



PORNOGRAPHY AND HUMAN RIGHTS

ABSTRACT

A recent motion for a resolution, entitled “Gender aspects and human rights implications of pornography”, was introduced the 9th April 2019 in the Parliamentary Assembly of the Council of Europe (PACE) by the German deputy Frank Heinrich. Deploring the negative impacts of pornography on gender equality and the near absence of any regulations either domestically in the Council of Europe region or internationally, the signatories invite the Council of Europe and the Parliamentary Assembly “*as a guardian of human rights and the rule of law [...] to act fast, outlining legal policy proposals to tackle abuses against women and vulnerable persons in pornography*”.

Pornography: printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate sexual excitement.¹

Pornography consists in the portrayal of sexual subject matter for the exclusive purpose of sexual arousal. Sexual fantasies portrayed in pornography, however, conveys a misleading vision of sexuality and encourages gender stereotypes and sexual violence in the real world, in addition to entrap users in a loop of addiction.

Pornography is on many aspects incompatible with the protection of human rights. The production and dissemination of pornographic content first represents a severe violation of porn actors’ human rights: it violates their dignity by portraying -and actually being- degrading and cruel treatments. Pornography also threatens on a greater scale the security and the well-being of children, women and men in the entire society.

Pornography constitutes a unprecedented public health problem, that needs to be addressed on a national and an international level. Governments and international institutions must particularly tackle the increasing issue of online pornography, by starting to regulate the Internet.

¹ “Pornography”, in *Oxford English dictionary*, retrieved from <https://www.lexico.com/en/definition/pornography>.

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KEY ELEMENTS ON PORNOGRAPHY

Internet drastically facilitates the access to pornography

1 in 5 searches on Google's mobile search are for pornography. Pornographic searches are the most popular search category on Google.²

In 2016, 91 980 225 000 videos were watched on PornHub. It represents 12 videos per day and per person in the entire world.³

A 2009 Symantec's study of children online revealed the word 'porn' ranked as the 4th most popular search word for children aged 7 and younger, and was in the top 5 for youth under 18.⁴

In 2007, global porn revenues were estimated at \$20 billion, with \$10 billion in the United States alone. In 2018, a single company, MindGeek, owned and produced most popular pornographic websites. It is the largest pornographic company with both free and paying websites, an advertising network and major professional porn studios.

Pornography is addictive

When the brain is exposed to something rewarding, it responds by increasing the release of dopamine, known as the 'pleasure hormone'. Pornography activates both centres of the brain reward system: the pleasure system and the wanting system. However, the wanting system is stronger than its counterpart, the satisfying system. As a result, the user can get caught in a loop of wanting and pumping out dopamine in response to new images, and then wanting even more.⁵ Over time, the reward centre's dopamine receptors shrink due to chronic overstimulation.⁶ With a dulled reward centre, the user does not feel the dopamine's effects as well. Pornography stops producing the same excitement as it used to. As a result, many will look for more hardcore pornographic content to get a higher dopamine burst.⁷

² Maryam Kamvar, Shumeet Baluja, "A large scale study of wireless search behavior: Google mobile search", *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems* (2006): 701-709.

³ "Pornhub's 2016 Year in Review", *Pornhub Insights* (4 January 2017) available at <https://www.pornhub.com/insights/2016-year-in-review>.

⁴ Maggie Hamilton, "Groomed to Consume Porn: How Sexualized Marketing Targeting Children," *Big Porn Inc.* (2011): 16–24.

⁵ Norman Doidge, *The Brain That Changes Itself* (2007).

⁶ P. Kenny, G. Voren, and P. Johnson. "Dopamine D2 Receptors and Striatopallidal Transmission in Addiction and Obesity." *Current Opinion in Neurobiology* 23, no. 4 (2013): 535–538.

⁷ D. H. Angres, K. Bettinardi-Angres, "The Disease of Addiction: Origins, Treatment, and Recovery." *Disease-a-Month* 54 (2008): 696–721.

Pornography impacts sexual life

In pornography, sexuality is disconnected from intimacy and affection to be reduced to a mere mechanical action. Consequently, porn use is correlated with less sexual and relationship satisfaction and changed sexual tastes.⁸

Pornography increases erectile dysfunction rates among young men: a Swiss study published in 2012 found that 30% of 18- to 25-year-olds had erectile dysfunction.⁹

Pornography impacts mental health

A 2014 study of the brain scans of 64 pornography users found that increased pornography use is linked to decreased brain matter in the areas of the brain associated with motivation and decision-making. This lack contributes to an impairment of impulse control and a desensitization to sexual reward.¹⁰

Pornography impacts more children and adolescents

In 2008, 93% of boys and 62% of girls in the United States had seen Internet pornography during their adolescence.¹¹

In 2016, nearly 49% of American college males reported having first encountered pornography before the age of 13¹² and 64% of Americans between 13 and 24 actively watched pornography weekly or more often.¹³

Pornography has a higher impact on teenagers, as they are more sensitive to dopamine.¹⁴ One feature of an adolescent's brain is its ability to change in response to the environment by modifying the communications networks that connect brain regions. Although this brain's elasticity allows enormous strides in learning and thinking, it also makes them more vulnerable to develop mental disorders and dangerous behaviours.¹⁵

⁸ E. M. Morgan, "Associations Between Young Adults' Use of Sexually Explicit Materials and Their Sexual Preferences, Behaviors, and Satisfaction," *Journal of Sex Research* 48, no. 6 (2011): 520–30.

⁹ Mialon, A., A. Berchtold, P. A. Michaud, G. Gmel, and J. C. Suris. "Sexual Dysfunction Among Young Men: Prevalence and Associated Factors." *Journal of Adolescent Health* 51, no. 1 (2012): 25–31.

¹⁰ Simone Kühn and Jürgen Gallinat, "Brain Structure and Functional Connectivity Associated with Pornography Consumption," *JAMA Psychiatry* 71, no. 7 (2014): 827–834.

¹¹ Chiara Sabina, Janis Wolak, and David Finkelhor, "The Nature and Dynamics of Internet Pornography Exposure for Youth," *CyberPsychology & Behavior* 11, no. 6 (2008): 691–693.

¹² Chyng Sun, Ana Bridges, Jennifer Johnson, and Matt Ezzell, "Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations," *Archives of Sexual Behavior* 45, no. 4 (May, 2016): 983–94.

¹³ Barna Group, "The Porn Phenomenon: The Impact of Pornography in the Digital Age" (2016).

¹⁴ University of Pittsburg, "Teen Brains Over-Process Rewards, Suggesting Root of Risky Behavior, Mental Ills," *Phys.org* (January 2011), available at http://phys.org/news/2011/01teen_brains_over_process_rewards_root.html.

¹⁵ Jay N. Giedd, "The Amazing Teen Brain," *Scientific American* (June 2015) 32–37.

