

12-2017

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Ngo, Fawn T.; Jaishankar, J.; and Agustina, Jose R., "Sexting: Current Research Gaps and Legislative Issues" (2017). *Criminology Sarasota Manatee Campus Faculty Publications*. 5.

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Copyright © 2017 International Journal of Cyber Criminology – ISSN: 0973-5089
July – December 2017. Vol. 11(2): 161–168. DOI: 10.5281/zenodo.1037369
Publisher & Editor-in-Chief – K. Jaishankar / Open Access (Authors / Readers No Pay Journal).

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GUEST EDITORS' INTRODUCTION TO THE SPECIAL ISSUE

Sexting: Current Research Gaps and Legislative Issues

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Abstract

'Sexting, the portmanteau of Sex and Texting, has become a hot topic of debate between the legislators, researchers, educators, parents and teens' (Jaishankar, 2009, para 1). In spite of the considerable and growing body of literature on sexting, there are significant gaps in the current research. A review of research to date also reveals a dearth of cross-national and cross-cultural research on the topic of sexting. Notably, legal and ethical issues abound with the current method for punishing and deterring adolescents who engage in sexting as some countries view sexting as a form of child pornography. Hence, the imperative need to scientifically assess the issue of sexting is envisaged and this special issue was proposed. This special issue includes five original articles that attempt to address the gaps in the extant body of research on sexting and issues with the current legislation and prosecution of adolescents and adults who engage in sexting.

Keywords: Sexting, Sex, Texting, Child Pornography, Legal Issues, Ethical Issues.

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Introduction

“Sexting” became an official dictionary definition in 2009 when the Online Macquarie Dictionary adopted it among 85 new words (Gaylord, 2011). Sexting, a portmanteau of “sex” and “texting,” (Jaishankar, 2009) is usually defined as sending, receiving, or forwarding sexually explicit messages or nude, partially nude, or sexually suggestive digital images of one’s self or others via a cell phone, e-mail, Internet, or Social Networking Service (Brown et al., 2009; Calvert, 2009; Corbett, 2009; Dilberto & Matthey, 2009; Halder & Jaishankar, 2014; Jaishankar, 2009, Walker & Moak, 2010). Sexting is a global phenomenon (Agustina & Gómez-Durán, 2012; Halder & Jaishankar, 2014). Reports of sexting have been documented in the United States, United Kingdom, Australia, Canada, and China (Jolicoeur & Zedlewski, 2010). In the United States, while the act of sexting is not prohibited when photos are shared between consenting adults, sexting becomes a legal problem when an underage person engages in the act or in cases involving sexual photos of minors.

Prior Research on Sexting

In the last decade, interests in the topic of sexting have culminated in a sizable and growing body of research. In particular, researchers and scholars have explored the *prevalence of sexting* (Dake et al., 2012; Drouin & Landgraff, 2012; Fleschler Peskin et al., 2013; Gordon-Messner et al., 2012; Henderson & Morgan, 2011; Lenhart, 2009; Lounsbury, Mitchell & Finkerhor, 2011; Mitchell et al., 2012; Rice et al., 2012; Strassberg et al., 2013; Temple et al., 2012), *motivations for sexting* (Drouin et al., 2013; Englander, 2011; Henderson & Morgan, 2011; Kopecký, 2011; Martinez-Prather & Vandiver, 2014; Parker et al., 2013), *correlates of sexting* (Agustina & Gómez-Durán, 2016; Dake et al., 2012; Delevi & Weisskirch, 2013; Dir, Cyders & Coskunpinar, 2013; Drouin & Landgraff, 2012; Ferguson, 2011; Gordon-Messner et al., 2012; Klettke, Hallford, & Mellor, 2014; Marcum, Higgins & Ricketts, 2014; Mitchell et al., 2012; Rice et al., 2012; Strohmaier, Murphy & DeMatteo, 2014; Temple et al., 2012; Weisskirch & Delevi, 2012), *attitudes toward sexting* (Ferguson, 2011; Strassberg et al., 2013; Weisskirch & Delevi, 2012), and *perceived outcomes of sexting* (Comartin, Kernsmith & Kernsmith, 2013; Dir et al., 2013; Drouin et al., 2013; FleschlerPeskin et al., 2013; Henderson & Morgan, 2011; Kopecký, 2011; Weisskirch & Delevi, 2012).

