

Sexting or pedophilia?

¿Sexteo* o pedofilia?

¿Mensagens de texto sexuais ou pedofilia?

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ABSTRACT

The scholarly world is seriously debating the critical need for some legal statutes or legislation helping to establish a differentiation between sexual images and contents usually created and shared by teenagers and young adults through mobile phones and what is known today as cyber porn, a new method developed by pedophiles using the internet as a means to sexually harass and exploit children.

This paper, mainly based on secondary analyses, includes empirical research conducted on 13 police officers, 20 teenagers, and 20 parents of teenagers. It reveals the severity of the situation and emphasizes the urgency for an immediate and appropriate legal response.

KEY WORDS

Digital Lives, Pedophilia, Pornography, Sexter, SNS Networks (fuente: Tesouro de política criminal latinoamericana - ILANUD).

* Sexteo, sextear: envío de imágenes y contenidos eróticos o pornográficos a través de teléfonos celulares.

RESUMEN

Se debate seriamente en el mundo académico de hoy la necesidad crucial de una legislación o de estatutos jurídicos tendientes a establecer una clara diferenciación entre las imágenes de índole sexual, creadas y compartidas por adolescentes y jóvenes adultos usualmente a través de sus teléfonos móviles (sexting), y la pornografía cibernética (cyber porn), desarrollada por pedófilos usando la internet para

acechar, corromper y explotar sexualmente tanto a niños como a otros menores de edad. Este artículo, basado primordialmente en un análisis secundario, incluye una investigación empírica sobre 13 agentes de policía, 20 adolescentes y 20 progenitores de adolescentes. En ella se revela la gravedad de la situación y se hace hincapié en la urgencia de una apropiada e inmediata respuesta legal.

PALABRAS CLAVE

Vidas digitales, pedofilia, pornografía, sexteador, servicios de redes sociales - SNS Networks (Source: Tesoro de política criminal latinoamericana - ILANUD).

RESUMO

O mundo acadêmico está debatendo seriamente a necessidade crítica de estatutos legais para diferenciar entre as imagens sexuais que os adolescentes e os adultos jovens crâm para compartilhar entre eles e a pornografia cibernética desenvolvida pelos pedófilos para molestar e explotar

as crianças. Esse documento, baseado principalmente na análise secundária, inclui a pesquisa empírica realizada em 13 oficiais da polícia, 20 adolescentes, e 20 pais dos adolescentes. Revela a gravidade da situação e enfatiza a exigência por uma resposta legal imediata e apropriada.

PALAVRAS - CHAVE

Vidas digitais, pedofilia, pornografía, pessoa que envia mensagens de texto sexuais, redes SNS (fonte: Tesoro de política criminal latinoamericana - ILANUD).

Introduction

The United States is seemingly flooded by “...a crime wave of child pornography offenses perpetuated by middle and highschoolers” (Eraker, 2010). Since the year of 2008, many minors have been charged under pornographic laws for taking sexually explicit images of themselves or others and transmitting them to other minors by cell phones or posting them on the internet. This social phenomenon of creating and transmitting sexually explicit photographs via cell phones, computers, web cameras and/or social media sites by minors is called, “sexting, a naughty cousin of ‘texting.’ ” This common occurrence of sexting—sending, receiving or forwarding sexually suggestive or explicit images or messages via cell phone or internet—among the teenage and young adult generation has become epidemic.

One study reports youth between ages of 13-17 exchange 75 billion text messages including sext messages each month (U.S. Teen Mobile Report, 2010). Another study shows 1 in 5 teens, ages 13-19, have either sent or received a semi-nude or nude picture and 15 % of senders and recipients have met online only. Almost 40 % of young people reported sending and 50 % reported transmitting sexually suggestive or explicit images or messages without anticipating emotional and/or legal ramifications (Mohan, 2013). Similarly, a Strassberg & McKinnon (2012) study found that 24 % of students who had sent a sexual image were unaware of the legal risks while 35 % of the students were aware of legal consequences and decided to sext anyway. A study of the National Campaign to Prevent Teen and Unplanned Pregnancy: Sex and Tech, further revealed that many teens do, in fact,

understand the risk of proliferation of their sexually suggestive postings, but they still do it because they believe exchanging sexually suggestive content increases their chances of dating and hook-ups with others.