Pornography is therefore detrimental to the normal processes and maturation of a child's frontal cortex when exposed to the viewing of pornography¹⁶.

Adolescents using pornography develop unrealistic attitudes about sex and misleading attitudes toward relationships. Exposure to sexually explicit material increases the likelihood that adolescents will accept and engage in sexually permissive behaviours: sexual activity at a younger age, sexting, multiple sexual partners, deviant sexual practices, use of psychoactive substances and lack of protection against STIs.¹⁷

Pornography distorts the way to see women

In pornography, no mention is made of consent or mutual respect. All women are constantly available for sex, have insatiable sexual appetites and are always sexually satisfied by whatever the men do.¹⁸ In this context, exposure to pornography is significantly correlated to the belief that women are sexual objects¹⁹ and that male dominance and female submission are expected gender roles. As a result, pornography greatly participates to the continuation of harmful gender stereotypes.

Moreover, pornography mainly consists in physical coercion to have sex: it teaches its users that women enjoy sexual violence and degradation. An analysis of the 50 most popular pornographic videos found that 88% of scenes contained physical violence, and 49% contained verbal aggression, 87% of aggressive acts were perpetrated against women, and 95% of their responses were either neutral or expressions of pleasure.²⁰ With this view, pornography widely fuels rape myths and is responsible for many of the violence and sexual violence perpetrated against women.

Pornography encourages harmful behaviour and sexual violence

The brain pumps out an increased amount of dopamine when things are new, shocking or surprising. When the brain's pleasure centres fire, it becomes more difficult for the brain's centres for pain or aversion to fire at the same time, which means that things that normally would be unappealing or disgusting suddenly stop bothering as much when associated with pleasure and can even become attractive.²¹

¹⁶ E. Le Roux, "Pornography: Human Right or Human Rights Violation?" *Open Journals Publishing* (2009), available at

https://www.researchgate.net/publication/262545053_Pornography_Human_right_or_human_rights_violation

¹⁷ Elizabeth M. Morgan, "Associations between Young Adults' Use of Sexually Explicit Materials and Their Sexual Preference, Behaviors, and Satisfaction," *The Journal of Sex Research* 48, no. 6 (2011): 520–530.

¹⁸ R. Jensen and G. Dines, "The Content of Mass-Marketed Pornography," *Pornography: The Production and Consumption of Inequality*, (1998): 65–100.

¹⁹ Jochen Peter and Patti M. Valkenburg, "Adolescents' exposure to a sexualized media environment and their notions of women as sex objects," *Sex Roles* 56 (2007): 381–395.

²⁰ Ana J. Bridges, Robert Wosnitzer, Erica Scharrer, Chyng Sun, and Rachael Liberman, "Aggression and Sexual Behavior in Best-Selling Pornography Videos: A Content Analysis Update," *Violence against Women* 16, no. 10 (2010): 1065–1085.

²¹ Mary Anne Layden, "Pornography and Violence: A New look at the Research," *The Social Costs of Pornography: A Collection of Papers* (2010): 67.

Among the effects of the use of pornography are an increased negative attitude toward women, a decreased empathy for victims of sexual violence and an increased dominating and sexually imposing behaviour. A 2015 meta-analysis of 22 studies from seven countries found that the consumption of pornography was significantly associated with increases in verbal and physical aggressions.²²

An Italian study found that males aged 14 to 19 who viewed pornography were more likely to have sexually harassed a peer or forcing someone to have sex.²³

Pornography impacts relationships and families

Frequent consumption of pornography is associated with diminished trust between intimate partners, decreased pleasure in sexual intimacy, less sexual and relationship satisfaction, increased risk of developing a negative body image, belief that marriage is sexually confining and decrease in the prospect of raising children.²⁴

An American study on married couples found that those who used pornography more often reported lower satisfaction with their sex-life and decision-making as a couple.²⁵ The probability of divorce doubles for men and women viewing pornography.²⁶

In another study on women victims of domestic or partner violence, among those that had been raped, 73% stated that their partners were consumers of pornography.²⁷

Pornography supports child abuse

Most child pornography portrays the victims as enjoying the sexual abuse. Such depictions undermine the viewer's guilt and facilitate the perception of these sex acts as not abusive.²⁸

Viewers of child pornography gradually acclimate to what they see, resulting in the desire to see more cruel images showing children.²⁹ A study on child sexual abuse offenders found that 92% of them possessed child pornography.³⁰

²² Paul J. Wright, Robert S. Tokunaga, and Ashley Kraus, "A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies," *Journal of Communication* 66, no. 1 (February 2016): 183–205.

²³ Silvia Bonino, Silvia Ciairano, Emanuela Rabagliette, and Elena Cattelino, "Use of Pornography and Self-Reported Engagement in Sexual Violence among Adolescents," *European Journal of Developmental Psychology* 3, no. 3 (2006): 265–288.

²⁴ Dolf Zillmann, "Influence of Unrestrained Access to Erotica on Adolescents' and Young Adults' Dispositions Toward Sexuality," *Journal of Adolescent Health* 27, no. 2 (2000): 41–44.

²⁵ Samuel L. Perry, "Does Viewing Pornography Reduce Marital Quality Over Time? Evidence from Longitudinal Data," *Archives of Sexual Behavior* (2016).

²⁶ *Ibid.*

²⁷ Mary Anne Layden, *op. cit.*, 57–68.

²⁸ Diana E. H. Russell, "Russell's Theory: Exposure to Child Pornography as a Cause of Child Sexual Victimization," in *Big Porn Inc.* (2011): 181–194.

²⁹ *Ibid.*

³⁰ Najat M'jid Maalla, "Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography," A/HRC/12/23 Human Rights Council (2009).

Pornography fuels prostitution and sex trafficking

Pornography is a form of prostitution: bodies within pornography have been bought and sold for sex. The only difference is that pornography portrays an act of prostitution for mass consumption.

Pornography fuels prostitution and prostitution fuels the sex trade. Many men want to live what they saw on screen and ask prostitutes to recreate what is depicted in pornography, including violent sex. Furthermore, any type of pornography that contributes to the demand for a particular type of prostitute is likely to attract the attention of traffickers, who can provide that type of prostitute. It includes human trafficking, i.e. the commercial sexual exploitation of children. Traffickers lure innocent and vulnerable children into the sex trade through the false hope and false promises of caring for them and providing for some of their basic needs.³¹

Working in the porn industry is destructive

The working conditions of porn actors are often overlooked, on the basis that they consented to what they are being subjected to. Many porn actors use drugs to maintain erections for abnormally long periods of time or to endure the pain and/or the humiliation of the sexual performances.³² Alcohol and drug addictions are common in the porn industry.

