

SEXTING: A TYPOLOGY

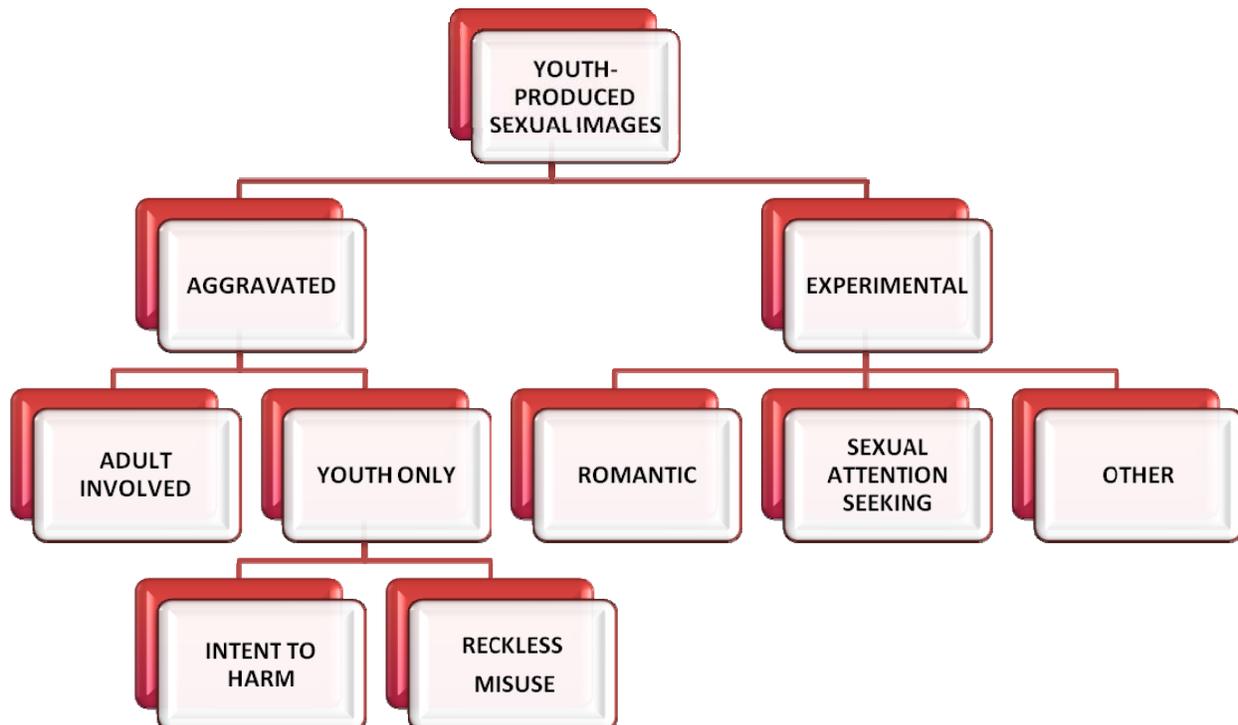
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Summary

This bulletin presents a typology of sexting episodes based on a review of over 550 cases obtained from a national survey of law enforcement agencies. The cases all involved “youth-produced sexual images,” defined as images of minors created by minors that could qualify as child pornography under applicable criminal statutes. The episodes could be broadly divided into two categories, which we termed ‘Aggravated’ and ‘Experimental’. Aggravated incidents involved criminal or abusive elements beyond the creation, sending or possession of youth-produced sexual images. These additional elements included 1) adult involvement; or 2) criminal or abusive behavior by minors such as sexual abuse, extortion, threats; malicious conduct arising from interpersonal conflicts; or creation or sending or showing of images without the knowledge or against the will of a minor who was pictured. In Experimental incidents, by contrast, youth took pictures of themselves to send to established boy- or girlfriends, to create romantic interest in other youth, or for reasons such as attention-seeking, but there was no criminal behavior beyond the creation or sending of images, no apparent malice and no lack of willing participation by youth who were pictured.

Figure 1. Typology of youth-produced image cases known to law enforcement



Introduction

Sexting has prompted considerable worry and controversy. There is concern that young people are adding unknowingly to the already daunting supply of illegal online child pornography; that youth may be compromising futures with images that could be permanently available to colleges, employers and child pornography traffickers; and that youth may be charged with serious sex crimes and placed on lifelong sex offender registries for impulsive teenage indiscretions.

To help promote an objective discussion of the problem and to develop strategies to minimize its dangers and harm, we have reviewed approximately 550 sexting cases that came to law enforcement attention in 2008 and 2009 to develop an evidence-based typology. The aim of the typology is to show the diversity of sexting incidents and to organize them in a way that helps law enforcement, school officials, parents and others confronted with sexting incidents to differentiate among and assess such cases.

What is Sexting?

The term “sexting” has been used in the media and by researchers to refer to sexual communications with content that includes both pictures and text messages, sent using cell phones and other electronic media. Because the term has been used in different ways, we have chosen an alternative term, ‘youth-produced sexual images,’ with a more precise definition that focuses on the most problematic form of sexting. We define youth-produced sexual images as pictures created by minors (age 17 or younger) that depict minors and that are or could be child pornography under applicable criminal statutes. We include the sending of such images by any electronic technology (e.g., cell phone, webcam, digital camera). In addition, we include the full range of such incidents that come to the attention of law enforcement, including those involving adults and situations that do not involve romantic relationships.