While it is not possible at this time to determine the true prevalence of sexting due to inconsistent terminology, inappropriate sampling frame, and inaccurate interpretation employed in prior research (Lounsbury, Mitchell & Finkerhor, 2011), there is evidence that sexting is more prevalent among adults than adolescents as well as both adults and adolescents are receiving texts more than sending them (Klette et al., 2014). There is also evidence that sexting tends to occur within a committed relationship and among adolescents. Peer pressure and social norms are the main motivators for them to engage in sexting (Dake et al., 2012; Strohmaier, Murphy & DeMatteo, 2014). Pertaining to the correlates of sexting, findings from prior research indicate that being sexually active, reporting pleasure in sex, having multiple sex partners, having unprotected sex, and experiencing forced intercourse are significant predictors of sexting (Dake et al., 2012; Dir et al., 2013; Gordon-Messner et al., 2012; Rice et al., 2012; Temple et al., 2012).

Findings from prior research also reveal that individuals engaging in sexting report higher frequency of drinking alcohol and using drugs, smoking cigarettes, engaging in



binge drinking, being bullied, suffering from depression, having suicidal ideation, and displaying impulsive behavior (Benotsch et al., 2013; Dake et al., 2012; Dir et al., 2013). Being African American, living in a single-parent household, displaying histrionic traits, and having positive attitudes toward sexting also increase the likelihood of individuals engaging in sexting (Dake et al., 2012; Ferguson, 2011).

Notably, while prior research has found that individuals who sext tend to agree that sexting could have potential adverse effects (Henderson & Morgan, 2011; Kopecký, 2011; Weisskirch & Delevi, 2012), many who sext report that they experienced few negative social and legal consequences as a result of the behavior (Strohmaier et al., 2014). Further, relating to perceptions on sanctions for sexting, in one study involving a sample of community members, the authors uncovered that the majority of surveyed participants would support requiring the offender to register as a sex offender in cases involving a youth or young adult consensually sent or received a nude photo of a minor (Comartin et al., 2013). With regards to the prosecution of minors who engage in sexting, in a study involving a sample of college students, the authors report that one third of the participants would endorse the prosecution of teen sexting, another third would oppose such prosecution, and the final third expressed that the prosecution of teen sexting should depend on certain factors (Strohmaier et al., 2014).

Current Legislation on Sexting

As O'Connor, Drouin, Yergens and Newsham (this issue) discuss in their paper, there is considerable variation among legislations and penalties associated with the prosecution and defense of sexting crime in the United States and abroad. Notably, because sexting is a relatively new phenomenon, state legislatures and prosecutors have been struggling with how to punish and deter teens engaging in this behavior. Overall, there is no clear consensus on how sexting cases should be handled either in the United States or internationally, and not all states or international countries have adopted laws that specifically address sexting and/or revenge porn (Halder & Jaishankar, 2013). Many jurisdictions rely heavily on archaic laws that, at least in sexting cases, are pieced together to deal with this new technological phenomenon. With regard to revenge porn, there is better legislative support. However, the reality is that there are numerous contradictions in the law and inconsistencies among the jurisdictions, as well as inequitable, highly-varied results for teenage sexting defendants (Ibtesam, 2017). There is also no clear consensus among the states about who should get prosecuted, what defenses apply, and what content should be criminalized (Hoffman, 2011)

