

# Sexting, Sexy Selfie or Inappropriate Self Generated Images

What Must be Understood to Prevent Criminalisation of Children & Young Adults

Sexting among teens is, unfortunately, pretty common. Many parents are shocked to hear how casually teens discuss how prevalent it is. And, while experts differ on statistics, as long ago as 2009 a study confirmed 'sexting' is a teen reality that's here to stay, how right they were. Interestingly though research and 'experts' continue to supply statistical issues relating to the sending and receiving of sexy self generated images as if it has suddenly become an epidemic. Why do children or young adults take such images? To show off, to entice someone, to show interest in someone, or to prove commitment. Perhaps even as a joke. Teens' developing interest in sex, an impulse to experiment, and apps that make sexting easy -- and acceptable -- create an environment that some teens find irresistible.

Sending these pictures or messages is problematic enough, but the real challenge comes when this content is shared broadly. As far too many teens have found out, the recipient of these messages is in possession of a highly compromising image or message that can be easily posted on a social networking site or sent to others via direct messaging.

In a technological world where anything can be copied, sent, posted, and seen by huge audiences, there's no such thing as being able to control information. The intention doesn't matter -- even if a photo was taken and sent as a token of love, for example, the technology makes it possible for everyone to see your child's most intimate self. In the hands of teens, when revealing photos are made public, the 'sender' almost always ends up feeling humiliated. Furthermore, sending sexual images to minors is against the law, and some children have been prosecuted for the making and/or distribution of Indecent Images of Children. So whilst the image may have been sent in complete innocence the child may find themselves charged or cautioned for a criminal offence. This charge or caution will result in a period spent on the Sex Offenders Register (SOR). The SOR is a register containing the details of individuals convicted, cautioned or released from prison for a sexual offence against children or adults since 1997, (and initially was believed to be for adults and was not created for registering children Under 18).



## Lets Define 'Sexting' Correctly

In 2012, whilst speaking to students from years 9 & 10 at an all girls school, a student stated that she did not take part in 'sexting', but did receive and send 'Sexy Selfies'. Initially I felt this was an act of defiance, then I realised this exactly highlighted the issue. Most teens that do get involved in taking, sending and receiving sexy selfies do not see it as 'sexting'. If a parent or a teacher tries to speak to a teen about 'sexting' the initial

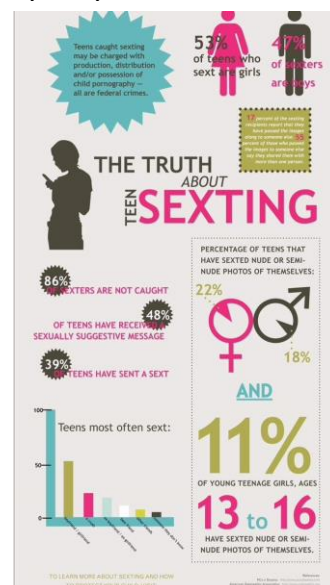
response will be '#awks' (awkward). However whilst this synonymisation is understandable and may legitimise the action to the teen involved in sexting, the issue becomes one of definition which highlights the legal dangers;

Sexting: *Sexting* is sending, receiving, or forwarding sexually explicit messages, photographs or images,

Indecent Image of a Child: *An Indecent Image of a Child* is not defined by law, the decision of whether an image is indecent is left to the police, CPS and the jury.

Whilst no legal definition exists for an Indecent Image of a Child, the image itself will have to be or contain elements of sexually explicit imagery (as with a Sext), so the correct synonymisation with Sexy Selfie should or could be Indecent Image of a Child.. This is why Under 18's have been placed on the Sex Offenders Registered for a minimum of 1 year as a result of being charged or cautioned. The offence of making and distributing an indecent image of a child was generated prior to the current technological era (and before some were born). This offence was always intended for an adult who created and distributed images of a child, not for peer on peer images. Therefore the line between whether a child is a victim or an offender is a completely distorted one.

