

Roundtable on Youth, Sexuality, Technology

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Children’s Rights, Children’s Voices, Children’s Technology, Children’s Sexuality

by Peter E. Cumming, York University, Toronto, Canada, cummingp@yorku.ca

The title of today’s panel, “Youth, Sexuality, Technology,” sounds like a recipe for *moral panic*. And it is moral panic about a recent phenomenon, a purported epidemic of young people’s “*sexting*,” I wish to respond to briefly today. In particular, I want to contextualize teen *sexting* and adult responses to it by highlighting significant gaps in children’s rights discourse, particularly the United Nations Convention on the Rights of the Child, in relation to children’s *provision* rights to healthy sexual exploration and expression and children’s *participation* rights as determinants of their own sexual being and behaviour. Finally, I visit these issues as an embodied human being with his own distant history of childhood and sexuality—even if this occurred considerably before the invention of “digital technology”—though I fear that those of you came to this paper because of the abbreviated abstract’s promise that the author would contrast his own “childhood experiences exploring sexuality in 1950s rural Ontario with those of tweens in 2008” will be sadly disappointed at the few and tame revelations to come (while those of you who didn’t read the abstract and stumbled here because you thought this was a Geography panel may be equally relieved to hear this reassurance).

First, who are these “children,” including teenagers, adolescents, young people, young adults, about whom I am speaking, and why do I insist on calling them “children” in a panel on “youth”? The Convention on the Rights of the Child defines “children” as human beings under the age of 18: and it is to all these “children” I am referring. For better or worse, people under

18 *all* live in the confines of *children's* rights discourse and *child* pornography laws. While there may well be significant distinctions to be made between prepubescent children and postpubescent youth, they are not distinctions I want to assume or reinscribe regarding sexuality and technology in relation to *sexting*: Following Freud, I recognize both children and youth as sexual beings, whatever that means differently to both, and I have no doubt that both children and youth (and adults, for that matter) are using digital technologies as part of their sexual repertoire.

Second, what is this "*sexting*," which so neatly brings together the "sexuality" and "technology" dimensions of this panel (and to which, I believe, the third paper on this panel will also speak)? "*Sexting*," a 21st-century combination of "texting" and "sex," has been defined variously as the sending of nude or semi-nude photos or videos and/or sexually suggestive messages via cellphone texting or instant messaging. Although the word "*sexting*" is only a few years old, a handful of recent incidents in the United States, some misplaced and heavyhanded legal overreactions charging children exchanging consensual nude photographs of themselves with the production, dissemination, and possession of child pornography, a single recent American online survey commissioned by the unusual alliance of the National Campaign to Prevent Teen and Unplanned Pregnancy and *CosmoGirl* magazine, a media feeding frenzy, and even a May 6, 2009 episode of *Law and Order* have all served to create the impression that in the past few months there has erupted an epidemic of *sexting* among youth and that this is a thoroughly bad thing.

Although depicted in the media as a "nationwide" epidemic, in the last year or two there have been major police prosecutions for *sexting* with a limited number of individuals in at most a dozen U.S. states. There have been no cases of that kind in Canada. (I'll leave the Australian

cases for our colleague from Australia; significantly, I have not found instances from Europe except a single reference surmising that “the practice is not thought to be prevalent in Britain” (*Times Online*). Thus, the “epidemic” of *sexting* consists, according to breathless print and online sources, of four Grade 6 and 7 students in Alabama; three Pennsylvania girls (aged 14 and 15) and three male classmates (aged 16 and 17) (Wikipedia); 14-year-old Michael Harmon who received a photo of a classmate which showed her bare breasts (GASP); a 14-year-old Florida boy who sent a photo of his genitalia to a female classmate because he was “bored” (YAWN) (*Macleans*); a teenage boy in Indiana (Wikipedia); a 15-year-old Ohio high school girl—from the questionably named Licking Valley High School (“Porn Charges for ‘Sexting’”); a 17-year-old Ohio girl; “two Ohio teenagers who had nude photos on their cell phones of two 15-year-old classmates” (Wikipedia); “dozens of white-faced 12- and 13-year-olds and pimply 14-year-olds with twitchy legs” in Colorado (“‘Sexting’: A Disturbing”); two 16-year-old girls who took side-profile pictures of themselves naked after taking a shower (“‘Sexting’: A Disturbing”); a group of 11- to 17-year old boys who traded photos of semi-nude or nude teenage girls (Sexting Girls); a 14-year-old New Jersey girl who posted 30 explicit nude pictures of herself on MySpace.com (Sexting Girls); six 12- to 14-year-olds from Massachussets (Sexting Girls); a Texas eighth-grader who spent the night in a juvenile detention center after his football coach found a nude picture that a fellow student sent him on his cell phone (“‘Sexting’ Shockingly”); a Wisconsin 17-year-old (“Sexting Craze”); a New York 16-year-old (“Sexting Craze”); and 18-year-old Phillip Alpert of Orlando, Florida who received unrequested naked pictures of his 16-year-old girlfriend but who mass-emailed the photos to the girl’s relatives when they broke up.