Porn actors are also more vulnerable to sexually transmitted diseases, depression and suicide tendencies.³³

³¹ Katariina Rosenblatt, *Trafficking in America: The Most Undetected Human Rights Violation of Our Time* (2014).

³² Hilton, Donald L. "Pornography Addiction — A Supranormal Stimulus Considered in the Context of Neuroplasticity." *Socioaffective Neuroscience & Psychology* 3 (2013).

³³ Liz Braun, "Porn stars seem to be coming, then going: Dying young in XXX industry", *Toronto Sun* (19 January 2018), available at <https://torontosun.com/entertainment/movies/porn-stars-seem-to-be-coming-then-going-dying-young-in-xxx-industry>.

PORNOGRAPHY AND HUMAN RIGHTS: THE STATE'S DUTY TO PROTECT THE PERSONS

Pornography produces numerous harmful impacts, both on people - from porn actors to porn users - and on society. Many human rights are violated in the process of production and diffusion of pornographic content. States, which are legally bound to implement human right treaties they ratified, cannot let pornography live and prosper. Their tacit acceptance of pornography is highly problematic and contestable. They have a positive duty to protect human rights by fighting against the production of pornography and preventing its access.

The Need to Protect Porn Actors' Rights

Pornography constitutes first and foremost a violation of porn actors' human rights. It violates their dignity, the prohibition of degrading treatments and constitutes in certain circumstances a situation of forced labour.

VIOLATION OF HUMAN DIGNITY

Article 1 of the Universal Declaration of Human Rights (1948): "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 1 of the Charter of Fundamental Rights of the European Union (2000): "Human dignity is inviolable. It must be respected and protected."

The notion of human dignity is linked to the idea that every person has an equal right to be valued and respected for his own sake. Because it is inherent to every person by nature, human dignity is universal, inviolable and inalienable. It cannot be given or taken away by any State or authority. States are therefore compelled to respect and protect it. They have both a negative and positive duty to prevent anything that could harm a person's dignity.

Pornography deeply violates porn actors' dignity: it portrays them performing a sexual act, which is by nature a very intimate act, with violent behaviours, both physically and mentally. Moreover, sex is only motivated because financially rewarded, which constitutes a commodification of the human body. Finally, the sexual act is recorded and traded for voyeuristic purposes. Its dissemination multiplies the damage caused to the person's dignity. Pornography therefore constitutes an aggravated violation of human dignity.

Regarding pornography, individual consent cannot justify a violation of the human dignity. Indeed, this "consent" to give up one's dignity is rarely a choice and more often a necessity, because it involves money. Moreover, consent in porn industry is not always respected and remains always biased by a financial need.

VIOLATION OF THE PROHIBITION OF DEGRADING TREATMENTS

Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 4 of the Charter of Fundamental Rights of the European Union and

Article 3 of the European Convention on Human Rights (1950):

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Torture and cruel, inhuman and degrading treatments are universally prohibited by all human rights treaties. Yet pornography violates this prohibition: most pornographic contents depict humiliating treatments and physical harm against one of the sexual “partners”. Many also portray criminal behaviours such as rape, incest and child abuse. Moreover, these degrading treatments are almost always perpetrated against vulnerable people, namely women and children, although men are also concerned.

Women constitute the primary ‘material’ of pornographic production. Porn actresses are the first victims of pornography: often coming from broken families, foster homes, abusive pasts, poverty and addiction, their work in pornography is more a descent to hell rather than a choice of career. They must work in inhuman conditions: harmful and humiliating sexual performances, vulnerability to sexually transmitted disease, psychological harassment, etc³⁴. These work conditions damage mental health and increases self-damaging behaviours, sometimes as far as committing suicide³⁵.

Concerning the use of children in pornography, it constitutes an intolerable crime: child abuse, child prostitution and child pornography are strongly prohibited by international law.³⁶ In *K.U. v. Finland*, the European Court of Human rights held that:

“States have a positive obligation [...] to criminalise offences against the person, including attempted offences, and to reinforce the deterrent effect of criminalisation by applying criminal-law provisions in practice through effective investigation and prosecution. Where the physical and moral welfare of a child is threatened such injunction assumes even greater importance. The Court recalls in this connection that sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims”.

Pornography thus constitutes an aggravated violation of the prohibition of degrading treatments on vulnerable people.

³⁴ J. Van Maren, “Porn is super-empowering: just ask the Duke University porn star” (22 September 2014), available at <https://www.lifesitenews.com/blogs/porn-is-super-empowering-just-ask-the-duke-university-porn-star>

³⁵ Liz Braun, “Porn stars seem to be coming, then going: Dying young in XXX industry”, *Toronto Sun* (19 January 2018), available at <https://torontosun.com/entertainment/movies/porn-stars-seem-to-be-coming-then-going-dying-young-in-xxx-industry>.

³⁶ United Nations Convention on the Rights of the Child (1989); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000); Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007); European Union Directive on combating the sexual abuse and sexual exploitation of children and child pornography (2011).

VIOLATION OF THE PROHIBITION OF SLAVERY AND FORCED LABOUR

Article 4 of the Universal Declaration of Human Rights: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

Article 5 of the Charter of Fundamental Rights of the European Union:

- “1. No one shall be held in slavery or servitude.
- 2. No one shall be required to perform forced or compulsory labour.
- 3. Trafficking in human beings is prohibited.”

Article 4 of the European Convention on Human Rights:

- “1. No one shall be held in slavery or servitude.
- 2. No one shall be required to perform forced or compulsory labour.

Slavery and forced labour are often seen as distant issues or belonging to the past. Sex trafficking is however a growing reality and affects every corner of the globe. According to the International Labour Organization, there are 4.5 million people victims of forced sexual exploitation.³⁷ This statistic is of course greatly underestimated, due to the secrecy of sex trafficking.

Pornography directly fuels prostitution and sexual exploitation. The high demand of certain types of persons on pornographic websites encourages the human trafficking of women and children through prostitution and porn Websites rarely bother to verify whether porn actors are consenting adults.

³⁷ "ILO 2012 Global estimate of forced labour - Executive summary", *International Labour Organization* (28 March 2015).

VIOLATION OF THE RIGHT TO PRIVACY

Article 12 of the Universal Declaration of Human Rights: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Article 7 of the Charter of Fundamental Rights of the European Union: “Everyone has the right to respect for his or her private and family life, home and communications.”

Article 8.1 of the European Convention on Human Rights: “Everyone has the right to respect for his private and family life, his home and his correspondence.”

The right to privacy is currently challenged by the conservation of data on the Internet. Online pornography constitutes a database of images and videos, which are difficult to have deleted. In theory, right to the image supposes a right to change one’s mind and request the suppression of compromising material. In practice, the “right to be forgotten” on the Internet is almost impossible. It provides opportunities to harassment, blackmail and money extortion. Pornographers rarely bother to protect their “employees” from such risks and therefore participate to the vulnerability of the persons appearing in pornographic content.

