley Madison hack, he observed that ‘if you found something out because your colleague’s angry spouse/jilted lover/kids/whoever posted about it on social media, that doesn’t make the revelations OK to talk about’. Lichfield’s focus is not on the individual’s obligation to monitor and police their ‘digital footprint’, but on the inevitability of what Marwick and boyd (2011) have termed ‘context collapse’ in social media spaces. The examples Lichfield (2015) offers to illustrate this point are not just of malicious sharing (or revenge porn), but include plausible examples on accidental or inadvertent digital ‘overshares’:

You wouldn’t say, in a work meeting, ‘Hey, I just came across an old Facebook picture of you stoned out of your mind!’ or ‘Hey, I just learned that you lost your virginity to my old

high-school friend!’ Likewise, you do not joke, ‘Hey, talldarkhandsome37, nice Ashley Madison profile!’

While Lichfield’s article takes the form of a brief advice column and does not go into depth, it does not suggest that adults should feign complete ignorance of public information. Rather, it adopts what might be termed an ethical bystander stance (see Carmody, 2015), recommending that workplace bystanders refrain from rebuking, taunting or otherwise humiliating the subjects of digital overshares, hacks and leaks. It is notable here that the Ashley Madison user’s implied right to sexual privacy is not contingent on his adherence to conventions sexual virtue or sexual secrecy. I use ‘his’ deliberately in making this point, not just because the moniker ‘talldarkhandsome37’ implies (middle-aged) masculinity but because the new (or at least emerging) norms of digital sexual privacy Lichfield describes seem very much embedded in gendered understandings of appropriate sexual conduct (particularly in a Western, secular context).

Young people, cyber safety and sexual rights in digital publics

Sexuality education and cyber safety resources addressing issues of sexting (i.e. the exchange of sexual pictures and messages) via smartphones and social media platforms have been criticized for promoting an intensely gendered and potentially stigmatizing framework of what might, in Petchesky’s terms, be understood as negative sexual rights. Within these educational texts, young women are predominantly directed to understand their own (and other women’s) subjectivity within picture-sharing cultures via pedagogies of inevitable public shame and regret (Brown and Gregg, 2012; Dobson and Ringrose, 2016). Young women’s rights to participate in digital practices, and to ‘play’ in digital spaces, are therefore elided and erased by the potential risks of exposure. The only ‘defence’ against public shame is retreat (and future abstinence) from digital sexual expression. Within these pedagogical frameworks, young women and girls are not addressed as sexual (or digital) citizens possessing both rights and responsibilities, but as ‘at-risk’ subjects, who are ignorant of the inevitable ‘consequences’ of their actions (see Albury and Crawford, 2012; Albury et al., 2013).

These ‘consequences’ are *never* positive and include gossip, public humiliation and damage to sexual ‘reputation’ (which may potentially extend into as yet unknown future workplaces). As Boesel (2014) puts it, even cyber safety education that doesn’t directly target young women and girls relies on metaphors of female sexual decorum to encourage self-protective behaviours online:

... check your settings, tug down your hem, button your blouse. Abstinence only, please – or you’re asking for it. Keep your knees (bits?) pressed together, and cover up already. Surely you’re not trying to show your data to everyone, you [insert choice of sexual slur here]?

Privacy rights in public spaces

The potential for an extension of positive rights beyond ‘privacy’ is particularly significant for those aged under 18 (particularly young people over the age of consent), for whom the boundaries between public and private sexualities have never been clear-cut.

Cultural geographers and sexuality scholars alike have noted the tensions inherent within adults' attempts to regulate children's conduct. On one hand, curfews, Internet filters and other boundaries and restrictions on access to public spaces are justified by adult concerns regarding the innocence of children and their need to be protected from sexual content (Pyburne and Jolly, 2014). On the other, the regulation and restriction of a range of forms of sexual expression (from dress codes to 'no touch' rules in schools) are justified by anxieties around adolescents' 'wayward' sexuality, which requires constant external surveillance (Allen, 2005). Where young people lack the material resources that allow them to access the 'private' spaces of legitimate adult courtship (restaurants, hotel rooms, domestic bedrooms), public spaces such as parks, shopping centres, school playgrounds and car parks have been long deployed for sexual purposes (see Allen, 2013; Holloway and Valentine, 2004). As I have suggested elsewhere (Albury, 2016), contemporary mediated youth cultures involving suggestive or explicit selfies, sexual chat and other forms of digital sexual expression are threatening to adults *not* because they are unprecedented but because they make sexed and gendered bodies and identities visible in concrete (and at times discomfiting) ways.

