

BRINGING SEXTING TO THE BOOK IN CROATIA: STAYING ON THE FENCE OR EXPLORING A FLYING START?¹

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Abstract

As one of the sexual behaviors of young people, sexting is increasingly being scientifically researched. Contemporary analyses clearly reveal young people are habitually using the Internet and social networks in the context of sexuality. These analyses are usually presented within a psychological aspect, and almost never with the context of criminal law. The aim of this paper is first to review the characteristics of sexting, focusing on its definitions, frequency, features, and determinants. We tackle a developmental perspective and potential negative consequences exploring the phenomena within the context of criminal law. Considering that the possibilities of criminal law development leading to sexting sanctioning have not yet been problematized, the second part of the paper pioneers the relationship between sexting and existing incriminations within the Croatian criminal law system, to answer the question of the sanctioning needs and possibilities. The insights provide the first criminal law perspective on sexting sanctioning in Croatia.

Keywords: *sexting, sanctioning, criminal law, child grooming, child pornography, revenge porn, Croatia.*

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1. A (Sexting) Picture Speaks a Thousand Words

The word sexting comes from a combination of “sex” and “texting” and is defined as sending sexually explicit or provocative messages, photos or videos over the Internet using a smartphone (Klettke, Hallford, & Mellor, 2014; Vrselja, Pacadi, & Maričić, 2015). It refers to revealing of the whole naked body or body parts (e.g., in an underwear or swimsuit) or intimate parts, but may also include sexual activities (K. J. Mitchell, Finkelhor, Jones, & Wolak, 2012). The concept is still relatively new, so it is not surprising that there are a number of different aspects, definitions, and perspectives on the issue, as well as contradictory research findings. Newer definitions also include the exchange or forwarding such content (Sesar, Dodaj, & Šimić, 2019). In this sense, authors consider sending own material to others as primary sexting and forwarding to a third party as secondary, where the person forwarding is not recorded in sexual materials. A distinction in literature exists between active and passive sexting, where active is related to creating, showing, publishing, and sending material to others, and passive is related to receiving this content (J. R. Temple & Choi, 2014).

Studies have tried to estimate the frequency of youth sexting, but the results vary considerably, from as little as 2.5% to as much as 50%, due to various conceptual and methodological ambiguities (Barrense-Dias, Berchtold, Surís, & Akre, 2017; Klettke et al., 2014). Nevertheless, it seems to be present in a substantial number worldwide. A US survey of 13- to 19-year-olds found that between 9% and 19% sent personally sexually explicit material, and slightly more received it - between 17% and 31% (Cox Communications, 2009; The National Campaign to Prevent Teen and Unplanned Pregnancy, 2008). Similar research from the United Kingdom reveals that 38% of young people received a message with such content (Beatbullying, 2009). An extensive European study on over 18,000 adolescents found an average receiving prevalence of 3.4% (Baumgartner, Sumter, Peter, Valkenburg, & Livingstone, 2014). A study about Spanish adolescents aged 12 to 14 found that 7.6% of them had sexted (Gámez-Guadix & Mateos-Pérez, 2019), and a study in Belgium, on slightly older adolescents, found 11% of them have sexted (Van Ouytsel, Van Gool, Ponnet, & Walrave, 2014).

Several studies have been conducted in Croatia as well. Vrselja et al. (2015) found that almost 40% of Zagreb high school students have sexted one or more times, and about 8% of children between the ages of 9 and 17 have received a sexual message. Afterwards, comparable results were found, with between 33% and 64% of young people having sexted (J. Burić, Juretić, & Štulhofer, 2018). Another study on students revealed that 1% of them forwarded messages to someone for whom the material was not intended (Kričkić, Šincek, & Babić Čikeš, 2017). Flander found that a higher percentage of high school students receive sexually provocative content than the percentage that has sent it, most often via Snapchat and Instagram, and less frequently via WhatsApp and

Facebook (Flander, et. al., 2018). The same research pointed out that more than half of high school students received sexually provocative photos or recordings of other people or acquaintances (52%), while to a lesser extent they received such content on which themselves (10.8%) or their partners (19.7%) were recorded. It is worrying that 13.4% of adolescents had sexted under persuasion and 4.4% under coercion, mostly from partners or friends, and that 1% of the young people surveyed sent such content at the urging of an unknown person. Interest in sexting seems to increase with age, so young people between the ages of 16 and 17 are more likely to sext than those between the ages of 12 and 15 years (Dake, Price, Maziarz, & Ward, 2012). It is a common conclusion that sexting is more usual in young adulthood, but the first experimentation begins in adolescence (Sesar et al., 2019). The reasons for such age differences are multiple, from psychophysiological maturation, generally more frequent sexual activity, but also to more frequent possession of smartphones and less parental control.