We limit the definition of youth-produced sexual images to pictures that police thought could qualify as child pornography because the applicability of child pornography laws is the major source of controversy about these images, and it is often the basis for law enforcement involvement. However, child pornography is defined broadly in the U.S. Laws vary, but many are modeled after federal statutes, which define “child” as age 17 or younger, and child pornography as the “visual depiction of sexually explicit conduct”.¹ Sexually explicit conduct includes acts such as intercourse, oral sex,

bestiality, and masturbation, as well as “lascivious exhibition of the genitals.” The U.S. Supreme Court has defined “lascivious exhibition” broadly to include images that focus on the genitals even of clothed children.² Thus, to be considered child pornography, an image does not have to depict a child below the age of consent for sexual activity or a child being sexually abused. Suggestive pictures that focus on the genitals of minors wearing, for example, swim suits or underpants can qualify, as can pictures of 16-year-old teenagers engaged in legal sexual activity, at least under federal law. At the same time, not all pictures of naked minors constitute child pornography (e.g., children in the bath or at the beach) if no sexual conduct is implied and there is no special focus on the genitals.

How many minors have created youth-produced sexual images?

Several studies have suggested sexting is widespread among adolescents,³⁻⁵ but the proportion who actually make and send sexual images of themselves is unclear. One widely-cited, but flawed study found that 20% of teens had created sexual images of themselves.⁵ However, this finding cannot be applied to minors nationwide because the sample included 18 and 19 year olds who were adults, and the participants were part of a convenience sample rather than a nationally representative sample.⁶ A better designed study by the Pew Center using a nationally representative sample of youth ages 12 to 17 estimated that 4% of youth had created and sent “sexually suggestive nude or nearly nude” images.⁷ However, based on the question asked in this study, youth could have created and sent pictures that did not qualify as child pornography. A forthcoming national study is designed to assess sexting behavior in greater detail and estimate the proportion who create and send truly explicit sexual images.⁸ But the Pew research suggests that creating such pictures is not yet a normative behavior among adolescents.

Typology Described

Aggravated versus Experimental cases. We determined that cases could be broadly divided into two categories, which we termed ‘Aggravated’ and ‘Experimental’. (Figure 1) Aggravated incidents involved additional criminal or abusive elements beyond the creation, sending or possession of youth-produced sexual images. These additional elements included 1) adults soliciting sexual images from minors, other instances of minors sending images to adults, or other illegal adult involvement; or 2) criminal or abusive behavior

by minors such as sexual abuse, extortion, deception or threats; malicious conduct arising from interpersonal conflicts; or creation or sending of images without the knowledge or against the will of minors who were pictured. In Experimental incidents, by contrast, youth created and sent sexual images without any of these additional elements. There was no criminal behavior beyond the creation or sending of images, no apparent malice and no lack of willing participation by youth who were pictured. Generally speaking, in these Experimental episodes, youth took pictures of themselves to send to established boy- or girlfriends, to create romantic interest in other youth, or for attention-seeking or other reasons that did not appear to involve elements of the Aggravated cases. We use the term 'Experimental' because, while there is no evidence that this behavior is normative, these incidents appear to grow out of typical adolescent impulses to flirt, find romantic partners, experiment with sex and get attention from peers.

Aggravated incidents. This category, which involved additional criminal or abusive elements beyond the creation, sending or possession of youth-produced sexual images, could be conceptually divided into two distinct sub-groups – Adult Involved cases that included sexual offending by adults and cases that involved Youth Only, no adults.

Aggravated incidents, Adult Involved. In most of the Adult Involved cases, adult offenders developed relationships with and seduced underage teenagers, in what were clearly criminal sex offenses even without the added element of youth-produced images. Some of these adult offenders had face-to-face relationships with victims as family friends, relatives, community members. In other cases, offenders used the Internet to meet victims. The youth-produced sexual images were generally, but not always, solicited by the adult offenders. In a minority of cases, the youth pursued relationships with adults and sometimes lied about their ages. These cases involving adults are a distinct public policy concern because they typically entail violations of criminal statutes prohibiting sex between adults and underage minors (i.e., statutory rape), in addition to child pornography charges. In the majority of cases that involved adults, the adults were considerably older than the youth victims. However, some of the involved adults were still teenagers, given that 18 is the age of majority in most of the U.S., and some of these 18 and 19 year olds were high school students. So, the younger end of the "adult" category poses dilemmas because it includes teenagers and high school

students who may not have violated age of consent laws and who may have been acknowledged members of peer groups that included younger teens.

ADULT INVOLVED AGGRAVATED CASES

The parents of a 14 year old girl found nude pictures of her on her computer. She admitted sending the pictures to a 37 year old man she met online. The girl was in love with the offender, who lived in another state. The victim never met him face-to-face. Police found he was communicating with numerous adolescent girls. They were able to identify 8 or 9 victims ages 12 to 16 that had sent him sexual images. He seemed to target victims who struggled with their self-image; many were over-weight and had skin problems. According to the police investigator we interviewed, two of the victims said "he made them feel good." The offender also had hundreds of photographs and videos featuring child pornography on his computer. He was charged with federal crimes and sentenced to 10 years in federal prison .

