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The New Pornographers: Legal and Ethical Considerations of Sexting

BRETT LUNCEFORD, PH.D.¹

University of South Alabama

SCHOLARS HAVE LONG NOTED THE role of the media in the sexualization of children and adolescents. However, with the advent of new media technologies such as the internet and cellular phones, children and adolescents are no longer merely consumers of this sexual ideology, but also creators of digital content that performs this ideology. Such content can range from the relatively tame “girls making out” images found on sites such as collegehumor.com to sexually explicit photographs transmitted through cellular phones within a circle of friends that draws the attention of law enforcement. In this essay, I discuss the practice of adolescent sexting (the practice of sending sexually explicit text messages) by reviewing some of the more prominent cases covered in the media; next, I explore the legal aspects surrounding the practice of sexting; finally, I consider the ethical issues surrounding sexting, exploring the issue of harm to both the individual and society by rooting the practice within a culture that celebrates, yet remains suspicious of, adolescent sexuality.

Despite numerous studies that demonstrate that adolescents and children are sexual beings (e.g. Calderone 1985; Martinson 1994; Buzwell and Rosenthal 1996; Davies *et al.* 2000; Larsson *et al.* 2000; Santelli *et al.* 2000; Whitaker *et al.* 2000; Woody *et al.* 2000; Lamb 2001; Little and

Rankin 2001; Sandnabba *et al.* 2003; Woody *et al.* 2003; Graupner 2004; Hornor 2004; Manning *et al.* 2005; Cornell and Halpern-Felsher 2006; Kelsey 2007), American society remains ambivalent toward adolescent sexual expression. This is especially the case where photographic evidence of sexual behavior is concerned. But in a culture that celebrates aggressive female sexuality, adolescent girls are given mixed messages. Paris Hilton is famous for appearing in a sex tape and for the ubiquitous upskirt photographs that feature her *sans* panties, yet a 14-year-old New Jersey girl faced potential child pornography charges with the accompanying sex offender registration for posting explicit photographs of herself on MySpace (*Brattleboro Reformer* 2009; Defalco 2009; Kalson 2009; *Providence Journal* 2009). Despite the seemingly clear-cut laws surrounding child pornography, the realities of adolescent sexuality trouble our conception of what constitutes legal and ethical behavior, especially in the digital age, when images, text, and video can be transmitted at the touch of a button to many people at once. The assumptions surrounding child pornography — that adults are exploiting children — are challenged by a new generation of youth who seem determined to put themselves, and their sexuality, on display.

Many adolescents seem unaware of the potential for humiliation and embarrassment that can occur when these photos and videos are distributed to unintended parties. Thus potential harm to the individual is an underlying ethical concern. For example, Jessica Logan, an 18-year-old woman from Ohio, killed herself after her ex-boyfriend sent nude pictures of her to other girls at her school. Logan was tormented by other students; she “was called all sorts of names, people were throwing stuff at her, and one day her mother found her in her bedroom. She’d hanged herself” (Feldman 2009, 1). Sometimes the photos can be made even more public, as in the case of Vanessa Hudgens, of Disney’s *High School Musical* series, who caused a public relations embarrassment when nude pictures meant for her boyfriend were leaked to the internet (*Bennington Banner* 2007; Hicks 2007; Keating and Zeidler 2007; *New York Post* 2008).

This essay examines the practice of adolescent “sexting,” or sending sexual messages or images through text messages. I will first discuss the practice of sexting by reviewing some of the more prominent cases; next, I will explore the legal aspects surrounding the practice of sexting; finally, I will consider the ethical issues surrounding sexting, exploring the issue of harm to both the individual and society by rooting the

practice within a culture that celebrates, yet remains suspicious of, adolescent sexuality.