The sexting popularity comes in part from the widespread use of online technologies playing an influential role in young people's lives, identity, self-expression, behaviour modelling, peer relationships, learning and entertainment (Jakov Burić, Garcia, & Štulhofer, 2020). To that extent, it is also considered to be expected within general sexual exploration in the context of the digital age (Hasinoff, 2012).

The sexting motivation is most often directed towards the desire for intimacy with an existing partner or a manner of seducing potential partners (Englander, 2012). Accordingly, sexting mainly takes place within a relationship with a romantic partner in order to maintain or begin a relationship (Weisskirch & Delevi, 2011). Some suggest sexting is more common in long-distance relationships (Doering, 2014), and rarely used to start short-term sexual intercourse (Garcia et al., 2016). Other motives include fun, a desire to impress others, attention, desire to feel good, request of other person, or initiation of sexual activity (Cox Communications, 2009; Henderson, 2011). It is perceived as a form of a safe sexual behaviour, especially if health or religious reasons are an obstacle to engaging in other forms of sexual behaviours (Sesar et al., 2019). These various motives are not mutually exclusive and may contribute differently to the overall motivation for sexting.

Sesar and colleagues (2019) categorized sexting as relational (for the purpose of intimacy with a partner), reactive (for the purpose of exploration, entertainment or popularity), forced (due to pressure from a partner or peer) and violent (forwarding without permission and inflicting personal harm). Same authors have developed a model of motivational factors distinguishing between contextual and individual (2019). The first relate to cultural and social factors, i.e., traditionalism and restrictiveness of society towards sexuality, manifested in the availability of pornography and open discourse on sexuality. Yet, little is known about these influences since sexting research mainly comes from similar Western cultures (Sharabany, Eshel, & Hakim, 2008). Individual factors relate

to demographic and cognitive characteristics, such as attitudes toward sexting and the characteristics of a romantic relationship, with gender in focus. In general, there is a social bias towards stereotypical male sexual values, allowing boys more freedom to express their sexuality, while girls are exposed to double standards and meet more restrictions (Fine & McClelland, 2006). Accordingly, it seems that boys sext more often than girls, which can serve as a confirmation of their masculinity and seeking status among peers (Dodaj, Sesar, & Jerinić, 2020). Unlike young men, there is often a negative perception of girls sharing their sexually explicit content as insecure, promiscuous, irresponsible, or that they lack self-esteem and seek attention in a wrong way (Doering, 2014; Ringrose, Gill, Livingstone, & Harvey, 2012). Some point out it may contribute to the objectification of one's own body (Fredrickson & Roberts, 1997). However, there is the view that sexting can encourage girls in terms of contributing to their own sexual preferences and empower sexual choices (Ashton, McDonald, & Kirkman, 2018), meaning they act according to their own desires, having control over the sexual aspect of their life (Ashton et al., 2018).

In general, sexting research develops from two perspectives. Sexting is interpreted as a normal communication manner including contemporary digital technologies and a healthy expression of sexuality and interpersonal relationships. It is also considered a risky and deviant behaviour (Doering, 2014; Eric Rice et al., 2014), with this approach as more frequent in studies emphasizing the need for interventions and prevention (Kosenko, Luurs, & Binder, 2017). In the following lines we present relevant research from both perspectives.

