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Delineating Victims from Perpetrators: Prosecuting Self-Produced Child Pornography in Youth Criminal Justice Systems

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Abstract

Video recording technology advancements and accessibility has been paralleled by a growth in self-produced child pornography (SPCP). Although social and judicial attention has been given to instances of teenage sexting, Internet-based forms of SPCP, such as webcam/website sex tourism, have almost been ignored. While some of the proposed legislation reform has referenced video-based SPCP, the majority has focused on SPCP distributed through cellular phones; excluding that which is manifested online or through entrepreneurial efforts. The purpose of this article is to introduce non-sexting SPCP, using the case study of Justin Berry (in the United States), and to propose a broad punishment, education, and counseling response from youth criminal justice systems (YCJS). Recommendations are meant as a starting point, framed with multiple YCJS structures, the duality of victim and perpetrator, the justice and welfare approaches to juvenile justice, and the United Nations Convention on the Rights of the Child in mind.

Keywords: Child pornography, Self-produced, Juvenile sex offender, Policy, Internet.

Introduction

The Internet is an important venue for the production and dissemination of child sexual exploitation material (i.e., child pornography). In 2015, the National Center for Missing and Exploited Children's (2016) Cyber-Tipline received more than 4.4 million reports, with 99 percent being related to pornography involving children. While a considerable proportion of child pornography is produced and disseminated by adults, a growing percentage that is distributed digitally is self-produced by children. Of the 6,161 child sexual exploitation victims identified by United States law enforcement in 2014, 14 percent were self-producing and disseminating images online; compared to 18 percent who were being victimized by a parent/guardian and 27 percent by a neighbor/family friend (Sparks, 2016).

Increases to teenagers being charged with producing and distributing child pornography (CP), by consensually exchanging sexually explicit textual or visual material, has led to social and political pressure to modify existing CP laws. Suggested amendments have

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focused on protecting youth consensually engaged in sexting behavior, via cellular phone, while prosecuting adults who solicit sexting content from teens, and adolescents who non-consensually distribute CP (e.g., Briggs, 2012; Judge, 2012; Thompson, 2014; Smith, 2014).

In spite of sexting being the most common form of self-produced child pornography (SPCP), and thus the focus of law revisions, it is not the only form. The documented and publicized case of Justin Berry shows that youth are engaging in live, webcam-based, SPCP and distributing it on personal websites (Eichenwald, 2005; Soderlund, 2008). Proposed changes to CP laws do not address the broader SPCP issue, as they oversimplify the necessary legislation (e.g., Duncan, 2010) and sentencing reform required (e.g., Bosak, 2012), or are deemed too punitive (e.g., Leary, 2007; 2009). As a result, youth criminal justice systems appear ill-equipped to handle criminal cases of Internet-based SPCP, where the perpetrator (the youth) can also be characterized as the victim.

The purpose of this article is to introduce/highlight growth of Internet-based (i.e., non-sexting) SPCP, and provide a starting point for discussion on a suitable judicial response. Recommendations begin with existing CP and developing sexting laws, but take into consideration evidence-based practices, the uniqueness of Internet-based SPCP, and the motivations of teens for engaging in the behavior. As a result, the focus here is on appropriate, multi-faceted, legislation for juveniles who engage in Internet-based SPCP, involving effective punishment options, counseling, and education strategies, and the rationale for each. While there is an emphasis on Australia, Canada, United Kingdom, and United States of America, recommendations proposed are broad to consider the goals and objectives of multiple youth criminal justice systems.

The Growth of Self-Produced Child Pornography (SPCP)

Growth in all SPCP activities can be partly attributed to the rise in the availability of cellular phones and webcams, and advancements in the speed and accessibility of Internet connections. Between 2004 and 2009, the rate of cellular phone use among 12-year-olds rose from 18% to 58% and from 64% to 83% among 17-year-olds (Lenhart, 2009). By 2013, 47% of teens (12 to 17) with a cellular phone had a smart-phone, while 93% had access to a computer at home; 49% of 17-year-olds had their own personal computer (Madden, Lenhart, Duggan, Cortesi, & Gasser, 2013). A follow-up survey in 2015 revealed that smart-phone ownership among 15 to 17-year-olds had risen to 76%, with 92% of teenagers (13 to 17) reporting at least daily Internet use and 24% reporting ‘almost constant’ Internet use (Lenhart, 2015). This easy, and continual, access to the necessary technology and Internet inevitably leads to more teenagers engaging in online SPCP.

With rates of cellular phone and computer access increasing among teenagers, rates of image-based SPCP have also risen. The National Campaign to Prevent Teen and Unplanned Pregnancy reported in 2009 that 20% of teens had electronically sent sexually erotic images to another individual. More recent studies report that 28% of teens have sent sexually erotic images (Strohmaier, Murphy, & DeMatteo, 2014; Temple & Choi, 2014). Examining criminal cases of teenage sexting, Wolak, Finkelhor, and Mitchell (2012) found that 78% involved the use of a cellular phone. While they did find that cellular phones were the most common medium of SPCP distribution, they noted that 41% of criminal cases also involved the use of a computer or online website (i.e., Internet). Through a series of interviews conducted by *The New York Times* with teenagers who operate their

own webcam websites (Eichenwald, 2005), and with 47% of 13 to 17-year-olds reporting use of video chat tools (Lenhart, 2015) it is likely that the judicial system will see an increase in cases of SPCP come before them that go beyond cellular phone-based sexting.