Digital Exhibitionism: The Case of “Sexting”

Eric Schaefer (2002) explains that the advent of 16mm film technology revolutionized pornographic films. Digital video technology and the popularity of the internet seem to have wrought a similar revolution. With the internet, channels of distribution have been eliminated, and anyone with a digital camera and exhibitionistic tendencies can expose himself or herself to thousands of people. Martin Barron and Michael Kimmel (2000, 165) trace the development of three forms of pornographic media — magazines, videos, and Usenet — describing how these shifts illustrate “the increasing ‘democratization’ of pornographic media.” However, these forms of pornography remain relatively anonymous. Unlike those who post images online for their own sexual fulfillment, teenagers are currently engaging in distribution of pornographic images of themselves in a more targeted manner, often through cellular phones. Such acts have been described in the media as “sexting.”

Sexting is a growing concern among parents, law enforcement officials, and legislators. A study published by the National Campaign to Prevent Teen Pregnancy and CosmoGirl.com (2008, 1) found that 22 percent of teen girls, 18 percent of teen boys, and 11 percent of young teen girls (ages 13–16) “have sent/posted nude or seminude pictures or video of themselves.”² What’s more, Bill Albert, a spokesman for the National Campaign to Prevent Teen Pregnancy, states that “legal consequences were very low on their list of concerns” (Marks 2009). Although this is a phenomenon that seems to be shared by both males and females (see also Hamill 2009a), many of the news reports seem to focus on cases involving adolescent females who sent photos to their boyfriends, which frames the behavior as mainly a heterosexual phenomenon. However, we have no way of knowing whether this is the case, because the National Campaign to Prevent Teen and Unplanned Pregnancy and CosmoGirl.com study did not identify sexual orientation.

There have been several recent high-profile cases of sexting that have been widely reported, the most spectacular of which is the case of Jessica Logan, who killed herself after nude photos of her were disseminated to her classmates (Feldman 2009; Fletcher and Jolly 2009; McCarty 2009;

Morelli 2009; *Patriot Ledger* 2009). Another case involved a group of students in Spring Grove, Pennsylvania, where two freshman girls sent nude photos of themselves that were then forwarded around the school (Boeckel 2009; Evans 2009; *Evening Sun* 2009; Gross 2009; Parker 2009; Shaw 2009; *York Dispatch* 2009).

One case that illustrates the fuzzy boundaries of what is considered acceptable adolescent self-expression involved a group of teenagers in Wyoming County, Pennsylvania (Gram 2009; Hamill 2009a, 2009b; Marks 2009; Nissley 2009; Rubinkam 2009; Searcey 2009). Seventeen students had been caught either with nude or semi-nude photos of classmates on their cell phones, or they were identified in the images. These students accepted an offer to take a course dealing with pornography and sexual violence in lieu of being charged with child pornography. However, three other students rejected the offer because they did not feel that they had done anything wrong. In the case of two girls who were both wearing bras, District Attorney George Skumanick Jr. considered the photo “provocative” and threatened them with child abuse charges if they did not take the class (Hamill 2009a). He also threatened a girl who was photographed wearing a bathing suit (Searcey 2009). Thus in some cases the motive may not even be sexual expression, but is perceived as sexual by others.

Skumanick put forth a rather overbroad definition of child pornography, one that would render illegal almost any Calvin Klein ad aimed at the teenage market. The *Wall Street Journal* reported that Skumanick claimed that “a girl in a bathing suit could be subjected to criminal charges because she was posed ‘provocatively’” (Searcey 2009, A17). Yet the girls were being sent mixed messages, essentially being told that when similar images are taken in a different context, it is art or commercial speech. MaryJo Miller, the mother of one of the girls who appeared in their bras, observed, “There are photos of girls in magazines wearing bras” (Nissley 2009). Moreover, much more provocative photos, such as the semi-nude photos of Miley Cyrus in *Vanity Fair*, have resulted in little more than hand wringing about the sexualization of teens. Jim Farber states that “The quasi-nude *Vanity Fair* spread drew howls of outrage from parents, and shrieks from kids who thought it beneath their sweet idol” (Farber 2008, 35). Yet this did not result in child pornography charges against *Vanity Fair*, Annie Leibovitz, or any of the millions who likely own a copy of the magazine. Cyrus defended the photos, stating, “I thought, ‘This looks pretty, and really natural.’ I think it’s really artsy”

(Winkler 2008, C5). Even so, she later conceded that “it was honestly one dumb decision. I just think I need to be a bit more careful next time” (*Sunday Mirror* 2008, 6). Similar arguments could likely be made by other, less famous teens with less illustrious photographers.