1.1. Sexting Taking Shape: Developmental Perspective and Negative Consequences En Route

Adolescence brings many physical, cognitive and socio-emotional changes accompanied with natural desire to explore as this is the period of transition to adulthood and important part of a healthy development (Fortenberry, 2016). Sexual initiation is not only a form of risky behaviour, but also a normative development point predicting some positive future outcomes (Tolman & McClelland, 2011). Psychophysiological maturation relevant for sexting acts internally and externally (Koletić, Štulhofer, Tomić, & Knežević Čuća, 2019). Testosterone, crucial for the maturation of men (Bancroft, 2009; Fortenberry, 2016) is associated with the competitiveness sexual behaviours involved with meeting sexual partners (Štulhofer, Koletić, Landripet, Hald, & Čuća, 2019). Sexting is considered experimental in the context of a relationship or seeking entertainment, not aiming at harming a person or any illegal elements (Sesar et al., 2019; Wolak, Finkelhor, Walsh, & Treitman, 2018).

The peculiarity of sexting in comparison to other sexual behaviour such as pornography is its interactivity followed with greater sensitivity to social influences (Lucić & Štulhofer, 2019), which are generally very strong during adolescence in the context of identity, recognition, peer acceptance and a propensity for conformism (Brown & Larson, 1989). They take place through various mechanisms, such as social learning, social comparison, diffusion of norms, pressure, and maximization of reputation among peers (Lucić & Štulhofer, 2019). Adolescents are particularly sensitive to the peer influence due to time spent together, less parental supervision and a likely feeling of attachment to peers in the context of identity and emotional closeness (Brown & Larson, 1989). The social impact within the context of sexuality and sexting has been confirmed, given that sexual activity is associated with the number of sexually active peers as well as regular contacts with older adolescents (Lucić & Štulhofer, 2019). Girls are more influenced by socialization, as well as socio-cultural and situational factors (Lucić & Štulhofer, 2019). Peer pressure is linked with the use of pornography only in boys, while in girls it is associated with risky sexual behaviours (van de Bongardt, Reitz, Sandfort, & Deković, 2014). Those who sext are more likely to know peers who also sext (E. Rice et al., 2012) with frequency related to the perception of sexting approval by friends, parents, and the media (Houck et al., 2014). Sexting is associated with the number of older and sexually experienced same sex friends, thus highlighting the important influence of peer groups (Lucić & Štulhofer, 2019). This in regard, some believe it can be an attempt to imitate or impress peers aiming for gain a greater status (Lucić & Štulhofer, 2019) or the result of encouragement and instructions from more experienced peers (Lucić & Štulhofer, 2019). With a view to greater understanding, neurobiological studies reveal that brain parts responsible for reasoning the long-term behaviour consequences are still evolving, so adolescents are not always aware of risks and more often engage in reckless behaviour (Reyna & Zayas, 2014). The imbalance in decision-making and the emotional drive towards rewards and risk is the result of a disproportionate development of the subcortical and cortical regions of the brain (Reyna & Zayas, 2014).

In an emotionally important or charged context with emphasis on perceived rewards, adolescents generally make more risky decisions (Reyna & Zayas, 2014). Compared to children and adults, adolescents are more likely to take even more risks if they are surrounded by peers (Reyna & Zayas, 2014) which is in line with a finding on significant proportion of risky behaviours taking place precisely in peer groups or under group pressure. Social influence of peers is partly biologically conditioned: aside from physical growth and development, hormones influence behaviour, as well as interest in peers, sensation seeking, social acceptance, status, and fear of peer rejection (Reyna & Zayas, 2014). This is in line with a longitudinal Croatian study revealing sensation seeking as a personality trait predicting sexting (J. Burić et al., 2018).

When sexting is understood as a deviant behaviour, it is commonly associated with other risky behaviours, such as multi-person sexting (Garcia et al., 2016), multiple partners (Benotsch, Snipes, Martin, & Bull, 2013), unprotected sex, alcohol and drug use (Yeung, Horyniak, Vella, Hellard, & Lim, 2014), as well as aggressive behaviour (Dake et al., 2012; Lee, Moak, & Walker, 2013). Young people who had sexted at least once, compared to those who had never, were more often involved in sexually risky behaviours and more often socialized with peers exhibiting deviant behaviour (Vrselja et al., 2015).

