

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
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Global Information Society Watch 2015

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NETHERLANDS

DEALING WITH SEXTING IN SCHOOLS IN THE NETHERLANDS



NETSHEILA

Lin McDevitt-Pugh
www.netsheila.com

Introduction

Remember being 14 and discovering yourself as a sexual being? I do. It was a great feeling, and scary. For my peers and me, experimenting was a natural part of growing up. Dating this one, dropping that one, keeping our friends informed on who was hot and who was not. We each experienced this part of our lives differently, and none of us escaped it. We were constantly on the brink of elation or dejection.

If like me you were born before 1990, you had various technologies at your disposal to help in your lusting and learning. You may have spent hours on the phone, or writing letters. You may have met up at school or in the holidays, gone out on dates.

People born after 1990 had new technological possibilities to facilitate the gentle art of being an adolescent. From the turn of the 21st century, computer hardware manufacturers began building webcams directly into laptops and desk screens. In the privacy of their own rooms, adolescents could flirt, chat and, with a simple command, take photos on their computers.

The technology advanced rapidly. In 2007, Apple introduced the internet-enabled iPhone with a touch-screen interface. The Android followed in 2008.¹ Capturing, storing and sharing images of sexual intimacy just became a lot easier. By 2013, nine out of every ten adolescents in the Netherlands had a mobile phone. All 12- to 15-year-olds in the Netherlands are online, 84% of them on a daily basis.² WhatsApp, Snapchat and similar apps make it easy to share images with friends, for free. If these images are of naked or near-naked persons, or are sexually explicit, sending these messages is known as “sexting”.

Until a decade ago, things could get out of hand with the sharing of sexually explicit images in a way that was harsh and unacceptable, even though age-appropriate. Word could get out that a girl or boy was “easy” or “game”. Freshly dumped sweethearts wanting to save face with their peers or simply wanting to retaliate could paste compromising photos all over the school. In the past decade, the technological ability to do serious damage to an adolescent’s reputation has moved to a new level. With a simple click, the image can be distributed to friends and they can distribute it further. The video or image will stay in cyberspace forever and the fear of it popping up when least expected will remain a concern for the person in the image. It is not just a new level in technology: because the image is now being disseminated widely, the act of disseminating it falls under the laws relating to child pornography.³ In legal terms, all those who distribute it are punishable by law. The individual’s conviction of a sexual offence is registered and can never be erased. Future employers can ask for a declaration of good behaviour and read about the conviction; the young person will experience great difficulties in the job market as a result.

And that is a problem. With a punishment that essentially lasts a lifetime, what school would want their young people convicted? What are the options for action, between convicting the young people involved in sending the images around, and sweeping the incident under the carpet, leaving the most vulnerable people, the people whose images are now out in the world, to deal with the consequences?

Policy and political background

National

Sex between minors is not punishable by law if it is voluntary and consensual, if there is little age difference, and if there is an affectionate relationship

1 <https://en.wikipedia.org/wiki/Smartphone>

2 Rutgers WPF. (2015). *Whitepaper Jeugd en seks online*. www.rutgers.nl/sites/rutgersnl/files/PDF/DEF_Whitepaper_jeugd_en_seks_online.pdf

3 Article 240 of the Criminal Law refers to criminal pornography as the showing or unauthorised sending of images or objects that conflict with the sexual decency norms. For example, sending or receiving sexualised images via smartphone of someone under the age of 18 is a form of child pornography. <https://www.ncj.nl/richtlijnen/jgrichtlijnenwebsite/details-richtlijn/?richtlijn=2>

between the two adolescents concerned. Sexting, however, falls under Article 240 of the Dutch Penal Code.⁴ Sexting is defined as the publication of images that are in conflict with sexual decency.⁵ Minors engaging of their own free will in sex together is not treated as a crime but, until guidelines were introduced in late 2014, sexting with each other was a crime, regardless of the intention behind the exchange of images. The guidelines exempt the exchange of sexual images between two minors from the pornography laws, provided all of the following apply:

- No pressure or coercion was used.
- The person in the image knew the image was being made.
- There is no large age difference between the two people exchanging images.
- The images are not made for commercial purposes.
- The images are not disseminated beyond the two people.

In the absence of any one of these provisions, the adolescent whose image is being disseminated, other school students, a parent, a teacher or a social worker may report the crime to the police.

A conviction will stay on the young perpetrator's "Certificate of Good Conduct"⁶ forever. Rutgers – an organisation working on sexual and reproductive health and human rights in the Netherlands – is of the opinion that it is important to keep the offence off the records. Its motivation is that the young people involved are doing what young people have always done in situations of a teenage break-up, or dabbling in sexual exploration, or being mean, but the difference is that technology now makes it possible to publish the images and it is the technology that elevates the deed to the level of a criminal offence. Rutgers prefers that the young person's crime be treated as a light sexual offence, where he or she is given

a training order from the Council for Child Protection, and the life-long label of sex offender will not apply. Rutgers has developed an individual psycho-educational programme called "Respect Limits", consisting of 10 to 12 sessions provided by qualified trainers and coordinated by Rutgers, that a young violator attends as part of his or her training order.