Three of the girls accused by Skumanick have taken the case to court, arguing that they are not guilty of producing or appearing in child pornography. MaryJo Miller, the mother of one of the girls, argued, “There was absolutely nothing wrong with that photograph” (quoted in Rubinkam 2009, 8). Critics argued that the District Attorney’s Office was overstepping its role in protecting children. Witold Walczak, a lawyer with the American Civil Liberties Union of Pennsylvania, which represents the families who are fighting the charges, stated, “Prosecutors should not be using a nuclear-weapon-type charge like child pornography against kids who have no criminal intent and are merely doing stupid things” (Hamill 2009a, A21).

The various cases of sexting demonstrate the variety of punishments that prosecutors have attempted to impose. Recently, a 14-year-old girl from New Jersey was accused of distributing child pornography and arrested for posting explicit photos of herself on MySpace (*Brattleboro Reformer* 2009; Defalco 2009; Kalson 2009; *Providence Journal* 2009). Yet, the *Providence Journal* (2009, B1) reported that “Maureen Kanka, the New Jersey mother who pushed for [Megan’s] Law after her daughter was killed by a sex offender, blasted authorities for charging the 14-year-old, saying the girl ‘should have intervention and counseling, because the only person she exploited was herself.’” But in the face of strict child pornography laws and laws that counter child exploitation, such as Megan’s Law, that was not a decision for her to make — the laws are clear: child pornography is child pornography regardless of who creates it. The girl received probation and court-ordered counseling (Billups 2009), but such a case reveals a need for nuance in legal and ethical considerations surrounding not only child pornography but adolescent sexuality in general. According to Perry Aftab of wired-safety.org, an online internet safety website, “The laws are either too hot or too cold and we need to make sure we find one that is just right . . . We are either charging kids under child pornography and sexual exploitation laws as if they were registered sex offenders — which they will be if they’re successfully prosecuted — or we’re giving them a slap on the wrist with harassment laws that were not intended to address this” (Marks 2009, 25).

Adolescent Sexuality and the Law

In media depictions of sexting, its legal status is a primary concern: is it a crime or is it simply a foolish thing that youth today are doing? As far as the law is concerned, it is a crime, but the ways in which legal scholars and legislators frame the laws concerning adolescent sexuality can reveal underlying ethical stances. Because a core ethical consideration concerns the potential harm to both the individual and society, it is important to consider the existing legal debate surrounding the practice of sexting which, in some ways, mirrors the ongoing debate surrounding the rights of the individual versus the rights of society as a whole. First, however, we must consider sexting within the context of the current sexual practices of adolescents.

Much of the hand-wringing surrounding sexting concerns the transmission of nude photos of teenagers. Nudity is not sexuality, of course, but the display of the unclothed body is a common form of sexual self-expression in both adults and adolescents. For example, one teen referred to her sexting as “flirting” (Marks 2009, 25) and another stated, “It’s just like another form of sex” (quoted in Cahalan 2009, 3). As noted earlier, research demonstrates that adolescents and even children are sexual beings. John Santelli *et al.* (2009, 378) note that despite a decrease in sexual initiation in adolescents from 54 percent to 48 percent, they also “found an increase in current sexual activity from 1991–2007 among sexually experienced students.” In other words, slightly fewer teens are beginning to have sex but those who are having sex are having more of it. Jodi Cornell and Bonnie Halpern-Felsher (2006, 299) found in their study of ninth-graders that 20.3 percent had had oral sex, 12.6 percent had had vaginal sex, and 10 percent had had both oral and vaginal sex. Moreover, teens are not only having sex with their romantic partners, but other “hook ups” as well. For example, Manning *et al.* (2005, 398) found that over a third of sexually active teens had sex with a partner with whom they were not romantically involved (see also Manning *et al.* 2006). Such behaviors persist as adolescents move into adulthood and go to college (Paul 2006; Paul and Hayes 2002). Add to this ambiguity concerning relationships the ambiguity of definition: some teens do not consider oral or anal sex to be “sex” (Carpenter 2001; Nicoletti 2005).