One of the most common forms of non-sexting self-produced pornography is *camming*: performing sexual services, via live webcam, in exchange for money, goods, and/or attention. Growing in popularity among young adults (Jade, 2015), camming has been cited as a means for paying the costs associated with pursuing higher education (Betzer, Kohler, & Schlemm, 2015; Sagar, Jones, Symons, Bowring, & Roberts, 2015). In many instances of camming, those who are successful fit the demographic of ‘barely legal’, as there is a high demand for their services (Reece, 2015). On the other side of the legal-age barrier of self-produced pornography is the emergence of webcam child sex tourism (WCST). Primarily conducted in the Philippines, but quickly expanding to other countries with few child protection laws, WCST involves adults paying to observe and direct children in sexually explicit activities (Puffer, McDonald, Pross, & Hudson, 2014). Situated between adult camming and WCST are ‘non-coerced’ teenagers performing on webcam for paying (and occasionally non-paying) fans. For teenagers who create their own website and broadcast themselves, there are opportunities for monetary gain, gifts from fans, and admiration that they might not otherwise receive (Bocij, 2004; Jonsson, Svedin, & Hyden, 2015).

The Case of Justin Berry

In 2005, Kurt Eichenwald wrote in *The New York Times* about Justin Berry, a young adult who had been operating a webcam from his bedroom since the age of 13, performing sexual acts in exchange for gifts and money from adult fans. In the article, Berry recounts his first venture into online SPCP, where he was offered \$50 in a chat room in exchange for baring his chest to the webcam for three minutes. Seeing no harm in the act, and being acutely aware of the financial gain available, he agreed to the request. Soon after, Berry became enthralled with the *camboy* (male webcam model) lifestyle and the opportunities it afforded him. He ended up spending his free time online, even missing school to perform for clients. Berry's acts escalated to include sex with prostitutes and with other teenagers he recruited to join his online business.

Examining the complexity of underage camming, Soderlund (2008) asserted that those who engage in online SPCP are “neither purely victims nor purely entrepreneurial children, but participants in an ad hoc, opportunistic underage prostitution and pornography industry” (p.65). For example, although Justin Berry attempted to squeeze out competition, by recruiting other teenagers to perform with him, Berry was also recruited and exploited by numerous adults (Eichenwald, 2005). One former client became a business partner, helping to increase traffic to the website, while his estranged father, upon learning of Berry’s business, took an active role in procuring sexual partners for Berry. This included scheduling trips to Mexico to film Berry having sex with prostitutes.

Recognizing the growth in criminal cases involving SPCP, changes to existing CP laws have been proposed and implemented, to varying degrees, across many countries. In 2014, Australia’s Parliament of Victoria enacted section 70AAA (exceptions to child pornography offences), while the Parliament of Canada amended the *Canadian Criminal Code*, via Bill C-13 (protecting Canadians from online crime). In both countries, the

changes resulted in juveniles being excluded from prosecution for SPCP images. As of July 2015, 20 American states had sexting-type laws², with only nine (Arkansas, Connecticut, Florida, Louisiana, New Jersey, Rhode Island, South Dakota, Vermont, and West Virginia) explicitly referencing sexting (Strohmaier, Murphy, & DeMatteo, 2014; Hinduja & Patchin, 2015). Thus far, there are no federal laws in the United States specifically addressing sexting, revenge pornography³, or other forms of SPCP. Within the United Kingdom, a 2015 amendment to the Criminal Justice and Courts Bill resulted in modifications to existing CP-related crimes; however, this amendment was targeted at incidents of revenge pornography (including video) and adults' sexting with juveniles rather than juveniles with peers and/or adults. In each of these countries, the changes either ignore or only superficially highlight the practice of video-based SPCP and/or where youth operate their own online businesses. Where legislation does include reference to video-based SPCP, the focus remains on cellular phone production and distribution, and not Internet distribution.

The Challenges of SPCP in Youth Criminal Justice Systems

Internet-based SPCP cases create a difficult and complex legal challenge for youth criminal justice systems (YCJS). First, youth facing prosecution occupy dual roles of both the victim and perpetrator of sexual exploitation, creating questions surrounding who is being protected by the law (Thompson, 2014). Like juvenile prostitution (Kittling, 2006), a non-sexting SPCP adolescent who comes before a judge can be categorized as a victim of third-party exploitation, a solo entrepreneur, a victim of child sexual abuse, or a combination of the three. Examining cases of juvenile prostitution, Mitchell, Finkelhor, and Wolak (2010) found that in 66% of third-party exploitation cases, the child was viewed as a victim by the judicial system. Comparatively, only 11% of youth involved in solo prostitution cases were viewed as victims. As there are few examples of Internet-based SPCP court outcomes, a similar comparison cannot be made. However, like with juvenile prostitution, independent of adult coercion, the duality of victim/perpetrator in cases of SPCP create challenges, as the juvenile may not be seen solely responsible for their actions, despite clearly engaging in a criminal act. The additional role that third-parties may play, via coercion and grooming, make these cases even more complicated.