A 14 year old girl was drawn into a sexual relationship with her step-uncle who was 38 and lived in another state. They communicated online for about a month; then he introduced sexual topics into their conversations. He sent her sexual pictures of himself and she sent him pictures of all sorts, including sexual images. After six months, the offender visited the victim and took her to back to his home. While they were together, they both took hundreds of sexually explicit pictures of themselves and each other. The mother reported the offender to the police. The offender received two ten-year sentences.

As these case descriptions illustrate, many youth in Adult Involved cases developed romantic or sexual attachments to adult offenders. However, some adult offenders used other ploys. Deception, for example, was not typical but did occur in some instances, as illustrated below.

The offender, 32, claimed to run a modeling agency. Using a social networking site, he solicited girls, ages 11 through 17, to take nude pictures of themselves and send him the images. He sent them adult and child pornography to show them poses, and he paid for the pictures girls sent. He targeted vulnerable girls, for example, a 13-year-old whose father was in prison for sexually abusing her and whose family was living on welfare and behind on their rent. Police estimate he had at least 80 victims, some of whom he molested. The offender was discovered when a youth overheard one of the victims bragging about the money she made and told a parent, who called the police. The case was pending trial at the time of the interview.

While most of these adults committed sexual offenses and were treated as such by law enforcement, there were cases where adults may not have realized they were interacting with underage youth, because youth were deceptive or furtive about their ages. For example:

A 12 year old girl took sexual pictures of herself, some very graphic, and sent them to a 22 year old male she had been talking to on a social networking site. The girl claimed to be 19 and aggressively pursued the young man. Because of this, the police wanted to bring charges against her, but the prosecutor refused. The man was not considered a suspect by police.

A 16-year-old girl used the Internet to send sexually explicit photos of herself to numerous men and solicit them for sex. She was using a stolen computer because her parents had taken her computer away from her. The police talked to two of the men involved but did not charge them because the girl had portrayed herself as 18 and was physically very mature. The girl's father had asked for help in controlling her behavior with men on several occasions. Her case was handled in juvenile court and she was mandated to mental health counseling. [2140.006]

Aggravated incidents, Youth Only. The other category of Aggravated cases involved "Youth Only". No adults solicited youth-produced sexual images or interacted sexually with youth, either knowingly or unknowingly. We determined there were two subgroups of these Youth Only cases. The first, which we labeled "Intent to Harm" involved criminal, malicious or other abusive behavior beyond the creation, sending or possession of youth-produced sexual images. In the second subgroup, there did not appear to be any overtly criminal, malicious or other abusive behavior, but someone who was pictured in an image did not willingly or knowingly participate in the taking or sending of a picture. We labeled this sub-group "Reckless Misuse." The key to distinguishing the Intent to Harm and Reckless Misuse groups was in the intent of at least one of the youth participants. If a youth took or used images intending to harm, harass, or embarrass someone, then the incident was classified as Intent to Harm. This would include retaliation for a relationship breakup or to sully someone's reputation. In the Reckless Misuse category, by contrast, pictures were taken or sent without the knowing or willing participation of a youth, but there was no apparent specific intent to harm. For example, in a frequent Reckless Misuse scenario, a youth who received images would show or forward them to others without permission to do so.

Aggravated incidents, Youth Only: Intent to Harm. These cases were diverse and fell into three sub-types, 1) cases that arose from interpersonal conflict such as break-ups and fights among friends, 2) cases that involved criminal or abusive conduct such as blackmail, threats or deception and 3) criminal sexual abuse or exploitation by juvenile offenders. This is an example of an interpersonal conflict case.

A girl, 13, sent a topless photo of herself to her boyfriend, who was 14. When they broke up, the boy sent the photo to numerous teens via cell phone and many recipients forwarded the image to others. The police found out when one recipient told a parent. By then over 200 students had received the picture. The police seized over 150 cell phones from students. The police and prosecutor did not charge any of the parties to the incident because so many youth were involved and police did not want to "mark kids for life".

Many of the cases that arose from interpersonal conflict involved highly malicious behavior, but some were relatively mild.

Two high school girls (A & B) got mad at each other. They had been friends and had access to nude photos of each other. Girl A showed a nude photo of Girl B to another girl. Girl B thought the photo had been shown to many people. To get even, she sent a picture of Girl A's breasts to several boys. Several days later, both girls went to principal's office, crying and upset. They felt bad about what they had done.

Other cases involved criminal behavior, such as extortion or abusive behavior such as deception:

The parents of a 16 year old contacted police because a boy was extorting their daughter. The victim said she had accidentally uploaded a nude picture of herself to a social networking site. When she realized this, she deleted the image, but a boy from her school had already downloaded it. He threatened to distribute it if she did not send him more nude pictures. When the girl refused, the boy sent the picture to about 100 people. The boy, who was a straight A student, was charged with a felony. He pleaded guilty and was put on probation.

A 15 year old girl and 16 year old girl had been friends and schoolmates but had a falling out. The 15 year old created a fake online profile of a boy who appeared to be interested in the 16 year old. Under this deception, the fake boy asked for a naked picture of the 16 year old, which she sent. The 15 year old distributed this image to her friends, eventually 50-100 other youth saw it. The victim and her mother went to the School Resource Officer, who investigated and found the source of the picture. The 15 year old offender was arrested and charged originally with felony distribution of child pornography, but pleaded guilty to a misdemeanor with community service and counseling.

