

## THE WORLD WIDE WEB OF DESIRE

### CONTENT REGULATION ON THE INTERNET

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THE INTERNET IS OFTEN DESCRIBED AS THE LAST FRONTIER FOR FREE SPEECH AND EXPRESSION, AN ANARCHIC AND CHAOTIC SPACE FOR IRREPRESSIBLE POLITICAL, SEXUAL AND PERSONAL EXPRESSION. HOWEVER, THE LAST DECADE HAS SEEN AN INCREASE IN THE CONFIDENCE OF STATES TO GOVERN THE INTERNET, AND SIMULTANEOUSLY THE CRACKDOWN ON SPACES ON THE INTERNET. WHAT ARE THE PROCESSES BY WHICH PEOPLE WILL PARTICIPATE IN DECIDING HOW THE INTERNET WILL BE GOVERNED? HOW PARTICIPATORY ARE THESE PROCESSES AND DO THEY GIVE ADEQUATE REPRESENTATION TO ALL VOICES? AND IN THE CONTEXT OF CONTENT REGULATION SPECIFICALLY, WHO DECIDES WHAT IS “HARMFUL CONTENT” – THE STATE, INTERNATIONAL BODIES, THE LAW OR PEOPLE/END-USERS? THIS PAPER ATTEMPTS TO EXPLORE THESE QUESTIONS AND OTHERS AROUND CONTENT REGULATION, AS WELL AS THE NOTION OF “HARMFUL CONTENT”, WHICH HAS BEEN THE MAIN FOCUS OF CONTENT REGULATION DISCUSSION.

#### Gender in the content regulation debates: Between big brother and little sister

Debates on content regulation have been part of national and international processes on internet governance. In the last five years, these debates have been mostly configured around the lowest common denominator of agreement between different parties (governments, NGOs, the UN and related bodies), and that is child pornography. This agreement is often seen to imply a certain consensus on various other aspects of content regulation, including the mandatory role of national governments and international authorities (the UN, processes such as the

Internet Governance Forum, etc.) and the necessity of legal intervention in determining and tackling child pornography. This is highly problematic, because even if there is agreement on the problem of child pornography (as evidenced by the signatories to the optional protocol to the Convention on the Rights of the Child),<sup>1</sup> this does not imply a consensus on increasing state control and encroachment on the privacy of individuals.

<sup>1</sup> One hundred and fifteen countries signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the UN General Assembly on 25 May 2000.

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In these debates, content is always viewed as static or “dead”. They do not take into account various other modes of interaction on the internet including peer-to-peer networks, webcams and chat rooms. Statistical evaluations of the internet state that only 2% of the internet consists of adult websites or pornography (a billion dollar industry). But this fraction is highly visible and accounts for a significant amount of web traffic, including non-commercial sources of pornography on the internet, such as peer-to-peer file exchanges, unsolicited email, web cameras and chat rooms.<sup>2</sup> The law, however, attempts to regulate content as if it is static and stable, and can be erased, prohibited or partly blocked.<sup>3</sup> Hence it is possible that content regulation measures would only partially address problems related to “protecting” children, since they would not effectively address issues like child grooming<sup>4</sup> by online predators. This is already obvious as colleges and schools are clamping down on social networking sites such as Friendster, Facebook and Orkut in the name of combating online predators, without also taking into account that children too are entitled to a certain degree of freedom and privacy.

The Convention on the Rights of the Child recognises this autonomy, in terms of a child’s right to access to information and material from a diversity of national and international sources, rights against arbitrary or unlawful interference with his or her privacy, family,

home or correspondence, and the right to freedom of expression (including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice).<sup>5</sup> In content regulation debates, however, children are not allowed autonomy over their sexual selves; instead, parents to some extent control the child, and institutions like the state, schools and libraries also determine what kind of content the child can see.<sup>6</sup>

The consensus is also problematic because of the lack of representation of different voices of end-users, and this is one of the reasons for processes such as the Internet Governance Forum (IGF) and other such spaces. There is also already a perceived lack of feminist intervention and representation of women’s voices. For instance, when the Internet Corporation for Assigned Names and Numbers (ICANN) was contemplating approving .xxx as a global top-level domain for sexually explicit material, the voice of women, the women’s movement and feminist perspectives was absent from the debate.<sup>7</sup> Not much was said from a feminist perspective about what .xxx would imply for the internet, accessing information for ordinary people and freedom of speech as guaranteed under the law in most countries, or even whether it would effectively address concerns about the existence of sexually explicit material and/or pornography on the internet.

Any position that analysed the gender implications of the existence of sexually explicit material

2 Thornburgh, D. and Lin, H.S. (2002). *Youth, pornography and the internet*. Washington D.C.: National Academy Press. Available from: [www.nap.edu/books/0309082749/html/57.html](http://www.nap.edu/books/0309082749/html/57.html). Cited from: Dery, M. (2007). “Paradise Lust: Pornotopia Meets the Culture Wars”. In K. Jacobs, M. Janssen, M. Pasquinelli (Eds.), *C’Lick Me: A Netporn Studies Reader* (p. 125). Amsterdam: Institute of Network Cultures.

3 Kuhn, A. (1998). *Cinema, Censorship and Sexuality*. London: Routledge. Kuhn makes a similar argument about cinema being viewed as a dead static object by (censorship) laws.

