

## USE OF SOCIAL MEDIA IN TEEN DATING VIOLENCE

*\*Note: Terms in bold are defined in the Use of Social Media in Teen Dating Violence Glossary Information Sheet*

Technology pervades nearly every teenage social interaction, and is the new medium through which adolescents communicate. In 2013, 78% of teens owned a cell phone, half of which were **smartphones**, and 93% have access to a computer.<sup>1</sup> Electronic devices give an unprecedented ability to communicate, monitor, and get geographical information, which enables abusers to exert power and control over their victims, even in teen relationships. Since the vast majority of teens use technology, often under no adult supervision, technological devices have become a vehicle for perpetrating **teen dating violence** (TDV). Teens use electronic communication to abuse their partners in numerous ways, including establishing the relationship, monitoring a partner's whereabouts, expressing aggression toward a partner, and reestablishing contact after a violent episode.<sup>2</sup> The widespread prevalence of technology allows abusers to exercise pervasive *coercive control* over their victims.

Although technology can be confusing because it is constantly changing, it is a valuable source of evidence. The **cloud**, an online database owned by a company (like Amazon, Apple, or Google) that can be accessed anywhere, preserves data found on electronic devices even if it has been deleted from a device, or the device is destroyed. Electronically stored evidence (ESI) presents the issues of anonymity and possible falsification, but can be evaluated under existing Rules of Evidence.

### ***Social Media Websites and Apps Facilitate Constant Communication***

Websites that rely upon membership and connect users with similar interests are extremely popular among teens; 81% have some sort of online presence.<sup>3</sup> Much of social media's appeal for teens comes from a strong preoccupation with self-image and what others think of them, due to incomplete psychological development.<sup>4</sup> The most popular social media websites among teen users are **Facebook** (77% of teens have an account), **Twitter**, **Instagram**, **MySpace**, and **Youtube**.<sup>5</sup> All of these platforms require users to set up personal accounts, and if a teen forces his partner to share an account password, it is a form of abusive control.<sup>6</sup> Youth from lower income families (under \$30,000) are more likely to use such sites than teens in wealthier households.<sup>7</sup>

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## ***The Dangerous Side of Flirtatious “Sexting”***

**Sexting**, a commonly used expression that describes sending nude or semi-nude photographs via text message, is an increasingly popular method for teens to express themselves in their relationships.<sup>8</sup> In fact, about 1 in 4 teens has sent a nude picture.<sup>9</sup> The majority of “sexts” are sent voluntarily as a form of flirtation, but teens are often coerced into sending a nude photo or explicit message to their partner. Those in possession of explicit messages or photos can disseminate them to a large audience in a matter of seconds using social media; threatening to release the photos can give an abusive partner leverage. Teens who engage in sexting are much more likely to have suicidal thoughts and engage in other risky behaviors such as unprotected sex.<sup>10</sup> In addition, teenagers in some places have been found guilty of possession of child pornography,<sup>11</sup> and may face criminal charges under laws that attempt to “protect minors [...] from their own lack of judgment.”<sup>12</sup> Sexting does not, however, fall into the Supreme Court’s definition of child pornography,<sup>13</sup> and is criminal only if it is found to be “speech integral to criminal conduct,” so an otherwise legal and consensual sexual act is protected under the First Amendment.<sup>14</sup>

## ***Non-Consensual Secondary Sexting and Revenge Porn***

**Secondary sexting** is when the recipient of a sext forwards it to a third party without the consent of the original sender (who is usually the subject of the photo).<sup>15</sup> It is closely related to **revenge porn**, or the distribution of sexually explicit images to the public without the subject’s knowledge. Revenge porn is a form of harassment and control that causes severe emotional reactions in victims. The explicit images can be collected without the victim’s knowledge, through applications that hijack a computer’s camera or by placing small and undetectable cameras in a bedroom. It can be prosecuted under copyright, stalking, intentional infliction of emotional distress, or invasion of privacy laws,<sup>16</sup> but 25 states now have laws specifically criminalizing revenge porn,<sup>17</sup> and a federal bill criminalizing revenge porn is set to go before the House in the near future.<sup>18</sup> The Communications Decency Act (CDA) protects providers of interactive online services from liability for the content published on the site,<sup>19</sup> but fortunately several sites (Facebook, Reddit, Twitter, and most recently Google) have explicitly banned revenge porn in their updated policies.<sup>20</sup>

## ***Technology Uses for Stalkers and Abusers***

TDV perpetrators can use technology to stalk their victims. Smartphones are equipped with **location-tracking services** that provide the abuser with easy access to the victim’s whereabouts. TDV perpetrators may buy phones for their partners, which they

use to track their partners and their every move. Software meant for parents to monitor and protect their children can be used by abusers to track their victims. Social media websites enable abusers to pinpoint the location or activities of the victim, such as where she went to dinner or where she is on vacation. If a teen makes her social media profile public to anyone with Internet access to view, the information is available to her abuser even if they are no longer connected on the site.