In the United States, pressure to curb what appears to be a widespread increase in sexting among adolescents and the potential harmful consequences resulting from such behavior, couple with a lack of detailed legislation or case law on the phenomenon, have forced prosecutors in some states to pursue child pornography charges against juveniles who sext. Consequently, the question as to whether charging adolescents who choose to exchange self-produced images under child pornography laws is a sensible legal approach to the problem has been raised. According to legal scholars, when state legislators drafted the current child pornography laws, the phenomenon of sexting, or even the possibility of sexting, was unquestionably outside of the realm of their imagination and anticipation (Jolicoeur & Zedlewski, 2010). Legal scholars have also argued that child pornography, which generally involves subjecting children to unimaginable harm in the creation of

sexual images, differs significantly from sexting, which tend to involve teens who choose to sext pictures of themselves and more importantly, they were not harmed or abused during the process of taking the images (Eraker, 2010).

Overview of the Special Issue

In spite of the considerable and growing body of literature on sexting, there are significant gaps in the current research. For instance, in addition to a lack of reliable information on the true prevalence of sexting, very little is known about the role of individual differences as well as the applicability of existing general theories of crime and delinquency in accounting for sexting. A review of research to date also reveals a dearth of cross-national and cross-cultural research on the topic of sexting. Relatedly, legal and ethical issues abound with the current method for punishing and deterring adolescents who engage in sexting.

This special issue includes five original articles that attempt to address the gaps in the extant body of research on sexting and issues with the current legislation and prosecution of adolescents and adults who engage in sexting.

The first article by Crimmins and Seigfried-Spellar examines the relationship between sexting and low self-esteem, moral foundations, and individual differences using a sample of adults recruited through Amazon's Mechanical Turk. The authors also explore the prevalence of different methods employed for sexting (i.e., traditional text messages vs. mobile application), types of image/video used for sexting (i.e., semi-nude vs. nude), and the recipient (e.g., boyfriend vs. stranger) and content of the sent image/video (e.g., face, masturbating). In addition to providing support for the finding generated from prior research that sexting tend to occur within a committed relationship as well as sexting appears to be a normal and healthy aspect of relationships among adults, the work by Crimmins and Seigfried-Spellar highlights the relevance and importance of individual differences in understanding sexting. Similar to research studies on crime and delinquency that have documented that individuals who break the law tend to be impulsive, risk taking, insensitive to others, and do not consider future consequences, the authors found individuals who engaged in sexting displayed higher levels of sensation-seeking and negative urgency (i.e., impulsivity) relative to individuals who did not engage in this behavior. Although Crimmins and Seigfried-Spellar did not propose researchers and scholars to evaluate the applicability of general theories of crime and delinquency (e.g., strain, control, and social learning) in accounting for sexting, their work certainly pave the way for such endeavor.

The second article by Marganski addresses the issue of a lack of cross-national studies in the extant literature on sexting. Employing a sample of American and Polish university students, the author examined personal and situational factors that influence sexting behavior. Marganski found that relative to Polish university students, American students reported higher levels of sexting and relative to American female students, American male students displayed higher levels of normalization of intimate behaviors occurring through technology (i.e., knowing someone who sexted, using technology to facilitate hookup encounters, etc.). Marganski also found that relative to American male students, American female students with higher risk exposure (e.g., witnessing someone being mistreated by a partner on social networking sites) were more likely to engage in sexting. The work



undertaken by Marganski suggests that there are gender- and culturally-specific pathways to sexting and hence, more cross-national and cross-cultural research is warranted.

The third article by Hasinoff focuses on a topic that has been overlooked in prior research on sexting: the treatment of victims and perpetrators of sexting in the media. In her article, Hasinoff provided an in-depth qualitative discourse analysis of Adam Allen's case, an 18-year old who was convicted of distributing child pornography because he forwarded explicit photos of his former girlfriend to her family, friends, and teachers and who, as a result of his error in judgment, had to register as a sex offender in Florida. Hasinoff's work reminds us of the import of the Crime Victims' Movement and the need and challenge before us to draft legislations on sexting that will strike the right balance between limiting an individual's behavior but at the same time allowing the person to make and learn from his or her mistakes.