4 Grooming is when an abuser tries to ‘set up’ and ‘prepare’ another person to be the victim of sexual abuse or rape. It usually includes activities that are legal in and of themselves, and aim to build trust and establish emotional control over a potential victim. Grooming techniques may involve lying, creating a different identity and then attempting to engage in more intimate forms of communication, or compromising potential victims with the use of images and webcams. Source: Wikipedia <[en.wikipedia.org/wiki/Child\\_grooming](http://en.wikipedia.org/wiki/Child_grooming)>, and Child Exploitation and Online Protection Centre <[www.ceop.gov.uk/get\\_advice\\_what\\_is\\_grooming.html](http://www.ceop.gov.uk/get_advice_what_is_grooming.html)>

5 Articles 13, 16, and 17 of the Convention on the Rights of the Child. Available from: [www.ohchr.org/english/law/crc.htm](http://www.ohchr.org/english/law/crc.htm)

6 Along with the proposal to create the .xxx top-level domain to limit pornographic content on the internet, there has also been a proposal for another new top-level domain, .kids. However, there has been very little public discussion of this measure and what it would mean for the ability of children to safely but freely access the internet. A new suggestion is to ensure that adult content is available on a separate port (cp80, 2005) which would work as a filter to pornography. All these suggestions to zone the internet need to be addressed and discussed, with effective participation from all users.

7 Kee, J. (2005) “Women’s human rights: Violence against women, pornography and ICTs”. Women Claiming The Information Society (WOCTIS), 11 September 2005, Berlin.

has been subsumed in the larger political issue of internet governance. Even in the World Summit on the Information Society (WSIS) process, voices that articulated concerns around gender seemed to vanish from the discussions. Gurumurthy notes: "At one point, during the preparatory processes prior to the Summit, in July 2003, all references to women suddenly disappeared in the draft documents."<sup>8</sup> She states that the debate was reduced to squabbling over a sentence or a paragraph on gender, which is uncannily familiar in the history of women's movements negotiating with the law (international and national), and also implies the loss of any possibility to ensure fundamental gender equality in debates around internet governance.

One reason for this might be that women and women's movements in different countries have a troubled relationship with state regulation, which often restricts and stifles spaces for free speech by women.<sup>9</sup> The women's movement and feminists also are divided amongst themselves on the issue of pornography and censorship, between those who link pornography with violence, and those who think that the internet makes possible a space to explore and express alternative sexualities and women's desires. Moreover, in most countries, women's movements or organisations are concerned with the more basic problem of ensuring access to the internet for women, because of the existence of a gender digital divide that is further complicated by class, caste, and location in urban or rural areas.<sup>10</sup>

Even when official documents around the WSIS and IGF processes talk about ensuring gender equality in terms of access to the internet, they do not reflect on the kind of access and the nature of spaces available for women. The internet, being an interactive space, is slowly being transformed and changed by the presence of women, especially because of initia-

tives such as Take Back the Tech, Blank Noise, etc. But there are still instances of violence against women in cyberspace and harmful uses of the internet such as cyber harassment,<sup>11</sup> bullying and stalking that raise questions about what kind of environment and context the internet represents for women.

It is obvious that the discourse around content regulation has shifted mostly towards the protection of children from harmful content and child pornography on the internet. Any references to gender-related concerns were dropped, including even problematic conceptions that women and children need the paternalistic protection of the state or international bodies from harmful content. One can speculate that this could possibly mean (in a positive sense) that women are no longer viewed only as "victims" and because of their own agency do not require the protectionist attitude of the state. Or, on the other hand, women's movements, feminists and others working on gender have encountered and realised the hazards of demanding protection from the state, in the interests of their own freedom of expression and because of their alliances with civil society, non-governmental organisations and social movements.

On the negative side, however, the debate on content regulation thunders on without a feminist or gendered perspective, which would provide different and varied understandings of "harmful content". It would also be a space to raise concerns that are difficult but necessary regarding internet access, sexuality (including that of the child), alternative sexualities, freedom of expression, and violence against women in cyberspace. A feminist perspective would hopefully speak from the lived realities of people who engage with all these concerns. This paper attempts to look at some of the paradoxes that consequently emerge, striving not to fall into the trap of configuring the content regulation debate around the lowest common denominator of child pornography on which everyone seems to have a consensus. This, in the opinion of the author, oversimplifies the complexity of concerns around content regulation.

8 Cited from Kee, J. (2005). "Cultivating Violence Through Technology? Exploring the Connections between Internet Communication Technologies (ICT) and Violence Against Women (VAW)". Available from: [www.genderit.org/en/index.shtml?apc=r90501-e91306-1](http://www.genderit.org/en/index.shtml?apc=r90501-e91306-1)

9 An obvious example of this is Taslima Nasreen's book *Lajja* (Shame), which was banned in Bangladesh and parts of India because of alleged obscenity and indecency.

10 See note 7.

11 See basic statistics on online harassment/cyberstalking in the US (2000-2006). Available from: [www.haltabuse.org/resources/stats/Cumulative2000-2006.pdf](http://www.haltabuse.org/resources/stats/Cumulative2000-2006.pdf)

## What is pornography?

Debates around harmful content do not quite clarify what is meant by the term, and neither does the category pornography. Various kinds of media, activities and behaviour are clustered around these terms, ranging from cyber sex, sexually explicit images and videos of people, explicit art, comic books and hentai anime,<sup>12</sup> webcam sex and chat rooms to textual pornography and erotica. All this is contained in the category of pornography, which is imagined in most discourses as static, “dead” media/content and not as interactive (conversations, activities, behaviour). In most countries and internationally (apart from child pornography), pornography as such is not legally defined, and this range of material and behaviour is further collapsed into the category of either obscenity or harmful content.<sup>13</sup>

Lust's passion will be served; it demands, it militates, it tyrannises.

*Marquis de Sade*

Ideally, differing standards of acceptability in each culture would determine the meaning of terms such as obscenity and harmful content. But in many countries like India and Malaysia dusty laws left over from a colonial legacy (the Hicklin test for obscenity) determine what is obscene. The Hicklin test of obscenity<sup>14</sup> is based on whether “the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.” These standards are relevant in the

context of internet governance as well, since most countries are extending existing legislation for other media (television, cinema) to the internet. Even if new laws are enacted for the internet, most provisions that are different relate to procedure or creating new categories of offences (cyber harassment, spam, email fraud, etc.) but would adopt the same definitions regarding obscenity or sexually explicit material, inheriting also the weight of precedents that have determined what is obscene.