LIMITATION AND EXCLUSION OF PORNOGRAPHY UNDER THE FREEDOM OF EXPRESSION

Minimum Limitation of Pornography under the Restrictions of Freedom of Expression

The diffusion of pornographic content is often justified by the principle of freedom of expression, as protected by Article 10 of the European Convention on Human Rights. Freedom of expression, however, has its own limits, developed in the paragraph 2 of the same article:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, . . . for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence . . .”

Pornography falls under the restrictions of paragraph 2, as it constitutes in certain cases situations of crime (incest, child pornography, rape), impairs health and morals, does not protect the reputation of porn actors and more broadly impairs men, women and children’s well-being. The State is therefore entitled to restrain freedom of expression regarding the protection of morals and of the rights of others, as confirmed by the case-law of the European Court on Human Rights.³⁸

Maximum Limitation of Pornography under the Prohibition of Abuse of Rights

The protection of freedom of expression regarding pornography constitutes an abuse of rights, as it greatly impairs other rights protected by the Convention (see above *The Need to Protect Porn Actors’ Rights*). Since pornography threatens other human rights, it is incompatible with the values proclaimed and guaranteed by the Convention, and should therefore not be protected by Article 10 by virtue of Article 17 of the European Convention on Human Rights:

Article 17 : “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

For now the European Court on Human Rights only invoked Article 17 in cases regarding speeches denying the Holocaust, justifying a pro-Nazi policy, linking all Muslims with a grave act of terrorism, or portraying the Jews as the source of evil.³⁹ It would however be legitimate to similarly condemn pornography, as it conveys equivalent threats to human rights and dignity.

³⁸ *Handyside v. The United Kingdom*, no. 5493/72, ECHR, 1976; *Müller and others v. Switzerland*, no. 10737/84, ECHR, 1988; *Otto-Preminger-Institut v. Austria*, no. 13470/87, ECHR, 1994; *Wingrove v. The United Kingdom*, no. 17419/90, ECHR, 1996; *Hoare v. The United Kingdom*, no. 31211/96, ECHR, 1997; *Perrin v. The United Kingdom*, no. 5446/03, ECHR, 2005.

³⁹ *Lehideux and Isorni v. France*, no. 24662/94, ECHR, 1999; *Garaudy v. France*, no. 65831/01, 2003; *Norwood v. the United Kingdom*, no. 23131/03, 2004; *Witzsch v. Germany*, no. 41448/98, 2005; *Pavel Ivanov v. Russia*, no.

35222/04, 2007; *M'Bala M'Bala v. France*, no. 25239/13, 2015; *Belkacem v. Belgium*, no. 34367/14, 2017; *Roj TV A/S v. Denmark*, no. 24683/14, 2018.

The Need to Protect Society from the Impacts of Pornography

PROTECTING WOMEN

The portrayal of stereotyped gender roles, in the media as in pornography, “*perpetuates a simplistic, immutable and caricatured image of women and men, legitimising everyday sexism and discriminatory practices*”.⁴⁰ In pornographic content, women are portrayed as sex objects i.e. “*ideas about women that reduce them to their sexual appeal in terms of their outer appearance and their body (parts)*”.⁴¹ This vision of women as objects only aimed to satisfy sexual desire influences the demand of more submissive, and often humiliating, sexual practises for women. It directly impacts the respect given to women, not only in the intimate sphere, but also in the professional, familial and public sphere. It also impairs the feminine body image, with the projection of oversexualized and unrealistic standards, causing self-esteem issues.

Furthermore, pornography, by causing the dilution of the notion of consent, encourages harassing behaviours and fuels violence and sexual violence against women, which is contrary to every international text aimed at ending violence against women.⁴²

Yet, States-members of the United Nations have committed since 1979 for the “*elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*”.⁴³ In that context, pornography appears as an obstacle to the elimination of discrimination against women, which urgently needs to be addressed.

PROTECTING MEN

As with women, pornography portrays stereotyped male gender roles. Men are depicted as chained to their sexual desires, incapable of self-control and only motivated by the urge to fulfil their drives. Male sexuality is reduced to the satisfaction of individual pleasure, based on the domination over the other one. Thus, men are denied any ability to show respect or affection in sexuality. Underneath this vision, men are reduced to animalistic instincts and denied the nature of rational and emotional human beings.

It is a known fact that porn users are mainly men. Yet, although watching pornography is an individual decision, male porn users are also victims of a global strategy of the porn industry. Targeted via popups, ads or mailings, they often encounter pornography unwillingly. An American study indicated that the first exposure was more accidental (43.5 %) than intentional (33.4 %) or

⁴⁰ PACE, “Combating sexist stereotypes in the media”, Resolution 1751 (2010).

⁴¹ Peter, J., & Valkenburg, P. M. (2009). “Adolescents’ exposure to sexually explicit Internet material and notions of women as sex objects: Assessing causality and underlying processes”. *Journal of Communication*, 59, p.408.

⁴² United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979); Council of Europe’s Convention on preventing and combating violence against women and domestic violence (2011).

⁴³ United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979).

forced (17.2 %).⁴⁴ An Australian study indicated a similar trend with 75% of 16- and 17-year-olds having encounter pornography accidentally.⁴⁵

Male users of pornography are being lied to about sexuality. Pornography wrongly assimilates female desire to male desire and therefore increases misunderstanding between genders. It also omits the importance of consent in sexuality and influences potential imposing behaviours. Furthermore, pornography puts a lot of emphasis on the physical appearance and sexual performance. It thus leads to create self-esteem issues and pressures on men. In that sense, pornography constitutes a disastrous sex education for men along with the numerous harmful impacts already mentioned.

Many men in situation of porn addiction are willing but unable to free themselves from pornography. Yet governments do not help them by operating a taboo on pornography and especially its dangers. There is an urgent need for implementing prevention and treatment programmes to protect men from porn addiction.

PROTECTING CHILDREN

The use of pornography not only threatens the innocence and privacy of children and teenagers, but also causes enormous mental damages. As many of them have not experienced sex yet, they develop unrealistic and distorted expectations towards sexuality. These expectations directly lead to harmful and risky sexual behaviours, for themselves and for others. Moreover, pornography does not only impact sexuality, but also *“self-esteem, well-being, relationships, equal opportunities and achievements in school. In some cases, it can lead to sexual violence and be severely detrimental to their physical and mental health”*.⁴⁶

In that context, education is key. Sex education must raise awareness about the dangers of pornography. To meet this objective, States must *“develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.”*⁴⁷

⁴⁴ “Age of First Exposure to Pornography Shapes Men's Attitudes Toward Women”, *American Psychological Association* (3 August 2017), available at <https://www.apa.org/news/press/releases/2017/08/pornography-exposure>.