Finally, some of the Intent to Harm cases involved youth who committed acts of sexual abuse that included production of images.

A 13 year old girl took sexual pictures of her 3 younger sisters (ages 5, 6 & 8) and touched them sexually. Police determined that she herself had been molested by her step-father. A child protective services agency had been involved with the family for some time. The girl was removed from the home; the agency was taking steps to remove her younger sisters also.

Aggravated incidents, Youth Only: Reckless Misuse. The Youth Only Reckless Misuse cases did not appear to involve any intent to harm but images were taken or sent without the knowing or willing participation of a youth who was pictured. In these cases, pictures were taken or sent thoughtlessly or recklessly and a victim may have been harmed as a result, but the culpability appears somewhat less than in the malicious episodes. Here are 2 examples:

At a party where there was heavy drinking, three boys in the shallow end of a pool pulled down their swim trunks and had a "swordfight". A girl, 17, filmed this and sent the video via cell phone to six other people. The three boys did not know she had taken the video or sent it. The girl was charged in juvenile court.

A boy, 16, who had been bullied in school and teased about his "male anatomy" took a picture of his penis and sent it a female classmate. The classmate, in turn, but without permission, sent it to four other girls. The incident was disclosed when a teacher confiscated the boy's cell phone and found he was using the picture as a screensaver on his phone. Police investigated and deleted the images. No one was charged.

Experimental incidents. In the typology, the cases that were not deemed to be "Aggravated" were categorized as "Experimental". This means they involved the creation and sending of youth-produced sexual images, with no adult involvement, no apparent intent to harm or reckless misuse. Among the cases that came to police attention, it was possible to distinguish three sub-categories of these Experimental episodes that had some important differences. First, there were "Romantic" episodes in which juveniles in ongoing relationships made images for themselves or each other, and images were not intended to be distributed beyond the pair. Second, there were episodes we termed "Sexual Attention Seeking" in which images were made and

sent between or among youth who were not known to be romantic partners, or one youth took pictures and sent them to multiple other youth or posted them online, presumably to draw sexual attention. Finally, there was a small subset of miscellaneous episodes, which we termed "Other." In these incidents, youth created and often sent or posted youth-produced images for motives that seemed to involve some other intent that was often hard to assess.

Experimental incidents, Romantic. These incidents included couples in ongoing romantic and sexual relationships who made images for each other. Of course, parents were often not pleased to discover such pictures, and sometimes wanted police to take action.

A 14 year old boy and a 12 year old girl who were boyfriend/girlfriend for a couple of weeks sent sexual pictures and videos to one another, including pictures showing masturbation. The girl's mother found the pictures of the boy on her daughter's cell phone and told the School Resource Officer that she wanted the boy prosecuted to the full extent of the law. When she found out that her daughter had sent images, too, she wanted the girl prosecuted as well. Both went to juvenile court and were assigned 20 hours of community service.

One wrinkle of sexting incidents is that pictures do not always end up where they are intended to go, as illustrated by the case below.

A 13 year old girl received a picture of a penis on her cell phone. Police traced it to a 16 year old boy. He meant to send it to his girlfriend, whose telephone number was one digit off. The boy was embarrassed and apologetic. He had never taken such a picture before; neither had his girlfriend. The 13 year old girl was not upset by the incident, and her parents did not want to press charges after they heard what had happened.

Most of these romantic relationships were heterosexual, but some were homosexual as in the following:

Parents called the police when they discovered their son, 16, had received a video of a 17 year old boy masturbating. Their son was gay and in a relationship with the other boy. His parents were upset about his sexual orientation. The 17-year-old was put on probation and required to write an essay about what he had done.

Experimental incident, Sexual Attention Seeking. In these cases, images were made and sent but not within an ongoing relationship. Often, it appeared the intent was to interest someone in a relationship.

A father checked his 13-year-old daughter's cell phone and found that a boy, 14, had sent her a picture of his penis. The father contacted the school and the School Resource Officer interviewed the boy and girl. They were friends and had been texting late at night. The boy sent the picture "out of nowhere." The girl was not particularly offended. The boy told the police he did it to be funny, but the police believed he had feelings for the girl. The teens' parents had spoken with each other about the incident and were very cooperative. The police took no action.

An 'unpopular' girl, 15, had a crush on a classmate. She sent him videos of herself doing a striptease and playing with her breasts. He talked about these in school but there was no evidence he showed them to other kids or that the videos were sent to others or posted. However, the girl was taunted and cyber-bullied as a result. The police talked to the teens and their parents. The girl received counseling. No one was arrested in this case.

In some cases, as in the one just described, youth were offended by receiving sexual images. However, this reaction did not by itself put the episode in the Aggravated category unless there was evidence that the sender intended to offend or shock. If the sending of images was repeated when interest was not reciprocated, it could, however, become harassing and thus, malicious and classified as Aggravated. That scenario was rare however. Most cases that involved malicious or harassing behavior arose from interpersonal conflicts which were not apparent in the cases we categorized as Experimental.