One of the major problems with public reactions to “*sexting*” is a complete conflation of nudity with sexuality and pornography. Thus, snapshots of two Pennsylvania 13-year-old girls

which showed the teens “in their white bras” resulted in threats from a district attorney of charges of child pornography (Sexting Girls Facing). The photo of a 17-year-old in the same case showed “her just out of the shower, with a towel wrapped around her waist and her breasts exposed” (Sexting Girls). As the American Civil Liberties Union pointed out in its suit against the overly eager District Attorney, “Neither of the two [pictures] depicts sexual activity or reveals anything below the waist” . . . However, according to ACLU, “The district attorney told a group of parents and students . . . that he has the authority to prosecute girls photographed in underwear . . . or even in a bikini on the beach, because the photos are “provocative” (ACLU). Clearly, these photos do not fit under Pennsylvania’s child pornography law, which defines this felony based on photos “of a minor engaged in sexual activity, ‘lewd exhibition of the genitals,’ or nudity that is meant to titillate” (Sexting Girls).

Legal responses to teen *sexting* in the U.S. have been sledgehammer-like, including production and possession of child pornography, a felony which in some states can result in these children being labelled as registered sex offenders for decades; felony obscenity; being declared an “unruly child”; contributing to the delinquency of a minor; “sexual abuse of children... or open lewdness” (District); possessing and distributing material of a child in a sexual act (Sexting Girls); and disseminating indecent material to a minor and endangering the welfare of a child. The 18-year-old Florida man who sought revenge by emailing nude photos of his 16-year-old girlfriend to her family was convicted of transmission of child pornography, resulting in jail time, a label of “sex offender” until he is 43, which results in his inability to live with his father because his father lives near a school and with him having to attend classes with convicted sex offenders (Commentary, Mike Galanos, CNN). As Lithwick concludes, “the criminal justice system is probably not the best venue for addressing the *sexting* crisis. . . prosecutors have

charged the *senders* of smutty photos, the *recipients* of smutty photos, those who *save* the smutty photos, and the hapless *forwarders* of smutty photos with the same crime: child pornography.

Who is the victim here and who is the perpetrator? Everybody and nobody. ("Textual").

In fairness, there has been some pushing back against this legal overzealousness. The ACLU was successful in making its case that the teenaged girls in question did not consent to having their pictures distributed, their images were not pornographic, and that the photos were protected under First Amendment speech (Sexting Girls). Several states have recently moved towards aligning their laws more closely with teenagers' practices in relation to sexuality and technology, Vermont legalizing consensual exchange of graphic images between people 13 to 18 (Wikipedia) and Ohio and Utah reducing *sexting* from a felony to a first degree misdemeanor. Although one online writer has argued that "case law has not kept up with the impact of digital media on teenage behaviour" ("Sexting Craze"), I would argue that this has the order reversed: case law has not kept up with the impact of teenage behaviour on digital media. Or, more precisely, as David Oswell argues in "Ethics and Techno-Childhood," "Childhood is never disclosed in isolation; it is always accompanied by technology. Technology makes childhood visible as a problem. In doing so both technology and childhood, like leaky vessels, leak into each other. I refer to this as *techno-childhood*: the interrelation between, and the mutual constitution of, technology and childhood" (170). When Toronto criminal lawyer Edward Greenspan quips that "the only way to stop teens from *sexting* is to take away their cellphones, and teens would sooner give up a lung," he unwittingly recognizes this tight connection between children and technology, technology being what Nick Lee calls "an extension of childhood."

