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## Commentary

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## COMMENTARY

*Mary Graw Leary\**

Whether regarding democracy movements in the Middle East, distance learning, “get out the vote” efforts, or a host of other activities, rapid developments in technology and social media have permanently altered how people interact, communicate, manage reputations, and establish themselves. No demographic is more open to, and therefore affected by, these rapid developments than the young. Today’s youth were born into these technologies being “the norm.” For example, seventy-five percent of American teens have cell phones, which are no longer limited to verbal communication.<sup>1</sup> These mobile devices are new multi-media platforms that allow texting, recording, computing, and accessing the Internet all without using a desktop computer.<sup>2</sup> This explosion in mobile media has played a role in the ability of the average youth to use media 7.38 hours a day, excluding media use for school work.<sup>3</sup>

This expansive increase in media use and technology presents significant opportunities for social connection, learning, and access to information for all people, particularly youth for whom the technology is so central.<sup>4</sup> While this technology poses expansive opportunities, it also creates a new avenue for increased risk to children, which is equally as extensive.<sup>5</sup> Increasingly,

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1. AMANDA LENHART ET AL., PEW INTERNET & AM. LIFE PROJECT, TEENS AND MOBILE PHONES 2 (Apr. 20, 2010), available at <http://www.pewinternet.org/~media/Files/Reports/2010/PIP-Teens-and-Mobile-2010-with-topline.pdf> [hereinafter TEENS AND MOBILE PHONES].

2. *Id.* at 5.

3. VICTORIA RIDEOUT ET AL., KAISER FAMILY FOUND., GENERATION M<sup>2</sup>: MEDIA IN THE LIVES OF 8 – 18 YEAR-OLDS 21 (2010).

4. MIZUKO ITO ET AL., JOHN D. AND CATHERINE T. MACARTHUR FOUND., LIVING AND LEARNING WITH NEW MEDIA: SUMMARY OF FINDINGS FROM THE DIGITAL YOUTH PROJECT 5 (Nov. 2008), [http://www.macfound.org/atf/cf/%7B B0386CE3-8B29-4162-8098-E466FB856794%7D/DML\\_ETHNOG\\_WHITEPAPER.PDF](http://www.macfound.org/atf/cf/%7B B0386CE3-8B29-4162-8098-E466FB856794%7D/DML_ETHNOG_WHITEPAPER.PDF).

5. *E.g.*, Gwenn Schurgin O’Keeffe et al., *The Impact of Social Media on Children, Adolescents, and Families*, 127 PEDIATRICS 800, 801-02 (Mar. 28, 2011), <http://aappolicy.aappublications.org/cgi/reprint/pediatrics;127/4/800.pdf>; SAMUEL C.

experts, researchers, and medical professionals are studying the potential risks to children who spend an average of 7.38 hours a day using media, who log on to their favorite social media site more than ten times a day or who send over 1,500 text messages a month.<sup>6</sup> This issue of *The Journal of Contemporary Health Law and Policy* contains two Notes highlighting the growing health concerns of the harms caused when, as the American Academy of Pediatrics states, “a large part of this generation’s social and emotional development is occurring while on the Internet and cell phone.”<sup>7</sup>

It is tempting to view the developments in social media such as social networking, video posting, and blogging as only positive. But the reality is that any activity so integral to the lives of children has the potential for significant impact, both positive and negative. Today’s youth are both consumers and creators of content; inherent risks exist not only to what youth are exposed, but also in what content they create and share. As John Palfrey, Faculty Co-Director of the Berkman Center for Internet & Society, describes it, youth are generating their digital identity. However, this is an identity that cannot be completely controlled once created and circulated.<sup>8</sup>

While technology surely is not harmful in and of itself, experts are increasingly observing that technology, like other social activities, has the potential to increase the risk of harm.<sup>9</sup> Teen domestic violence, threats to school safety, bullying, privacy invasions, and reputation destruction are all social problems that have existed for decades. Such problematic realities of today, when combined with technology’s ability to virally spread information to and from youth, can morph today’s problems into tomorrow’s epidemic.