Second, as the purpose of most existing CP laws is to target third-party exploitation, production, and distribution, their direct application to SPCP cases leads to legal inconsistencies in the overall intent of CP laws (Briggs, 2012; Smith, 2014). This is because it criminalizes acts (e.g., camming) that among adults would be deemed acceptable (Attwood, 2012). This differs from other crimes prosecuted, such as theft or murder, where the act is illegal independent of the age of the offender. Nevertheless, as criminal cases of image-based SPCP have increased, juveniles have begun to be prosecuted under CP laws never intended for this purpose (e.g., Zhang, 2010). Between 2008 and 2009, United States law enforcement agencies reported 3,477 criminal cases of teenage sexting (Wolak, Finkelhor, & Mitchell, 2012). In a large percentage of these criminal cases, youth

²States with pseudo-sexting laws do not specifically use the term 'sexting' but do have provisions which address those under 18 sending and/or receiving sexually explicit images.

³“...the online posting of sexually explicit photographs without the subject's consent...often accompanied by the victim's name, address, phone number...” (Koppelman, 2015, p. 661).

were charged with the production and/or distribution of CP. Although Wolak and colleagues found a relationship between sexting severity (e.g., degree of distribution and explicitness of images) and charges faced, there was still wide variability in punitive sentencing. Where punishment severity was high, outcomes were dictated almost solely by the strictness of the CP laws within the state, such as mandatory sex offender registration (for additional examples, see also Sacco, Argudin, Maguire, & Tallon, 2010). Therefore, it is likely that teenagers who engage in online SPCP will be viewed as engaging in ‘severe’ CP and face harsh penalties, as no other options will be available to prosecutors and judges. While this may be the correct response in some cases, for the majority it will lead to unnecessary and counter-productive sentencing.

The legal inconsistencies in the overall intent of laws applied to cases of online SPCP, combined with the goals and objectives of many YCJS, leads to the third problem: approaches to youth justice differ by jurisdiction, leading to challenges proposing recommendations, and implementing legislation that satisfies the various interest groups within the justice system and society. Historically, YCJS are rooted in two broad approaches: justice and welfare (Alder & Wundersitz, 1994). The justice approach is based on the juvenile being fully responsible for their actions, with the court system determining degree of culpability and punishment. In comparison, the welfare approach is based on juveniles being a by-product of their dysfunctional environment and thus the court system focuses on treating the underlying social causes rather than punishing the juvenile. Today, YCJS operate on a spectrum between the two approaches (for examples, see Cavadino & Dignan, 2006; Winterdyk, 2002; 2005), typically influenced by political motives, moral panics, media influence, and public opinion.

Although a spectrum of approaches to youth criminal justice do exist, Muncie and Hughes (2002) contend that globalization and neo-liberal economic restructuring has resulted in convergence of penal policies in Western Anglophone countries. Muncie (2005) further argues that the movement to neo-liberal governance is most evident in Australia, Canada, United Kingdom, and United States. Further supporting the argument of policy convergence is Hazel’s (2008) cross-national comparison of 93 countries and 146 jurisdictions. Hazel highlighted seven principles that influenced YCJS: (1) best interest of the child (e.g., *United Nations Convention on the Rights of the Child*); (2) *parens patriae*: court is responsible for deciding and protecting the future of the child, independent of child’s wishes; (3) young people who offend are children in trouble; (4) minimal intervention; (5) protection of society; (6) education and resocialisation; and (7) social integration (e.g., restorative justice principles). While some of these principles conflicted with one another and are thus not implemented in each country –acknowledging that there is not complete convergence in global YJCS–, Hazel argued that these principles should be considered when attempting to develop transnational practices and policies. As a result, the following recommendations are developed with global policy convergences in mind, so they can have broad-reaching application to multiple YCJS.

Recommendations

Developing YCJS guidelines for Internet-based SPCP requires a multi-faceted approach that addresses the three challenges outlined. First, the duality of perpetrator and victim means that recommendations must include punishment, that holds youth accountable for their actions, counselling on the factors that led to the adolescent engaging in SPCP, and education on the dangers of continuing to engage in the practice. Second,

recommendations must be specific to cases of Internet-based SPCP, while using evidence-based practices to identify what has, or has not, been effective in similar situations (e.g., sexting and other juvenile sex-related offenses). Third, differences in approaches to juvenile justice should be considered. This means providing proactive and reactive recommendations, that focus on the principles identified by Hazel (2008), while striking a balance between the justice and welfare approaches. This allows for recommendations to be used as a framework to later be modified, for legislation that more accurately aligns with each country's juvenile justice goals and objectives. Therefore, the following recommendations are proposed in broad terms, underpinned by existing and proposed juvenile sexting laws, and are intended to aid in beginning, and directing, conversations about YCJS guidelines for Internet-based SPCP.

1. Punishment: Detention and/or registration is not the solution

In recommending an appropriate punishment framework for Internet-based SPCP, it is important to consider punishment revisions proposed to existing CP laws, to account for sexting-based SPCP, and the effectiveness of incarceration and sex offender registration on juveniles. From these, evidence-based guidelines can be developed that properly address Internet-based SPCP.