The Hicklin case was about the mass distribution of inexpensive pamphlets provocatively titled *The Confessional Unmasked* which described how priests extracted erotic confessions from female penitents.<sup>15</sup> The publication of the pamphlet was encouraged by the Protestant Electoral Union and used by them to discredit the Catholic Church and specifically to prevent laws that would allow Catholics into parliament. The pamphlet played a role in the social turmoil around the Murphy riots. It is perhaps not so surprising that the test that determines what is obscene in most British Commonwealth countries originates from a judgement that did not strictly deal only with obscenity, but also with political speech against the Catholic Church. Historically, pornography or obscenity has served this purpose of being a mode of speaking against authority, of truth-telling and straight talk. In early stages of modern Europe the birth of print culture and urban spaces led to the proliferation of explicit sexual writing that was used to satirise and criticise the church, state and monarchy, and was controlled for its defamatory and blasphemous nature, more than its obscenity.<sup>16</sup>

The Hicklin test is intriguing because it unforeseeably came to determine obscenity jurisdiction in many countries, on the basis of finding a text objectionable for multiple reasons including religious sensibilities around the church and political meanings for the conflict around Ireland, but attempting to mask and contain these within one – the obscenity of priests extracting erotic confessions from women.

12 Hentai anime and manga allow elements of sexual fantasy to be represented in ways that would be impossible to film. This may include portrayals of sexual acts which are physically impossible, unacceptable in society, or run counter to social norms. Examples include extreme bondage, creatures with tentacles, and other fetishes.

13 An analogy can be drawn to how sexuality came to describe various affective, intuitive and physical phenomena in the eighteenth century, leading to a rigid notion of sexuality as described in law, medicine, psychiatry and other such discourses.

14 The Hicklin test has been modified with reference to judgments such as *Miller v. California*, and in *India K.A. Abbas v. Union of India* (1970) 2 SCC 780.

15 *R. v. Hicklin* (1868), L.R. 3 Q.B. 360, Cockburn C.J.

16 O'Toole, L. (1999). *Pornocopia: Porn, Sex, Technology and Desire*. London: Serpent's Tail.

Another example of political connotations attached to the term pornography<sup>17</sup> relates to objects and artefacts that were found in the lost ancient city of Pompeii and then became part of the Secret Museum. In this context pornography was defined as representations (objects, images) that a dominant class or group (especially men) did not want a less privileged group to have access to. The existence of mass circulation of media exacerbated the dominant group's concern about the availability of this material to the "easily corruptible rabble or women."<sup>18</sup>

This is not to say an affect of finding something obscene (vulgar, pornographic) does not exist in the consciousness of people. But the categorisation of something as obscene or pornographic has to be located in social, political and moral discourse. The Hicklin test, on which obscenity jurisdiction rests, itself raises questions about whether obscenity can be clearly determined and therefore regulated. In spite of the law accommodating subjective reactions and community standards, there is often misrecognition of obscenity (and pornography) in the law.

Even modern pornography that is mostly about fantasy and arousal is hardly devoid of politics. It is saturated with political meanings about sexual practices, morality, pleasure, private liberties and individual rights. Most pornography speaks of sex in terms of the pleasure of the (white/Caucasian) heterosexual male, which necessarily leaves out women's subjective experience and pleasure. Yet there are more complex meanings embedded in pornography that do not allow it to be easily dismissed as violence and subordination of women. Unpacking pornography first leads us to the objects that are mistakenly placed in this category, that have enormous literary, artistic, social and/or political significance. Pornography also paradoxically provides one of the few free spaces for the expression of counter-hegemonic representations of sexualities and desires. It is an element of community-building amongst queer groups, of

the refashioning of selves in terms of gender and sexuality, and in some instances even destabilising the institutions of family and patriarchy. It also engages with realities of sexuality across race and class probably more vividly than cinema. Though some pornography is probably degrading to women or contains images of gratuitous violence and subordination of women, modern pornography, especially on the internet, is too varied to be described only in such terms.

The regulation of pornography has always been a political matter. Regulation usually engages with the text/film/art alone, or even only a part of it, not examining the moral, social and political discourses that it is part of. This has historically led to the banning of material such as birth control pamphlets and anti-Church rhetoric, and in the contemporary world it has led to the blocking of women's voices and sexual expression and clamping down on spaces for social networking for communities.

## Who regulates? Whose pornography?

The law either functions in an instrumental sense to govern society – consisting of independent norms that exist outside the framework of everyday lives, that are instrumental in how people relate and interact with each other. Or, the law functions organically, as if it is part of and integral to the everyday interactions of people. Obscenity laws in most countries determine obscenity as if not implicated in moral, social and political discourses. The law then is also a constitutive force, and not merely a descriptive one. In allegedly describing an objective reality, it also describes the outer domain of that reality. In other words, the law does not chance upon a pre-existing object called pornography or obscenity, but actually creates that category of material. The law does not merely document or record a set of social relations, but through such descriptions actually prescribes what these social relations ought to be and how deviance from the norm would then be considered an illegal act.<sup>19</sup>

17 The etymology of the word pornography can be traced to *graphos* (writing or description) and *porneia* (prostitutes) and hence it means the description of the life, manners, etc. of prostitutes and their patrons.

18 Boyd, K. S. (2001). *One index finger on the mouse scroll bar and the other on my clit*. PhD dissertation, Simon Fraser University.

19 Liang, L., Suresh, M. and Malhotra, N. (2007). *The public is watching: Sex, laws and videotapes*. New Delhi: Public Service Broadcasting Trust.

