Adolescent-created Sexual Images and the Law

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This Presentation

☐ Considers the issue of adolescent-created sexual abuse images.

☐ Identifies the legal position in respect of adolescent-created images.

☐ Considers that the law has created a ‘ticking time bomb’ and needs to consider how to respond.
Adolescent-created Images

- “Sexting” is the new popular term in the media.
  - “Celebrities” have used it quite successfully to give their “careers” a boost.
  - Members of the public also actively involved.
  - The growth of, and technological advances in, mobile camera technology contributes.
  - It is clear that adolescents are involved (Carr, 2004; Mitchell et al, 2011)

Adolescent-created images

- Sexting is only one form of behaviour.
- Adolescent-created images can cover a variety of different forms.
  - Many, but not all, will involve apparent consent.
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- Wolak & Finkelhor, 2011

□ My (unscientific) typology:

- Sexting.
- Recording of sexual activity.
- Commercial activity.
- Harassment.
Adolescent-created Images

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- To what extent are adolescents vulnerable to prosecution?
  - “Child” is generally considered to be a person under 18.
  - In many (most) countries the age of consent is below this.
  - The law will (ordinarily) criminalise the production and distribution of sexual images of children.
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- International law does not really address this point:
  - OPSC
    - Not mentioned.
  - Lanzarote Convention
    - Article 20.3 (discretion of signatories).
  - EU Directive 2011/93/EU
    - Not mentioned.

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- Practice differs between countries:
  - USA
    - Quite a long history of prosecuting adolescent-created images.
    - Latest research suggests significant criminal justice response (Wolak & Finkelhor, 2012).
    - Some States have actively legislated to minimise the repercussions of sexting.
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- **United Kingdom**
  - General policy is that prosecutions will not occur.
    - This is subject to some exceptions.
    - There certainly have been criminal justice responses.
  - Anecdotal evidence suggests that there is active consideration of criminal justice responses to adolescent-created images.
  - A **very** strange defence that is virtually unworkable and will apply to very few.

- **Canada**
  - An important country for this development.
  - Initially had a low age of consent (14) but sexual images were 18.
  - Courts recognised the paradox:
    - Considered that criminalising the recording of lawful sexual activities was unconstitutional.
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- Is it correct to use a criminal justice response to adolescent-created images?
  - Implications of this in many countries are significant.
    - Labelling of a person a ‘sex offender’.
    - Restrictions on employment (increasingly featuring in international law).
    - Sex offender notification schemes.

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- Should we distinguish between consensual and non-consensual behaviour?
  - How do we identify consent?
- Should we exclude dissemination beyond the creator(s)?
  - This perhaps addresses one of the key fears of the courts and policy makers.
- Should we focus on the motivation of the individual?
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- Within Europe it is possible to see how Sharpe could influence the law.
- Article 8 of the ECHR has been held to include the right to a sexual life.
  - *Dudgeon v United Kingdom*
- The necessity and proportionality of any restriction must be considered.
  - Proportionality will include the effect of any restriction.

Conclusion

- International and national law has developed in recent years in respect of CSAI.
- The definition of CSAI and offences are generally becoming clearer and more appropriate.
- The issue of adolescent-generated content has not been considered.
- There is a real danger that adolescents are punished for experimental behaviour (c.f. contact behaviour).