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CASE #1: SEXTING

The exchange of racy images between consenting adults is a phenomenon that has exploded with recent technological advances. Pornography is one of the Internet's major revenue generating mechanisms and many people report receiving unsolicited emails for pornographic websites. Users have found ways to transmit pornography with other technology, including text messages sent via cellular phone. A recent survey of 1200 teenagers revealed that one in five had used their cell phone to send "sexy or nude photos of themselves," or sexts.¹

Sexting can be as simple as a person sending a provocative image to his partner to inspire a wry grin. The issue has become prominent in part because the couple just described might be children, and the image might be extremely provocative. In one case a 17-year-old girl used her cell phone to send nude photos of herself to her boyfriend. After the two broke up, however, the photos began circulating among the other students at their high school.² In one such case, the teen committed suicide. While sexting may facilitate easier transmission of these types of images, some contend that new messaging technology is just a new medium for old behaviors.

Beyond the possible embarrassment of circulating nude photographs, teenagers across the U.S. have been charged with obscenity for owning, producing, and distributing sexts.³ Since sexters are often under the legal age of consent, some prosecutors have even chosen to punish sexting as child pornography. If convicted, such charges come with serious consequences, such as hefty fines, jail time, and the stigma of the sex offender label. On one hand, such punishment may serve as a strong deterrent, reducing the number of sexts sent by impulsive teens.

On the other hand, in at least one case, the ACLU has sought to protect the speech rights of minors and to prevent criminal prosecution for sexting.⁴ According to the ACLU's Witold Walczak, "Kids should be taught that sharing digitized images of themselves in embarrassing or compromised positions can have bad consequences, but prosecutors should not be using heavy artillery like child-pornography charges to teach them that lesson."⁵ Some legislators agree and

¹ Harsha, Keagan, "Is your child sexting?" http://www.wcax.com/Global/story.asp?S=9612361&nav=menu183_2, *WCAX.com* (Jan. 3, 2009).

² "Castalia police look into complaint of nude photos sent by cell phone," <http://www.sanduskyregister.com/articles/2009/03/19/front/1232333.txt>, *Sandusky Register* (Mar. 20, 2009).

³ Pilkington Ed, "Sexting Craze Leads to Pornography Charges," <http://www.guardian.co.uk/world/2009/jan/14/child-pornography-sexting>, *Guardian News and Media Limited* (Jan. 14 2009).

⁴ *Miller, et al v. Skumanick*, 605 F.Supp.2d 634 (M.D. Pa, Mar. 30, 2009), commentary available at: www.aclupa.org/legal/legaldocket/milleretalvskumanick.

⁵ ACLU, <http://www.aclupa.org/pressroom/aclusueswyomingcountydafor.htm>, (press release, Mar. 25, 2009).

sex crimes laws have been changed in some jurisdictions to either allow for consensual sharing of sexual materials between minors, or to reduce the penalties for such behavior.⁶

⁶ Associated Press, “Vermont considers legalizing teen ‘sexting’,” <http://www.foxnews.com/story/0,2933,514875,00.html>, *Fox News.com* (April 13, 2009); Russ, Dick, “Ohio to address ‘sexting’ laws,” <http://www.wkyc.com/print.aspx?storyid=111478>, *WKYC.com* (April, 2009).