The law has a particularly troubled relationship with visual media, as evident from initial judgements on cinema that likened it to magic and sorcery and said that it had potential for evil.<sup>20</sup> This troubled relationship of the law with visual media is further compounded by the nature of the internet, which changes conceptions of media broadcast, producer and consumer/viewer. Even the idea of a medium of communication has radically changed, as the internet can be described as a space where media content is exchanged, dialogue and exploration take place, and alternatives to mainstream news, lifestyles and politics are suddenly far more accessible.

I know it (hard core pornography)  
when I see it.

*Justice Potter Stewart*

Regulation of the internet by the law is fraught by a range of issues, ranging from the efficacy and efficiency of such laws to protecting the privacy of individuals and their rights against the state. In the US, the Communications Decency Act of 1996 was the first attempt to regulate internet pornography. It was challenged by the American Civil Liberties Union (ACLU) and later partially overturned by the Supreme Court (and various federal courts) for limiting the free speech right of adults through the use of the term “patently offensive”, which was unclear and not legally defined. This was followed by the Child Online Protection Act of 1998, which was almost immediately struck down by the federal courts and in some states because the use of “community standards” to determine harmful materials was too broad. The law in force now is the

20 The statement by Justice Potter Stewart seems to be produced by this frustration of the law in dealing with visual media. In a judgment on whether a film (*The Lovers*) was obscene or not, Potter Stewart said, “I know it (hard core pornography), when I see it,” while simultaneously admitting that he may not be able to intelligibly define it. Linda Williams, the author of *Hard Core*, says that Potter Stewart’s statement is also a recognition of the gut or visceral reaction to pornography. She states that pornography, “weepies” or melodrama, and horror film are similar genres, associated with bodily responses – horror with the scream, melodrama with tears and pornography with the orgasm. These genres have also generally received less academic interest than other genres and have been slow to be accepted as cultural phenomena worthy of study.

Children’s Internet Protection Act of 2000, which was upheld as constitutional in 2004.

There is now a move to introduce very stringent and mandatory data retention laws for internet service providers (ISPs) in the US to help in tracking and capturing paedophiles. The uproar caused by this indicates that people are wary of the government being given access to their personal (medical, insurance, financial) information and are questioning the efficacy of this law in tracking down paedophiles. Critics of the proposal for broad data retention laws in the US (already in place in Europe) said that while the justification for internet surveillance might be protecting children, the data would be accessible to any local or state law enforcement official investigating anything from drug possession to tax evasion.<sup>21</sup>

An instance of censorship of “pornographic” material that is relevant to any examination of content regulation mechanisms for the internet is the case of Little Sisters bookshop in Canada. Little Sisters was one of four gay and lesbian bookshops in Canada, and used to import books and magazines from other countries, especially the US. Over a period of time, their shipments were targeted by the customs authorities; books and magazines were not allowed across the border on grounds of alleged obscenity. The law in Canada is fairly stringent and deals not only with obvious categories of explicit sex and violence, but also “explicit sex that is degrading and dehumanising, which will be undue exploitation of sex if it creates a substantial risk of harm” to the viewer, who is presumed to be a heterosexual woman. Canadian legislation on obscenity is heavily influenced by the work of radical feminists Andrea Dworkin and Catherine MacKinnon, which equates pornography with violence and draws causal linkages between pornography and actual sexual assault.

21 McCullagh, D. (2006). “Congress may consider mandatory ISP snooping: House Democrat joins Bush administration in supporting a mandate that net firms store records about consumers’ activities”. CNET News.com, 28 April. Available from: [news.com.com/Congress+may+consider+mandatory+ISP+snooping/2100-1028\\_3-6066608.html](http://news.com.com/Congress+may+consider+mandatory+ISP+snooping/2100-1028_3-6066608.html)

As a result of these legal formulations,<sup>22</sup> which are not specifically anti-gay and supposedly radical and feminist, many gay and sadomasochistic books and magazines were detained for long periods of time at the border and not allowed into Canada (which technically is a form of prior restraint or pre-censorship that is illegal in most countries, especially for written material). The customs authorities also only cursorily examined the books before detaining them, unlike a judicial or other censorship process that would have to be more rigorous. The irony of course is that Dworkin's own works were detained by the customs authorities on the suspicion that they constituted hate literature. The case also reveals that the anxiety is not the existence of "obscene" material that was detained, as these could be found in any other mainstream bookstore, but the existence of queer spaces where such material could be circulated. The Canadian Supreme Court eventually held that the actions of the customs authorities were justified, but also stated that sexuality minority groups are obviously more vulnerable to restrictions of freedom of speech and expression.<sup>23</sup>

As the above example illustrates, the ineptness of the law lies in the frequent misrecognition of obscenity (and even pornography), in addition to the misuse of obscenity laws and other laws to police sex and sexuality. What is surprising is that the Little Sisters case occurred in Canada, which does not have anti-sodomy or anti-homosexuality laws, as is the case with many countries in Asia and other parts of the developing world.

### The long hand of the law: Regulations in the developing world

The developing world is beset by issues of access to the internet and the digital divide (between the rich and the poor, urban and rural). As is also obvious from cases that have come to light from China, Burma and other parts, the regulation of the internet

22 R. v. Butler [1992] 1 S.C.R. 452

23 Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R.

If, for the better part of the 20th century, it was New York and its glistening imitations that symbolised the future, it is now the stacked-up, sprawling, impromptu city-countries of the third world. The idea of the total, centralised, maximally efficient city plan has long since lost its futuristic appeal.... desires flee the West's surveillance cameras and bureaucratised consumption to find in the Third World metropolis a scope, a speed, a more fecund ecology.

*Rana Dasgupta, The Sudden Stardom of the Third-World City<sup>24</sup>*

is often a very serious and contentious matter in the developing world, that is further complicated by many factors. These include corporate interests (the role of entities like Yahoo and Google), relations between states, self-determination movements, and anti-national agendas and activism (for instance, freedom for Tibet, protests in northeast India, environmental movements). Though a large amount of censorship and regulation takes place in the name of national interests, official secrets, sedition and anti-national activity,<sup>25</sup> there is a spreading sense of anxiety about the nature of sexual and/or obscene content on the internet as well.