To delineate consensual sexting behaviour between two adolescents, from 'traditional' CP involving an adult, proposed amendments to existing CP laws have ranged in punishment from moderate (e.g., Briggs, 2012; Thompson, 2014) to severe (e.g., Leary, 2009). While Barnes (2012) notes that punishment is required, he believes that detention is not a viable option. Likewise, Duncan (2010) argues that a graduated punishment structure is necessary, with an emphasis on diversion programs (over detention). He also suggests that first-time offenders be exempt from prosecution, or that SPCP be made a misdemeanor, summary offense, or status offense. More quantifiable, but still recommending a graduated structure, Bosak (2012) proposes that punishment should include a) a maximum fine of \$5,000; b) 300 hours of community service; and c) restrictions on use of electronic devices for a period not exceeding three years. Despite each of these being suggested for sexting SPCP cases, they serve as an appropriate starting point for Internet-based SPCP.

Although Hazel (2008) notes the principle of protecting society as common across multiple YCJS, research suggests that accomplishing this through incarceration can have negative effects on long-term life success, as developmental domains are interrupted and often not reconnected (van der Geest, Bijleveld, Blokland, & Nagin, 2016). In a review of the literature on juvenile incarceration, Lambie and Randell (2013) found that imprisoned youth can have difficulties in regulating attitudes and behaviors, which can lead to impaired brain development and psychosocial maturity. This can result in increased problems with susceptibility to (negative) peer influence and impulsivity, and impair social integration and opportunities. Based on 35,000 juvenile offenders, Aizer and Doyle (2015) found lower high-school completion rates and higher adult incarceration rates. For the few that did return to school, many were categorized as having emotional or behavioral disorders. In a longitudinal study of 1,171 adolescent males, Dmitrieva, Monahan, Cauffman, and Steinberg (2012) found that incarceration in secure facilities led to a decline in temperance and responsibility. Even placement in long-term treatment centers led to negative effects on psychosocial maturity development, with older youth

experiencing more adverse effects. These findings suggest that juvenile detention can severely impact brain and psychosocial development, whether it is in a secure facility or a treatment center. Combined with the high potential for pre-existing psychosocial issues in teens engaging in SPCP, detention should not be sought in these cases.

It is a difficult decision to label a juvenile as a sex offender, and require registration. In Leary's 2007 article, introducing many researchers to the concept of SPCP, it was suggested that in the interest of protecting society, as well as the youth from their own self-destructive behavior, sex offender registration and treatment are necessary components of prosecuting SPCP. Leary held this belief despite acknowledging that sex offender registration has, at best, mixed support and results. However, Leary's viewpoint appears to align with the majority. In a YouGov survey of U.S. residents, Harris and Socia (2016) found that 53.6% somewhat or strongly agreed that *juvenile sex offenders should be placed on the public sex offender registry*.

Among researchers and practitioners working with juveniles and proposing sexting-based SPCP policy, it is almost universally agreed upon that sex offender registration *not* be an option for prosecutors and judges (e.g., Barnes, 2012; Bosak, 2012; Duncan, 2010; Kimpel, 2010; Thompson, 2014). Supporting this viewpoint, sexual behavior practitioners state that juvenile sex offenders that are required to register, experience more mental health problems and feelings of shame, embarrassment, and hopelessness (Harris, Walfield, Shields, & Letourneau, 2016). In addition, these youths have greater living instability and issues of harassment and unfair treatment. Finally, registration can have similar collateral consequences to friends and family of the juvenile (Comartin, Kernsmith, & Miles, 2010; Levenson & Tewksbury, 2009). Even though juvenile sex offender registration may appear to satisfy two of Hazel's (2008) principles –young people who offend are children in trouble and protection of society–research suggests this is not true. Namely, registration is neither in the best interest of the youth nor in protecting their future (Parker, 2014; Sterling, 2015), does not protect society (Chrysanthi, Burton, & Alvare, 2011; Markman, 2007), or promote social integration, education and resocialisation. Common across adult sex offenders who successfully reintegrate into their community are educational attainment, stable employment and housing, and pro-social relationships (Lattimore & Visser, 2009; Mercado, Alvarez, & Levenson, 2008).

2. Counselling: Focusing on underlying issues and reintegration

While it is important that youth take responsibility for their offense (justice approach), it is also important that the underlying factors (welfare approach) that led to the offense are addressed. For youth engaging in SPCP, Strohmaier, Murphy, and DeMatteo (2014) found that pressure from peers and feeling a need to respond to solicitation are motivating factors for participating in sexting, while Martinez-Prather and Vandiver (2014) cited a means of flirting or soliciting sex as motivators. In the case of Justin Berry, Eichenwald (2005) noted that Berry had difficulties making friends at school and that his online clients served to provide an emotional support system that Berry was unable to acquire elsewhere. Therefore, counselling should focus on addressing the social issues (e.g., lack of emotional support and peer friendship), thus providing the tools necessary to succeed, rather than focusing solely on the SPCP offense. This includes addressing maturation, such as socially appropriate methods for getting attention and/or rebelling, and thinking of the long-term impacts of a decision prior to engaging in it. This approach would be more in-line with the principles of best interest of the child, children in trouble, minimal

intervention, education and resocialisation, and social integration. Despite counselling being an important component of SPCP rehabilitation, this should *not* include sex offender treatment.