Two student Notes in this issue highlight the reality that these new media forms present for today’s youth: exciting opportunities for exposure and achievement, as well as exposure to risk. It is comforting and, therefore,

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MCQUADE, III & NEEL SAMPAT, ROCHESTER INST. TECH., SURVEY OF INTERNET AND AT-RISK BEHAVIORS 9, 15, 29 (June 18, 2008), <https://ritdml.rit.edu/bitstream/handle/1850/7652/SMcQuadeReport06-18-2008.pdf?sequence=1> [hereinafter SURVEY].

6. TEENS AND MOBILE PHONES, *supra* note 1, at 31; O’Keefe et al., *supra* note 5, at 800.

7. O’Keefe et al., *supra* note 5, at 800.

8. JOHN PALFREY & URS GASSER, BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES 19-20, 63-64 (2008) [hereinafter BORN DIGITAL].

9. *Id.* at 63-64; O’Keefe et al., *supra* note 5; SURVEY, *supra* note 5, at 7.

tempting to categorize cyber bullying and youth produced sexual images<sup>10</sup> or child-produced child pornography (CPCP) as age-old problems of traditional schoolyard bullying and teenage sexual development. However, these Notes demonstrate that such a view is blissfully ignorant of today's reality. These pieces bring to the forefront what is becoming an emerging discussion among experts: the combination of youth and technology present new risks to children's emotional safety. While these risks can certainly be managed, as with other dangers facing children, they raise public health concerns for this and future generations.<sup>11</sup>

Recognizing the public health implications of a generation left without adult guidance through these complicated technologies, both Notes not only examine these contemporary social problems, but they also propose twenty-first century solutions. At the cornerstone of each proposal is education. These Notes recognize that, like all health threats, the solution to the collateral harm this new world order poses for youth is not only legal. Rather, multi-faceted problems need multi-faceted solutions that incorporate prevention and, when prevention fails, smart responses.

There are many areas to explore regarding the interrelationship between media and youth. The inclusion of these two pieces by *The Journal* mirrors a recognition in the greater legal and social community regarding two of them. The issue of youth produced sexualized images, CPCP, and "sexting" has been the subject of much discussion, with over twenty states proposing legislation addressing this phenomenon.<sup>12</sup> Similarly, cyber bullying has received a great deal of attention, most recently being the subject of a Presidential Summit at the White House.<sup>13</sup> Recognition is emerging from the debate, captured in this issue, concerning the use of technologies by individuals to further bully, exploit, abuse, or control victims within the context of teen dating violence. The link between bullying, producing child

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10. DAVID FINKELHOR & JANIS WOLAK, CRIMES AGAINST CHILDREN RESEARCH CTR., UNIV. NEW HAMPSHIRE, *SEXTING: A TYPOLOGY* (2010), [http://www.unh.edu/ccrc/pdf/CV231\\_Sexting%20Typology%20Bulletin\\_4-6-11\\_revised.pdf](http://www.unh.edu/ccrc/pdf/CV231_Sexting%20Typology%20Bulletin_4-6-11_revised.pdf).

11. BORN DIGITAL, *supra* note 8; O'Keefe et al., *supra* note 5, at 801-02; SURVEY, *supra* note 5, at 7.

12. *2011 Legislation Related to "Sexting"*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=22127> (last updated Mar. 31, 2011).

13. Press Release, White House, President and First Lady Call for a United Effort to Address Bullying (Mar. 10, 2011), <http://www.whitehouse.gov/the-press-office/2011/03/10/president-and-first-lady-call-united-effort-address-bullying>.

pornography, “sexting,” and interpersonal violence is increasingly being discussed.<sup>14</sup> As demonstrated by the recent highly publicized suicides of teens whose sexual images were shared electronically without their control or, at times, their knowledge, the relationship between sexually explicit imaging of youth by youth, bullying, or intimate partner violence is only beginning to be understood.<sup>15</sup> These Notes add to the emerging dialogue regarding these important social and public health problems.