In the past, boys and girls expressed sexual attraction by passing written or verbal comments whenever and wherever secret opportunities arose to share feelings. Now, hidden personal expressions have become more explicit and are communicated at will via wire connections. The advancement of technology has created a virtual space for sexuality to be expressed and performed (Burns, 1997; Waskul, 2004); it has enabled new forms of social interaction among today's tech savvy generation. As in traditional behavior, today's youth understand sex communications and want to hide them as private communications. They are neither ready nor willing to acknowledge the reality that once a post goes on internet, it can quickly spread beyond the person to whom it was intended. Anyone can view an image for an indefinite time once it is on the internet and instead of remaining private it can become a vicious prank resulting in ostracism (Casey, 2012), psychological stress (Caron, 2011), and even serious legal ramifications (Haynes, 2012). In addition, such material may be seized by perpetrators for criminal use (Dowdell, Burgess & Flores, 2011).

According to psychologists, children who send and receive sexually suggestive or explicit images are more likely to develop symptoms of depression, disillusionment and betrayal when their private information is posted publicly (Caron, 2011). Studies are showing horrors caused by sexting acts such as cyber-stalking, cyber-bullying or cyber-harassment. This practice can lead to very serious effects such as suicidal thoughts, or even to suicide, especially when a photo goes viral without the sender's consent.

In addition to psychological and social connotations, the act of sexting violates the criminal statute due to the definition found in the federal child pornography statutes. The current federal child pornography statutes make no distinction between pornography created by minors for one another and the deeply exploitative materials created from actual rape and molestation of children. Consequently, several incidents of arrest have made recent headlines as jurisdictions have punished sexting incidents with charges of dissemination and possession of child pornography by using pornographic laws in the absence of laws to handle this new type of sexting criminality.

The use of child pornography laws to deal severely with sexting not only leads to an unlimited rise of prosecution, but also to social uproar. Parents' rights groups, scholars and academia question the use of laws originally designed to protect children from sexual abuse and exploitation as a vehicle to suppress and punish their sexual expressions. It can be debated that, no doubt, sexting behavior is not appropriate for socio-legal exemption, but handling these behaviors by applying pornographic laws, which originated prior to digital age/virtual reality to deal with serious sex offenders, is inappropriate and unfair to the young tech savvy culture.

With this background, this paper raises a vital demand to develop a legal standard method to evaluate incidents of sexting and to determine appropriate punishments. First, in this paper we will briefly discuss pornographic international, federal and state laws. Second, we will compare cases of adult sex offenders and minor sexters to understand the differences in the cases. Third, we will discuss the research and scholarly works to understand the causes and demographics of the problem of sexting among minors. Fourth and lastly, before ultimately concluding the demand for new legislation to handle sexting cases, we will discuss the struggle of law enforcement officials to deal with sexters and expectations of teens and their parents for more appropriate fill between the disconnect of legal system and highly sexualized teen cyber-culture.

Sexting and Child Pornography Laws

To begin on a large scale, there is no defined legal definition of sexting for the purposes of international law. In their work, Weisskirch & Delevi (2011) focused on the growing international phenomenon of sexting and their definition of sexting included "... the sending and receiving of sexually suggestive images, videos or texts on cell phones." Similarly, Saltman (2012) noted that in Canada child pornography laws passed by Parliament cover the issue of sexting within their country. According to the United States Department of Justice, Section 2256 of Title 18, United States Code, defines child pornography as any visual depiction of sexually explicit conduct involving a minor—anyone under 18 years of age. Visual depictions include photographs, videos, digital or computer generated images indistinguishable from an actual minor, and images created, adapted, or modified but appear to depict an identifiable, actual minor. Federal law prohibits the production, distribution, reception, and possession of an image of

child pornography using or affecting any means or facility of interstate or foreign commerce (See 18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A). Specifically, Section 2251 makes it illegal to persuade, induce, entice or coerce a minor to engage in sexually explicit conduct for purposes of producing visual depictions of that conduct.