Lichfield's conclusions regarding *adults'* rights to privacy in the digital age can contribute to an understanding of positive rights for young people. The assertion that 'in an internet world, designations like "public" and "private" apply less and less to what you know, and more and more to what you talk about' (Lichfield, 2015) evokes Warner's (1999) reflections on the relationship between publics and sexual shame. While Warner (1999) primarily addresses the role that sexual shame (and shaming) plays in the stigmatization of LGBTQ sexualities, he posits a framework for sexual ethics with relevance to contemporary understandings of sexual expression in digital spaces. For example, Warner's (1999) observation that 'there is a fine line between coercion through shame and constraint through ignorance' (p. 12) speaks to the intense, ongoing debates between researchers, educators and child protection advocates regarding the potential for benefits and harm presented by children and young people's access to sexual materials and sexual information online (see Livingstone and Mason, 2015).

Warner (1999) contrasts the mobilization of shame and stigma in media, policy and legislation with what he terms a queer ethics, in which 'one doesn't pretend to be *above* the indignity of sex' (p. 35). This ethical stance, he argues, 'is the premise of the special kind of sociability that holds queer cultures together' (1999: 35). As Warner notes, this form of collective ethics does not rule out gossip regarding others' sexual activity but is built on an understanding that sex and sexuality are not (and need not always be) 'private'. Queer community ethics, then, rely on a sense of sexual camaraderie and generosity that acknowledges a shared capacity to experience both public and private sexual indignities and embarrassments. This ethos can be summarized: 'if sex is an indignity, then we're all in it together' (Warner, 1999: 36).

Given the extreme difficulty of assuming individual responsibility for one's privacy within 'networked publics' (boyd, 2011), it seems unreasonable to suggest that the recognition and defence of young people's digital sexual rights (in terms of a recognition of personhood and autonomy) should be contingent on their adherence to feminized codes of sexual modesty. As Lichfield and Hill's responses to the Ashley Madison leak make clear, both adults and young people are increasingly engaging with porous digital spaces,

where evidence of ‘private’ intimacies may leak into other contexts (including schools and workplaces). These intimacies may be coded or encrypted to avoid interference, scrutiny and embarrassment, but these strategies are not fool-proof (see boyd and Marwick, 2011). In the absence of guaranteed privacy, what kinds of recognition of positive digital sexual rights should be extended by adults (including legislators and educators) to young people? Furthermore, how might recognition of young people’s sexual rights impact existing ‘cyber safety’ discourses?

The ethos of sexual sociability Warner (1999) identifies within LGBTQ communities is increasingly evident in emerging research on young heterosexual adults’ consensual sexting/selfie cultures, which are built on expectations of sharing and reciprocity (see, for example, Felizi and Varon, 2015; Tiidenberg, 2014; Warfield, 2014). This research suggests that sexual expression in these cultures is not unproblematically ‘shameless’, but that potential embarrassment or shame provoked by inadvertent (but non-exploitative/non-coercive) sharing of sexual pictures is mitigated by a sense that participants are ‘in this together’ (Lasén, 2013: 95). Digital spaces offer new opportunities for both individual and collective sexual play, and the expression of intimacy. At the same time, a range of digital affordances including asynchronous communication, and the potential for de-contextualization of shared images, creates a potential not only for loss of face but also for a significant (and potentially damaging) loss of control (Lasén, 2013: 96). As Lasén notes, these are paradoxes built into the transformation of social norms that surround emerging sexual cultures in the digital age.

