

Teens and Technology

What parents, teachers and students need to know



As students and teachers find themselves heading back to school, many will encounter situations where they are unsure of what students' rights and responsibilities are. The questions, concerns and confusion has increased as more young people have access to technology that was not available in years past.

In an effort to educate others about these issues and help stem the tide of legal problems, the ACLU of Ohio recently embarked on a public education campaign targeting students, parents and school personnel.

Sexting

On July 3, 2008, Cincinnati-area Sycamore High School student **Jessica Logan** tragically killed herself. Logan was the apparent victim of verbal taunting by area high school students after nude photos of her surfaced. She had sent the photos to a person she trusted while engaging in "sexting."

Sexting is the phenomenon of taking, sending, receiving or displaying nude images via a cell phone, email, blog or other online communication. This practice is fairly widespread — according to a 2009 study done by the National Campaign to Prevent Teen and Unplanned Pregnancy, **one in five teens admitted to sexting.**

Following Jessica's death, her parents launched a national campaign against sexting and state prosecutors have taken note. In Mason, also near Cincinnati, a fifteen-year-old boy and girl pled guilty to first degree misdemeanor charges after being



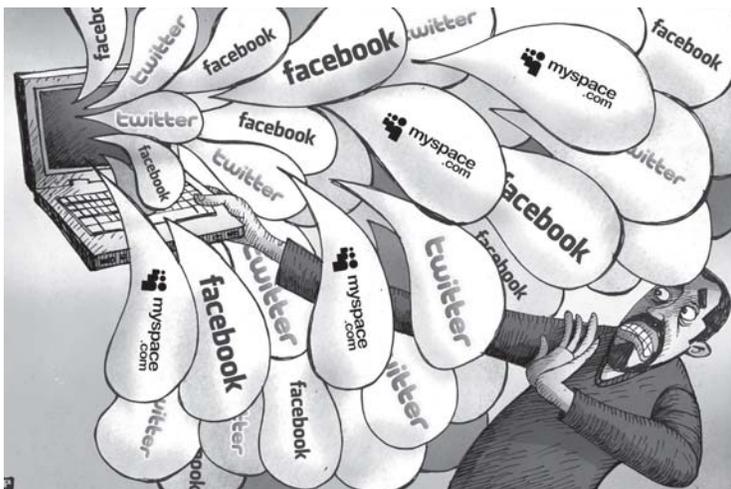
caught sexting. These teens were relatively lucky they were only charged with a misdemeanor. Prosecutors around the state have threatened teens who sext with felony charges, some of which would classify them as sex offenders and carry additional consequences like registration.

States vary in whether or not they treat sexting as a crime, and how severely it's punished. In Ohio, if you engage in sexting as a minor, you can face felony charges under child pornography laws, even for distributing your own picture. Teens 14 and older who are convicted of these crimes may be required to register as sex offenders.

The ACLU believes that while sexting is a poor decision, the criminal courts are not the place for these teens. Harsh felony charges and being labeled as a sex offender could ruin a young person's life, simply because of a thoughtless decision. Instead, educators and parents must use this opportunity to engage young people in honest conversations about respect for privacy and sexuality.

In April 2009, the ACLU of Ohio sent a letter to prosecutors and state legislators urging them not to apply felony child pornography laws to teens who sext.

Other states have also sought remedies outside of the criminal justice system. In late March, the **ACLU of Pennsylvania** filed a suit against a prosecutor for threatening to charge three girls with sexting for posing in their underwear. The ACLU was successful and the judge prevented the prosecutor



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from pursuing those charges.

Both Vermont and New Jersey have considered bills that would prevent teens caught sexting from being punished in the criminal justice system.

Online Speech

In 2006, a Holland, Ohio middle-school student named **Jessica Schoch** created a parody of her assistant principal on the social networking site, MySpace.

Even though Jessica created the page from her home computer, she was expelled from school when administrators discovered the page. The ACLU of Ohio represented Jessica in her appeal before the school board and argued that her expulsion violated her First Amendment right to free speech. The school board relented and Jessica was reinstated. Unfortunately, not all students are so lucky.

When children post on MySpace and Facebook, upload pictures to Flickr or even send emails to their friends, they might get in trouble at school for the content of that speech. While personal use of the Internet may seem private, public school students all over the country have faced punishments ranging from prom bans to expulsion for their Internet activities.

While the law is still murky in this area, Ohio courts have stated that students generally cannot be punished for speech that is produced on their own time, using their personal equipment, and off school property.

An exception to this may occur when what a student posts or uploads creates a significant disruption at school. However, this does not mean that officials can punish a student for merely posting something offensive, critical or profane.

School officials *can* regulate speech that is brought into school. However, most schools do not punish the student when another student prints their speech or accesses their Internet site while at school.

Students can get into trouble for Internet speech, even created outside of school, when it constitutes a true threat. A true threat is where a speaker directly threatens a person or group. **In almost any context,**



threats of physical violence are not protected by the First Amendment. Schools may punish a student for posting a threat to someone at school.

There may be consequences to sexting or online speech beyond punishment at school or criminal charges. **Posting false or private information about someone else could open them up for a private lawsuit.**

The best way for parents and teachers to be sure your student is protected is talking with him or her about their Internet activity and the importance of showing respect to other students and teachers.

By encouraging honest and thoughtful communication, young people will be better equipped to show good judgment when posting online. In addition, they will be informed of their own rights in case their own speech is challenged by someone.

For more information, check out "Students! Know Your Rights!" the ACLU's guide on the rights of students. You can download a free copy at www.acluohio.org.