On the surface, sex offender treatment would align with the principle of protection of society; however, like with juvenile incarceration and sex offender registration, research suggests that this principle would not be accomplished. Instead, incorporating sex offender treatment into Internet-based SPCP legislation would oppose the principles of best interest of the child, *parens patriae*, minimal intervention, and social integration. Research suggests that the factors associated with initially engaging in sexual offending may differ from the reasons for persisting (Hanson & Morton-Bourgon, 2005). Additionally, there is little evidence to suggest that traditional sex offender treatment programs are effective (Petrosino & Petrosino, 1999; Sandler et al, 2008; Zevitz, 2006). In a meta-analysis of eighty-two studies, Hanson and Morton-Bourgon (2005) found that the effect size between treatment progress and recidivism was 0.14. Newer treatment frameworks, such as the good lives model (see Laws & Ward, 2011; Ward & Stewart, 2003) may improve outcomes; however, even proponents note that incorrect implementation may lead to higher rates of reoffending, rather than lower (Willis, Ward, Levenson, 2014). In a meta-analysis of thirty-three studies on the effectiveness of sex offender treatment on recidivism amongst juveniles, results were mixed (Reitzel & Carbonell, 2006). Except for the final meta-analysis, each of these studies focused on adults, while none included online offenders. As a result, effectiveness, if any, is unclear for youth engaging in online SPCP. Because of this, focus should be on the psychosocial and developmental issues that led, and could lead again, to participating in online SPCP. This approach would be more in-line with the rehabilitation, reintegration, and prevention aims of many YCJS examined by Hazel (2008).

3. Education: The need for proactive and reactive strategies

Educating about the harms associated with participating in SPCP needs to be comprised of reactive education, for those who engaged in the practice, *and* proactive education, to prevent juveniles from participating in the behavior in the future (Barry, 2010). For juveniles who have engaged in SPCP, education would focus on the social harms of CP production and distribution. This includes the long-term and unforeseen harms of broadly distributed explicit material, the use of SPCP to convince other youth that it is normal (i.e., grooming), and the potential for bullying and harassment (Bosak, 2012; Duncan, 2010; Sacco et al., 2010). In conjunction with counseling, there would be an emphasis on delineating between sexual expression and sexual exploitation, activities appropriate for adults but not juveniles (e.g., camming), and age-appropriate sexual boundaries. This approach would acknowledge Hazel's (2008) principle that young people who offend are children in trouble, but also address the principle of education and resocialization.

Although the primary focus of reactive education would be on preventing youth from continuing in the SPCP behavior going forward, contributing to the proactive response to SPCP could be beneficial for a youth's resocialization and social integration. Community and school intervention programs have been shown to be effective at combating underage drunk driving (for review of alcohol education programs in schools see Dietrich, Rundle-Thiele, Schuster, & Connor, 2016) and adolescent smoking (Bruvold, 1993). However, similar education/intervention programs do not appear to have been implemented for CP.

Martinez-Prather and Vandiver (2014) found that 79% of teens did not have an education curriculum/program on SPCP (sexting) at their school and 39% were unaware that sexting could violate state child pornography laws. Similarly, Strohmaier, Murphy, and DeMatteo (2014) found that 61% were unaware. Those who were aware of the illegality were significantly less likely to engage in the behavior. As a component of their punishment, via community service, Internet-based SPCP offenders could be required to assist in educating other youth about proper cellular phone and webcam use, the legal ramifications of producing and disseminating SPCP, their reasons for engaging in SPCP, and the impact it has had on their life.

4. Putting it all together

While there are no minimum punishment recommendations that can be proposed cover all Internet-based SPCP cases, and are amenable to all jurisdictions, research suggests that incarceration and sex offender registration are not appropriate solutions. Instead, diversion and restorative justice programs, like the United Kingdom's Youth Inclusion Programme and Youth Inclusion and Support Panels (see Blakeman, 2011) would be more appropriate. This could incorporate community service, which could focus on assisting in proactive education of other youth. In addition, fines could be issued in accordance with the amount earned from the activities. Where third-party involvement was prevalent, punishment (including fines) could be modified to account for the degree of exploitation. Treatment/counselling would be a requirement; however, it would focus on the social and societal factors that led to the juvenile seeking SPCP as a solution to their problems, and provide the tools necessary to prevent future engagement.

Although Bosak (2012) proposed restricting the use of electronic devices for sexting cases, this punishment must be used cautiously in all SPCP cases. Today, the ability to use a computer is essential for almost any job. Moreover, it is a primary way that many people communicate with one another. Consider a scenario where a 16-year-old is attempting to obtain a job but cannot use a computer to design and print their resume or search for jobs. If they can obtain a job interview with a handwritten resume, they will need to inform their potential employer that they cannot use a computer. This eliminates many avenues of employment. Consider again, that same 16-year-old attempting to socialize with peers. When asked about social media accounts, they are unable to provide any, as they are not allowed to use a computer. This would severely limit their ability to reintegrated, potentially lead to those with similar or worse criminal careers preying on these youths and convincing them to participate in other crimes in return for 'friendship'. It would also prevent the youth from moving forward from their SPCP activities. As a result, it is imperative that any conditions concerning technology be focused on limiting/monitoring and not interfere with their ability to reintegrate into society. Through a limiting approach, activities can be monitored but the teen can keep up-to-date with technology skills essential for daily life and human interaction.