The remaining two articles center on the current legislation and prosecution of sexting. Specifically, O'Connor, Drouin, Yergens and Newsham compared and contrasted sexting laws currently implemented in the 50 states and the District of Columbia of the United States. The authors also compared and contrasted sexting laws from the United States with the laws currently employed in the United Kingdom, Canada, Australia, New Zealand, and South Africa. The authors' analyses reveal considerable variations in the prosecution of adolescent offenders who engage in sexting among the states in the United States as well as across national borders. The authors called for more uniform legislation and prosecutorial decisions across jurisdictions in the United States and abroad as well as more compassionate and sound legal responses to adolescent sexting.

The last article by Sweeny and Slack proposes that rape shield laws currently applied to sexual assault and discrimination cases be extended to cases involving sexting. The authors traced the history of rape shield laws in four common law countries, the United States, United Kingdom, Canada, and Australia, and argued that given the main objective of these laws is to protect victims from the emotional distress of being cross-examined about their sexual history on the witness stand, these laws are applicable and should be implemented in cases involving sexting.

Conclusion

According to the results from several survey polls (Cox Communications, 2009; Lenhart, 2010; Mitchell et al., 2012; Phippen, 2009; The National Campaign to Prevent Teen and Unplanned Pregnancy, 2008), the practice of sexting has become common among young adults and well-ingrained in today's teen culture. Whether sexting is merely the latest fad or a permanent, lasting expression of intimacy and sexuality remains to be seen. In the interim, the prevalence of sexting and the potential severity of its consequences, particularly for adolescents and young adults, warrant scientific examination and the construction of sound and effective legislation and policies to address the problem. With this special issue, we have attempted to address the current gaps in the extant scholarship on sexting and highlight issues with current legislation and prosecution of sexting. Although we acknowledge that questions still outnumber answers, we hope this special issue will serve as an impetus for further research on sexting as well as greater efforts to address the problem.

References

- Agustina, J. R., & Gómez-Durán, E.L. (2012). Sexting: Research Criteria of a Globalized Social Phenomenon. *Archives of Sexual Behavior*, 41, 1325.
- Agustina, J. R., & Gómez-Durán, E.L. (2016). Factores de riesgo asociados al sexting como umbral de diversas formas de victimización. Estudio de factores correlacionados con el sexting en una muestra universitaria. *IDP. Revista de Internet, Derecho y Política*, 22, 32–58.
- Benotsch, E. G., Snipes, D. J., Martin, A.M., & Bull, S. S. (2013). Sexting, substance use, and sexual risk behaviour in young adults. *Journal of Adolescent Health*, 52, 307–313.
- Brown, J. D., Keller, S., & Stern, S. (2009). Sex, sexuality, sexting, and sex ed: Adolescents and the media. *The Prevention Researcher*, 26, 12–16.
- Calvert, C. (2009). Sex, cell phones, privacy, and the first amendment: When children become child pornographers and the Lolita effect undermines the law. *Common Law Conspectus: Journal of Communications Law and Policy*, 18, 1–65.
- Comartin, E., Kernsmith, R., & Kernsmith, P. (2013). “Sexting” and sex offender registration: Do age, gender, and sexual orientation matter? *Deviant Behavior*, 34, 38–52.
- Corbett, D. (2009). Let’s talk about sext: The challenge of finding the right legal response to teenage practice of “sexting.” *Journal of Internet Law*, 13, 3–8.
- Cox Communications & National Center for Missing & Exploited Children, (2009). Teen online & wireless safety survey: cyberbullying, sexting, and parental controls. Retrieved from http://web.archive.org/web/20100107065200/http://www.cox.com/takecharge/safe_teens_2009/media/2009_teen_survey_internet_and_wireless_safety.pdf.
- Dake, J. A., Price, D. H., Mazriaz, L., & Ward, B. (2012). Prevalence and correlates of sexting behaviour in adolescents. *American Journal of Sexuality Education*, 7, 1–15.
- Delevi, R., & Weisskirch, R. S., (2013). Personality factors as predictors of sexting. *Computers in Human Behavior*, 29, 2589–2594.
- Dilberto, G., & Matthey, E. (2009). Sexting: Just how much of a danger is it and what can school nurses do about it? *NASN School Nurse*, 24, 262–267.
- Dir, A. L., Coskunpinar, A., Steiner, J. L., & Cyders, M. A. (2013). Understanding Differences in Sexting Behaviors across Gender, Relationship Status, and Sexual Identity, and the Role of Expectancies in Sexting. *Cyberpsychology, Behavior and Social Networking*, <http://dx.doi.org/10.1089/cyber.2012.0545>.
- Dir, A. L., Cyders, M. A., & Coskunpinar, A. (2013). From the bar to the bed via mobile phone: A first test of the role of problematic alcohol use, sexting, and impulsivity-related traits in sexual hookups. *Computers in Human Behavior*, 29, 1664–1670.
- Drouin, M., & Landgraff, C. (2012). Texting, sexting, and attachment in college students' romantic relationships. *Computers in Human Behaviour*, 28, 444–449.
- Drouin, M., Vogel, K. N., Surbey, A., & Stills, J. R. (2013). Let's talk about sexting, baby: Computer-mediated sexual behaviors among young adults. *Computers in Human Behavior*, 29(5), 25–30.
- Englander, E. (2012). Low risk associated with most teenage sexting: A study of 617 18-year-olds. Retrieved from <http://webhost.bridgew.edu/marc/SEXTING%20AND%20COERCION%20report.pdf>.