Despite the reality of adolescent sexual experience, the United States has passed laws that attempt to legislate it into submission. Mary Graw Leary (2007, 32) describes the inherent tension existing in laws

governing adolescent sexuality: “Although juveniles lack the capacity to consent, they do not necessarily lack the ability to intentionally have sexual contact.” In the case of self-produced pornography, the laws, where they relate to images of minors, are quite clear. The Adam Walsh Child Protection and Safety Act (2006) includes “possession, production, or distribution of child pornography” (§ 16911(7)) as an offense for which one must register as a Tier II sex offender and which carries a 25-year registration period (§16915(a)). Other attempts at curbing child pornography include the Protection of Children Against Sexual Exploitation Act of 1977, Child Pornography Prevention Act of 1996, and the PROTECT Act of 2003 (for legal commentary concerning the issue of child pornography, see Adler 2001; Burke *et al.* 2002; Mota 2002; Ost 2002; Reid 2003; Bernstein 2005; Kornegay 2006; LaRoy 2008; Russell 2008). Unlike the laws governing sexual contact, the laws surrounding the production of child pornography do not seem to have any provisions for self-produced material or concern for the age of the producer.

As demonstrated in news reports, law enforcement officials are still trying to determine how to deal with a case in which the victim and the perpetrator are the same person. There appear to be two prevailing schools of thought — those who advocate a hard-line approach because of the potential harm to society as a whole, and those who argue that child pornography laws were never meant to punish teenagers, advocating leniency when teens send pictures of themselves to other teens. Leary (2007, 4–6), a proponent of the first position, observes that:

Minors, without the grooming or coercion of adult offenders, are voluntarily creating and distributing self-produced child pornography. This “self-exploitation” occurs in countless circumstances including commercial production, producing with the intent that there will be a limited audience, self-posting of sexually explicit images on a web page or social networking site, producing for fee, making images of oneself and distributing or posting them on the Internet for recognition, attention, or profit, recording sexual encounters by a minor with another, and others. Whatever the circumstances, because this activity is the production of child pornography, these children face significant criminal penalties.

She concludes that “Because we as a society have acknowledged child pornography’s harm extends beyond those children depicted, we

cannot ignore this harm when the producer is a juvenile. Thus, our child pornography jurisprudence supports juvenile prosecution as an option to stem its proliferation" (Leary 2007, 36).

Yet Stephen Smith (2008, 544) counters,

To funnel into the criminal or juvenile justice systems cases of self-produced child pornography — material that, at its root, steps from the undeniable fact that today's teenagers are sexually active well before they turn eighteen — is unjustified. To do so would expose minors to the severe stigma and penalties afforded by child pornography laws. It would also cause minors to be branded as registered sex offenders and to incur the onerous legal disabilities and restrictions that were passed with sexual predators in mind, not minors engaged in consensual sex with their peers.

Smith (2008, 529) concludes that "these laws are simply too blunt an instrument to deal with consensual teenage sex that the minors involved chose to film in a culture where, for good or ill, sex among teenagers is commonplace."