What interests me most about the purported dystopic epidemic of *sexting* is how these widely publicized legal cases—cautionary tales writ large—and a single online survey about teens, young adults, and *sexting* have fuelled and shaped a media frenzy resulting in articles with titles such as “The Sexting Scare,” “Sexting Craze Leads to Child Pornography Charges,” “20% Chance Your Child May Be a Sex Offender!,” “Sexting Poses Risk to Teens’ Health,” “Sexting Teens Face Prison and Sexual Predator Status for Nude Photos,” “Want to Stop Sexting, CyberBullying & Digital Disease?,” “Textual Misconduct: What to Do About Teens and their Dumb Naked Photos of Themselves,” and “Technology Fuelling *Sexting* Craze.” Not to mention a Website: *sextingisstupid.com*.

In spite of these headlines, as *Macleans* magazine rightly notes, “the statistical proof of a *sexting* epidemic is scant: one lone survey.” Indeed, a much more careful reading of the “Sex and Tech” survey is called for. . . . It was conducted completely online; its commissioners no doubt have vested interests in the results; it is clearly not directly applicable to Canada; its definition of teens as ages 13 to 19 and young adults as 20 to 26 may fit the literal definition of “teenager,” but it also perversely skirts legal definitions of “childhood” including those in relation to child pornography, thus skewing statistics about teen sexting accordingly; most importantly, the very broad category of “nude or semi-nude” photos used in the survey questions recognizes no distinctions between nudity, sexuality, and pornography. However, even if we accept the survey data, there is much more to learn than most media reports suggest. Article after article expresses shock that 20% of teens *sext*, none recognizing that that implies a more amazing fact—that 80% of teens do not. The survey shows that far more young adults (33%) than teens (20%) are *sexting*, yet no comparable alarm about young adults has emerged. The survey indicates that twice as many teens and young adults send sexually explicit text messages

(39% of teens; 59% of young adults) as send nude photos (20% of teens, 33% of young adults), yet all media attention focuses on visual images. According to the survey, more girls *sex* than boys: 22% of teen girls vs. 18% of teen boys; 36% of young adult women vs. 31% of young adult men. Although most accounts explain this as boys pressuring girls to *sex*, more girls in the survey consider *sexting* "fun and flirtatious." (51% of teen girls give pressure from a guy as their reason for sending, while 66% of teen girls and 72% of young adult women claim the activity to be "fun & flirtatious.")- Children's and particularly girls' sexual agency are not generally or comfortably acknowledged in North America, and the findings of this survey call out desperately to be analyzed in terms of girls' sexual agency in relation to *sexting*.

While Canadian media responses have generally been more muted to the *sexting* epidemic, they too easily fall into the trap of assuming that what is true in the United States will necessarily be true here too. And so, the *Vancouver Province* says that *sexting* "has Canadian officials on the alert" even though "there have been few [no?] publicized cases in Canada to date." "Cpl. Annie Linteau, the RCMP B.C.'s spokeswoman, said she hadn't heard of the trend. "But I'd be surprised if it wasn't happening here," (O'Connor). Indeed, there may be critical differences between *sexting* in Canada and south of the border. It is not a crime in Canada for consenting young people under 18 to exchange nude photos, for example (O'Connor). And in Vancouver, "... local school officials said unlike their American peers, they would be reluctant to report *sexting* as a crime to police" (O'Connor).

There are a few sane voices in the furor over *sexting*. JSS writes in an online column "Sexting Hysteria," "the hysterical and infectious drive to stem *sexting* among teens and to put it on the level of child pornography has accelerated in just a few weeks. . . . Nothing has actually changed except that the kind of adults who do not engage in *sexting*, themselves, found out that

teen-agers were doing it....Teen-agers fumbling with their sexuality and technology is not something that should scare anyone into legislation, and schools shouldn’t be overreacting either.” (jss, “Sexting Hysteria”). Indeed, one could argue that in some ways virtual sexual activities are safer for teens than actual ones: nobody ever got pregnant or received an STD directly from an online exchange. In “Is ‘Sexting’ Same as Porn?,” Goodman writes, “There is nothing particularly new about young people taking pictures of themselves. It’s as old as the Polaroid.” In fact, I’d argue it’s older than that. Goodman also argues that “The panic not only erases the line between stupid and criminal, it dilutes the real horror of child pornography.” Lithwick raises concerns that girls are being punished disproportionately, being charged with producing while boys were merely charged with possessing pornography. Clearly, a key danger in *sexting* is not in the initial exchange of nude photos between two partners or potential partners but in the dangers of losing control of those images in the powerful, immediate, omnipotent, eternal, digital world. In a blog, Dann writes, “these kids don’t get the idea that everything you do online becomes a digital tattoo.Sexting is a dumb thing to do, not only because it effectively gives your body away to everyone else, but because you have no control over what happens after you hit the send button.” (Dann’s Blog) .