International

Many international agreements signed by the Netherlands are applicable to the situation of the victims of sexting. In the Convention on the Rights of the Child (1989),⁷ states parties have promised to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The International Covenant on Economic, Social and Cultural Rights (1966)⁸ specifies that the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1980)⁹ provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, education, health and employment.

The Beijing Platform for Action (1995)¹⁰ reinforced the importance of educating women, men, girls and boys to promote the social status of girls, and encouraged everyone to work towards mutual respect and equal partnership between girls and boys.

Criminal sexting is a new issue, but the way that violence against women is treated in the law and within institutions is not new. The question is, does the way Dutch institutions deal with sexting encourage mutual respect and equal partnership between girls and boys?

The poldermodel

In December 2014 the Dutch broadcasting station NOS aired a documentary on sexting.¹¹ The item included the story of a 14-year-old girl who was in love with a boy and sent him, albeit reluctantly, a

4 www.ncj.nl/programmaliijn-kennis/richtlijnen/jgrichtlijnenwebsite/details-richtlijn/?richtlijn=2&rlpag=506

5 Until 1984, the term "sexual decency" could be seen as what others regarded as decent. In 1984, a girl in a miniskirt walking through the Amsterdam Vondelpark at night was raped and the defence claimed that her lack of decency made her complicit in the crime. In a breakthrough court case, the feminist organisation Tegen Haar Wil (I was co-director at the time) got rid of the bylaw that made such a claim possible. Since then, the only person responsible for a sexual attack is the sexual offender himself; the law now applies the feminist interpretation of the term "sexual decency" as crossing the boundary of sexual autonomy, freedom of sexual expression, the absence of force, and the protection of vulnerable people including minors, students in student/teacher relationships and patients in patient/doctor relationships.

6 The Dutch phrase is Verklaring Omtrent het Gedrag, or VOG.

7 www.unicef.org/crc/index_30177.html

8 www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

9 www.un.org/womenwatch/daw/cedaw

10 www.un.org/womenwatch/daw/beijing/platform

11 nos.nl/nieuwsuur/artikel/2009957-sexting-jongeren-verspreiden-steeds-vaker-naaktfoto-s.html

sexy selfie. “They always say ‘don’t do it’, but they never tell you what will happen if you do,” she says in the opening scene of the story. Minutes after she sent him the sext, he sent it to his friends. And they sent it to their friends. It got around the whole school in a matter of minutes. And in a matter of minutes, her peers were texting her and calling her “slut” and “prostitute”. The girl was afraid to tell her parents, and locked herself in her room. A stranger rescued her some time later at a railway crossing, about to lie down on the rails. Her intention was to commit suicide. After some time a neighbour told her parents what had happened, which only made her more scared. She was afraid they would reject her as their daughter.

The NOS documentary coincided with the launching of a report by Rutgers WPF¹² and Bureau Sense, in December 2014. Researchers asked 1,000 secondary school students whether they had ever received a naked, partially naked or sexually explicit image of another school student on their smartphone; 600 had. In the meantime, 5% of boys and 2% of girls between the ages of 12 and 15 reported having sent sexually tinted images to someone else, and 7% of the boys and 2% of the girls did this with images received from a third party.¹³ While very few young people are actively taking and sharing naked, partially naked or sexually explicit images, considerably more young people are seeing the images that a few of their peers are making. None of the young people in the study were aware that transmitting these images to their friends is illegal, and that being found to be transmitting these images will remain on the record for the rest of their life.

The role of schools

In the absence of real data, we can extrapolate that the chances are strong that a school of 800 students will have 4.6 cases of criminal sexting per year to deal with.¹⁴ No information is available on how the school in the NOS documentary dealt with the girl, or how it dealt with the young people disseminating her naked image. One of the viewers watching the documentary, the now 28-year-old Francine Regelink, used Facebook to share her story of a similar experience when she was at school. Her ex-boyfriend duplicated a screenshot

of her breasts and pasted them throughout the school after they broke up.¹⁵ The school did nothing. She moved to another school. The instances of young people choosing to move to a different school after such an experience remain to this day undocumented.