Although most people have never had a negative experience during sexting (Dir & Cyders, 2015), risks exist and relate, for example, to the disclosure of sexting content to others, not the original recipient (Leshnoff, 2009) possibly leading to reputational damage, social exclusion, online or cyberbullying and in rare cases suicide (Ringrose et al., 2012). If certain sexually explicit messages are forwarded to others, consequences can amount to a form of child pornography subjected to sanctioning (Ostrager, 2010). There is a correlation between sexting and sexual activity, the number of sexual partners and unprotected relationships (Kosenko et al., 2017). The perspective of sexting as a deviant behaviour is sometimes considered as a form of moral panic (Angelides, 2013) but recognizing the need to protect vulnerable minors, especially girls, from sexual abuse and emphasizing double standards towards female sexuality (Hasinoff, 2012).

Sexting is also polemicized within context of impaired mental health, but often with methodologically flawed and inconsistent results (Jeff R. Temple et al., 2012). It is associated with more pronounced sadness, hopelessness, more frequent suicidal thoughts and suicide attempts (Dake et al., 2012), along with poorer emotion regulation (Van Ouytsel, Walrave, Ponnet, & Heirman, 2015). Young people with mental health problems may be more accessible or reveal more personal information on social media and the Internet, which may attract the attention of unwanted abusers (K. Mitchell & Štulhofer, 2021).

The recent study results by Burić et al. (2020) revealed that the problematic family environment is systematically linked to sexting and the psychological well-being of young people, which is especially true for girls. Poorer family climate is associated with more frequent sexting and lower psychological well-being, with sexting being associated with lower self-esteem and a desire for acceptance. Younger adolescents may be particularly vulnerable compared to older ones, as they are less willing to deal with the emotional and social aspects of sexting (Jakov Burić et al., 2020). Girls report being judged by others when engaged in sexting but also when they did not (Lippman & Campbell, 2014) and are more likely to be victims of online abuse related to sexting, blackmail and public humiliation (Lippman & Campbell, 2014). This can lead to mental health disorders, especially since girls are generally more vulnerable to depression than boys (Kuehner, 2017).

2. Easier Said Than Done: Criminal Law Perspective in the Driver's Seat?

Empirical knowledge of sexting, especially regarding consent and sexual harassment is of utmost importance in making adequate legislative norms serving to protect young people. Some sexting behaviours resulting in violation of the protected rights of others cannot be attributed to or justified with the standard development of an individual. Criminal law potential of prohibiting and sanctioning sexting has not been systematically researched in general. Among current Croatian incriminations, none is specifically related to sexting. There are several reasons to rectify this situation. First, the existence of harmful, so-called forced and violent sexting forms as previously mentioned. Secondly, there is possible relation to child pornography. Third, compared to primary sexting, secondary sexting lacks consent of the person portrayed in the explicit material as the person portrayed does not know to whom the material is passed (Calvert, 2009). Even in the primary sexting, consent can come with challenges. When a partner or peer pressures a person to get involved (Dake, Price, Maziarz & Ward 2012). Several, and less frequent, sexting forms have coercive elements, e.g., vengeful or revenge sexting initially taking place consensually, but afterwards the ex-partner sends these explicit materials to third parties emphasising in particular the original person's identity, without his or her knowledge (Tungate, 2014). Fourth, there exists the possible occurrence of sextortion, meaning blackmail and threats of posting or passing on sexually explicit photos of the victim, in case of ceasing sexual communication (Wolak, Finkelhor, Walsh and Treitman, 2018). Fifth, there is the possible relation of sexting with other risky and punishable behaviours such as cyberbullying, sexual grooming. All this tends to go in favour of the need to sanction certain sexting forms. However, the criminal justice system has its rules, limits and modalities of application respecting the principle of legality and directing these considerations exclusively through the prism of prescribed criminal offenses.