- Eraker, E. C. (2010). Stemming sexting: sensible legal approaches to teenagers' exchange of self-produced pornography. *Berkeley Technology Law Journal*, 25, 555-596.
- Ferguson, C. J. (2011). Sexting behaviours among young Hispanic women: Incidence and association with other high-risk sexual behaviours. *Psychiatric Quarterly*, 82, 239-243.
- Fleschler Peskin, M., Markham, C. M., Addy, R. C., Shegog, R., Thiel, M., & Tortolero, S. R. (2013). Prevalence and patterns of sexting among ethnic minority urban high school students. *Cyberpsychology, Behavior and Social Networking*, <http://dx.doi.org/10.1089/cyber.2012.0452>.
- Gaylord F. S. (2011). Sex, cells, and Sorna. *William & Mary Law Review*, 52, 1717-1746.
- Gordon-Messer, D., Bauermeister, J. A., Grodzinski, A., & Zimmerman, M. (2012). Sexting among young adults. *Journal of Adolescent Health*, 52, 301-306.
- Halder, D., & Jaishankar. (2013). Revenge Porn by Teens in the United States and India: A Socio-legal Analysis. *International Annals of Criminology*, 51(1-2), 85-111.
- Halder, D., & Jaishankar, K. (2014). Teen Sexting: A Critical Analysis on the Criminalization Vis-À-Vis Victimization Conundrums. *The Virtual Forum Against Cybercrime (VFAC) Review*, Korean Institute of Criminology, July/August 2014, 1(6), 26-43.
- Henderson, L., & Morgan, E. (2011). Sexting and sexual relationships among teens and young adults. *McNair Scholars Research Journal*, 7. doi: http://scholarworks.boisestate.edu/mcnair_journal/vol7/iss1/9.
- Jaishankar, K. (2009). Sexting: A new form of victimless crime? *International Journal of Cyber Criminology*, 3(1), 21-25.
- Jolicoeur, M. & Zedlewski, E. (2010). Much ado about sexting (Report no. NCJ 230795). Retrieved from National Criminal Justice Reference Service website: <https://ncjrs.gov/pdffiles1/nij/230795.pdf>.
- Klettke, B., Hallford, D. J., & Mellor, D. J. (2014). Sexting prevalence and correlates: A systematic literature review. *Clinical psychology review*, 34, 44-53.
- Kopecký, K. (2011). Sexting among Czech preadolescents and adolescents. *New Educational Review*, 28, 39-48.
- Lenhart, A. (2009). *Teens and sexting*. Washington, DC: Millennials: A Portrait of Generation Next, PEW Internet & American Life Project, PEW Research Center.
- Lenhart, A. (2010). Teens, adults and sexting: data on sending and receipt of sexually suggestive nude or nearly nude images by Americans. Retrieved from Pew Internet and American Life Project website: <http://www.pewinternet.org/2010/10/23/teens-adults-and-sexting-data-on-sendingreceiving-sexually-suggestive-nude-or-nearly-nude-photos-by-americans>.
- Lounsbury, K., Mitchell, K. J., & Finkerhor, D. (2011). The true prevalence of sexting. Retrieved from. http://unh.edu/ccrc/pdf/Sexting%20Fact%20Sheet%204_29_11.pdf.
- Marcum, C. D., Higgins, G. E., & Ricketts, M. L. (2014). Sexting Behaviors among Adolescents in Rural North Carolina: A Theoretical Examination of Low Self-Control and Deviant Peer Association. *International Journal of Cyber Criminology*, 8(2), 68-78.
- Martinez-Prather, K. & Vandiver, D. M. (2014). Sexting among teenagers in the United States: A retrospective analysis of identifying motivating factors, potential targets, and the role of the capable guardian. *International Journal of Cyber Criminology*. 8(1), 21-35.
- Mitchell, K. J., Finkerhor, D., Jones, L. M., & Wolak, J. (2012). Prevalence and