⁴⁵ Michael Flood, “The harms of pornography exposure among children and young people”, *Wiley Online Library*, available at <https://onlinelibrary.wiley.com/doi/abs/10.1002/car.1092>.

⁴⁶ PACE, “Fighting the over-sexualisation of children”, Resolution 2119 (2016).

⁴⁷ Article 17, Council of Europe Convention on preventing and combating violence against women and domestic violence (2011).

FIGHTING RACISM AND RELIGIOUS HATRED PORTRAYED IN PORNOGRAPHY

There exists a “racial” genre of pornography, where people of different ethnicity are often portrayed with stereotyped sexual features. For example, African American tend to be depicted as animalistic, incapable of self-control and sexually depraved, whereas Asian women as childish, sweet and innocent.⁴⁸

One can also look for a specific pornographic “type” of pornography portraying the projection of perverse sexual fantasies regarding historical periods of abuse such as the enslavement of African Americans, the genocide of Jews and Terrorism.⁴⁹

This type of contents constitutes a serious offense to any person belonging to the portrayed group.

Moreover, this type of pornography is primarily based on the portrayal of relations of submission-domination between gender and ethnicity. Racism in pornography is therefore likely to foster racist-sexist stereotypes as well as racist-sexist behaviour, including sexual abuse and sexual violence against racial and religious minorities.

Yet, in the International Convention on the Elimination of All Forms of Racial Discrimination (1969), States committed themselves to “*condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.*”⁵⁰ The fight against racism must therefore be also a fight against pornography.

⁴⁸ Alice Mayall, Diana E.H. Russel, “Racism in Pornography”, *Feminism & Psychology* 3, no. 2 (1 June 1993): 289.

⁴⁹ *Ibid*, p. 291.

⁵⁰ Article 2, International Convention on the Elimination of All Forms of Racial Discrimination (1969).

SOLUTIONS TO LIMIT PORNOGRAPHY

Online pornography is today free to depict harmful stereotypes and criminal acts without any condemnation and its access is almost unlimited. It constitutes a serious public issue, which requires a strong legal answer.

The Importance of Public Sensibilization about Sex Trafficking

Katariina Rosenblatt is an American survivor of human trafficking and the founder of the anti-human trafficking non-profit organization, *There Is Hope For Me, Inc.*

What drives most of the pornography industry is men, men who have become enticed for whatever reason (need for love, power, acceptance or curiosity) to fulfil their sexual fantasies online by viewing pornographic images. These men have found it easy to hide behind the façade of a fake email, account or other imagery they have created in order to carry out their fantasy life, when their reality is no longer a fulfilling option for them.

As the internet becomes more and more easier to access, these buyers of online commercial sexual imagery have more anonymity. This hides too their true intention, whether to fulfil a paedophile, sadomasochistic or BDSM interest or just hide behind curiosity. The problem with engaging in online pornographic access is that it is not a genuine relationship or communion or even consent between two adults. The fact that commercial sex exists online does not mean that it is healthy, beneficial or otherwise satisfying. In fact, pornography has been shown to have addictive qualities.

As I have worked alongside federal law enforcement agencies in my fight against human trafficking, I have seen several cases of devastation in the lives of minors as a result of pornography being so accessible online to anyone without limits.

One young girl who I worked with was in a foster care home who had access to the internet through her phone in her bedroom, as a twelve-year-old who was lonely and coming from a dysfunctional home life, she sought the attention of a man. Soon, a man approached her through an online chat room, posing himself first as a boyfriend then seeing her need for a father-figure he tried to fill that. Soon, that chat discussion between them began a relationship with her. As a twelve-year-old, she was not fully developed in her frontal lobe and had only been working off her emotional needs (Maslow's Hierarchy of Needs). The man on the other end of the computer pretended to be a boyfriend type seeking to meet all her emotional needs. This false friend then lured her into a false relationship through promises of love, a false sense of safety and security and a sense of belonging to somebody. Soon, he had her disrobing in the privacy of her foster care bedroom to her private computer/cell phone device. However, on the other end of the screen was not a young boyfriend but was a 50-year-old trafficker living in Nigeria capturing every image of the young girl and making her actions available for commercial profit online through a community of paedophiles. Limiting access to this type of porn would have prevented this young vulnerable minor from being

commercially sexually exploited with her images now travelled well across the globe from the US to the Ivory Coast, where her innocence was lost and her imagery never again to be recaptured.

Solutions

My work with minor children who have been victims of commercial sexual exploitation via the internet and pornography made clear how easy it is for men with ill intent to have access to these children and gain their trust through a false relationship, only to turn around and sell and exploit their purity in these images online. There is a market for it, which is the first line of attack for solving this problem. The demand for online sexual fantasies must if possible, stop! If it is not possible to curb the male sexual appetite, then it must be limited only to those who are willing to fully disclose or identify themselves. These false lures cannot continue in the vortex of anonymity. If this is allowed, then exploitation of children is being allowed.

Chat rooms, online web cam programming and live video streaming all need to have regulations placed upon them.

As well, the age of access and consent cannot merely be based upon the click of a button to acknowledge if somebody is old enough to be online. In California, when people access pornographic content, they first must read a disclaimer stating that they are not in any way affiliated with or seeking out the trafficking or exploitation of women or minors. By placing labels such as these upon the initial click, before even allowing access to images, states are trying to stop trafficking or at least regulating the use of the porn by providing a deterrent to the criminal enterprise of it.

Finally, by creating a public campaign about the Truth Behind Pornography, states can play a big role in taking away the power of the traffickers and demystifying the actual business of what goes on behind the closed doors of commercial sexual exploitation.

Conclusion

The opportunity for online exposure to false friendships and relationships ending in commercial exploitation of youth via the use of their images online or even the exploitation of young minor consumers can be prevented. As greater accountability is put in place by creating instant messages associated with the google words relating to sex, consumers will be reluctant to access online pornography. As well, by creating a campaign making the truth behind the industry known and available to all consumers who buy sex online, men are much less likely to access these outlets to meet their needs or delve into a curiosity which could develop into an addiction. Finally, by offering hope to those consumers who are in need, the pornography industry altogether can be avoided and consumers of it can get help for an addiction that has already started or prevent one from ever developing.

The Legal Regulation of Online Pornography

Online pornography is highly problematic regarding two points:

- Some of the pornographic content portrays crimes (paedophilia, incest, rape) or promote such crimes;
- Pornographic content is easily accessible for children and teenagers, who are particularly vulnerable to its harmful impacts.

The legal regulation of pornography must therefore address the double challenge of:

- Prohibiting and condemning any content depicting harm, humiliation and abuse;
- Blocking access to online pornography for children and teenagers.