The law is essentially the last and most powerful instrument of social reaction intended to suppress harmful and unwanted behaviours, with state force affecting certain human rights and freedoms. It seeks to adequately sanction perpetrators, prevent re-offending, influence others not to commit criminal offenses, protect victims, proclaim the just sanctioning and strengthen citizens' trust in the rule of law enabling safe life in the society (Herceg Pakšić, 2019). To explore sanction possibilities in Croatian criminal law, this discussion evolves respecting two limitations. The first is the age limit regarding perpetrator, meaning the applicability of the criminal law provisions *ad personam*. The second is the content limit, meaning the consideration of content of current criminal offenses possibly adequate for sanctioning (e.g., reference to a person luring a child to satisfy that person's sexual needs, abuse of a sexually explicit mature and pornographic criminal offenses).

It has been previously stated, adolescent sexting takes place in an atmosphere in which the social influence of sexually active peers, older ones or ones already

sexting, is particularly important. Gender differences in the context of peer pressure were accentuated in boys, regarding the use of pornography and in girls regarding sexually risky behaviours. While gender differences are decisive from a psychological point of view, they are indecisive in the context of criminal law. The architecture of all sexual offenses is gender neutral, meaning it is normatively possible that both the perpetrator and the victim might be either sex. Age, on the other hand, plays crucial role since it determines the possibility bringing a criminal law norm into life. In this regard, in accordance with the provisions of Art. 7. of the Croatian Criminal Code, criminal law does not apply a person under age 14 to be *tempore criminis*. Thus, children under this age cannot be criminally liable nor is it possible to initiate criminal proceedings. The reason for such normative regulation is the prevailing doctrinal position modelled on the German regulation. There is an irrefutable presumption of incapacity of a child under 14 to be culpable (Perron/Weißer in Perron et al., 2019). The same idea is presented by certain Croatian authors (Novoselec & Martinović, 2019). As no criminal law steps are possible, the data on the act and its commission are sent to the competent social welfare centre with the possibility of family law measures being applied.

Upon reaching the age of 14, a person becomes criminally liable. Until the age of 21, a person is considered a minor (age between 14 and 18) or young adult (age between 18 and 21). Sanctions are possible and the applicable provisions are differentiated from those intended for adult perpetrators. The scope of these provisions belongs to juvenile justice: the Juvenile Courts Act, the Criminal Code, the Criminal Procedure Act, the Protection of Persons with Mental Disabilities Act, and the provisions related to the execution of sanctions for juveniles (following Art. 3 of the Juvenile Courts Act). Adult perpetrators are subjected to general punitive criminal law with full application of the Criminal Code. The content of the criminal offense does not differ depending on the age category of perpetrator. The most important distinguishing determinant of the applicable provisions for minors and adults lies in the system of sanctions. Juvenile perpetrators are sanctioned primarily by imposing educational measures. Juvenile imprisonment is possible for older juveniles (between 16 and 18), which differs in duration from deprivation of liberty for adult perpetrators. There are also provisions related to imposing security measures.

The fact that sexting *per se* is not incriminated, not prohibited as a separate criminal offense, leads to a dividing line of content in behaviour that must be determined between the manifestation of normal sexual development and prohibited behaviour. In this regard, we analyse whether and to what extent sexting can be subsumed under certain behaviours standardized as criminal offenses in Croatian criminal law system. We will explore a few solutions for consideration. The essence of sexting is sending sexually explicit or provocative messages, photos or videos of oneself or others on the Internet using a smartphone, including the exchange, or transferring of such content.

We distinguish between active (sending), passive (receiving), relational (for the purpose of intimacy with a partner), reactive (entertainment, popularity, research), forced (due to pressure from a partner or peers) and violent (without consent or permission of the person involved in order to inflict damage). These listed types will be subsumed under the modalities of selected criminal offenses.