While it is important to address the issues of third-party coercion and participation in online SPCP, these should not come at the expense of youth avoiding punishment. For example, Justin Berry was given immunity from prosecution in exchange for providing his client list to the Federal Bureau of Investigation (Soderlund, 2008). Despite initially being manipulated into engaging in camming, and later coerced by his father into continuing, Berry also participated and exploited others without direct third-party coercion. Routinely providing immunity deals to SPCP distributors sets a precedent whereby youth

can engage in the practice, and acquire related benefits, without fear of punishment, by providing a list of their clients to law enforcement if/when apprehended.

Conclusion

Cases such as Justin Berry's provide a glimpse into what prosecutors' face when dealing with Internet-based SPCP. Without legislation directly targeting online SPCP, like teenage sexting, laws will continue to lag behind technological advancements⁴ leaving prosecutors to struggle in their attempt to adapt outdated laws to an ever-changing and highly nuanced landscape. The judicial response to *all forms* of SPCP needs to be a collaborative one that incorporates both formal and informal measures. The recommendations outlined here are broad and take into consideration the principles of multiple YCJS (Hazel, 2008), allowing for their international application. As taxonomies are created, to differentiate types of SPCP, and the motives (e.g., financial and self-esteem) and degree of coercion involved are identified, these recommendations provide leeway for prosecutors and judges to use discretion in determining punishment. In circumstances where the youth is clearly being exploited by others, a minor sentence can be imposed. Conversely, where the youth is exploiting others, a stiffer punishment can be enforced/ utilized.

While the primary purpose of this article has been to draw attention to the current and future growth of Internet-based SPCP, the problem should not be viewed independently from other forms of SPCP, revenge pornography, webcam sex tourism, or even Internet-aided juvenile prostitution. Instead, these new-age sex crimes, conducted in cyberspace, need to be examined and addressed together. However, like with sexting-based SPCP, the examination needs to consider all possibilities and to help us better understand how each type of crime manifests independently and/or in conjunction with others. Through an examination of the broader problem, appropriate legislation can be developed that prosecutes adults and youth involved in these crimes, but protects victims, while adhering to the objectives of many YCJS to ensure that juveniles do not become entrapped in the criminal justice system and become chronic offenders.

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References

- Aizer, A., & Doyle Jr., J. J. (2015). Juvenile incarceration, human capital, and future crime: Evidence from randomly assigned judges. *The Quarterly Journal of Economics*, 130, 759-803.

⁴ The focus of this article is on the omission of video/Internet-based SPCP from public policy. However, advancements in virtual reality technology suggest that it is only a matter of time before it is used for sexual exploitation, as it is already making inroads within the adult pornography industry (Booton, 2015). Therefore, as we discuss the need for judicial recommendations for non-sexting SPCP, it is important we recognize that virtual reality will need to be addressed in the near future (Lemley & Volokh, 2017).

- Alder, C., & Wundersitz, J. (1994). New directions in juvenile justice reform in Australia. In C. Alder & J. Wundersitz (Eds.), *Family conferencing and juvenile justice: The way forward or misplaced optimism?* (pp. 1-13). Canberra: Australian Institute of Criminology.
- Attwood, F. (2012). Sex and the media. In K. Ross (Ed.), *The Handbook of gender, sex, and media* (pp. 457-469). Oxford: Wiley-Blackwell.
- Barnes, S. (2012). Responding to self-produced child pornography: Examining legislative successes and shortcomings to reach an appropriate solution. *Journal of Law, Technology & the Internet*, 4, 1-39.
- Barry, J. L. (2010). The child as victim and perpetrator: Laws punishing juvenile "sexting". *Vanderbilt Journal of Entertainment & Technology Law*, 13, 129-881.
- Betzer, F., Kohler, S., & Schlemm, L. (2015). Sex work among students of higher education: A survey-based, cross-sectional study. *Archives of Sexual Behavior*, 44, 525-528.
- Blakeman, I. (2011). The youth justice system of England and Wales. *UNAFEI Resource Material Series*, 78, 80-93.
- Bocii, P. (2004). Camgirls, blogs and wish lists: How young people are courting danger on the internet. *Safer Communities*, 3, 16-22.
- Booton, J. (2015, July 15). How virtual reality will revolutionize porn. *New York Post*. Retrieved from: <http://nypost.com/2015/07/15/how-virtual-reality-will-revolutionize-porn/>.
- Bosak, D. (2012). The blurring line between victim and offender: Self-produced child pornography and the need for sentencing reform. *Ohio State Law Journal*, 73, 141-176.
- Briggs, M. (2012). Send me a picture baby, you know I'd never leak it: The role of *Miller v. Mitchell* in the ongoing debate concerning the prosecution of sexting. *Villanova Sports & Entertainment Law Journal*, 19, 169-202.
- Bruvold, W. H. (1993). A meta-analysis of adolescent smoking prevention programs. *American Journal of Public Health*, 83, 872-880. doi: 10.2105/AJPH.83.6.872.
- Cavadino, M., & Dignan, P. (2006). *Penal systems: A comparative approach*. London: Sage
- Chrysanthi, L., Burton, D.L., & Alvare, D. (2011). Net-widening in Delaware: The overuse of registration and residential treatment for youth who commit sex offenses. *Widener Law Review*, 17, 127-475.
- Comartin, E. B., Kernsmith, P. D., & Miles, B. W. (2010). Family experiences of young adult sex offender registration. *Journal of Child Sexual Abuse*, 19, 204-225.
- Dietrich, T., Rundle-Thiele, S., Schuster, L., & Connor, J. P. (2016). A systematic literature review of alcohol education programmes in middle and high school settings (2000-2014). *Health Education*, 116, 50-68. doi: 10.1108/HE-03-2014-0042.
- Dmitrieva, J., Monahan, K. C., Cauffman, E., & Steinberg, L. (2012). Arrested development: The effects of incarceration on the development of psychosocial maturity. *Development and Psychopathology*, 24, 1073-1090.
- Duncan, S. H. (2010). A legal response is necessary for self-produced child pornography: A legislator's checklist for drafting the bill. *Oregon Law Review*, 89, 645-700.
- Eichenwald, K. (2005, December 19). Through his webcam, a boy joins a sordid online world. *The New York Times*. Retrieved from: <http://www.nytimes.com/2005/12/19/us/through-his-webcam-a-boy-joins-a-sordid-online-world.html>.