Any individual who attempts or conspires to commit a child pornography offense is subject to prosecution under federal law. Section 2251A of Title 18, United States Code, specifically prohibits any parent, legal guardian or other person in custody or control of a minor under the age of 18 to buy, sell or transfer custody of that minor for purposes of producing child pornography. Section 2260 of Title 18, United States Code, also prohibits any persons outside the United States to knowingly produce, receive, transport, ship or distribute child pornography with intent to import or transmit the visual depiction into the United States (US Department of Justice: Citizen's Guide to U.S. Federal Law on Child Pornography 2012).

In addition to federal statutes, each state has its own laws to deal with child pornography. For instance, in the State of Alabama it is illegal to produce, possess and distribute child pornography. Persons found producing, possessing or distributing images of minors engaging in sexual activity will face charges under the Alabama child pornography law, "Electronic Solicitation of a Child;" those convicted will be registered with sex offender status. Punishments are up to 20 years in prison and up to \$30,000 in fines. Exemptions do not yet exist for minors who trade sexting photographs with each other.

Pedophilia and Sexting Cases: Court Decisions in the Light of Pornographic Laws

Pornography laws are originated to handle serious sex offenders, and there is no debate that these laws are appropriate to deal with sex offenders and to protect the children. For instance, in the year of 2012-13, three persons were put behind bars in Alabama by using the federal and State of Alabama pornographic laws. John Patrick Tuohy, 69 years old, resident of Mobile, AL, was arrested and charged with attempted possession of obscene material of a minor and the electronic solicitation of a child. Tuohy had lured online a 15 year old to meet him for sex. In another case, Tommy Dee Mason, 45, a resident of Huntsville, AL, accused of

sexually abusing two daughters of a family friend, will face four counts of sexual abuse of children under the age of 12. In still another case, John Montague, former Fire Fighter and youth sports coach, pled guilty to two counts of electronic solicitation after allegedly kissing a 13 year-old girl and sending her inappropriate text messages. All three are registered as sex offenders and procedures applicable to them were established under Megan's Laws and Walsh Acts.

However, as mentioned earlier, current federal and state pornography laws do not differentiate between pedophilia and sexting. Since 2008, there are numerous cases involving minors who have found themselves in the courts for emailing or posting sexual images of themselves or others. For instance, in 2009 six Pittsburgh high school students were expelled after sharing nude photos via cell phones; three teenage girls allegedly took nude or semi-nude photos of themselves and shared them with male classmates via their cell phones. The female students, all 14 or 15 years old, faced charges of manufacturing, disseminating, or possessing child pornography while the boys, ages 16 and 17, who published the story on websites, faced charges of possession. Police reported the photos were discovered three months after the posting when officials seized the cell phone of a male student who was using it in violation of school rules and a classmate's nude photo was found on the phone. A police investigation then began and led to other phones containing more photos. Like the three sex offender cases mentioned above, the teens' behavior was violation of the "letter of law" governing anti-pornography and they were punished accordingly. In March 2009, a fourteen-year old girl from Passaic County, New Jersey, faced child pornography charges after posting nearly 30 explicit nude pictures of herself on MySpace.com.

It can be inferred from the above cases that there are sound reasons to differentiate between pedophilia and sexting, however existing anti-pornographic laws failed to do so. These laws were not made with sexting in mind. Pedophiles who are mature create pornography intended to harm victims, or seek fulfillment of distorted desires. Conversely, in the sexting cases mentioned, it was not established that the teenagers had intended to inflict harm on any individual or that they had known beforehand the legal ramifications of their actions. In spite of the major differences between the fact scenarios of social phenomena of sexting and pedophilia; courts treated all the cases as involving "criminal intent" and violation of pornographic laws. Con-

sequently, minors were charged with possession and distribution of child pornography; they were charged with felonies and registered as sex offenders according to established procedures for public notifications under Megan's Laws and Walsh Acts. These decisions of the courts forcing young people to face social and legal consequences originally reserved for sex offenders, led to serious concern among parents of young teens, academicians as well as criminal justice professionals.