Here are some other cases that appeared to involve sexual attention seeking:

A girl, 15, sent unsolicited naked pictures of herself to 3 different boys in her school using her cell phone, including to one boy who was 18. Then she and a friend went to the School Resource Officer because they were concerned the images would be sent around the school. However, none of the pictures were ever found and the case was dropped.

A school resource officer investigating a charge of harassment found some very graphic images on a 17 year old boys' cell phone. They showed a 17 year old girl from the school masturbating in her bedroom and bathroom. She had apparently taken these pictures and sent them to a number of boys unsolicited. Both the boy and the girl were arrested on charges of production and possession, and while the cases are being handled by juvenile court, both youth may be required to register as sex offenders.

A girl, 17, posted nude pictures of herself on a social networking site. The website identified the images as possible child pornography, removed them and reported the incident to the National Center for Missing & Exploited Children, which forwarded the report to the local police department. The police talked with the girl, but she was not charged.

Experimental incident, Other. There were a small number of cases that did not appear to have aggravating elements, like adult involvement, malicious motives or reckless misuse, but also did not fit into the Romantic or Attention Seeking sub-types. These tended to involve either youth who took pictures of themselves for themselves (no evidence of any sending or sharing or intent to do so) or pre-adolescent children (age 9 or younger) who did not appear to have sexual motives.

An 11 year old girl took naked pictures of her breasts with her cell phone. Her grandparents discovered the images, did not realize they were of the girl and brought the phone to the police. The girl, when interviewed, admitted she took the pictures of herself but said she had not sent them to anyone, and there was no evidence otherwise.

Implications

This bulletin has presented a typology of "sexting" cases, or what we prefer to call youth-produced sexual images. The typology is based on an analysis of more than 550 cases that came to law enforcement attention in 2008 and 2009. The typology is intended to help codify some of the diversity in such episodes. In particular, the analysis suggests a useful distinction between what we have labeled as "Aggravated" and "Experimental" cases, in which the Aggravated category includes Adult Involved incidents or Youth Only incidents with criminal or abusive behavior beyond the creation or sending of youth-produced images or lack of willing participation of a minor pictured in an image. The Experimental cases do not involve such elements but include Romantic or Sexual Attention Seeking incidents between minors and a few Other cases. The Other incidents largely involved youth who took pictures of themselves with no sharing or apparent intent to share and pre-adolescent children who did not seem to have sexual intentions and may have acted largely on impulse.

Diversity of Circumstances. The most important implication of this analysis is the recognition that youth-produced images are made and disseminated under a wide range of

circumstances. It is crucial that no single stereotype about these cases be allowed to predominate in popular thinking or influence public policy. Youth-produced sexual images are not all just “impulsive” acts or “romantic exchanges.” Some Aggravated Youth Only cases entailed a considerable amount of malice, such as youth who blackmailed other youth into providing more pictures or engaging in sexual acts.

Adult Involved cases were also diverse. Some featured exploitative adults who tricked or seduced teens into sending graphic pictures, while others involved adolescents, often troubled, who initiated sexual interactions with adults. These were largely non-forcible crimes by adults who had illegal sexual contact with underage youth or what is generally called statutory rape. Statutory rape is a relatively prevalent crime although there is no information about how often it includes youth-produced sexual images. In 2000 (most recent figures), about 25% of the sex crimes committed against minors and reported to police involved statutory rape.⁹ Certain characteristics – histories of physical or sexual abuse, delinquency, depression, conflict with parents – appear to increase the risk that youth will be drawn into such relationships.¹⁰ It is important to keep in mind that crimes charged as statutory rape are diverse in their dynamics.^{9,11} The participation of underage youth, while generally deemed voluntary, is voluntary to varying degrees. Young adolescents have little experience of intimate relationships.¹² They often do not know how to negotiate with older partners about sexual activity. Some youth are pressured or coerced into sexual activity and some are intimidated.¹³⁻¹⁵ Nonetheless, many youth in these situations believe they are in love, are resistant to viewing a relationship as criminal, and feel considerable loyalty to the adult offender.^{10,16} While some youth lie about their ages and knowingly solicit adults, the laws of most states hold adults responsible for ascertaining that their sexual partners are not minors.

Further, statutory rape cases that begin with youth initiative are not necessarily less serious or less criminal than other sexual abuse cases. In fact, adolescents that initiate such relationships are often troubled and vulnerable. But the true dynamics of these incidents need to be recognized in order to deal with them effectively. Victims in these cases often have romantic attachments to offenders that complicate investigation and prosecution or strong distrust of authorities such as parents and police.

Moreover, prevention programs need to recognize that adults are not always the initiators in such sexting incidents, and they should try to dissuade youth from making such overtures.^{10, 17}

Even cases with only juveniles can be serious. But in addition to cases involving adults, our typology demonstrates that there are cases featuring minors alone as producers and recipients of images that have very abusive and exploitative dimensions. Some youth used images to blackmail other youth. Some youth sexually abused and photographed younger or vulnerable youth. Some used images to tarnish reputations. Not all episodes among minors are benign. Some entail criminal behavior that would land youth in the juvenile justice system even in the absence of images potentially classifiable as child pornography.