The Chinese government has always ensured tight control over the access that people have to the internet. Though most of this control is to limit access to political content, there is concern about sexual content as well, evidenced by far more stringent punishments for distributing pornography. Records of those punished under pornography laws include arrests for spreading pornographic texts or erotica that in most jurisdictions would not be considered as "harmful".<sup>26</sup> The government has ordered thousands of cybercafés to install internet surveillance

24 Available from: [www.ranadasgupta.com/texts.asp?text\\_id=36](http://www.ranadasgupta.com/texts.asp?text_id=36)

25 Malhotra, N. (2007). "Search history: Examining pornography on the internet". Available from: [www.genderit.org/en/index.shtml?apc=r90501-e95146-1](http://www.genderit.org/en/index.shtml?apc=r90501-e95146-1)

26 Chiu, J. and Wong, W. *Control of Internet Obscenity in China, Taiwan and Hong Kong*. Available from: [newmedia.cityu.edu.hk/cyberlaw/gp12/intro.html](http://newmedia.cityu.edu.hk/cyberlaw/gp12/intro.html)

software to prevent unsupervised internet usage. The Chinese population is often not allowed to use popular search engines like Google, and users are redirected to China-based search engines that block searches for pornography or content related to Falun Gong or Tibet.<sup>27</sup>

Apart from being an enormous violation of the freedom of expression and other international rights, these moves by the Chinese government raise very disturbing questions and change the internet from being a space that can be controlled by the government to a mode of control in itself, through regulation by technological means (surveillance, filtering) and the limitation of spaces for accessing the internet (absolute control over ISPs, cybercafé regulations). The internet was once imagined as an unorganised, anarchic and chaotic space that the pirates and geeks would somehow always reinvent in spite of regulation. But moves by governments (including those in the first world) raise doubts about this notion and in fact destroy the optimism that the internet will always be free, revealing a flip side that the internet could become a mode of Orwellian control by the government.<sup>28</sup>

In the Indian context, the anxiety about sexual content equals if not overshadows some of the other concerns about political and anti-national content. This is most evident in the attempt to regulate spaces such as cybercafés where lower and middle class people and especially youth access the internet, leading to a spate of legislation and rules around the design and organisation of such spaces, the production of identity cards and data retention by cybercafés.

The problematic history of censorship of sexual material in the Indian context has unfortunately seen the confluence of two unlikely players – the conservative Hindu right and the women’s movement.<sup>29</sup> Moral and social panic around obscenity in India is most

evident in the context of television, where all English movie channels were pulled off the air because of a complaint by one teacher about sexual content and its unacceptability by Indian cultural standards.

Public debate in India about sexual content on the internet came out of the closet only in 2004 with the so-called MMS scandal, when a video made on a mobile phone camera of two teenagers engaged in sexual activity was posted on the net without the girl’s consent. Next, in 2006, the police cracked down on four men who used the internet, specifically the website “guys4men”,<sup>30</sup> to hook up. The men were taken into custody on grounds that they were committing a criminal offence under S.377 of the Indian Penal Code, which is the law that criminalises homosexuality, specifically sodomy and any “intercourse that is against the order of nature”.<sup>31</sup> This incident echoes a previous incident in 2001 in the same city, where members of an organisation were arrested for conspiracy to commit sodomy and for obscenity because they were carrying material about sexuality, AIDS and safer sex. Laws related to both obscenity and anti-sodomy are being used to threaten the existence of sexual health organisations and queer support groups and spaces. The Indian government obviously has no qualms about using antiquated colonial legislation, which does not comply with the international human rights regime, to police practices around sex and sexuality.

In recent years, the internet has been characterised in media coverage as an unsafe space, the dark underbelly of the city, a haven for sexual predators, kidnapers and rapists. Media coverage of a murder case now called the Orkut murder case seems to put on trial not only the alleged kidnapers and murderers of the boy, but also the social networking website that

27 “Chinese search engines ‘hijacked’ - US analysts”, 18 October 2007, Euro2day. Available from: [www.euro2day.gr/articlesfna/45499633/](http://www.euro2day.gr/articlesfna/45499633/)

28 In George Orwell’s novel *1984*, a television screen is used by the state to watch everyone in the house, and all activities are carried out literally under the eye of Big Brother.

29 See note 24.

30 Guys4men is a networking site for men to meet men for friendships, relationships and sex, and has in the past few years gained in popularity in India.

31 Section 377, Indian Penal Code: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years and shall also be liable for a term which may extend to 10 years and shall also be liable to fine.” Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section

may have linked all of them together. Speculation is rife in newspapers about the nature of people that one could meet on the internet. This is hardly the only time that Orkut has been dragged into controversy. It has already been the target of state action, accused of harbouring networks of terrorists, fans of crime lords in Dubai, nefarious murderers and kidnappers. Even in the US, social networking sites like MySpace, Friendster and Facebook are facing fire and have been blocked by filtering software in most schools and colleges because of the possibility of online predators. It is also possible that such blocking might soon be mandated by law.<sup>32</sup> In Malaysia, the police have been ordered by the government to randomly check mobile phones for pornographic images.<sup>33</sup> Here censorship laws are fairly stringent but are being challenged by the existence of new technology, especially the internet.

In the developing world, laws are being used to regulate not just obscene speech (or pornography) but also political dissidence and rebellious voices of women and men. The law is being used to police sex and sexuality (obscenity laws, anti-sodomy laws and others) rather than to control what can be clearly determined as "harmful content". It is in this frighteningly draconian context, where the state has no compunctions about policing sex and sexuality, that our understanding of censorship laws has to be located.