Today, justice struggles to tackle this new channel of crime largely encouraged by a sense of impunity. In order to efficiently fight against cybercrime (cybercrime includes all crimes committed using the Internet), judges must be able to enforce the law on the Internet.

THE QUESTION OF THE INTERNET TERRITORIALITY: IS THE REGULATION BY A STATE POSSIBLE?

“The Internet is not, as many suggest, a separate place removed from our world. Like the telephone, the telegraph, and the smoke signal, the Internet is a medium through which people in real space in one jurisdiction communicate with people in real space in another jurisdiction.”⁵¹

The principle of territorial sovereignty justifies the regulation of the use of the Internet by persons within the territory. However, one might argue that an Internet regulation within a territory is not feasible when the source of the Internet is located outside the territory. Indeed, Internet information flows across territorial borders without regulation, therefore much of the content of the Internet is beyond the regulatory scope of a State. Yet, the inability of governments to stop these flows at the border does not mean that they are unable to regulate the effects of these flows in the territory. For example, some harmful effects can be regulated afterwards through legal sanctions. A nation's prerogative to control events within its territory therefore implies the power to regulate territorial acts and local effects of extraterritorial acts.

Yet, one might also argue that a unilateral regulation of the Internet will lead to overlapping regulations and *spillover effects* of each nation's Internet regulation. “*Spillovers are present when activity deemed legal in one country causes harm deemed illegal in another, regardless of which*

⁵¹ Jack L. Goldsmith, "The Internet and the Abiding Significance of Territorial Sovereignty," Volume 5|Issue 2 *Indiana Journal of Global Legal Studies* (1998).

nation's law applies".⁵² Internet users outside the territory can be affected by the local regulation to the extent that they are dependent on users or service providers within the regulating jurisdiction. These negative effects do not however question the legitimacy of a state regulation:

"It is uncontroversial that pollution emitted in State A that wafts into State B can be regulated by State B. State B's regulation does not become less legitimate because the pollution also causes damage in States C-Z. This is true even if the agent of the pollution does not know which way the wind blows and thus does not know the states into which the pollution will travel. The same analysis applies to the Internet. A government's regulation of the harmful local effects of an Internet transaction does not become less legitimate because the effects of the same transaction are regulated differently in other jurisdictions where these effects appear."⁵³

Moreover, these *spillovers effects* can be diminished through international harmonization. The regulation of the Internet by a state remains therefore legitimate, possible and necessary.

⁵² Ibid.

⁵³ Ibid.

WHAT ARE THE POSSIBILITIES TO REGULATE THE INTERNET?

Governments can regulate the Internet through legislation and regulation:⁵⁴ Internet activities can be either controlled by a judge or regulated by a regulatory authority.

Through Legislation: The Control by a Judge

Legislation implies the creation of detailed and rigid rules, comporting prescriptions of what is legal and not. The infringement of these rules is subjected to financial and even criminal sanctions by a tribunal.⁵⁵

Penalization of Internet actors

States can target several Internet actors in the process of production, distribution, provision and consumption of online pornography.

First, individuals who produced, shared or consumed illegal online pornography can be held responsible and subjected to penalties associated. States can first penalize producers of illegal pornographic content, be they professionals or amateurs. They can also penalize individuals who stored or shared illegal pornographic content, especially through peer-to-peer networks.⁵⁶ Finally, individuals who consumed online pornography can be held responsible, as they are active witnesses and customers of an illegal content.

Individuals do not however bear alone the responsibility of sharing illegal online pornography. Individuals often need Websites to access online pornography. The latter is therefore responsible for the provision of an illegal content and can be blocked -and even shut down- by a specialized judge and be subjected to penalties. Both commercial and free Websites are concerned: the element of profit only constitutes an aggravating factor.

Finally, it is not possible to access the Internet without the services of an Internet Service Provider (hereinafter ISP). The responsibility of ISPs is however difficult to assess, as the flow of information they convey is considerable. Yet ISPs have been charged in the past with criminal offences of providing child pornography in Germany.⁵⁷ Today, according to the Electronic Commerce Directive 2000, although ISPs are not required to oversee information they convey and cannot be held responsible for an illegal content, they can be held responsible if they were aware of an illegal content but did nothing to remove it.⁵⁸

⁵⁴ Stéphane Astier, « Vers une régulation éthique de l'internet : les défis d'une gouvernance mondiale », *Revue Internationale des Sciences Administratives* 1, vol. 71 (2005) : 143-161.

⁵⁵ Ibid.

⁵⁶ A peer-to-peer (P2P) network is a network in which interconnected computers share resources amongst each other without the use of a centralized administrative system.

⁵⁷ Somm, Felix Bruno, File No: 8340 Ds 465 JS 173158/95, Local Court (Amtsgericht) Munich.

⁵⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

Through Regulation: The Control by a Regulatory Authority

Regulation implies the exercise of online activities within general limitations set by legislation. The legal framework of Internet in that case remains loose. Internet users must only respect a certain ethic, controlled by a regulatory authority. Unlike legislation, tribunals do not intervene immediately, it is the role of administrative authorities to call to order first.

Co-regulation

“The concept of co-regulation involves industry self-policing through an independent and credible body subject to government accountability and oversight.”⁵⁹

The most common technical applications of co-regulation are rating systems. They are used to filter out violence or pornography from the Internet:

“[Rating system] works by embedding electronic labels in the text or image documents to vet their content before the computer displays them or passes them on to another computer. The vetting system can be applied to political, religious, advertising or commercial topics. [These] tags can be added by the publisher of the material, by the company providing access to the Internet, or by an independent vetting body.”⁶⁰

A question then arises: what is the threshold for considering (or not) an online content as illegal pornographic content? Some rating authorities may judge a certain site as pornographic, when another not. One’s might then fear situations of excessive censorship or laxity. Pornography, however, is a precise notion: it is the portrayal of nudity for the exclusive purpose of sexual arousal. This strict definition prevents excesses in both ways: for an online content to be rated as pornographic, it must fulfil the dual condition of sexual matter/nudity portrayal and of sexual arousal intention.

Auto-regulation

“Autoregulation supposes the elaboration, the application and the respect of rules by actors themselves. State intervention is reduced to its minimum: these rules must at least respect the legality.”⁶¹

ISPs and Websites have been encouraged to produce codes of practice to control access to illegal content. For example, Facebook declared in 2018 to have removed more than 20 million pieces of adult nudity or pornography in just three months’ time,⁶² using ranking software and self-reporting

⁵⁹ OFCOM, “*Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation*” § 2.14 (2008).

⁶⁰ Akdeniz, Yaman “Governance of Pornography and Child Pornography on the Global Internet: A Multi-Layered Approach,” *Law and the Internet: Regulating Cyberspace*, Hart Publishing (1997): 223-241.

⁶¹ Ibid.