As many state legislatures struggle to find the appropriate response to CPCP, youth produced sexualized images, and “sexting,” Sarah Theodore’s Note, “An Integrated Response to Sexting: Utilization of Parents and Schools In Deterrence” provides important reflections. The piece reminds what is so often forgotten in the political debate: complex social problems are rarely solved by simple criminal statutes. While this Note recognizes a reality not all wish to see, that these images are harmful and can be used to exploit children, it also recognizes the true solution is not criminalization alone. This Note reminds the audience of the nature of true societal response in the public health sphere: prevention. While it advocates education, a significant tool in responding to this alarming trend, this piece articulates an important, often ignored aspect of education. Specifically, it asserts the need to educate multiple facets of society, not just youth. It also recognizes the importance of many societal segments in the solution including youth, educators, law enforcement and, critically, parents. This piece adds a voice to the growing legislative attention to an educational component to the solution and to the need for parents to be engaged in a societal response.<sup>16</sup>

Bethan Noonan’s Note, “Crafting Legislation to Prevent Cyber Bullying: The Use of Education, Reporting, and Threshold Requirements” offers legislators and educators a concrete framework for responding to the

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14. *E.g.*, Assem. Con. Res. 100, 2009-10, Reg-Sess (Cal. 2010), [http://info.sen.ca.gov/pub/09-10/bill/asm/ab\\_00510100/acr\\_100\\_bill\\_20100104\\_introduced.pdf](http://info.sen.ca.gov/pub/09-10/bill/asm/ab_00510100/acr_100_bill_20100104_introduced.pdf).

15. *Policy Statement on Sexting*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (Sept. 21, 2009), [http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en\\_US&PageId=4130](http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=4130). Similarly, in recognition of “National teen Dating Violence Awareness and Prevention Month,” the California Legislature noted that “sexting,” is “becoming [a] new frontier [] for teen dating abuse.” Assem. Con. Res. 100, 2009-10, Reg. Sess. 2 (Cal. 2010).

16. *E.g.*, N.J.A.B. § 1560 (2011); N.J.S.B. § 2698 (2011); N.Y.S.B. § 3439 (2011). These legislative proposals regarding “sexting” include robust educational programs for various segments of population regarding the significant risks of digital image sharing.

national crisis created by cyber bullying. The legislative suggestions, however, are problem-focused and speak to the complexity of this threat to children. While some argue that cyber bullying is nothing more than bullying, this Note offers a comprehensive discussion of the behavior in a public health context that exposes the severity of this harm. After laying out the issue in this framework, the piece reviews some of the many legislative responses with a critical eye. This complex issue has obvious implications for the general health of our youth. However, not forgotten in Noonan's analysis, is the understanding that any potential solution also has implications for youth speech and expression rights, educator interests in a healthy learning environment, and collateral effects of criminal law responses to youth activities. By framing cyber bullying as a health issue, this Note again places at the base of the proposed solution the education of children as well as that of educators and parents. The education curriculum it suggests is as nuanced as the problem. It includes components addressing the definition of cyber bullying, strategies to prevent it, and methods to identify victims before the health consequences become overwhelming. Importantly, this piece recognizes the need in legislation for an additional measure: accountability. The legislative suggestions contained in the piece remind policy makers that candid assessment of the frequency of the problem must be obtained from schools and schools must report both events and interventions. Finally, it addresses the importance of forcing school officials to comply with their legal obligations to protect children.

Technology's complex influence is magnified by its role in the vulnerable lives of children. The potential to expose children to the collateral harms of negative behaviors, such as the production of sexually explicit pictures of children or the harassment and bullying of youths, demands complex solutions. Both Notes provide insight into these problems and encourage comprehensive reforms by framing these social concerns in the public health context. As a result, *The Journal* has provided important commentary on two significant health issues affecting this and future generations.