Smith and Leary illustrate two opposing ethical stances — the good of the individual versus the good of society as a whole — and it seems that the legal system still is trying to strike an appropriate balance between the two. Moreover, it seems that legislators and legal scholars are attempting to impose a form of adolescent morality that never was. However, unlike sexual contact between individual teens, this form of sexual expression can be shared by hundreds of people as it spreads virally. If such images were to proliferate, it would become increasingly difficult to distinguish voluntary adolescent sexual expression from child pornography created through coercive means. Because the issues surrounding sexting are complex, it seems far from being resolved.

The legal system has always grappled with the rights of the individual and the impact of individual actions on others. Yet both of these stances ignore the implications of the fact, if not the fact itself, that these adolescents are *choosing* to create erotic images of themselves. These teenagers were not plied with drugs and alcohol, nor were they coerced into creating these images. As such, these images transgress the commonly held narratives surrounding the production of child pornography. In media and legal discourse concerning sexting, these images are continually described as self-exploitation, yet there must be some kind of compelling

self-interest in producing these images because, as Baruch Spinoza (1992, 165) suggests, "Nobody, unless he [or she] is overcome by external causes contrary to his [or her] own nature, neglects to seek his [or her] own advantage." In other words, these images may not actually be exploitation — at least in the minds of the participants. Therefore, we must examine sexting from a different standpoint, one that acknowledges the complicity and agency of the adolescents themselves.

Sexual Norms and the Ethics of Sexting

John Stuart Mill (1907, 2–3) argues that "all action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and colour from the end to which they are subservient." He continues, "When we engage in a pursuit, a clear and precise conception of what we are pursuing would seem to be the first thing we need, instead of the last we are to look forward to" (Mill 1907, 3). What, then, seem to be the ends implicit in the act of sexting? I suggest that at its heart, the utility value of sexting is in the construction of a desired presentation of self.

Erving Goffman (1959) suggests that we are constantly performing, presenting ourselves in ways that are socially desirable. This is also the case in sexuality; one is always performing one's sexuality. Yet, as Judith Butler (1990, 140) notes, "We regularly punish those who fail to do their gender right." Women are caught in a paradox, required to perform both the innocent virgin and the sexually knowing wanton. Men are implored to value virility and sexual experience, such that the term "virgin" is used as a slur. Thus, it is not enough to simply consider these displays of sexuality as a performance — rather, it seems that these images function rhetorically. Parke Burgess (1970, 120) states that "the strategies and motives of any rhetoric . . . represent an invitation to a life-style, an invitation to adopt a pattern of strategies and motives, verbal and nonverbal, that determine how men and women will function together in culture." This is especially the case with sexual media: Richard Miller (1989, 149) argues that "pornographic media use suggestive images that appeal to affections and sensual pleasures; they are also speech acts in that they bid their patrons to assent to judgments demanded by the medium."

Edwin Black (1970, 119) explains, "In all rhetorical discourse, we can find enticements not simply to believe something, but to *be* something.

We are solicited by the discourse to fulfill its blandishments with our very selves.” Thomas Benson (1989, 318) provides a similar argument: “Rhetorical being, knowing, and doing are simultaneous and overlapping actions that together constitute rhetorical action: discourse is fabricated, judgments are made, understandings are shared, agents move others and are themselves moved to belief and action, and identities are revealed and created.” By exposing themselves sexually and disseminating the images, these adolescents not only perform a sexual identity that they seem to believe is socially desirable, they also reveal a positive orientation toward such acts. That these images are then spread through the adolescent community likewise reveals ambivalence toward the legal implications of such images.

In some ways, these adolescents create a self-fulfilling prophecy; they engage in behaviors that they know will attract attention and thus reinforce the behavior as desirable. They have found that the more explicit the act, the more desirable they will seem and the more attention they will receive. Thus it seems little wonder that photographs seem to be following a trajectory from less explicit and flirtatious images, to more revealing images, up to openly sexual images. Mill (1907, 9–10) proposes that “Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure.” There is likely some degree of pleasure derived from knowing one’s own desirability. Susan Bordo (1999, 190) describes the “receptive pleasures traditionally reserved for women,” such as “the pleasures, not of staring someone down but of feeling one’s body caressed by another’s eyes . . . Some people describe these receptive pleasures as ‘passive’ . . . ‘Passive’ hardly describes what’s going on when one person offers himself or herself to another. Inviting, receiving, responding — these are active behaviors too, and rather thrilling ones.”

