

<https://theconversation.com/dating-apps-are-in-danger-of-confusing-the-justice-system-90027>

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**Dating apps are in danger of confusing the justice system**

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Dating apps have become so commonplace they’re even finding their way into the courtroom. Not as a way for lawyers and judges to meet potential partners, but with profiles and messages used as evidence of people’s identity, behaviour or intentions.

Yet people are rarely completely honest and upfront when it comes to dating, especially with the added anonymity of the internet. [Research suggests]( <https://www.marketwatch.com/story/most-online-daters-couldnt-pass-a-polygraph-2013-10-23>) many dating app users try to present an exaggerated or false version of themselves in pursuit of love or sex, while others might just be playing out fantasies with [no intention]( <https://www.theguardian.com/lifeandstyle/2013/jul/07/hoaxer-who-breaks-womens-hearts>) of recreating them in real life.

The problem is that judges and jury members may not have had the same experience of dating apps as those witnesses whose evidence is being presented. They may simply not appreciate the ambiguity of online behaviour. As dating apps become a more common form of evidence, we need to ensure the courts appreciate the nuances in how some people live out their digital lives. Otherwise we risk serious miscarriages of justice.

Given how much personal information people can [include in their profiles]( <https://www.theguardian.com/commentisfree/2017/sep/28/the-guardian-view-on-dating-apps-users-must-own-their-love-lives>), dating apps might be some of the most powerful sources of digital evidence. Along with online messages, dating profiles can give juries first-hand insight into the nature of relationships and how the individuals involved present themselves.

This type of digital evidence is often about behaviour so intimate that it can be difficult to independently verify any other way. When it comes to the intricate details of a relationship, there are unlikely to be any witnesses to what the people involved did, discussed and consented to. In which case, it comes down to one person’s word against another’s. But when they have used digital platforms to communicate with one another, this can provide, in the words of one judge, [“very cogent evidence”]( <http://metro.co.uk/2017/12/31/man-jailed-rape-freed-facebook-messages-prove-innocence-7194372/>) of what happened behind closed doors.

But evidence from apps is also open to misinterpretation by outside observers. Online dating often comes with its own unwritten set of rules and etiquette that may potentially confuse newcomers. For example, the site OKCupid recently began forcing users to display real names rather than made-up aliases, in part to bring it in line with other dating apps and make interacting online more comparable to interacting in the real world. But this has [prompted a backlash](<https://www.theverge.com/2017/12/22/16812152/okcupid-usernames-controversy-anonymity-privacy-dating-online>) from some users who feel their pseudonyms give them a greater sense of security and privacy, something those who haven’t used the site might not understand.

**Online ambiguity**

Apps generally create incentives for users to add as much personal information to their profile as possible. But faced with the choice of missing out on these rewards or revealing more information than they’d like, some users may create a more ambiguous identity. For instance, they could simplify their gender identity or sexuality, which could be misinterpreted if it were presented as fact in court.

Further confusion and ambiguity can arise just from the way the apps ask people to describe themselves with pre-defined categories that might mean something different to each user (or an outside observer). For example, the gay and bisexual male dating app Grindr lets users join a [number of “tribes”]( <https://www.huffingtonpost.com/dieter-holger/grindr-is-digitizing-the-_b_7250054.html>) representing different physical and sexual characteristics, such as “bear” (generally referring to larger, hairy men) or “geek”. Many of these labels [already existed in queer culture]( <http://www.tandfonline.com/doi/full/10.1080/00918369.2017.1392131>) but each one could still have multiple or changing meanings for different people.

This ambiguity may seem harmless when it relates to physique or hair colour. But other categories might try to describe more significant attributes that aren’t always clear cut, such as sexual health status, sexual interests or gender identity. And these could be much more significant in law.

In 2017, there were two high-profile cases in the UK concerning what could be described as sexual “fraud”, involving defendants found to have deceived their partners about their [gender](<https://www.theguardian.com/uk-news/2017/jun/29/gayle-newland-found-guilty-at-retrial-of-tricking-female-friend-into-sex>) and [HIV status](<http://www.bbc.co.uk/news/uk-england-sussex-41928938>), respectively. Both cases drew on a detailed selection of digital evidence, taken from dating and social networking app profiles.

But if online evidence continues to be used in trials of offline crimes, the courts need to be careful about treating the information people post and send at face value. These kinds of sexual offence cases potentially can draw heavily on evidence that indicates deception, which prevents defendants from arguing they obtained consent from their alleged victims.

There is [growing concern](<http://journals.sagepub.com/doi/10.1177/0022018315623674>) among legal academics that the law doesn’t make enough of a distinction between deception and non-disclosure. This may result in people being treated as if they had actively lied because they chose not to reveal something about themselves. And digital evidence does not offer a complete solution to this problem.

Before criminal trials start to rely on the newer features of dating apps, such as sexual health history and HIV status categories, we need to come up with a way to ensure judges and juries understand how nuanced this evidence might be. A new variety of expert advice is needed, informed by research driven by the real-life experiences of app users, to fill in the gaps in the courts’ knowledge. In the most simple terms, judges and jurors need to remember that you shouldn’t believe everything you read online.