Some cases appear quite minor. However, in addition to these sexting episodes that involve clear-cut criminal elements, there were also a considerable portion of episodes coming to police attention that appeared to be rather minor in nature, and were more rightly viewed as adolescent sexual experimentation than as criminal violations. They included teens who took pictures of themselves with cell phones without disseminating or intending to disseminate them; teens in relationships who only shared pictures with each other; images that might not actually qualify as child pornography (for example, pictures of naked breasts with no sexual activity, and no “lascivious display of genitals”). There also were images of teens who were almost 18 and engaging in legal sexual activity. Nonetheless, such images can be alarming when they come to the attention of parents or school officials, and it appears they are often forwarded to the police. Moreover, because this is a sample collected from law enforcement, it probably under-represents the number of the less serious episodes that either never come to adult attention or that parents discover and handle without the involvement of authorities.

Consider developmental context. In evaluating the seriousness of episodes, it is also important to consider the behavior of young people in the context of child development. Sexting is not simply kids acting “stupid”. Learning about romantic and sexual relationships is a key task of adolescence in our culture, which provides very mixed messages about appropriate sexual behavior. A large part of sexual development involves negotiating behaviors that are heavily freighted with moral, interpersonal and life course implications. How much intimacy do I want or should I allow?

What kinds of activities will create bonds and trust? What is the meaning of various forms of sexual contact? It is not just photographs, but most kinds of sexual interactions that have reputational consequences for teens, who have to balance those concerns against the kinds of trust and specialness that romantic attachments can create. The sharing of sexual images, while risqué in one cultural dimension, may also be a form of sexual sharing that has some comparative safety to it in contrast to face-to-face sexual intimacy, since it can be engaged in outside the presence of the other person.¹⁸ Thus the feelings of immediate embarrassment may be more manageable, a youth can control how she or he appears to another, and the pressure for additional sexual intimacy is not so intense and immediate, as it might be in a face-to-face sexual encounter.

Complicating matters, it is likely that many youth, just like many adults, are not aware of the legal issues regarding sexual images of minors. Under many current criminal statutes, making, sending, or even possessing youth-produced sexual images may be subject to more severe punishment than other forms of voluntary sexual behavior, even full sexual intercourse between teens. On the other hand, some of the images described by police in our study would not qualify as child pornography in many jurisdictions. It seems that law enforcement concerns about the conduct of and impact on the youth involved in these incidents went beyond simple distinctions of whether or not the images constituted child pornography. But even when teens are aware of its illegality, some of the interpersonal utility of image sharing may seem worth the risk to them. This suggests that while teaching young people about the potential legal and reputational consequences of youth-produced images might deter some of this behavior, the problem may be best handled as part of education and mentoring that allows young people to think in a complex way about their romantic and sexual relationships.

Key elements to aggravated sexting. Hopefully, this bulletin and its typology are useful in furthering the discussion about what elements of sexting episodes make them more serious, or “Aggravated” to use our terminology. Our primary suggestion is that aggravating circumstances are created by behavior that goes beyond the making, possessing or sending of images, and includes elements like adults involved with underage minors; attempts to extort, embarrass, bully or sexually exploit; or the taking or sending of images without the knowledge or willing participation of a youth who is pictured.

Additional considerations when assessing youth-produced images

It should be kept in mind that there is still considerable variability even within the categories we created. The Aggravated category included some incidents where the Intent to Hurt resulted in only limited distribution of an image. For example, a boy who was angry at his ex-girlfriend sent her picture to his mother who reported the incident to the police. Similarly, some of the Reckless Misuse incidents involved limited distribution of images and sometimes images were shown to other youth but not actually sent. In addition, while many of the Experimental incidents were relatively mild, some were quite concerning, especially when they involved young adolescents.

Other dimensions need to be considered. This highlights that, in addition to the typological categories outlined here, a variety of other dimensions should be considered when evaluating incidents. These dimensions include 1) the ages of the minors involved and the developmental appropriateness of their actions, 2) their backgrounds, including factors such as history of sexual abuse and prior involvement with the criminal justice system, 3) whether there was a sexual or social relationship that was coercive, 4) the nature of the images, and 5) the extent of any dissemination that occurred. The point of assessing these factors should be to determine whether the youth involved need protection, education or mental health services as much as to evaluate the degree of criminality involved.

Limitations to Typology. It is also important to recognize that any attempt to create a typology has inherent limitations. One obvious problem is that information to allow a good classification of a case may not be available or may be the subject of disagreement. One youth may believe the dissemination of her image was an attempt to destroy her reputation, but the disseminator may say that he was just sharing an item of interest with a friend. Moreover, episodes can change their categorization over time. What started out as an experimental episode between boyfriend and girlfriend, can turn ugly and malicious when the relationship breaks up, or even years later in the course of a divorce. Also, our classifications of cases are based on information from law enforcement investigators and may not reflect the actual motives and intentions of the youth involved.

Law Enforcement Implications

There is currently much discussion about how to deal with sexting episodes that come to the attention of law enforcement. Many legal and journalistic writers are critical of using child pornography laws to criminalize the behavior of young people.^{19,20} Citing examples of what we have categorized as “Experimental” sexting, they have made arguments that it was not this kind of activity, but rather adults exploiting children that legislators had in mind in drafting child pornography statutes. Some have pointed to the Supreme Court decision in *Ashcroft v. Free Speech Coalition* that justified the child pornography exception to 1st amendment rights based on the argument that these sexual images (as opposed to animations, for example) were products of sexual abuse, a characterization that is hard to apply to experimental forms of sexting and even to many Aggravated incidents. Many writers simply are opposed to using the serious penalties associated with child pornography violations, including sex offender registration, against young people, who in many cases might be better described as victims or naïve experimenters, than criminals. In some instances, young couples for whom full sexual intercourse is not criminal, can be prosecuted for exchanging images with each other. Our data suggest that many prosecutors appear sympathetic to these arguments to the extent that they have declined to prosecute.