## Understanding sexuality through law and pornography

The Victorian era is often characterised as an era of repression of sex and sexuality, of policing of statements and setting up of rules about where, to whom and in the context of what kind of social relations sex could be talked about. One did not speak of sex, merely through the interplay of prohibitions that

If sex is repressed, that is, condemned to prohibition, silence and non-existence, then by just speaking about it you are engaging in an act of deliberate transgression. A person who holds forth in such language places herself to a certain extent outside the reach of power; she upsets established law; she somehow anticipates the coming of freedom. This explains the solemnity with which one speaks of sex nowadays.

*Linda Williams, Hard Core: Power, Pleasure and the Frenzy of the Visible*

referred back to one another. At the same time, however, there was simultaneously a veritable discursive explosion around sex and sexuality, not necessarily only in illicit discourses (of gossip, ribaldry, etc.) but in fact a multiplication of discourses concerning sex in a field of power itself; an institutional incitement to speak about it and to do it more and more; a determination on the part of agencies of power (in medicine, psychiatry, law) to hear it spoken about and to cause *it* to speak through explicit articulation and endlessly accumulated detail.<sup>34</sup>

In these institutional discourses (medicine, law, psychoanalysis), scattered sexualities become rigid, stuck to an age and/or type of practice and akin to identities. Intriguingly, this modern compulsion to speak incessantly about sex, as identified by Foucault, is nowhere more evident than in hard core pornography, where pornography becomes a means of organising knowledge around sexuality and not merely meant for arousal and pleasure. In her seminal work *Hard Core*, Williams argues that pornography becomes one of the many forms in which knowledge of pleasure is organised. The power that took charge of sexuality itself became sensualised and pleasure thus discovered fed back into the power, leading to the solidifying of sexualities within discourses of law, psychoanalysis, medicine and of course pornography.<sup>35</sup>

32 "US seeks to block social networking sites". 1 August 2006. Available from: [www.tech2.com/india/news/antivirus-security-internet/us-seeks-to-block-social-networking-sites/1086/0](http://www.tech2.com/india/news/antivirus-security-internet/us-seeks-to-block-social-networking-sites/1086/0)

33 "Malaysia targets mobile phone sex". 29 August 2005. Available from: [news.bbc.co.uk/2/hi/asia-pacific/4194674.stm](http://news.bbc.co.uk/2/hi/asia-pacific/4194674.stm)

34 Foucault, M. (1978) *History of Sexuality: Volume One*. Penguin Books (Reprint: 1990).

35 Williams, L. (1989). *Hard Core: Power, Pleasure and the Frenzy of the Visible*. Berkeley: University of California Press.

Nowhere is this twofold process of power and pleasure feeding into each other more obvious than in the report of the Meese Commission on pornography, released in the US in 1986. The report was the first exhaustive examination of the available pornography at the time (725 magazines, 2,000 books, 2,300 films) and was heavily influenced by the anti-pornography radical feminist position, making a clear correlation between pornography that depicts rape or sexual abuse and the actual physical act itself. The confluence of two discourses around sexuality (law and pornography) led to the production of an elaborate classification system and enumeration of various sexual acts and positions within the report. Susie Bright, a noted lesbian activist and writer, said about the Meese Commission report that it was probably the most pornographic material available at the time.<sup>36</sup>

The modern era is further complicated by the emergence of the internet, where multiple modes of connection, production and distribution are possible. Pornography that previously circulated illicitly in specific cinema halls and through video stores is now (almost) freely streamed, downloaded and circulated online. The internet allows anyone to be a producer and distributor, leading to the multiplication of paraphilias and perversions online. Thus in spite of the existence of discourses around medicine, law, psychoanalysis, pornography and others that solidify sexuality into specific practices and identities, there is a plethora of material outside of these obvious frameworks that is now available on the internet, and not just related to alternative sexualities like lesbian, gay, bisexual or transgender.<sup>37</sup> If the discourses on sexuality in pornography and law are both controlling and heteronormative, then the internet is a space where ideas of pleasure are multiplying and getting more complicated. The

36 Susie Bright said, "I masturbated to the Meese report. It's so filthy, I almost passed out." The lawyer for the American Civil Liberties Union said, "I fully support the right of my government to publish filth."

37 As Williams says, pleasures of the body do not exist in immutable opposition to a controlling and repressive power or discourse such as law or pornography, but instead are produced within configurations of power that put pleasures to particular use. The notion of power has to be looked at in its productive sense, in terms of the discourses and effects it has.

web is engendering a growing awareness that the universe of human sexuality is much bigger and stranger than ever imagined.<sup>38</sup> As Mark Dery states, "Even a websurfer who is pure in heart and says his prayers at night has probably been spammed with a come-on from a sexual subculture whose deviant desires would have given Freud anaphylactic shock. Spam and search engines have made the invisible visible."

It would seem that the web is exploding with extremes of different kinds – the weird, absurd, impossible and uncanny. But this also includes disturbing images of child pornography and of sexual humiliation and torture of detainees and prisoners of war. The question remains whether this phenomenon can be addressed or controlled by the law, whether it requires blocking by ISPs, zoning of the internet, or in the extreme instance, the shutdown of access and redirection of people to different parts of the web (as in China).

## Exploring different models of regulation

There is an obvious failure of the law, as an instrumental or constitutive force, to regulate obscenity or harmful content, either in its attempts to define it in isolation from other social and moral meanings, or in the use of obscenity laws to police sex and sexuality and encroach on freedom of expression. There is a need to turn away from finding an answer in the instrumental and constitutive elements of the law and to look at organic laws embedded in the practices of people, while respecting their privacy

Privacy is turned from exclusion based on self-regard into regard for another's fragile, mysterious autonomy.