Things are changing, however. As of June 2015, schools are required to develop their own social protection or safety policy. Part of this policy will be programmes that support healthy sexual development in young people. Prevention, identification and care of victims of sexting comprise a required component of the policy.¹⁶ A number of organisations support schools in developing and implementing these policies: *Kennisnet* (Knowledge Net), *Bureau Jeugd en Media* (Youth and Media Organisation) and Rutgers. Rutgers provides tips and tools for lessons about relationships and sexuality on the website *seksuelevorming.nl*, including material on sexting,¹⁷ and produces studies on cyber sex and sexual abuse online and offline.

The Netherlands has a culture of mediation. Schools prefer to have the students work things out between each other, rather than bring in the law. Only when violence or blackmail is involved will the police be brought in. This culture, called the *poldermodel*,¹⁸ involving consensus decision making and the ability to set aside differences for the greater good, is stronger than the law.

Empowering young people to be in charge of their online identity

Criminal sexting is causing a rise in stress and depression in young people.¹⁹ According to Rutgers, some victims are adequately supported if the image or video is stopped from travelling further in cyberspace. The website *meldknop.nl* is used to issue requests to a number of servers to remove the image or video. Some victims seek psychological help, others want compensation. Some choose mediation, others want to prosecute.

- For Dutch authorities and care organisations, the emphasis is on prevention. In recent months many awareness-raising programmes for young people have been launched.

12 The name Rutgers WPF was changed to Rutgers in 2015.

13 Rutgers WPF. (2015). Op. cit.

14 The Amsterdam police record on average one incident of problematic sexting per day. Amsterdam has 62,750 school pupils in the age category 12-17. If the average size of a school is 800 pupils, and if problematic sexting is universal to all schools, then every school would have 4.6 incidents of problematic sexting per year.

15 www.facebook.com/GirlsLove2Run/posts/633636226748811

16 Personal email, Ineke van der Vlugt, Rutgers, 20 June 2015.

17 www.helpwanted.nl/opvoeders/scholenpagina/handleiding-sexting

18 See https://en.wikipedia.org/wiki/Polder_model for an explanation of this cultural phenomenon.

19 www.joop.nl/leven/detail/artikel/32519_chantage_na_sexting_zorgt_vaker_voor_psychische_klachten



The “changemakers” of WE CAN Young Tilburg behind www.onuitwisbaar.nu.

- In November 2014 in Amsterdam, the police, together with the vice squad and the organisation Qpido, started a series of 50 educational meetings for parents, teachers and professionals on sexting and grooming.

To increase the sexual and relational empowerment of young people, and to prevent risks in sexting, www.onuitwisbaar.nu was launched in November 2014 in Tilburg. This website was designed by WE CAN Young Tilburg to inform and support young people, parents and professionals and to increase their awareness of the consequences of sexting.

In May 2015 the Utrecht police department and the organisation Pretty Woman launched a city-wide educational programme to address the positive and negative sides of sexting.

Rutgers and SOA Aids Nederland have a website for young people, sense.info, that provides information on sexting with the emphasis on “keeping it fun and safe”.

Conclusions

Smartphones offer new possibilities in the repertoire of sexual development. A problem is that the images they capture can easily be misused, sent on to others without the permission of the person in the image or video, and launched into

cyberspace. Any material distributed in this way, without the permission of the young person in the image, is pornographic, no matter what the age of the person in the image or the person publishing the image. Young people sharing the image among themselves are committing a crime. Dutch law and Dutch agencies and initiatives are responding by:

- Excluding personal exchanges of sexual images between two young people in a relationship from the pornography law.
- Providing alternative sentencing, such as training orders, where young people learn to respect limits.
- Making it compulsory for schools to develop policies around, among other things, sexting.
- Developing classroom materials for various age groups on sexting to prevent the misuse of personal images.
- Creating tools to support the sexual empowerment of young people.

Little is known on how schools deal with incidents of sexting. Many questions can be asked. For example, is their primary concern to come to agreement (*poldermodel*), or legal compliance, whereby the law that has been developed to protect the interests of the victim in accordance with



From the website www.onuitwisbaar.nu (onuitwisbaar can be translated as “indelible” or “cannot be erased”).

international treaties and agreements prevails? Victims are probably not aware of their rights as defined in international treaties. The international human rights treaties are also probably not foremost in the minds of the mediators. So who is bringing this perspective into the mediation?

No registry is kept on how many victims choose to change schools after their image has been circulated, and how many perpetrators choose to attend a different school. Also unknown is the effect this has on their further education.

Action steps

The following steps should be taken in the Netherlands:

- Research how schools deal with incidents of sexting and how victims and perpetrators reflect on this.
- Include explicit policy on sexting in the general “social safety policies” of schools, including training of teachers and preventive measures.
- Measure the impact of the new social policies on the incidence of sexting.
- Exchange experiences with other European countries on the effects of policies to diminish the harm of sexting.
- Form recommendations for an effective Dutch policy on sexting, as part of sexual health policies.

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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