⁶² Adrian Weckler, “Facebook remove more than 20 million pieces of adult nudity or pornography in three months”, *Business Technology* (23 September 2019), available at <https://www.independent.ie/business/technology/facebook-remove-more-than-20-million-pieces-of-adult-nudity-or-pornography-in-three-months-36909490.html>.

of users. Twitter also committed to fight the invasion of pervasive porn by limiting results from search terms like “sex,” “nsfw” and “hentai” among others.⁶³

Individuals can also autoregulate themselves in their own access to pornographic content. Autoregulation is often used by parents to protect their children from inappropriate pornographic content. There are several different kinds of software tools:

- “Time-Limiting” software limits how much time or at what time the person can use the computer or the Internet;
- “Filtering and Blocking” software limits access to some sites, words or images;
- “Outgoing Content Blocking” software prevents children from revealing personal information to people they do not know;
- “Monitoring Tool” software informs adults about children’s online activity by recording the addresses of visited websites or displaying warning messages.⁶⁴

These software tools can also be used for adult users of pornography caught in a loop of addiction and willing free themselves from it.

Conclusion

The current legal framework of pornography is unable to tackle alone the unprecedented nature of Internet. While legislations regarding pornography already exist, their application online is mostly ineffective in practice.

Two solutions are therefore possible:

- Implement a “hard model”, by establishing means to efficiently implement existing legislations on the Internet through the reinforcement or the creation of specialized unit police and judges;
- Implement a “soft model”, by organizing a cooperation between States, individuals et Internet actors through regulation.

These models are not exclusive nor contrary and can be jointly implemented.

⁶³ Stacy Liberatore, “Is Twitter censoring search terms? Words like 'sex' and 'porn' have been blocked- but users can still look up racial slurs” (28 March 2017), available at <https://www.dailymail.co.uk/sciencetech/article-4358312/Twitter-block-certain-words-search-engine.html>.

⁶⁴ Serkan Çankayaa et al., “Parental controls on children’s computer and Internet use”, *Procedia Social and Behavioral Sciences* 1 (2009): 1105–1109.

CASE STUDY: MODELS OF ONLINE PORNOGRAPHY REGULATION

States are becoming more aware of the unprecedented phenomenon of online pornography, its harmful impacts and the striking absence of any regulation. Actions are therefore engaged to fight online pornography in several countries, following different models of regulation:

1. The “soft model” in the United Kingdom: a recent legislation (Digital Act of 2017) implemented a co-regulative system where, supervised by an administrative authority, Websites prevent the access of minors to pornography;
2. The “soft model” currently being discussed in Poland: the legislation and the regulation could be ensured by ISPs implementing a block on pornographic content by default, which may be cancelled by adult users;
3. The “hard model” in China: the legislation and the regulation of pornography are ensured by the State, censoring and penalizing pornography.

The United Kingdom

In 2017, the British Parliament voted the Digital Economy Act, which officially forbade access to pornographic Websites for minors. Every website distributing pornography “on a commercial basis” will be obliged to verify the age of its users.

Websites concerned must earn money or other benefit from the distribution of pornographic content, such as through advertising, even if the material itself is free for users. All adult sites, whether hosted or based in the United Kingdom or not, will need to comply with the new legislation. Internet Websites such as Facebook, Twitter and Snapchat will not be concerned by these restrictions, as these only apply to Websites with more than a third of pornographic content.

In practice, Websites will have to put their own measures into place to verify their users’ age, involving the uploading of user’s ID (passport, driving licence) or credit card information. The *MindGeek* company, world leader in the distribution and production of online pornography, developed for this purpose a single sign-on service, entitled *AgeID*:

“First, a user can register an AgeID account using an email address and password, both of which are protected by a salted, one-way hash. The user verifies their email address and then chooses an age verification option from our list of 3rd party providers, using options such as Mobile SMS, Credit Card, Passport, or Driving Licence. The user then leaves AgeID and enters the details required to prove their age into the site of the third-party age verification provider. The third party will then pass back either a pass or fail to AgeID. Due to the intentional separation of AgeID and its providers, AgeID can neither see, nor store any of this age verification data.”⁶⁵

Alternatively, users may be able to buy a ‘porn pass’ from a newsagent. This way, none of their information is stored online, and they can access adult content by entering a code provided on the pass.

The British Board of Film Classification has been chosen to administer the regulation. While It will not provide age verification itself, it will approve providers who do. It will be responsible for finding non-compliant.⁶⁶ Any website or app that will not comply with the regulations will be facing a fine of up to £250,000 or being blocked by the United Kingdom ISPs.

Supposed to be implemented on the 15th of July, the ‘porn block’ has been delayed for another six months, due to an administrative error. This legislation however raises concerns regarding the conservation by Websites of sensitive personal information, such as pornographic consumption and sexual interests.

⁶⁵ Helen Johnson, “Porn block: UK porn website ban delayed – how the new proof of age laws will work (eventually)”, *Inews* (8 September 2019), available at <https://inews.co.uk/news/technology/porn-block-free-website-ban-when-date-delay-how-ageid-law-explained/>.

⁶⁶ Ian Morris, “UK porn block: everything you need to know”, *Techradar* (24 June 2019), available at <https://www.techradar.com/news/uk-porn-block-everything-you-need-to-know>.

Poland

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In 2009, the Ministry of Finance published a bill amending the Act of 16 July 2004 Telecommunications Law, which envisaged setting up a Register of Forbidden Websites and Services maintained by the President of the Office of Electronic Communications⁶⁷. This Act, had it been passed, would have been an implementation of a dedicated infrastructure model. The telecommunications operator would have been obliged to block access to four types of content:

- content promoting fascist or other totalitarian regimes;
- pornographic content depicting sexual acts with minors, sexual violence or animal pornography;
- content which, presented, allows for deception aimed at achieving financial gains unlawfully through fraudulently obtaining information;
- content constituting unlawful advertising, promotion or sponsorship information, allowing for the arrangement of gambling games without permission or for participation in such games.

What may serve as the reference point for blocking pornographic websites by default, however, is the Act of 15 December 2016 amending the Act on Gambling and certain other acts.

With the new provisions, which have become effective on 1 July 2017, the minister responsible for public finance maintains the Register of Domains Offering Gambling Games in Violation of the Act, hereinafter referred to as “the Register”. Entries in the Register cover the name of the Internet domain, date and time of the entry, its amendment or deletion.

The telecommunications operator providing Internet access services is, among other things, obliged to block access to the Internet sites using Internet domain names entered in the Register, and do so gratuitously, by removing the domains from Information and Communication Technology (ICT) systems they use to convert domain names to IP addresses. They must do so within 48 hours from the entry in the Register being made, and they must also ensure connections referring to the Internet domain names entered in the Register are redirected to the website maintained by the minister responsible for Public Finance, containing a relevant communication and notification on the liability for the violation of the provisions of the Act.