*Patricia Williams, The Alchemy of Race and Rights*

38 Dery, M. (2007). "Paradise Lust: Pornotopia Meets the Culture Wars". In K. Jacobs, M. Janssen, M. Pasquinelli (Eds.), *C'Lick Me: A Netporn Studies Reader* (p. 125). Amsterdam: Institute of Network Cultures.

and inner lives. As Kauffman states, "we also need to recognise that gender, sexual fantasy and sexual desire derive fundamentally from mystifications. Fantasies are not the enemy, which by definition are based on unruly desires rather than politically correct needs."<sup>39</sup>

The events in lamdaMOO<sup>40</sup> (often described as "a rape in cyberspace")<sup>41</sup> point to the power of fantasy in virtual realms, and the resolution of the incident within the community itself points to a radical possibility of imagining "laws" of self-regulation for the internet.

### Evolving community standards for behaviour: LambdaMOO and "a rape in cyberspace"

LamdaMOO is one of the oldest running online virtual reality dimensions in cyberspace. It is text-based and allows different players to choose gender, sexuality and other aspects of themselves while entering. Two women who were part of the MOO were attacked and violated by another player, who by running a program was able to make them do sexual and humiliating things to themselves.<sup>42</sup> The women described the act as rape, and the community accepted that the act was a grave violation that needed to be addressed. Although what should be done was cause for enormous debate in the community, eventually the offending player was removed from the community. More importantly, the incident went on to become a catalyst for the MOO to set up self-regulation measures, "a system of petitions and ballots so that anyone could put to popular

vote any social scheme requiring implementation," including the options to complain, take action or remove another user. An ad hoc mediation system was subsequently added to the mechanisms available in this virtual alternate dimension to address problems between MOO residents.

### Peer-to-peer monitoring online

Another instance of self-regulation that seems to operate at least moderately well is peer-to-peer regulation on the popular online video streaming platform YouTube.<sup>43</sup> The user is allowed to flag content as inappropriate and YouTube is then compelled to check on the content to determine whether it should remain online.<sup>44</sup> The obvious drawback is that the final authority is YouTube, which is a corporate entity that is not invested in maintaining freedom of speech. For instance, a stand-up comedy routine that contained references to Gandhi (originating from the UK) was uploaded on YouTube and drew widespread objection from Indians, including coverage in mainstream news media.<sup>45</sup> The video soon disappeared from the website, even though technically it was not offensive or obscene, but challenged certain perceptions of nationhood of which Gandhi is an important symbol. Ultimately, corporate entities being given the power over spaces for free speech and expression is more problematic than states having such power. There is no judicial or procedural mechanism to challenge their decisions, and though corporations would probably allow content that might qualify as obscene (for eyeballs),

39 Kauffman, L. (1998). *Bad Girls and Sick Boys: Fantasies in Contemporary Art and Culture*. Berkeley: University of California Press.

40 LamdaMOO is an object-oriented multi-user dungeon or domain, a text-based online virtual reality system to which multiple users are connected at the same time

41 Dibbell, J. "A rape in cyberspace". Available from: [www.juliandibbell.com/texts/bungle.html](http://www.juliandibbell.com/texts/bungle.html)

42 They say he raped them that night, and that he did it with a cunning little doll, fashioned in their image and imbued with the power to make them do whatever he desired. They say that by manipulating the doll he forced them to have sex with him, and with each other, and to do horrible, brutal things to their own bodies. See note 40.

43 YouTube Community Guidelines, available from: [www.YouTube.com/t/community\\_guidelines](http://www.YouTube.com/t/community_guidelines) "We're not asking for the kind of respect reserved for nuns, the elderly, and brain surgeons. We mean don't abuse the site."

44 "When a video gets flagged as inappropriate, we review the video to determine whether it violates our Terms of Use – flagged videos are not automatically taken down by the system. If we remove your video after reviewing it, you can assume that we removed it purposefully, and you should take our warning notification seriously." See YouTube Community Guidelines, available from: [www.YouTube.com/t/community\\_guidelines](http://www.YouTube.com/t/community_guidelines)

45 "Violent Gandhi!" Mid-Day, 12 January 2007. Available from: [www.mid-day.com/news/city/2007/january/150017.htm](http://www.mid-day.com/news/city/2007/january/150017.htm) "NRI's Gandhi Video on YouTube Under Fire". Tech2. Available from: [www.tech2.com/india/news/internet/nris-gandhi-video-on-YouTube-under-fire/3752/0](http://www.tech2.com/india/news/internet/nris-gandhi-video-on-YouTube-under-fire/3752/0)

they would not consider it important to “protect” content that transgresses norms of gender, sexuality or nationhood.<sup>46</sup>

### Filtering software

The danger of relying on corporations is also evident in the use of filtering software, especially programs meant to protect children from “harmful content”. Such software often blocks content that is useful, informative or would provide a different perspective to the child, because it is deemed “inappropriate”, “indecent”, “radical”, “tasteless” or “gross”, including “works on the Holocaust, Islam, AIDS/HIV, gay rights, the National Organization for Women, or the International Workers of the World union.”<sup>47</sup> Moreover, while quietly restricting political speech, filtering software is often not effective in regulating what would probably be far more harmful content. On running a check of the various filtering programs available, it was found that objectionable websites frequently slipped through.<sup>48</sup> Using filtering software produced by commercial interests is beset with problems, and yet it is the solution that is suggested in most schools and universities and to families.

There is no mechanism for website owners to know if their website is blocked by a particular filtering program or to complain and challenge the blocking of their website on legitimate grounds. The “stop-list” of tags, words, phrases and websites that are deemed harmful or objectionable by the manufacturer of the filtering software is not made public, and is treated as a highly valuable commercial trade secret, even though it infringes on the rights of people to access and exchange information. This is a guaranteed right in most countries and should

be protected by the state vis-à-vis the interests of corporations and maintenance of trade secrets. Obviously the filtering software can also be used to block criticism of the product itself, as well as websites that are against internet censorship or point to the perils of using filters. CYBERSitter blocked both the website of Peacefire, a student organisation against internet censorship that published a commentary entitled “Don’t buy CYBERSitter”, and a webzine that criticised the company.