Research and Scholarly Opinions

The rising social concern for sexting behavior among teens and young adults has led to great curiosity for research and discussion. Efforts have been made to explain and understand causes, and relations among age, gender, race and ethnicity of sexters with sexting practices. Some findings are below.

Sexting is a new way of expression

Technology has impacted every aspect of our lives, including our ways of expression, communication and interactions. Studies of Ross (2005) and Wysocki & Childers (2011) found that the internet has allowed for human sexuality to explore new forms of communication and expression. The internet provides a space midway between fantasy and action and enables people to interact with others and perform sexual fantasies they would not otherwise perform in real life.

Scholars have called sexting the "...modern equivalent of streaking" (Eraker, 2010). It is a "...more technological approach to sending a flirtatious note or a 'sexy present'" (Ostrager, 2010). It is a fun expression of romantic relations (Hudson, 2011) and opportunity "to be sexy or to initiate sexual activity" (Henderson & Morgan, 2011).

Extensive use of technology leads to sexting

Studies of Hudson (2011), Pew Research Center (2009), and Strassberg & McKinnon (2012) observed that extensive use of laptops, wireless internet access, cell phones and mobile devices with internet access make it easy to record videos, send, exchange and forward pictures. In addition, extensive hours of technology usage on social networking sites (i.e. Facebook, Twitter, and Instagram) and media have led to sexting. They further added that along with the rising trend of sexting is the more serious rise of efforts by

sexual predators to seize sexting material and develop websites and other ways to prey upon youngsters.

Correlations exist among sexting and demographics or characteristics of minors

Nineteen year old college students are 80 times more likely to text than individuals at any other age, while individuals ranging from ages 16-22, on average, text 60 times more than most young adults (New Media Society, 2012). This information is useful, because it can possibly show a relationship between how often a person texts to how likely a person is to sext. Wysocki & Childers (2011) explained that people have become more comfortable with text messaging and the younger generation has mastered it thereby increasing likelihood to experience with sexting. Lounsbury, Mitchell & Finkelhor (2011), further added that students ages 18-24 produce higher sexting rates than any other age group with cell phones as their primary sexting method. Studies have also been conducted to determine gender differences in sexting. The research of Dowdell, Burgess & Flores (2011) on 1,284 college students shows that nearly 92% actively use SNS, with female students more active users of SNS networks than male students, and females engaging in sexting more than males.

Similarly, studies of Weisskirch & Delevi (2011); Drouin & Landgraff (2012); and Harrison & Gilmore (2012) found that men are less likely than women to participate in sexting. Women reported higher incidents of phone sex and sending nude pictures of themselves to their boyfriends or someone they had an interest in pursuing a relationship with. Lindsay & Krysik (2012) found that females are more likely to disclose online pertinent, personal information quicker than male students which puts female college students at risk of stalking, sexual assault, robbery and domestic violence. This study also found that females receive more e-mails of cyber-harassment and from potential stalkers all of which can lead to suicidal thoughts.

With regard to race and sexting, white students have higher participation rates than non-white students (Benotsch, Snipes, Martin & Bull, 2013).

The above mentioned studies can lead to the possible assumption of a connection among three elements that could explain the rise of sexting: freshmen college students, female students and increased texting.

Sexting is a means to initiate or enhance an existing relationship

Many studies have been done to discover why teens and young adults endanger their careers by involvement in this illegal behavior. Studies show that many students will engage in serious relationships for the first time while attending college. Many students will also use this transition to explore their sexuality and develop new sexual behaviors. In some cases, sexting has been used as a new avenue to channel and explore sexual freedom. Researchers have studied attitudes and perceptions related to college students, relationships and sexting.