From a utilitarian standpoint, there is little wrong with putting oneself on display if one seeks attention, especially in a culture that celebrates sexuality and youth. Mill (1907, 11) notes that “some *kinds* of pleasure are more desirable and valuable than others,” and in a culture saturated with messages imploring adolescents, especially young women, to be not only sexy, but sexual, the pleasures derived from sexual expression are certainly valuable and desirable. Candice Kelsey (2007, 5) argues that “girls crave feeling like an adult. And many girls believe that adult equals

sexy — a conclusion that’s repeated endlessly to them by marketers and media outlets hyping sexualized images and products.” Adolescents who engage in sexting seem to have internalized the sexualization of the world in which they live.

There remains the underlying question of whether the act of adolescents taking sexually explicit images of themselves and sending those images to others is ethical. I propose that the core issue here is harm, both to the teen — emotionally and that which is done to his or her future — and to society as a whole. It is clear that sexting may cause potential harm to the participant’s emotional well-being, as evidenced in the case of Jessica Logan. Adolescents may be ill-equipped to deal with the potential betrayal of trust that comes when sexual images of themselves are passed on to others without their consent. At the very least, such images may prove to be embarrassing if they resurface in the future, as in the case of Vanessa Hudgens. If those who favor a hard-line approach to defining sexting as the production of child pornography have their way, there may also be potential harm to the individual’s future if he or she is required to register as a sex offender. Yet all of this (with the exception of the potential for sex offender status) also applies if the individual in the image is 18 years old or older. Once the individual turns 18, an act that was once creation and distribution of child pornography becomes merely a bad decision, and the law is not meant to protect people from bad decisions. Moreover, this implies that somehow, on an arbitrary date (i.e., one’s 18th birthday), an act transforms from a morally reprehensible act to one that is simply in poor taste.

From a societal standpoint, Leary (2007) takes the stance that any images of adolescent sexuality must be eliminated because they may be used by pedophiles to groom other victims. Yet pedophiles commonly use mainstream pornography to groom victims as well (Dombrowski *et al.* 2007; Itzin 1997), and there are legal alternatives that could just as easily stand in for a grainy cell phone photograph of a 17-year-old. The implicit argument concerning sexting seems to be that such images *will* be used to groom pedophiles; from the standpoint of this argument it seems incomprehensible that such images can be defined as yet another variety of pornography or simply self-expression. This line of reasoning seems to function as an extension of what W. Phillips Davison (1983) calls the “third person effect,” in which individuals perceive that others will be more affected by mediated messages than themselves (see also Perloff 2002).

Of course, each instance of sexting tends to normalize the practice. Yet one cannot lay this entirely at the feet of the adolescents involved. Once again, we must consider the phenomenon within the larger media landscape in which these teens reside. Bandura (2002, 132) notes that “media portrayals can alter perceived social sanctions by the way in which the consequences of different styles of conduct are portrayed.” In many media portrayals of adolescent sexual behavior, the act is shown as a desirable outcome, a consummation of the relationship. Sexual intercourse is the logical *telos* of romantic relationships, even when teens are involved. Harris and Scott (2002, 313) suggest that “watching numerous sitcoms and movies showing teenagers being sexually active may cultivate acceptance of such a position in the viewer and thus weaken family-taught values against premarital sex.” Sexting can be considered simply another form of sexual expression, which the media portray as desirable. As such, sexting is merely a symptom, rather than the disease itself.