Some stalkers use technology to communicate with their victims constantly. *Frequency* of text messages, not necessarily their content, can be frightening and threatening for victims, as well as an invasion of their privacy.<sup>21</sup> Whether the level of communication is considered threatening depends upon the individuals involved. The median number of texts teens send per day is 60. Teenage girls text the most (with a median of 100 texts per day, compared to a median of 50 per day for boys).<sup>22</sup>

TDV perpetrators can easily hack into computers and accounts using spyware; all it takes is the victim opening a single file to download spyware on a computer that tracks all computer activity without the victim's knowledge.<sup>23</sup> Accessing an intimate partner's email account without their consent has been held to be a violation of the federal Computer Fraud and Abuse Act (CFAA).<sup>24</sup>

### ***Cyberbullying and Online Anonymity***

Technological devices and online forums provide teens with a means to communicate without having direct, face-to-face contact. Cyberbullying is defined as the use of technological communication to threaten or intimidate another individual. Almost half of all teens in a relationship report some sort of digital harassment.<sup>25</sup> Technology can be used to hide the identity of an abuser; a perpetrator can create a fake Facebook or Instagram account, go by a pseudonym in an online chat room and anonymously spread secrets or nasty rumors, or manipulate evidence to make it look like the victim is the perpetrator. Certain smartphone applications or calling services can hide the telephone number of the abuser so that text messages or phone calls sent to the victim can remain anonymous.<sup>26</sup> Courts can refer to the victim's cell phone bill to expose that the calls or texts were never actually sent from the victim's phone.<sup>27</sup>

### ***Evaluating ESI (Electronically Stored Evidence)***

Documented evidence and present sense impressions found in text messages, twitter posts, and other forms of ESI expand a factfinder's resources. ESI is not stored in just one physical device; it is uploaded to the cloud, and often saved on other "synced" devices as well. ESI can be treated as any other form of evidence; it was incorporated

into the Federal Rules of Civil Procedure in 2006, and there is case law and scholarly writing indicating that it fits within our existing legal structure.<sup>28</sup> The following must be considered when faced with ESI offered as evidence: 1) whether it is **relevant** according to Federal Rule of Evidence 401, such that it tends to make an important fact more or less probable; 2) whether it is **authentic** as required by Rule 901, meaning it is what it is claimed to be; 3) whether it is **hearsay**, and if so, whether it is covered by an applicable exception in Rules 803, 804, and 807; 4) whether the evidence is **original**, or, if it is a duplicate, whether there is admissible secondary evidence; and 5) whether the **value** of the ESI outweighs possible prejudice.<sup>29</sup> For e-hearsay to be admissible, it must meet the **timing**, **presence**, and **knowledge** requirements: “were the statements made in the text, tweet, status update etc. contemporaneous with the writer’s personal observation of the event?” And “was the writer actually there for the event?”<sup>30</sup>

**Authenticity** can be a significant problem with ESI, since it is so easy to manipulate. But written documents can be falsified just as easily, so ESI can still fit into the existing Rules of Evidence.<sup>31</sup> Witness testimony corroborating electronic hearsay is not necessary. As long as e-hearsay is accompanied by independent evidence, it can be authenticated.<sup>32</sup> This is often the case; the Urban Institute Justice Policy Center found in 2013 that “84 percent of cyber dating abuse victims also reported psychological dating abuse victimizations.”<sup>33</sup>

### ***A Benefit of ESI: It Is Very Hard to Destroy***

Fortunately for courts, it is difficult to delete electronically shared information, and traces of the truth are almost always left behind.<sup>34</sup> Most digital devices automatically upload all data to the cloud, so it is accessible even if a physical cell phone is destroyed, or an email is deleted.

### ***Endnotes***

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  12. *A.H. v. State*, 949 So. 2d 234, 238 (Fla. Dist. Ct. App. 2007).
  13. Haynes, *supra* note 11 at 373.
  14. *United States v. Stevens*, 130 S. Ct. 1577 (2010).
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32. *Id.* at 10.
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