Grooming of children to meet sexual needs finds its place within the criminal offenses against sexual abuse and exploitation of a child (Art. 161 of the Criminal Code). It serves as the proactive outcome of criminal law at a stage in which it is still possible to prevent a direct and injurious contact with a child, and as such indicates a rather innovative approach in providing protection to particularly vulnerable victims (Herceg Pakšić, 2019). The incrimination title and content are founded on the term grooming or sex grooming, meaning establishing contact (including in cyberspace) with the intent to sexually abusing a child in the real world and may involve explicit communication of a sexual nature (Škrtić, 1991). Adults actively approach children on social networks, profiles, online chat rooms and virtual groups with the ultimate intention of committing sexual violence against the children or producing pornographic material (Kool, 2011). Terms such as cyber exploitation, internet seduction, child preparation are also used (Herceg Pakšić, 2022). It is a predatory act of skilful and strategic manipulation of a child in an effort to alleviate sexual violence (Winters & Jeglic, 2017). Online sexual grooming has been extensively researched from a sociological and psychological perspective, however criminal law analyses are still rare given that the introduction of incrimination occurred relatively recently (Herceg Pakšić, 2022). In this context Kool mentions “sexual photos via mobile with subsequent blackmail resulting in actual sexual contact” (2011). Croatian law proscribes a sentence of six months to five years in prison for an adult person who would, using information communication technology or otherwise, with the intent of sexual abuse or pornographic offenses, propose a meeting to a child under 15 with steps to ensure it takes place. The acts of sexual abuse or pornographic offenses can be committed by perpetrator or by another person. Collecting, giving or forwarding information about a child is punishable, as well as attempt to commit an act. Several aspects are to be highlighted. First, the perpetrator is precisely defined as an adult, meaning persons under the age of 18 (minors) cannot be perpetrators of this criminal offense. The age benchmark of the perpetrators is the decision of the national legislature. There are examples equal to the Croatian provision, as in England, while others omit the age limit thereby enabling a wider possibility of criminal law reaction, as in the Netherlands. The Croatian provision identifies the victim as a person under the age of 15, meaning the incrimination aims at protecting children who have not yet reached the age sufficient for sexual consent. Evident drawback of this is the lack of protection of children over the age of 15 as they undoubtedly can be lured or manipulated into an exploitative situation (ECPAT International, 2016; Herceg Pakšić, 2022).

Although virtual “chatting” that includes sexual innuendos can be part of sexual grooming, it does not suffice to form criminal law liability (Herceg Pakšić, 2019, 2022). The perpetrator has to take measures to organize the encounter. These measures are not determined by the legal text but can consist in perpetrator's departure to the agreed location, purchase of transport tickets to the meeting place, or reservation of a hotel room (Škrtić, 2013). This is an intentional criminal offense carrying awareness of communicating with a child and is in fact a stage in the criminal sequence to contact sexual abuse. Information and communication technologies are normatively stated as communication modality to highlight the dangers children face in online environments. However, communication itself can take place in any manner, as the provision contains the general clause “or otherwise”. It follows that sexting can be a part of behaviour incriminated under the Croatian provision of grooming, therefore it can serve to sanction some of its specific categories, active, passive, reactive and forced- sexting that adult perpetrator uses with a child under 15, along with undertaking measures to meet to commit another crime such as sexual abuse or pornography.

Sexting is also associated with pornography. The Criminal Code includes three “pornographic” offenses: Exploitation of children for pornography (Art. 163), Exploitation of children for pornographic performances (Art. 164) and Introducing children to pornography (Art. 165). Key concepts are defined in each criminal offense. Child pornography is “material visually or otherwise depicting a real child or a realistically shown non-existent child or a child-like looking person, in real or simulated sexually explicit behaviour or showing the sexual organs of a real child or a realistically shown non-existent child or a child-like looking person for sexual purposes” (following Art. 163 para. 6 of the CC). Content that has artistic, medical, or scientific significance is not to be considered as pornography. Overall, the purpose is “... the protection of a specific child who is filmed for pornographic purposes, but also of children in general and preventive action to combat child abuse” (Turković et al., 2013, p. 222), as well as to “the potential affirmation of a subculture that favours the sexual exploitation of children (Derenčinović, 2003, p. 15). Two decades ago, a growing challenge in combating online child pornography in Croatia were that the perpetrators are anonymous with access to various multimedia techniques for creating and distributing illegal content, that can become available anywhere in the world (Derenčinović, 2003). The pornographic performance is defined as “showing live or by means of communication a real child or a realistically shown non-existent child or a child-like looking person in real or simulated sexually explicit behaviour or sexual organs of a real child, a realistically shown non-existent child or a child-like looking person for sexual purposes” (Art. 164 para 6 of the CC). The legal definition of introducing children to pornography means showing them “material that visually or otherwise depicts a person in real or simulated sexually explicit behaviour or material that shows the sexual organs of people for sexual purposes” (Art. 165,

para. 3 of the CC). Compared to the notion of child pornography, this refers to a “person”, meaning the portrayal of adults is also included. Sexual or sexually explicit behaviour implies “...a) sexual intercourse and equivalent sexual activity between children or between adults and children of the same or opposite sex, b) diverse types of bestiality, c) masturbation, d) sadistic or masochistic abuse of children, e) lascivious exposure of the child's genitalia or body parts in the umbilical region, regardless of whether this is real or simulated sexually explicit behaviour” (Derenčinović, 2003, p. 13).