Regardless of the reasons why, it is clear that adolescents seem determined to express their sexuality and, when viewed as a rhetorical act, sexting functions as a way to re-imagine adolescent sexuality. It also provides an opportunity to redefine the idea of child pornography, because it is clear that the teens who produce these images are not thinking of it as child pornography; rather, they use terms such as “flirting” (Marks 2009; National Campaign to Prevent Teen and Unplanned Pregnancy and CosmoGirl.com 2008), “a joke” (*Gadsden Times* 2009; Gram 2009; National Campaign to Prevent Teen and Unplanned Pregnancy and CosmoGirl.com 2008), or a “thrill” (*Omaha World-Herald* 2009). Semantics matter. Feminist scholars have described how language affects women’s self-image, especially where it concerns their sexuality (Ho and Tsang 2005; Pitts 1998). Victoria Pitts (1998, 71) writes, “Reclaiming or resistance ideology implies that social inscriptions on the body can be rewritten, and the body — especially the female genitals and breasts — can be reclaimed.” A similar impulse may be at work in adolescents’ refusal to see sexting as criminal or even as morally wrong. Such linguistic strategies diminish the potential legal and emotional consequences of the act.

Taken from a utilitarian ethical stance, sexting can be seen as an appropriate, if not legal, form of sexual self-expression. Mill (1907, 61) suggests that “nothing is a good to human beings but in so far as it is either itself pleasurable, or a means of attaining pleasure or averting

pain.” The potential pleasure found in sending sexual images of oneself, however, must be tempered with the potential pain of betrayal. But sexual expression is a natural part of life; likewise, the potential harm in such acts of self-expression is also a part of life. If ethics were to eliminate the potential for harm, one must denounce sex itself as unethical. Alan Soble (1992, 1146) argues that “the sexual permeates our Being. But this does not make sexual ethics *sui generis*, even if this ethics is important. Nor need it be restrictive; if our being is sexual, that could be just as much reason for a relaxed, as for a restrictive, sexual ethics.” Adolescents are forcefully asserting their sexual agency. The clearest ethical stance concerning sexting lies not in forcing them to behave in a manner that adults consider appropriate, but rather in teaching them how to minimize the harm to themselves, as well as others, as they perform their sexuality. This, more than anything, seems likely to yield the dividend of a generation that can behave sexually in an ethical way.

Conclusion

The issues surrounding pornographic images of adolescents created by the adolescents themselves have no easy or obvious solutions. Although the government has a compelling interest in protecting children and adolescents from sexual predators, the law as it currently stands exposes the fissures between what is considered normal adolescent sexuality and the lived experience of adolescents. When public health researchers estimate that almost half of the adolescent population has engaged in sexual intercourse (Santelli *et al.* 2009), it seems clear that adolescents will seek not only to engage in sexual practices, but will also perform their sexuality and express themselves in sexual ways, much as adults have chosen to do.

Guy Debord (1994, 151) declared that “the spectacle is the acme of ideology.” By placing themselves on display in a sexual manner, these adolescents perform an ideology that considers sexual images an appropriate mode of self-expression. Moreover, it constitutes a rejection of the belief that adolescents are innocent creatures who are mere children under the law and who must be protected from exploitation. More disturbing, however, is the internalization of the sexuality that pervades American culture. They have learned far too well that they must be sexually enticing, and that one’s worth is measured by his or her physical attractiveness and desirability. Maurice Charland (1987, 143)

notes that “ideology is material because subjects enact their ideology and reconstitute their material world in its image.” It seems clear that adolescents have embraced the pornographic mindset and are performing it in a logical manner. When adolescents are continually bombarded with imperatives to be both sexy and sexual, it should come as little surprise that they would use new technologies to perform an identity that reflects these attributes. If the desire is to gain acceptance from others, especially peers, then sexting provides a means of generating considerable pleasure.

New media provide a way to recalibrate ethical considerations surrounding sexuality, especially adolescent sexual activity. I have argued that legal and ethical concerns surrounding adolescent sexual expression must be considered within the larger culture that encourages such behavior. Moreover, one must also consider the constraints of the media themselves because, as Marshall McLuhan (1994) reminds us, the medium influences how the message is perceived. In the case of sexting, teens choose to send images to their friends or romantic partners; these images are not simply stumbled upon by surfing online. More importantly, the individuals depicted in these images are known to the recipients. This is likely one reason why these images have a greater potential to spread virally, even when the image was originally meant only for one person.