- characteristics of youth sexting: A national study. *Pediatrics*, 129, 13–20.
- Parker, T. S., Blackburn, K. M., Perry, M. S., & Hawks, J. M. (2013). Sexting as an intervention: Relationship satisfaction and motivation considerations. *The American Journal of Family Therapy*, 41, 1–12.
- Phippen, A. (2009). Sharing personal images and videos among young people. Retrieved from <http://www.swgfl.org.uk/Staying-Safe/Sexting-Survey>.
- Rice, E., Rhoades, H., Winetrobe, H., Sanchez, M., Montoya, J., Plant, A., et al. (2012). Sexually explicit cell phone messaging associated with sexual risk among adolescents. *Pediatrics*, 130, 667–673.
- Richards, R. D., & Calvert, C. (2009). When sex and cell phones collide: Inside the prosecution of a teen sexting case. *Hastings Communications & Entertainment Law Journal* 32, 1–40.
- Strassberg, D. S., McKinnon, R. K., Sustaíta, M.A., & Rullo, J. (2013). Sexting by high school students: An exploratory and descriptive study. *Archives of Sexual Behaviour*, 42, 15–21.
- Strohmaier, H., Murphy, M., & DeMatteo, D. (2014). Youth sexting: Prevalence rates, driving motivations, and the deterrent effect of legal consequences. *Sexuality Research and Social Policy*, 11, 245–255.
- Temple, J. R., Paul, J. A., van den Berg, P., Le, V. D., McElhany, A., & Temple, B. W. (2012). Teen sexting and its associations with sexual behaviours. *Archives of Pediatrics and Adolescent Medicine*, 166, 828–833.
- The National Campaign to Prevent Teen and Unplanned Pregnancy (2008). Sex and tech: results of a survey of teens and young adults. Retrieved from http://www.afim.org/SexTech_Summary.pdf.
- Walker, J., & Moak, S. (2010). Child's play or child pornography: The need for better laws regarding sexting. *ACJS Today: Academy of Criminal Justice Sciences*, 35, 1–9.
- Weisskirch, R. S., & Delevi, R. (2012). "Sexting" and adult romantic attachment. *Computers in Human Behaviour*, 27, 1697–1701.