In all three offenses the perpetrator is defined as “who”, meaning it is a *delicta communia*, any person can appear in that role. Protection in the first two incriminations of exploitation of children for pornography or exploitation of children for pornographic performances is provided for children and minors up to age 18 and in the offense of introducing children to pornography, for children up to age 15. Understanding sexting through the prism of pornographic offenses, there are activities, punishable between one and ten years in prison, such as grooming, recruiting, or encouraging the recording of child pornography, its acquisition (for oneself or others), possession, production, sale or conscious access through information and communication technologies. The same punishment is provided for inciting pornographic performances, as well as for watching a performance live or by means of communication, if the perpetrator knows or should and could have known that a child was participating. If more serious circumstances follow committing the act, such as coercion, fraud, deception, power abuse, difficult position or relationship of dependence, the punishment is from three to twelve years. Equal punishment is provided for making a profit from pornographic performances or exploiting a child in that context. The longest punishments are related to severe psychophysical consequences, severe injury, impaired development, pregnancy, serious circumstances related to committing the act with reference to the special vulnerability of the child, special cruelty, or humiliation. or death of a child within the incrimination of the statute Serious Criminal Offenses of Sexual Abuse and Exploitation, Art. 166. This means that, depending on the modality, sentences of three to fifteen years, five to twenty years, and a minimum of ten or long-term imprisonment (up to 40 years) are possible. Punishing children is not in the focus of the Croatian legislature, which is evident from provision of impunity if a child produced and possessed child pornography, showing him or another child, as long as they consensually produced the material themselves for personal use (Art. 163 paragraph 5 of the CC). The offense of introducing children to pornography applies to any person who, in any manner (including a computer system) displays pornographic content or act to a child under age fifteen. For all pornographic criminal acts, the law requires destruction of content and the confiscation of the so-called *instrumenta sceleris*, i.e., instruments, devices, programs, data intended, adapted, or served to facilitate the commission of an act. Sexting can certainly occur in the context of mentioned pornographic acts, but overall sanctioning requires the fulfilment of other legal requirements. This is particularly evident

in the case of acquisition of explicit photographs of children or forwarding to third parties under circumstances sufficient for possession.

The new law, Abuse of Recordings with Sexually Explicit Content (Art. 144a CC), was recently included in the criminal offenses against privacy. This legislative move was a part of the sixth amendment to the CC of July 2021. Incrimination regards the well-known notion of revenge pornography, meaning a recording of sexually explicit content initially created consensually for personal use and then subsequently forwarded without consent. Revenge motivation or goals may exist, but are not part of the provision wording, so their determination is not decisive to prove the criminal act. It is, however, necessary to prove that a violation of privacy occurred. Most important is the protection of trust, reflected in the fact that the recording is shared without consent, but a more exact meaning of the relation of trust in the context of the act will be clearer after standards are formed within judicial interpretation. In general, it can cover the meaning of the word in ordinary, everyday speech along with the manner of determining trust in the context of other criminal acts (Roksandić, 2021). It is, however, evident that Abuse of Recordings with Sexually Explicit Content is suitable for consideration within context of sexting. It is not uncommon that the ex-partner shares explicit photos or recordings obtained by sexting (Bates, 2017) so, simply put, revenge porn can be counted as one of its negative consequences. Comparative experiences reveal this legislative move is one in the right direction. Revenge pornography has become contemporary epidemic (Rosenberg & Dancig-Rosenberg, 2021) with its increase in pandemic times exceeding 300% and victims of a worryingly young age, many of them only 10 years old (*Pandemic Fuels 329% Rise in Revenge Porn Offences in London - with Victims as Young as TEN | Daily Mail Online*, n.d.).