On the other hand, some agencies in our sample did prosecute sexting, even the experimental cases involving romantic partners. Those arguing for a more punitive approach that continues to associate these episodes with criminal sexting make several points.^{21,22} First, they believe such statutes and the prosecution of youth under them are important to send a message to young people about the dangers involved, even if the dangers are primarily to the youth themselves. They also tend to be concerned that the production and circulation of these images will abet sex criminality if they get into the wrong hands and undermine efforts to combat the widespread availability of and trafficking in child pornography.

Reform proposals. A variety of reforms have been proposed and in some cases passed to deal with concerns about sexting.^{22,23} Some states have made the self-production of sexual images by youth a misdemeanor, instead of a felony. Some have established diversion programs so that youthful offenders can have charges dropped and criminal histories expunged. Connecticut and Nebraska created affirmative defenses for youth sexting (e.g., for those possessing a

limited number of depictions; those who did not request the images, did not forward them or destroyed the images; or a minor who had depictions only of himself or herself). Connecticut, Missouri and Vermont laws exempt minors’ with sexting offenses from sex offender registration requirements. In Illinois, minors who distribute indecent images may be ordered to obtain counseling or perform community service. Connecticut and Utah laws provide misdemeanor penalties for minors who possess or distribute pornographic materials. Arizona created new petty and misdemeanor offenses for sexting by minors, but those who do not solicit the material and take steps to destroy or report it are exempt from the law. Louisiana’s law created a lesser offense for sexting by minors; penalties increase with second or subsequent offenses.²⁴

Perhaps the most sweeping reform is in Vermont, which in 2009 decriminalized some sexting behavior by adding a “Romeo and Juliet provision” to the state child pornography laws, exempting minors from prosecution for child pornography provided that the sender voluntarily transmitted an image of him or herself.

What our data suggest, however, is that sexting episodes are very diverse and complex and cannot be categorized or generalized very easily. In some cases a youth takes pictures and sends them to an adult in what is an exploitative sexual relationship. In other cases, the taking and sending appears to be a feature of a developmentally appropriate adolescent romantic relationship. In still others, it may be hard to determine whether youth who exchange images are agreed about to what use the images may be put.

Our own typological approach suggests that some forms of sexting might well be decriminalized in a *de jure* or *de facto* fashion, but that various aggravating conditions might be taken into account in deciding how it is handled.²² Legislation proposed in South Dakota, Senate bill 179, takes something of this approach breaking sexting down into two levels: juvenile sexting and aggravated juvenile sexting. The charge would be elevated to aggravated juvenile sexting under these kinds of conditions: if the offending minor committed the offense for commercial or financial gain; the visual depiction was created or produced without the knowledge and consent of any depicted minor; the visual depiction was subsequently distributed, presented, transmitted or posted by the offending minor to more than five other persons, adult or minor; and if the offending minor has been previously referred for juvenile sexting.

Conclusion

Youth produced sexual images or sexting is a complicated phenomenon that social policy will be trying to respond to for some time to come. The complexities stem both from the legal issues that the problem raises, but also from the variety of behavior and activities that are embodied in the problem, as this typology illustrates. It is important to assemble as much social scientific information as possible to assure that these policy responses are not based simply on fear and stereotype.