To contextualize youth *sexting* we should remember our own sexual histories as young people. Apart from digital media’s power to disseminate information quickly and broadly, there may be nothing radically new about *sexting*. The closest I ever came to being expelled from school was in Grade 2, when I was hauled before the authorities for looking up girls’ dresses. In 1957, in an Ontario village, as the seven-year-old son of a Protestant clergyman, I was trying my best to learn about sex. At 18, as a don at an Ontario University, I tried to make a political parody of a student council election by posing for the student newspaper—they had cameras

then, only the cameras needed film and the newspaper needed to be printed—clad only in a jockstrap; although I was thinly disguised by freckles to make me resemble *Mad* magazine’s Alfred E. Neuman, I had to go underground for several days until the Associate Dean cooled off. These events, notably, were before television, minicomputers, the Internet, and digital photography. However, much as contemporary nostalgia might view this as an “earlier, simpler time,” and much as current moral panics about youth sexuality might consider children’s and youths’ current *sexting* behaviours as depravities signaling the end of civilization, I would suggest that the “innocence” and “experience” of my ancient childhood might actually not be so far separated from the “experience” and “innocence” of many or most *sexting* exchanges.

Perhaps, then, adult alarm about technology and youth sexuality is a red herring—except insofar as it relates to cyber-bullying and sexual harrassment: one 18-year-old American woman committed suicide when a nude photo she sent to her then boyfriend came back to haunt her. Are there, for example, significant differences between teens learning to kiss while playing “Spin the Bottle” face-to-face and teen “chicks” and “dudes” going online to “Espin.com” to “spin the bottle and start flirting!” with “Over 4 Million Hotties”? Are there differences between youth playing face-to-face versus online “Strip Poker,” or between children investigating each other’s body parts while playing “Doctor” and teens sharing cell phone images of their naked bodies? As one Macleans reader writes, “Young people are showing each other their naked bodies! When did that ever happen before?”

Child pornography laws arise out of human rights legislation, particularly the United Nations Convention on the Rights of the Child. However, children’s rights advocates have been more preoccupied with “protection” and “prevention” than with “provision” and “participation” rights in relation to children and their sexuality. The CRC explicitly advocates protection of

children from sexual abuse, sexual exploitation, coerced sexual activity, unlawful sexual practices including child prostitution, and being used in pornography. Guiding principles of the CRC include “the best interests of the child,” the centrality of children’s participation rights, and the “full and harmonious development” of the child’s personality. Yet where in the CRC are children’s provision rights to healthy sexual being and participation rights in exploring and expressing that sexual being? Article 12’s right of the child to express his or her views freely? Article 13’s “freedom of expression . . . freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice”?; Article 16’s right to privacy – “No child shall be subjected to arbitrary or unlawful interference with his or her privacy . . . or correspondence”: as online writer DillthePill writes, “what the heck were the teachers doing looking through the students phones?”; Article 24’s “the right of the child to the enjoyment of the highest attainable standard of health”? Article 28 and 29’s rights to education?; Article 31’s right to engage in play and recreational activities appropriate to the age of the child?

Is nudity pornography? Not necessarily. Are consensual exchanges of naked photos between young people child pornography? Not in the first instance. Should child pornography charges be levelled against young people sharing naked photos of themselves? Definitely not. Can young people get into trouble by sharing sexually suggestive digital text, images, or video? Yes. Can this have real world consequences? Absolutely. However, teenagers have no monopoly on foolish choices and devastating consequences. Think, for example, of the infamous, intercepted cellphone conversation between the future King of England and his paramour in which he fantasizes about being a tampon so he can “live in her trousers”: no doubt that would have been *sexting* had the technology existed. When, we must ask, in Western

culture, did nudity become pornography, youth sexuality perverse, digital technologies the tail wagging the dog, and when and how and why have we forgotten children's participatory rights as sexual beings?