67 Version of the bill dated 13 November 2009, drafted under Article 6(1b) of the Council of Ministers’ Rules of Procedure:
http://www.archbip.mf.gov.pl/bip/files/bip/bip_projekty_aktow_prawnych/oc/2009/ustawa_gry_13.11/p_rojekt_nowelizacji_z_13_11_09_-_2_2_.pdf [accessed on 13 March 2018].

1. A monitoring body responsible for categorising domains

- An independent monitoring body will be appointed, which be responsible for determining the nature of the content made available, and for classifying domains involved in making such content available on a commercial basis. this body will make a list of websites subject to filtering by default on the part of Internet service providers. A non-governmental organisation which enjoys social trust may be such a body.
- The monitoring body will publish a document presenting the criteria determining the inclusion of an Internet domain in the Register.

2. A Register of Domains Making Pornographic Content Available

- The monitoring body appointed will maintain a Register of Domains Making Pornographic Content Available which will include names of Internet domains that make pornographic content available.
- The list of domains entered in the Register will be published on the website kept by the monitoring body, with public access thereto.
- The monitoring body will immediately inform the entity making pornographic content available of the inclusion of their Internet domain in the Register, justifying such a decision, and providing information on conditions to have the entry deleted (deleting pornographic content).

3. Block by default

- ISPs will be obliged to block access to pornographic websites using domain names included in the Register by default.

4. Notification on web filtering by default

- ISPs will inform their users of the date the filtering of pornographic content by default will be introduced and of the possibility to cancel such a service. An absence of response from a user will be taken as consent for the service provided.

5. Block cancellation

- At any time, each user may cancel the block imposed on websites entered in the Register by amending the agreement on the provision of ISPs and may do so gratuitously and without any preliminary conditions.
- This will not be possible where the given person is not a party to such an agreement; this includes minors, school students and other children who have access to a computer in the household, at school or in the library.

6. Settlement of disputes

- Entities whose domains are entered in the Register may submit objections to the President of the Office of Electronic Communications.

China

Internet regulation

The government of China is deeply attached to the notion of territorial sovereignty, especially regarding the Internet. A White Paper, released in June 2010, reaffirmed the government's commitment to regulate the Internet within its borders: "*within Chinese territory, the internet is under the jurisdiction of Chinese sovereignty. The internet sovereignty of China should be respected and protected*".⁶⁸

Since the promulgation of a legislation in 1996,⁶⁹ ISPs in China are required to connect to the global Internet only via one of the four major national networks (ChinaNet, GBNet, CERNET and CSTNET), which go through the Ministry of Industry and Information Technology gateways. Accordingly, all international traffic to and from the global Internet must pass through the same gateways. Foreign individuals, companies and Websites can thus use the Chinese Internet, but must comply with the national legislation.

The Chinese government deploys many ways of censoring the Internet, including technical methods like bandwidth throttling,⁷⁰ keyword filtering, as well as the global blocking of access to Websites.

Since the promulgation of the Rules for Administering the Internet Information Services in 2000, ISPs and information content providers (ICPs) are also required to register types of services, web addresses, telephone numbers and to keep users' access records for 60 days to provide them to the relevant state authorities if required.⁷¹

Pornography regulation

Pornography is strictly forbidden in China, according to the Section 9 "Crimes of Producing, Selling or Disseminating Pornographic Materials" of the Criminal Law of the People's Republic of China.⁷² Obscene material is referred as "*publications, films, video and audio recordings, and images containing depictions of sexual acts. Works related to human physiology and medical knowledge are not obscene. Artistic works containing pornographic content are not obscene*".⁷³

⁶⁸ "White paper on the Internet in China" (6 August 2010), *Information Office of the State Council*, available at http://www.chinadaily.com.cn/china/2010-06/08/content_9950198.htm.

⁶⁹ Decision on Revising the Provisional Regulations of the People's Republic of China on Managing Computer Internet Information Networks (1 February 1996).

⁷⁰ Bandwidth throttling is the intentional slowing or speeding of an internet service by an ISP. It can be used to actively limit a user's upload and download rates on programs such as video streaming and file sharing applications.

⁷¹ Susan Xue, "Internet policy and diffusion in China, Malaysia and Singapore", *Journal of Information Science*, 31 (3) 2005, pp. 238–250.

⁷² Criminal Law of the People's Republic of China, Fifth Session of the Eighth National People's Congress (14 March 1997), available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/5375/108071/F-78796243/CHN5375%20Eng3.pdf>.

⁷³ Chu Cheng, "Incomplete and Opaque: The Problems with China's Porn Laws", *Sixth tone* (9 December 2016), available at <https://www.sixthtone.com/news/1661/incomplete-and-opaque-the-problems-with-chinas-porn-laws>

Although pornography is officially prohibited, China faces the same difficulties when it comes to implementing this legislation, especially on the Internet, where online pornography flourishes. The government's approach is to actively block pornographic content, by throwing significant judicial and administrative resources into frequent pornography clean-up campaigns, targeting live-streaming platforms and online games, literature and videos.⁷⁴

In 2004, the Chinese government shut down the 99 Erotica forum, a site responsible for disseminating a large quantity of obscene material. In October 2005, the individual who ran the site received a 12 years prison sentence.⁷⁵ In 2018, China's anti-pornography office announced that 1,834 suspects had been arrested and 1,052 criminal cases solved in a national crackdown on pornography.

These campaigns of online crackdowns are however becoming harder and costlier to carry out, as the Internet users develop ever-more innovating strategies to bypass the censorship on pornography.

⁷⁴ Ibid.

⁷⁵ Ibid.

CONCLUSION

Pornography is never the answer to a sexual desire or need, as it worsens it by creating an addiction. It is a wrongful answer to what is originally a sexual and emotional problem.

Its process of production and of consumption raises serious concerns regarding the protection of human rights:

- the production of pornography supposes the sexual exploitation of persons in a situation of vulnerability;
- the consumption of pornography causes addictions and life-long mental damages, on both children and adults.

The satisfaction of one's sexual desire cannot justify the acceptance of pornography. Consuming or just accepting pornography signifies in practice to support the sexual exploitation of vulnerable people, the vision of women as sex objects, the sexualization of children and the promotion of a violent sexuality, both physically and mentally, without any concern for consent.

Pornography now constitutes a considerable underground phenomenon on the Internet. Every person can be affected, whether directly or indirectly.

Although major financial interests are at stake, means of action to protect people from pornography exist and can be implemented. State cannot pretend that they are powerless to limit pornography. They have a duty to intervene, in order to protect their own citizens. Pornography must be limited through national legislation and efficiently regulated in practice.

On an international level, international institutions, such as the Council of Europe, must act in favour of a legal harmonization regarding the limitation of pornography. Children must be a priority in the fight against pornography.