**SEXTING AND THE LAW - PRESS SEND TO TURN TEENAGERS INTO REGISTERED SEX OFFENDERS**

*posted by Brian Alseth, ACLU-WA Technology and Liberty Program Director on Sep 24, 2010*

Sexting is a new twist on the timeless desire of teens and adults to engage in sexual expression. Sexting involves the practice of creating, sending and/or posting sexually suggestive images or video via mobile phone, email, or over the Internet, and everybody is getting in on the act.  More than one in three young adults between the age of 18-24 have sexted, and one in four teenagers have done the same. [MTV-AP Poll Results](http://www.athinline.org/MTV-AP_Digital_Abuse_Study_Executive_Summary.pdf).

Despite widespread and oftentimes breathless media coverage of teenage sexting stories, it is hardly confined to the under-30 crowd. The AARP Monthly magazine recently published [*Sexting Not Just for Kids*](http://www.aarp.org/relationships/love-sex/info-11-2009/sexting_not_just_for_kids.html),advising tech-competent seniors to try sexting as a way to spice up the over 50 love life--complete with a “sexting dos and don’ts” section.

Sexting encompasses a wide range of behavior. Most sexting is, by itself, consensual, intended to be innocuous, although naive.  For example, individuals who are dating might send each other nude pictures. Because, however, the pictures involved in sexting are digital, it is easy for recipients to distribute them in ways that the original sender never intended or imagined. Far too common is the case where jilted former lovers have sent nude pictures of their exes after a bad break-up to classmates, friends, coworkers and relatives. At that point sexting is neither consensual nor innocuous.

One may have any number of personal objections to sexting, but as long as sexted images are taken voluntarily and shared consenually, it is none of the government’s business.  A couple should be able to intimately share naked pictures of each other if they so choose. Sexting among adults is unquestionably protected expression under the First Amendment.

For minors, unfortunately, sexting is an entirely different matter.  Child pornography laws, originally designed to protect children against adult predators, inadvertently criminalize both consensual and non-consensual sexting where the person in the photo is under 18. The penalties are draconian. ***Under current Washington law, even any minor involved simply in consensual sexting with a person his or her own age faces felony charges, up to five years in prison, and mandatory sex offender registration.***  One cannot understate the severity of these penalties when applied to the very minors the law was intended to protect from exploitation.

Because the child pornography laws were not intended to address sexting, the legal consequences for teens engaging in sexting are truly bizarre.  Devoted partners sharing an intimate photograph face the same punishment as a bully who maliciously sends a naked picture of an ex to the entire school.  Both the consenting teen couple and the bully are Class C felons under the law.  If all parties involved were 18 or over, however, there is no crime whatsoever.

Further, current law penalizes harassment *victims* in underage sexting cases just as harshly as the perpetrator. Take, for example, the scenario where a minor sends a nude picture to his or her partner and the partner later forwards the image to friends and classmates after the couple breaks up. The second sender is clearly the bad actor, but the law treats everyone involved as felons. In fact, the friends and classmates who received the picture are felons too, even if they never asked for the picture to be sent to them.

To make matters worse, prosecutors in this state and elsewhere actually have been enforcing these draconian laws against sexting teenagers.  In Florida, a 16-year-old girl and her 17-year-old boyfriend were both convicted under child pornography laws after taking intimate nude photos of themselves. Closer to home, Thurston County prosecutors initially charged 13 and 14-year-olds with felony distribution of child pornography after a sexting incident in a Lacey middle school. The charges were later downgraded to misdemeanors. Regardless, these cases are happening every day around the country, and kids really are being convicted as felony sex offenders for taking intimate pictures of themselves.

We know teens *are* sexting, regardless of whether they *should* be doing so. While we don’t have to acquiesce to such behavior, criminal penalties are not the solution. Education about the consequences of one’s actions and shifting social norms are the keys to curbing the tide, not incarceration. Moreover, with nearly one in four teenagers admitting to sexting, would any parent want to play the odds in believing that their child would never do such a thing? What if being wrong means five years in jail for your child?

Consensual sexting should not be a crime for teens or adults.  The frightening reality, however, is that our current child pornography laws coupled with modern technology have the potential to create a sex offender registry populated with the children it was intended to protect and a generation of teenagers who will reach the age of majority already convicted as child sex offenders. This is not what child pornography laws were meant for, and the time has come to address the issue rationally and reasonably, before it is too late.