Teens who engage in sexting are pushing the boundaries of adolescent sexuality in ways that have less to do with the adolescents themselves and more to do with the technologies available to them for expression of these desires. Jacques Ellul (1964, 133) argues that “technique elicits and conditions social, political, and economic change. It is the prime mover of all the rest, in spite of any appearance to the contrary.” Technology changes not only the available modes of expression, but humanity as well. Adolescents are sexual beings, and sexting provides a mode of sexual expression that is familiar to these “digital natives.” One thing is certain, however: it is unlikely that society will simply be able to legislate sexting out of existence. As Hannah Arendt (1976, 273) observed, “No punishment has ever possessed enough power of deterrence to prevent the commission of crimes. On the contrary, whatever the punishment, once a specific crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been.”

The case of sexting provides an opportunity to reconsider the ethical limits of adolescent sexuality and sexuality in general. Current attempts

to combat adolescent sexuality seem to ignore what anecdotal experience and scholarly research have demonstrated all along — adolescents are sexual beings. Generations of adolescents have demonstrated the difficulty of reining in their sexuality; yet, until recently, it has been possible to simply ignore the issue and believe that such acts were happening elsewhere. But biology is a harsh mistress, and attempts to squelch adolescent sexuality have simply yielded more creative means of sexual expression. The prevalence of sexting has brought the issue of adolescent sexual expression into the public sphere in a dramatic way. Viewed from an ethical standpoint, I have argued that the phenomenon of sexting must be placed within its societal context. This is not an argument for moral relativism, but rather a case where utilitarianism provides some explanatory force for behavior that may, on the surface, seem damaging to both the individual and society. When adolescents are taught, largely through the mass media, that sexual experience is a desired good, and these values are then perpetuated among their peers, it seems clear that portraying oneself as sexual would be a desirable strategy. Trying to save adolescents from themselves without understanding the roots of the behavior is misguided at best.

Notes

- 1 Brett Lunceford (Ph.D., Pennsylvania State University) is Assistant Professor of Communication at the University of South Alabama. His research interests center on rhetorical theory and social implications of new technologies. His research has been published in *American Communication Journal*, *Communication Teacher*, *ETC: A Review of General Semantics*, *Explorations in Media Ecology*, *Media History Monographs*, *Northwestern Journal of Technology and Intellectual Property*, *Review of Communication*, and *Theology and Sexuality*.
- 2 Some have raised concerns about the methodology used to gather the data for this survey, suggesting that the figures may be inflated because the teens that are online are those who would be more likely to engage in sexting (see Bialik 2009).

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6

"I'm Here to Tell You it's OK": The FCC Chairman, Digital TV, and Lying to the Government

BRUCE DRUSHEL, PH.D.¹

Miami University

THIS CHAPTER DEPARTS FROM THE others in this collection in that it deals not with the ethical issues in the content or use of an emerging media, but rather with the ethical behavior of public officials charged with ensuring service to the public from an emerging medium. In 2009, over-the-air television stations in the U.S. converted their transmissions from analog to digital, arguably the most significant technological change to the medium since its introduction. The transition to digital multiplexed television largely went unnoticed by most viewers but put at risk service to older and lower-income audiences who were more likely to lack cable or satellite service, new digital receivers, or converter boxes. The government made available coupons intended to defray the cost of converter boxes for those households, but some of the coupons expired before the recipients could use them. The head of the FCC caused a local uproar by effectively advising a questioner at a public forum to commit fraud by having a friend or neighbor falsify an application for more coupons. This chapter examines the ethical behavior of public officials faced with the competing duties to uphold regulations that impede the provision of practical public benefit and to ensure the greater public good.