Reflection and conclusions

There is, of course, a difference between loss of face among peers due to ‘context collapse’ and the deliberate adult deployment of sexual shame as a pedagogical strategy directed at young people. As I have outlined here, incidents such as the Ashley Madison leak and The Fappening are testing the limits of institutional or commercial assurances of ‘data security’, raising questions regarding the shifting boundaries that define adults’ digital (and sexual) rights and responsibilities. Both Hill (2015) and Lichfield (2015) suggest the possibility of understanding adults’ sexual rights as incorporating an ethical stance in relation to other people’s ‘private’ digital sexual expression.

As Dobson and Ringrose (2016) observe, much of the ‘sext education’ targeting young women does not promote affirmative consent, model ethical bystander behaviour or offer security strategies, but rather endorses (gendered) public cultures of sexual humiliation. Within these narratives, ‘cautionary tales of “stranger-danger” that dominate older cyber-safety messages have been replaced with cautionary tales of betrayal and harassment by known peers’, promoting not cyber safety but cyber abstinence (Dobson and Ringrose, 2016: 14). But what if school-based sext education supported Lichfield’s (2015) approach to sexual/digital privacy, in which ““public” and “private” apply less ... to what you know, and ... more to what you talk about”?

Dobson and Ringrose (2016) propose approaches to ‘sext education’ that take account of the digital context in which sexting takes place and consider not only the risks or pitfalls of digital technologies but also the emerging ethical approaches to sexual

expression (both individual and collective) within digital cultures. This is by no means an easy or straightforward approach, particularly given the gendered double standards embedded in current understandings of ‘appropriate’ sexual conduct. It is important, too, to acknowledge that a right to access digital publics, that is, to be seen and heard in public spaces, is not universal but highly contingent on socioeconomic factors. But what if the educational discourse around sexting and cyber safety directly challenged gendered assumptions regarding ‘appropriateness’?

What if a young woman’s rights to digital participation did not imply an obligation to either (a) maintain absolute secrecy regarding her sexual desires or (b) abstain entirely from all forms of mediated sexual expression? What if being known as ‘someone who gossips, and shares sexual images without consent’ was the *more* shameful identity and was presented to young people as such? What if they were cautioned that inappropriate gossip and non-consensual picture sharing was a violation of others’ rights, that it would potentially damage their ‘reputation’ and future employability? In this context, positive rights to self-expression (such as those identified by Gillespie, 2013) would take precedence over negative rights.

Furthermore, as workplaces become increasingly supportive of equity and diversity and anti-bullying policies, might there not be a possible future in which online evidence of consensual, non-work-related sexual expression is deemed irrelevant? What if employers (and human resource [HR] departments) adopted the ethos that ‘we’re all in this together’ in terms of having engaged in digital sexual communication at one time or another? Lasén’s (2013) more recent research with young heterosexuals suggests that one might (tentatively) imagine the ethos extending beyond LGBTQ communities to workplace cultures that take strong stands against sexual bullying, discrimination and harassment, but do not consider a jobseeker’s experiences of sexting as relevant criteria for hiring and firing.

These are precisely the ‘enabling conditions’ that Petchesky (2000) gestures towards in her discussion of the emerging landscape of positive sexual rights. If there is an obligation to consider whether all ‘public’ sexual information is indeed other people’s business, this challenges legislators, educators and policy-makers to move beyond abstinence and prohibition and to carefully consider if and when young people’s positive sexual rights may be infringed in the name of protection. This reworking of legislation and policy would require attention to the positive right to self-expression outlined in the ECHR, which would need to be clearly articulated in relation to rights to digital participation (Gillespie, 2013). While this might be tricky, it is not without precedent. Currently, there are sensitive, contextual processes for determining consent to offline sexual activities, and these processes might conceivably be reworked to meet the needs of the digital age. Within this contextual space, a reshaping of assumption around digital/sexual privacy might be reframed as a collective, rather than individual, responsibility for children and adults alike.

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1. In the Australian context, recent studies adopting a human rights approach to the issue of sexting (Albury et al., 2013; Crofts et al., 2015; Tallon et al., 2012) have explicitly and implicitly drawn on the positive rights frameworks outlined in the United Nations Convention on the Rights of the Child (UN CRC), particularly Article 12, which states that those aged under 18 should be 'provided the opportunity to be heard in any judicial and administrative proceedings affecting the child', with 'the views of the child being given due weight in accordance with the age and maturity of the child' (UN, 1989).

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