This is a real case of using a 'sledgehammer to crack open a nut', resulting in the complete unnecessary Criminalisation of a Child and completely destroying their reputation and preventing goals and plans for future education and employment.



## Legal Issue - Criminalisation of Children

Certainly with a number of Under 18 year old teens being placed on the sex offender register as a result of being charged or cautioned for the making and/or distribution of Indecent Images of Children legislation has been created to attempt to prevent the Criminalisation of teenagers.

### Current Legislation

The Obscene Publications Act 1959, Section 8 & 9 sexual Offences Act 2003, Section 127 Communications Act 2003, all make it a criminal offence for anyone of any age to commit a relevant offence of creating/ sending sexual messaging including imagery. So new legislation has been created in the form of Section 67 Serious Crime Act 2015 which specifically states that the offence can only be committed by someone over 18. However closer examination proves this new legislation to be problematic.

#### Serious Crime Act 2015

67

##### Sexual communication with a child

After section 15 of the Sexual Offences Act 2003 insert—

##### "15A Sexual communication with a child

- (1) A person aged 18 or over (A) commits an offence if—
- for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),
  - the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and
  - B is under 16 and A does not reasonably believe that B is 16 or over.
- (2) For the purposes of this section, a communication is sexual if—
- any part of it relates to sexual activity, or
  - a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;
- and in paragraph (a) "sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.
- (3) A person guilty of an offence under this section is liable—
- on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both;
  - on conviction on indictment, to imprisonment for a term not exceeding 2 years."

On closer examination not only does an offender have to be over 18, but sexual intention has to be proved (never easy). Furthermore the victim has to be under 16, so this adds confusion as this means that 17 year olds can send to each other under this legislation but still commit offences under the older legislation !. No power of arrest exists for this specific offence and the logistical & financial cost for investigating these offences (interviews, forensic examinations of devices etc) suggests that this legislation will not ever be used. This new legislation is not straightforward and I do not see it as preventing the criminalisation of children.

## Outcome 21

The National Police Chiefs Council (NPCC), which is working in partnership with the Child Exploitation and Online Protection Centre and the UK Council for Child Internet Safety issued guidance in response to the increase in the number of sexting offences and concern among schools that children are not “over-criminalised”. Outcome 21 offers Guidance to police forces in England and Wales covering the basis for mounting an investigation into alleged sexting offences and allows discretion to take no further action in certain cases.

Every crime reported to the police must have an outcome code. The NPCC, Home Office and the DBS have agreed a new outcome code for youth-produced sexual imagery. *Outcome 21: This outcome code allows the police discretion not to take further action if it is not in the public interest, even though there is enough evidence to prosecute.*

Using this outcome code is likely to mean the offence would not appear on a future Enhanced DBS check, **although not impossible**, as that disclosure is a risk-based decision.

So whilst Outcome 21 will hopefully mean 'no further action' no 'criminalisation' it can have an impact on the child's future, should they require a DBS Enhanced Disclosure for future gap year or full time employment.

## Conclusion

If a child or teenager gets involved in Sexting (which is highly likely), the response should always be guided by the 'principle of proportionality' this must include taking into consideration the amount of images taken and sent. The primary concern at all times should be the welfare and protection of the young people involved. Therefore I believe we should not be criminalising our young people and if Police consider no further action then at no stage should the report feature on any further DBS enhanced disclosure.

Whilst this action will prevent unnecessary Legal Consequences, it will not prevent 'Non legal psychological Consequences' which is why education and dialogue is the 'way forward'. The first part of stopping this epidemic of sexting is to know what the problem is, which is behaviour and understanding. Whilst there has been a call for compulsory sex and relationship education (SRE) for schools, there should also be compulsory Online Safety and Social media Workshops. These workshops must be carried out by experts who have dealt with victims, offenders, have worked with the law and continue to research online behaviour and its impact as a result of 'inappropriate behaviour'.

We will never police our way out of this problem but we can inform, advice, and educate young people on the consequences of taking 'Sexy Selfies'.

Jonathan Taylor MSc

Online Safety & Social Media Consultant