References

1. 18 USC Section 2256 - Child pornography defined, in *Criminal Code: United States of America*.
2. *U.S. v. Knox*, 32 F. 3d 733. 1994.
3. Associated Press & MTV (2009) *AP-MTV Digital Abuse Study: Executive summary*.
4. Cox Communications (2009) *Teen online & wireless safety survey: Cyberbullying, sexting, and parental controls*.
5. The National Campaign to Prevent Teen and Unplanned Pregnancy, *Sex and tech: Results from a nationally representative survey of teens and young adults*. 2008, Author: Washington, DC.
6. Lounsbury, K., *Sexting Factsheet*. 2010, University of New Hampshire, Crimes against Children Research Center: Durham, NH.
7. Lenhart, A., *Teens and sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging*. 2009, Millennials: A Portrait of Generation Next, PEW Internet & American Life Project, PEW Research Center: Washington, DC.
8. Mitchell, K.J., M. Wells, J. Wolak, and D. Finkelhor, 2011.
9. Troup-Leasure, K. and H. Snyder, *Statutory rape known to law enforcement*. 2005, Office of Juvenile Justice & Delinquency Prevention: Washington DC. p. 1-4.
10. Wolak, J., D. Finkelhor, K.J. Mitchell, and M. Ybarra, *Online 'predators' & their victims: Myths, realities, & implications for prevention & treatment*. *American Psychologist*, 2008. **63**(2): p. 111-128.
11. Hines, D. and D. Finkelhor, *Statutory sex crime relationships between juveniles and adults: A review of social scientific research*. *Aggression and Violent Behavior*, 2007. **12**: p. 300-314.
12. Weinstein, E. and E. Rosenshaft, *The development of adolescent sexual intimacy: Implications for counseling*. *Adolescence*, 1991. **26**(102): p. 331.
13. Cheit, R.E. and L. Braslow, *Statutory rape: An empirical examination of claims of "overreaction"*, in *Handbook of children, culture, and violence*, N. Dowd, D.G. Singer, and R.F. Wilson, Editors. 2005, Sage Publications: Thousand Oaks, CA.
14. Darroch, J.E., D.J. Landry, and S. Oslak, *Age differences between sexual partners in the United States*. *Family Planning Perspectives*, 1999. **31**: p. 160-167.
15. Manlove, J., K. Moore, J. Liechty, E. Ikramullah, and S. Cottingham, *Sex between young teens and older individuals: A demographic portrait*. 2005, Child Trends: Washington, DC.
16. Lanning, K.V., *Compliant child victims: Confronting an uncomfortable reality*. *APSAC Advisor*, 2002. **14**(2).
17. Wolak, J., D. Finkelhor, and K.J. Mitchell, *Trends in arrests of "Online predators"*. 2009, Crimes against Children Research Center - University of New Hampshire: Durham, NH. p. 1-10.
18. Goodman, E., *It's not about sex: Sexting is really about trust, and the violation thereof*, in *Pittsburgh Post-Gazette*. 2009: Pittsburgh, PA.
19. Ryan, E., *Sexting: How the state can prevent a moment of indiscretion from leading to a lifetime of unintended consequences for minors and young adults*. *Iowa Law Review*, 2010. **96**: p. 357-383.
20. Wood, R.H., *The failure of sexting criminalization: A plea for the exercise of prosecutorial restraint*. *Michigan Communications and Technical Law Review*, 2009. **16**: p. 151-178.
21. Leary, M.G., *Self-produced child pornography: The appropriate societal response to juvenile self-sexual exploitation*. *Virginia Journal of Social Policy and the Law*, 2007. **15**(1): p. 1-51.
22. Sacco, D.T., R. Argudin, J. Maguire, and K. Tallon, *Sexting: Youth practices and legal implications*. 2010, Youth and Media Policy Working Group Initiative, Berkman Center for Internet & Society - Harvard University: Cambridge, MA.
23. Willard, N., *Sexting & youth: Achieving a rational response*. 2010, Center for Safe and Responsible Internet Use: Eugene, OR.
24. Calvert, C., *Sex, cell phones, privacy, and the first amendment: When children become child pornographers and the Lolita Effect undermines the law*. *Community Law Conspectus*, 2009. **18**(1): p. 1-65.

DATA SOURCE FOR TYPOLOGY

This typology of sexting is based on cases handled during 2008 and 2009 by a national sample of law enforcement agencies participating in the 3rd National Juvenile Online Victimization Study (NJOV3). We reviewed narrative case summaries and preliminary data for approximately 550 cases with interviews that were completed as of December 17, 2010. (The field period of the study ended on March 16, 2011).

Procedures and sample. Starting in March 2010, we surveyed a sample of 2,721 law enforcement agencies by mail asking if they had handled cases of youth-produced sexual images during 2008 or 2009. When agencies reported handling such cases, we asked for contact information for the investigators. Interviewers then contacted investigators and conducted telephone interviews that gathered details of the incident. Interviewers also prepared narrative summaries of each case. Study procedures were approved by the University of New Hampshire Human Subjects Review Board.

The cases were collected from a stratified sample of law enforcement agencies that was designed to yield a nationally representative sample of Internet-related child sexual exploitation cases. The agency sample was divided into 3 sampling frames. The first frame included agencies mandated to investigate Internet-related child sexual exploitation crimes (i.e., federal agencies, Internet Crimes against Children Task Forces). We included all first frame agencies in the sample. The second frame included agencies with staff that had received specialized training, identified through lists provided by training agencies. About half of second frame agencies were randomly selected for the sample (n=815). The third frame included all other local and state law enforcement agencies in the U.S. About 12% of third frame agencies were randomly selected for the sample (n=1,662). The response rate to the mail survey was 80%.

Definitions and measures. The mail survey included the following question: "During 2008 or 2009, did your agency handle any cases that involved sexual images created by minors (age 17 or younger) AND these images were or could have been child pornography under the statutes of your jurisdiction? Please include cases where minors took pictures of themselves OR other minors, including 'sexting,' such cases that may have been crimes, but were not prosecuted for various reasons, [and] cases handled as juvenile offenses." Interviewers conducted telephone interviews with investigators who reported cases, using a computer-assisted telephone interview system. The interviewers gathered details about the reported cases, including the characteristics of the youth and any adults involved, circumstances in which images were created, nature of images, whether and to what extent images were distributed, how the incident came to the attention of police and the outcome. The case narratives prepared by interviewers included many of these details and also described the dynamics of the incident.

To create the typology, the authors, with the help of research assistants, reviewed the narrative summaries to identify the themes that were used to categorize case types and subtypes. The information about cases was gathered from law enforcement rather than from the youth involved, so the typology necessarily reflects the perspective of law enforcement. This bulletin does not include quantitative information about numbers and characteristics of incidents because it was done before the final data set was available. Additional bulletins will report on quantitative findings.

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