Imprisonment for up to one year is provided for a perpetrator who would abuse a trust and make a sexually explicit recording available to a third party without the consent of the person recorded. Manipulations through a computer system altering images and using them as real are also punishable. This regards a *deepfake* pornography, as modern technologies enable manipulation through digital content changes or creation of new explicit content, with the aim of violating one's privacy. A longer sentence, up to three years, is provided if the recording becomes available to more people. The incrimination was introduced at the initiative of an NGO, after the public debate on the Sixth CC amendment draft had ended (*Novo Kazneno Djelo u Hrvatskoj: Zatvor Za Osvetničku Objavu Seks-Snimke Na Webu - Tportal*, n.d.). The initiative received wide support, pointing out shortcomings of the former regulation when the sanctioning was possible only for recordings made without consent, excluding the situation of initial consensual recording but subsequent non-consensual content sharing. This normative gap would not have been so wide if the Croatian legislature had kept the incrimination of Severe Defamation. It was hastily removed within the Fifth Amendment to the CC in 2019 (Herceg Pakšić,

2021), though a broader comparative analysis indicated the possibility of revenge pornography prosecution under that incrimination, as, for example, in the Netherlands (Roksandić, 2021) or Sweden.

Revenge pornographic recordings as well as devices are to be confiscated within the criminal proceedings. However, there is current legislative deficiency regarding the lack of the obligation to destroy the recording. This omission should be noticed and corrected *pro futuro*, especially since the obligation of content destruction is normatively determined for i.e., pornographic recordings.

Compared to the pornographic and sexual grooming offences, where persecution is *ex officio*, revenge porn is prosecuted if there is proper motion/proposal. This means the impossibility of public prosecutor to act *proprio motu*, with the victim being required to submit a proper prosecution motion (Art. 197, para. 1 of the Criminal Procedure Code). It must be handed over to the competent Attorney's Office within three months, starting from the day of finding out about the criminal offense and the perpetrator (Art. 47, para. 1 and 2 of the Criminal Procedure Code).

3. Concluding Thoughts

Sexting stems from several biological, psychological, and social factors. Its essence regards sending sexually explicit or provocative content, such as messages, photos, or videos of oneself or others. While it can be considered a common part of the adolescent maturation and sexual exploration albeit risky behaviour, it can also mean entering an unacceptable area of violation of other person's rights. Sexting frequency is such that it is considered epidemic with victims getting younger. This is particularly intensified in the lives of young people, largely marked by the rapid progress of digitalization and virtual reality.

Within sexting categorization, few of its types enter in a potentially punishable area. We analysed possible response of criminal law. In Croatian legal system sexting itself is not prohibited so the possibility of its sanctioning is conditioned with analysis of selected existing incriminations, which content is to certain extent related to sexting. Taking in consideration the limits of the criminal law mechanism as well as the necessary fulfilment of the legal requirements, this revealed that criminal law can come into play and that the sanctioning possibility is strengthened through recent changes in Croatian Criminal Code. This can happen if sexting is sent by an adult to a child in the context of grooming to commit sexual abuse or pornography, or explicit photographs and materials are classified as pornographic offenses under specific conditions or explicit content is passed on using the relation of trust with a violation of privacy. We have also pointed out the current shortcomings to sanctioning: age limit, content limit requiring specific condition (within current incriminations-

lack of protection of specific categories, additional legal requirements for specific sexting forms...) . Contemporary knowledge in this context should be used for proper education of young people, integrated into a model that would possibly explain how adolescent sensitivity to risky behaviours can result in criminal acts, what this means for responsibility and purpose achieved by punishment. With rapidly changing technologies, young people need support and education in establishing healthy ways of using the Internet, achieved through media literacy and sex education programs (Rothman et al., 2018). This includes education on blocking unwanted messages, recognizing safe and risky contacts (K. Mitchell & Štulhofer, 2021) and the general creation of a safe environment in which they can share negative experiences and receive support, with the aim of strengthening resilience to the risks of modern technologies and promoting sexual health.

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