According to Hudson's study (2011) in regard to sexting, authors note young adults, mainly college students, use sexting as a means to initiate or begin a romantic relationship. This seems to be common practice among college students interested in casual relationships. Hudson, associated sexting with a certain comfort level for the sender; the person sending the text is in control of the direction and speed of the relationship. Also, sexting is said to encourage the relationship in a flirtatious, sexual fashion, and at the same time young adults feel more comfortable sexting as opposed to personal interaction with a potential partner.

According to Drouin and Landgraaf's study (2012), "...text messaging helps to strengthen bonds and foster intimacy, mainly within existing dyadic relationships." This study also discusses two attachment styles, which may have a significant role in sexting among college students. Anxious Attachment is described as a yearning to be close, while coupled with fear of separation and abandonment. These individuals feel the need to seek approval from others, but experience feelings of distress when the feelings are not returned. Authors assumed that students who exhibit Anxious Attachment characteristics are more likely to sext their partners to receive reassurance. Adversely, the Avoidant Attachment style is characterized by self-reliance, self-dependence, and fear of intimacy. Individuals that show signs of the Avoidance Attachment style will prefer to maintain independence while in a relationship. This suggests an interesting effect on sexting practices.

Another empirical research based article discusses that for young adults, "...sexting is just a part of dating." Researchers at the University of Michigan found sexting is a common practice among students aged

18-24, and reported no associations among sexting and psychological problems or risky sexual behavior. Their findings reported most who received sexts also sent sexts, suggesting sexting is a reciprocal practice that occurs between partners in romantic relationships (Gordon-Messer, Bauermeister, Grodzinski & Zimmerman et al., 2013).

Henderson & Morgan (2011) in their article, "Sexting and Sexual Relationships among Teens and Young Adults," explain attitudes toward the sexting trend. According to them, females feel pressured by males to post or send sexually explicit messages or photos. Peer pressure from friends is another contributing reason young adults and college students resort to sexting. However, roughly 26 % of males and 19 % of females believe sexting is harmless, though it could eventually yield negative consequences. The article also discusses reasons for sexting. Like much of the previously discussed literature, these authors believe sexting is conducted for three main purposes: to initiate a sexual relationship, enhance a current relationship (casual or committed), or to enhance and explore sexuality without having to engage in sexual intercourse. These authors also note young adults send sexual pictures and messages as a means to keep a partner's interest and attention.

Studies suggest more effective handling of sexting cases

Wolak & Finkelhor (2011) in their recent study have identified two separate categories in youth produced sexual images as 'Aggravated' and 'Experimental'. According to them, 'Aggravated' sexting is a form of child pornography by the intended usage and reckless misuse of sexually explicit material via cell phones by teens. Whereas 'Experimental' sexting includes pictures of the sender who sends images to an established partner in a relationship, to a potential romantic partner or purely for attention. Bowker & Sullivan (2010) encouraged prosecutors to use discretion, vested with their positions, to confront the activity of sexting appropriately by understanding the intentions of teen producing the images.

Stone (2011) discusses alternatives to dealing with sexting cases as pornography allegations and convictions. Instead of using current pornography laws, he suggests, in addition, a new law in which minors who send sexually explicit messages and photos to each other can be referred to family court and charged with a status offense while adults who possess sexual pho-

tos of minors would be charged under state child pornography laws. Similarly, Zhang (2010), in his article emphasized that, in the first place, parents and educators need to become involved in handling sexting instead of making sexting a legal issue.

The following can be inferred from the secondary analysis. (1) Teen sexting is part of life style for teens, and problems arise as it conflicts with laws. (2) Teens sext to establish relationships or to explore their sexuality at very tender ages and at turning points in their careers and lives. (3) Handling sexting cases with pornographic laws in the absence of sexting laws leads to inappropriate punishments and subsequent consequences. (4) A new judicial response exclusively pertaining to sexting is required. (5) Parents and educators can play a vital role by becoming involved in managing the rising sexting phenomenon.

In the light of the secondary analysis, online surveys had been administered to better understand expectations of teens and their parents and the struggles faced by law enforcement to deal with problem of sexting in the absence of sexting legislations. Survey findings are given below.