Dominant discourses of child protection in the debate around content regulation put pressure on companies to get involved in software development that filters out content that is harmful or objectionable for children to view. However there is no such similar effort to develop software for women to use to protect themselves or retaliate against harmful uses of the internet such as cyber harassment, bullying and other forms of violence against women in cyberspace.

### Self-regulation by internet service providers (ISPs)

Self-regulation is also what the Internet Services Providers’ Association of the UK (ISPA UK) has practised to a fairly successful degree, managing to ensure that images of child abuse are down to 0.4% on the internet hosted in the UK, <sup>49</sup> down from 17% to 18% in 1997.<sup>50</sup> It has also helped establish the Internet Watch Foundation (IWF), which does a fairly effective job of working with the government, police, public and ISPs to reduce the availability of “harmful content”, specifically child abuse images. In addition to a “notice and take down” service that alerts ISPs to any illegal content found on their systems, the IWF also operates a “hotline” for

46 Clips from a mainstream Indian film, *Girlfriend*, have been removed from YouTube as inappropriate material, in spite of the fact that the film was released and is available in video stores. One can speculate that the problem was the conjunction of the words Indian and lesbian, but since YouTube is a corporation there is no real way of knowing or challenging the rationale behind these decisions.

47 Miner, B. (1998) “Internet Filtering: Beware the Cyber Censors”. *Rethinking Schools* (online), Vol. 12, No. 4. Available from: [www.rethinkingschools.org/archive/12\\_04/net.shtml](http://www.rethinkingschools.org/archive/12_04/net.shtml)

48 Ibid.

49 ISPA UK response to the European Commission Public Consultation on Safer Internet and online technologies for children, June 2007. Available from: [ec.europa.eu/information\\_society/activities/sip/docs/public\\_consultation\\_prog/results/ispa\\_uk\\_a424247.pdf](http://ec.europa.eu/information_society/activities/sip/docs/public_consultation_prog/results/ispa_uk_a424247.pdf). The ISPA UK membership includes small, medium and large ISPs, cable companies, web design and hosting companies and a variety of other organisations. ISPA UK currently has over 190 members, representing around 95% of the UK internet access market by volume.

50 “UK leads the world in fight against online child abuse images”. 6 March 2006. Available from: [www.iwf.org.uk/media/news.archive-2006.158.htm](http://www.iwf.org.uk/media/news.archive-2006.158.htm)

the public to report potentially illegal online content. This initiative has been widely praised as an example of best practice self-regulation.<sup>51</sup> ISPA UK believes that informal networks and intelligence sharing are key components of combating the production and online distribution of illegal content, and collaborates with other entities such as the Child Exploitation and Online Protection (CEOP) Centre that works across the UK and internationally to tackle child sex abuse.

However, measures such as network level content blocking – when an ISP blocks access to a server not on its network – are worrying, as these are the same tools used by draconian regimes like China to block content. Thus freedom of speech on the

internet once again is precariously dependent on the whims of the state and corporate entities, and the public can only hope that it is being used only to block images of child pornography and not on a wider scale. The IWF has also been criticised on the grounds that it does not represent civil society interests, and only focuses on issues of child pornography. ISPA UK does not intend to address any other kind of “harmful content” or issues connected to it, as it determines that such issues are about public order, decency and morality and thus left to the state to determine. Its objective right now is to ensure a reasonably effective self-regulation model that minimises the availability of illegal online content, especially images of child abuse.

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51 Ibid.

## Conclusion: The line of control

Interventions in the content regulation debate that challenge the necessity of turning to the state and the law are obviously questioned firstly on the grounds of why the law is not enough to address the problem. Here we have examined the history of regulating expression/speech, and how it reveals that pornography and obscenity as categories have political and moral significance. In the contemporary world, sexual practices are policed and regulated in the name of controlling obscenity, "public order", "decency" and "morality". As discussed already, this is also evident in the regulatory regimes of countries in the second and third world, including China, India and Malaysia.

Nonetheless, it is not enough to point to the existence of loopholes in legal regulation, but also to point towards at least the genesis of options and alternatives to the law. Here we are not looking so much towards an alternative to the law, but rather towards turning away from an instrumentalist and constitutive notion of law, to regulation that is more organically formed from the practices of people. This could take the form of self-regulation within communities, or peer-to-peer monitoring practices that may be set up by the state or corporate bodies but are not ultimately controlled by them.

Though this may sound utopian, self-regulation might actually be the model that is most practical for the internet. Self-regulation manages to address the multitude of concerns related to content

Proud, aren't you, to display the beauty streaks your husband painted on your breast. When I stood before mine, his hands lost all control over the line.

*One wife to another*<sup>52</sup>

Everybody has a secret world inside of them. I mean everybody. All of the people in the whole world – no matter how dull and boring they are on the outside. Inside them they've all got unimaginable, magnificent, wonderful, stupid, amazing worlds. Not just one world. Hundreds of them, thousands maybe.

*Neil Gaiman, Sandman*

regulation: the freedom of expression, including sexual expression; disparate cultural standards and conflicting definitions in different jurisdictions; the technological hassles of controlling gateways and the political and administrative conundrums of controlling ISPs; the reality of cyber harassment and violence against women in cyberspace; and practices around sex and sexuality on the internet that cannot be contained within a heteronormative framework. Last but not least, it can help to nurture and sustain the existence of spaces for fantasy and unruly desires to speak, perform and be.

<sup>52</sup> *The Absent Traveller: Prakrit Love Poetry from the Gathasaptasati of Satavahana Hala*. Translated by Arvind Krishna Mehrotra, 1991.



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