- Hanson, R. K., & Morton-Bourgon, K. E. (2005). The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. *Journal of Consulting and Clinical Psychology, 73*, 1154-1163.
- Harris, A. J., & Socia, K. M. (2016). What's in a name? Evaluating the effects of the 'sex offender' label on public opinions and beliefs. *Sexual Abuse: A Journal of Research and Treatment, 28*, 660-678.
- Harris, A. J., Walfield, S. M., Shields, R.T., & Letourneau, E. J. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse: A Journal of Research and Treatment, 28*, 770-790.
- Hazel, N. (2008). *Cross-national comparison of youth justice*. London: Youth Justice Board.
- Hinduja, S., & Patchin, J. (2015). State sexting laws: A brief review of state sexting and revenge porn laws and policies. *Cyberbullying Research Center*. Retrieved from <http://cyberbullying.org/state-sexting-laws.pdf>.
- Jade, J. (2015). *Camgirl manual*. Ajax, ON: Metal Motion Productions Inc.
- Jonsson, L., Svedin, C., & Hyden, M. (2015). Without the Internet, I never would have sold sex: Young women selling sex online. *Cyberpsychology: Journal of Psychosocial Research on Cyberspace, 8*(1), Article 4. doi: 10.5817/CP2014-1-4.
- Judge, A. (2012). "Sexting" among U.S. adolescents: Psychological and legal perspectives. *Harvard Review of Psychiatry, 20*, 86-96.
- Kimpel, A. (2010). Using laws designed to protect as weapon: Prosecuting minors under child pornography laws. *New York University Review of Law and Social Change, 34*, 299-338.
- Kittling, N. (2006). God bless the child: The United States' response to domestic juvenile prostitution. *Nevada Law Journal, 6*, 913-926.
- Koppelman, A. (2015). Revenge pornography and first amendment exceptions. *Emory Law Journal, 65*, 661-693.
- Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinical Psychology Review, 33*, 448-459.
- Lattimore, P. K., & Visser, C. A. (2009). *The multi-site evaluation of SVORI: Summary and synthesis*. Washington, DC: National Institute of Justice.
- Laws, D. R., & Ward, T. (2011). *Desistance and sex offending: Alternatives to throwing away the keys*. New York, NY: Guilford Press.
- Leary, M. G. (2007). Self-produced child pornography: The appropriate societal response to juvenile self-sexual exploitation. *Virginia Journal of Social Policy & the Law, 15*, 1-50.
- Leary, M. G. (2009). Sexting or self-produced child pornography? The dialog continues - Structured prosecutorial discretion within a multi-disciplinary response. *Virginia Journal of Social Policy & the Law, 17*, 486-566.
- Lemley, M. A., & Volokh, E. (2017). Law, virtual reality, and augmented reality (Working Paper No. 2933867). Stanford Public Law.
- Lenhart, A. (2009). *Teens and Sexting*. Washington, DC: PEW Research Center. Pew Internet & American Life Project 202-419-4500.
- Lenhart, A. (2015, April 9). A majority of American teens report access to a computer, game console, smartphone and a tablet. Retrieved from: <http://www.pewinternet.org/2015/04/09/a-majority-of-american-teens-report-access-to-a-computer-game-console-smartphone-and-a-tablet/>.