Survey Results of Teens and Young Adults

An online survey using convenient sampling techniques was administered on 50 students participants. Finding are given below.

From the 20 responses received, it was concluded that most teens sext to express sexual desires, interests, and their own sexual identity bravado. Text messaging is the virtual stage for social interaction between them. This study showed that most respondents are aware that the recipient of a message will likely share it with others (Harmon, 2010).

Survey Results of Police Department, Montgomery, AL

Information was collected from three Montgomery Police Units: Research and Development, Criminal Investigations, and the Victim's Unit (JJA); an online questionnaire was used. Results are given below:

- Participants were fully aware that due to lack of any specifically defined sexting statute, sexting

cases were handled, registered and prosecuted using statutory provisions of the "Electronic Solicitation of a Child."

- Participants agreed that sexting cases registered under these provisions could be prosecuted as criminal offenses.
- Participants agreed that charging and prosecuting sexting crimes under current Alabama laws intended for sexual offenders are inappropriately used for sexting offenses.
- Participants agreed that a statute specifically and solely established to address sexting crimes would be very helpful in charging and prosecuting these cases in correct perspective (Kaur, 2012).

Survey Results of Parents of Teen Children

Out of 20 parent participants, twelve indicated that they monitor digital activities of their children and would reprimand them for any unsuitable activities. They use more than one method to supervise and protect their children. All parents were aware of the rising trend of sexting and clearly demarcate it from child pornography. They showed concerns about the punishments assigned to teens under existing laws and seek for new laws requiring lesser punishments more appropriate for sexting. Parents also want educational institutions to adopt awareness programs for teens to understand the consequences of such actions (Davis, 2013).

Conclusions

Sexting is a new problem. On one hand, it is part of the life style of the young tech savvy generation. On the other, it is looming with possibilities of serious crimes and legal ramifications. New solutions are required and society must adapt to the rapidly changing nature of technology and culture.

Use of current pornography laws to prosecute the millions of American teenagers who engage in sexting is impractical, imprudent and unjustly discriminatory; current sex offender laws cannot produce desired results. The threat of punishment under these laws is ineffective in preventing and controlling improper sexting behaviors. In the absence of sexting legislation, the dangers of exploitation will go unabated and when

detected, sexters will be treated as sex offenders. The intent of legislation to handle this virtual world challenge should be that no one, under the cover of sexting, could create and distribute pornography, and that no one could be labeled a sex offender for sexting. The gap needs to be filled between, what Alexandra Marks (2009) called "...the disconnect between the appropriate punishment in a legal system and an increasingly sexualized adolescent cyber culture." Basic suggestions for this focus are given below.

Federal as well as state level statutes specifically defining and categorizing sexting as a unique crime with appropriate punishment are needed. In some areas efforts in this regard have begun by downgrading sexting charges from felonies to misdemeanors. E.g., the Vermont Legislature has already passed a law directed at sexting among minors. State law, Title 13, 2802(b) makes it a crime for a minor to possess and transmit an indecent depiction of themselves electronically to another. All adjudications under this section are to be in family court and minors should be treated as juveniles. It also eliminates possibility of prosecution under the laws for sexual exploitation, unless the minor is a repeat offender. Similarly, Ohio has introduced a bill called, "Illegal Use of Telecommunication Devices," which makes sexting as an offense punishable up to a first degree misdemeanor. In Texas, under new legislation, minors caught sexting are punished less severely than they would have been under child pornography. They are rather placed in an education program along with their parents.

Given the number of youths participating in sexting, legal measures are not sufficient to control the rising phenomenon of sexting. As a society, some role can be placed upon the cell phone, public websites and media agencies to apply strict rules and regulations and to have more vigilant mechanisms to restrict and control free flow of nudity. However, more logically parents, teachers and educational institutions need to take a lead role in managing this problem. Those with influence should provide young people with proper awareness, monitoring supervision and guidance for responsible and beneficial use of technology to prevent potential lifetime nightmares.

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