

# Social and Legal Dimensions of Online Pornography

**Yasmin Ibrahim**

*University of Brighton, UK*

## INTRODUCTION

The dialectics between private pleasures and public needs raise various dilemmas, especially in the domain of the erotic and aesthetics. These are relative and abstract terms that can vary from individual to individual. However, in the public spaces of the Internet, the need for community standards of decency, acceptability, and taste often drag many of the debates about the Internet into a legal space, despite its description as a virtual sphere and the libertarian endeavours to keep it free from government and organizational control. While the Internet is a global resource it is often ruled through the laws of its physical embeddedness, and the global nature of the Internet also means that it is consumed and assessed through the differing cultural practices and norms that prevail in various parts of the world. The Internet as a communication and information platform is then subject to varying codes of ethical and moral conduct by different communities whether online or off-line. While the realm of the erotic is often equated with individual pleasure and psyche, the proliferation of pornography on a public platform raises social, moral, and legal concerns for communities, states, and governments. One significant element in the development of the Internet as a market place has been the availability of explicit sexual material, and these electronic networks continue to feed the pornography boom and facilitate new methods for consumers to interact with sexual content as “porn” (Spencer, 1999). These networks highlight the “privatising” potential of technology, especially in relation to sexual matters, while illuminating new forms of formal and informal exchanges (Jacobs, 2004, p.72; Spencer, 1999). The Internet, from being a rather unregulated enterprise a few years ago, has recently become the focus of multiple ethical concerns and debates and in some cases, it has amounted to moral panic (Bkardjieva & Feener, 2000; Cavanagh, 1999).

## BACKGROUND

The emergence of gaming culture and the simulation of reality through the design of gaming technology raises the age-old issues about image and representation; the effects it can have on our cognitive senses, and how these can, as a result, affect or mediate our ability to reason and engage with interactive technology. These questions become ever

more salient with regard to online pornography or sexually explicit material. The distinctive element about online porn is its use of multimedia, its ubiquity, and consumer access to it. Due to the anonymity of the Internet and the difficulties in regulating this transnational and anonymous medium, transgressive forms of entertainment, including pornography, have flourished online. According to Spencer (1999), the Internet is structured at one level around the economics and politics of consumption, at another level around the politics of individuality, and at another around communitarian concerns (p. 242).

Online pornography has been acknowledged as a relatively new form of pornography. Authors Stack, Wasserman, and Kern (2004) point out that there were about 900 pornography sites on the Web in 1997 and just a year later, the figure had burgeoned to between 20,000 to 30,000 sites, with revenues reaching US\$700 million by the late 1990s. Its growth has been attributed to the “triple a-engine” of accessibility, affordability, and anonymity (Cooper & Griffin-Shelly, 2002, p. 11). Fisher and Barak (2001) agree that “spectacular growth in availability of sexually explicit material on the Internet has created an unprecedented opportunity for individuals to have anonymous, cost-free, and unfettered access to an essentially unlimited range of sexually explicit texts, moving images and audio materials” (p. 312). This increased accessibility and convenience, as well as the exploiting of e-commerce by pornographers, means that the Internet makes it easier for individuals to come into contact with porn. Some suggest that this has enabled the normalization of practices that may have otherwise been stigmatized in traditional markets, leading to a mainstreaming of cyberporn through its visibility and presence (See Cronin & Davenport, 2001, p.35; O’Toole, 1998). In the last few years, undoubtedly, there has been increasing heterogeneity and decentralization on the Internet as a wider variety of producers and consumers participate in the making of globalized markets, and a contemporary notion of pornography should capture such networked sexual agency and politics (Jacobs, 2004).

## MAIN FOCUS

Diane Russell (1998) defines sexually explicit material as that which “combines sex and/or the exposure of genitals with abuse or degradation in a manner that appears to endorse,

condone or encourage such behaviour” (p. 3). James Check (1985), on the other hand, terms pornography as “sexually explicit material” without further qualifying it. The Internet poses new questions about the reality, regulation, definition, and availability of pornography, as it has dramatically increased the accessibility of pornography, and of violent pornographic images in particular (Gosset & Byrne, 2002). The danger of pornography to adults is much more disputed, and often the arguments for pornography include freedom of speech and the expression of civil liberties, the right to choose, and the right to privacy (Kuipers, 2006).