- Levenson, J. S., & Tewksbury, R. (2009). Collateral damage: Family members of registered sex offenders. *American Journal of Criminal Justice*, 34, 54-68.
- Madden, M., Lenhart, A., Duggan, M., Cortesi, S., & Gasser, U. (2013, March 13). Teens and Technology 2013. Retrieved from:
<http://www.pewinternet.org/2013/03/13/teens-and-technology-2013/>.
- Markman, J. S. (2007). Community notification and the perils of mandatory juvenile sex offender registration: The dangers faced by children and their families. *Seton Hall Legislative Journal*, 32, 261-455.
- 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 a capable guardian. *International Journal of Cyber Criminology*, 8, 21-35.
- Mercado, C. C., Alvarez, S., & Levenson, J. (2008). The impact of specialized sex offender legislation on community reentry. *Sexual Abuse: A Journal of Research and Treatment*, 20, 188-205.
- Mitchell, K. J., Finkelhor, D., & Wolak, J. (2010). Conceptualizing juvenile prostitution as child maltreatment: Findings from the National Juvenile Prostitution Study. *Child Maltreat*, 15, 18-36. doi: 10.1177/1077559509349443.
- Muncie, J. (2005). The globalization of crime control: The case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions. *Theoretical Criminology*, 9, 35-64.
- Muncie, J., & Hughes, G. (2002). Modes of youth governance: Political rationalities, criminalization and resistance. In J. Muncie, G. Hughes, & E McLaughlin (Eds.), *Youth justice: Critical readings* (pp. 1-18). London: Sage.
- National Center for Missing & Exploited Children (2016). *2015 Annual Report*. Alexandria, VA: Author. Retrieved from:
http://www.missingkids.com/en_US/publications/NCMEC_2015.pdf.
- Parker, S. C. (2014). Branded for life: The unconstitutionality of mandatory and lifetime juvenile sex offender registration and notification. *Virginia Journal of Social Policy & the Law*, 21, 167-511.
- Petrosino, A. J., & Petrosino, C. (1999). The public safety potential of Megan's Law in Massachusetts: An assessment from a sample of criminal sexual psychopaths. *Crime & Delinquency*, 45, 140-158.
- Puffer, E., McDonald, K., Pross, M., & Hudson, D. (2014). Webcam child sex tourism: An emerging global issue. *The Research and Scholarship Symposium*, Paper 15. Retrieved from
http://digitalcommons.cedarville.edu/research_scholarship_symposium/2014/podium_presentations/15.
- Reece, R. L. (2015). The plight of the black Belle Knox: race and webcam modelling. *Porn Studies*, 2(2-3), 269-271.
- Reitzel, L. R., & Carbonell, J. L. (2006). The effectiveness of sexual offender treatment for juveniles as measured by recidivism: A meta-analysis. *Sexual Abuse: A Journal of Research and Treatment*, 18, 401-421.
- Sacco, D. T., Argudin, R., Maguire, J., & Tallon, K. (2010). *Sexting: Youth practices and legal implications*. Cambridge, Mass: The Berkman Center for Internet & Society at Harvard University. Research Publication no. 2010-8.

- Sagar, T., Jones, D., Symons, K., Bowring, J. & Roberts, R. (2015). Student participation in the sex industry: higher education responses and staff experiences and perceptions. *Journal of Higher Education Policy and Management*, 37, 400-412.
- Sandler, J. C., Freeman, N. J., & Socia, M. (2008). Does a watched pot boil: A time-series analysis of New York State's sex offender registration and notification law. *Psychology, Public Policy, and Law*, 14, 284-302.
- Smith, M. (2014). You can touch, but you can't look: Examining the inconsistencies in our age of consent and child pornography laws. *Southern California Law Review*, 87, 859-886.
- Soderlund, G. (2008). Journalist or panderer? Framing underage webcam sites. *Sexuality Research & Social Policy*, 5, 62-72.
- Sparks A. (2016). Spotlight on sexual exploitation. Presentation given to Texas Children's Commission. Retrieved from:
<http://texaschildrenscommission.gov/media/53063/NCMEC-presentation-for-Childrens-Commission.pdf>.
- Sterling, R.W. (2015). Juvenile-sex-offender registration: An impermissible life sentence. *The University of Chicago Law Review*, 82, 295-315.
- 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. doi: 10.1007/s13178-014-0162-9.
- Temple, J. R., Choi, H. J. (2014). Longitudinal association between teen sexting and sexual behaviour. *Pediatrics*, 134, 1287-1292. doi: 10.1542/peds.2014-1974.
- Thompson, S. (2014). Sexting prosecutions: Minors as a protected class from child pornography charges. *University of Michigan Journal of Law Reform Caveat*, 48, 11-19.
- Van der Geest, V. R., Bijleveld, C., Blokland, A., Nagin, D. S. (2016). The effects of incarceration on longitudinal trajectories of employment: A follow-up in high-risk youth from ages 23 to 32. *Crime & Delinquency*, 62, 107-140. doi: 10.1177/0011128713519196.
- Ward, T., & Stewart, C. A. (2003). The treatment of sex offenders: Risk management and good lives. *Professional Psychology: Research and Practice*, 34, 353-360.
- Willis, G. M., Ward, T., & Levenson, J. S. (2014). The Good Lives Model (GLM): An evaluation of GLM operationalization in North American treatment programs, *Sexual Abuse: A Journal of Research and Treatment*, 26, 58-81. doi: 10.1177/1079063213478202.
- Winterdyk, J. A. (2002). *Juvenile justice system: International perspectives*. Toronto: Canadian Scholar Press.
- Winterdyk, J. A. (2005). Juvenile justice in the international era. In P. Reichel (Ed.), *Handbook of transnational crime and justice* (pp. 457-469). Thousand Oaks: Sage.
- Wolak, J., Finkelhor, D., & Mitchell, K. J. (2012). How often are teens arrested for sexting? Data from a national sample of police cases. *Pediatrics*, 129, 4-12.
- Zhang, X. (2010). Charging children with child pornography -Using the legal system to handle the problem of 'sexting'. *Computer Law & Security Review*, 26, 251-259.
- Zevitz, R.G. (2006). Sex offender community notification: Its role in recidivism and offender reintegration. *Criminal Justice Studies*, 19, 193-208.