Nevertheless, what constitutes pornography is often contested in societies. While in terms of ethics adult pornography is a contested terrain, child pornography, on the other, is almost universally prohibited. But in the online environment, a digital image can be manipulated and altered and consequentially it may be difficult to clearly define the distinction between adult and child images. Jenkins (2001) posits that child pornography can be accessed in various ways in the online environment, where it can be distributed via credit-card access Web sites, bulletin boards, and encrypted e-mails, as well as through peer-to-peer file sharing. These are constitutive of not only the new configurations between producers and users, but also of new forms of abuse (Oswell, 1999, 2006, p. 253).

A report by the Washington-based research and policy group, Third Way, highlights how this accessibility and presence can present new problems for Internet users, particularly children (cf. Whitehead, 2005). According to the report, only 3% of more than 450 million individual porn Web sites ask for proof of age. Additionally, a majority of these Web sites do not carry any warning of adult content, and nearly three-quarters display free teasers of pornography images on their homepages; it is therefore likely that children may accidentally come across a porn site while doing homework or surfing the Web. While child pornography is almost universally illegal, adult pornography is prevalent and easy to access on the Web. Whitehead (2005, p. 18) contends that unlike off-line pornography, which can be curbed through measures imposed by the community such as zoning laws and curfews, the politics of online pornography is very different, as online porn, through its technology, can be seen to be “everywhere and nowhere.” This has meant the loss of power for parents to control what their children come into contact with.

The status of a photograph as a verifiable fact continues to linger with the Internet despite the radical impact of digital technology on photographic practice. This has been problematic as digital technology can manipulate and distort images, thus further compounding the relationship between reality and representation. David Oswell (2006) describes this as the ethics of virtual observation, where the referentiality of the image in representing the scene of abuse that is real, and our ethical response to it, is predicated by our

perceptions of reality (p. 258).

In discussing the ethics of the virtual, Oswell (1999, 2006) observes that there are often epistemological inconsistencies and disjuncture between knowledge, law, and sociological perspectives. In the context of the US and UK, there is often an implicit understanding that child pornography is the record of actual child sexual abuse, and this has become widely used in legal discourses and public discourses of law enforcement charities and child protection agencies (Williams, 1991, p. 88).

According to Tate (1990), while child pornography has been a problem for decades, until relatively recently it has been a hidden crime (p. 1). In the UK, the principal legislation that addresses the indecent images of children is the Protection of Children Act 1978 (PoCA), which differentiates between different mediums representing the abuse. Photographic images are the subject of this specific legislation that focuses on child pornography, whereas all other mediums are treated as obscene articles and are subject to general obscenity legislation (Gillespie, 2005).

The ontological status of visual depiction has legal ramifications both in the context of the UK and the US. In the US, the Child Pornography Prevention Act (CPPA) of 1996 addresses the legal implications of visual depiction. In 2002, a ruling by the US Court of Appeals for the Ninth Circuit found that the CPPA ruled solely on the image without considering the set of contextual factors catered for in an earlier ruling in 1973, and in view of this, the CPPA’s emphasis on the image was “overbroad” and “unconstitutional” (Oswell, 2006). It also reiterated that the proximity or distance of a photograph from the scene of the actual event is an important criterion in the legality of child pornographic images. The court also overruled the argument in the CPPA that virtual child pornography is “intrinsically related” to the sexual abuse of children as the link between the two is contingent and indirect. Harm here does not necessarily accrue from the image but is dependent on the potential for subsequent criminal abuse. The ruling showed the court’s unease with the assumption that the image takes up the position of the “modest witness” whose account of the scene is “unadorned, factual and compelling” (Haraway, 1997, p. 26).

Virtual child pornography may have no link to crime or sexual abuse that has actually been committed, and in the same vein, the virtual image has no necessary link to future cases of abuse. As with child pornography, virtual child pornography cannot be prohibited on the basis of its possible harm to some children or the possibility some children may be exposed to it. In this sense, the CPPA defies the “principle that speech within the rights of adults to hear may not be silenced completely in an attempt to shield children from it” (Oswell, 2006, p. 251). In April 2002, the US Supreme Court found the Child Pornography Prevention Act (CPPA) unconstitutional. Though it remains illegal to make, show, or possess sexually explicit material of children, the court

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