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Responsible Pornography: Respecting Women's Interests and Rights in the Industry

Cover Page Footnote
Deborah Tuerkheimer; Jesse Dyer
RESPONSIBLE PORNOGRAPHY: RESPECTING WOMEN'S INTERESTS AND RIGHTS IN THE INDUSTRY

INTRODUCTION

Pornography is a hotly debated topic among men and women, from radical feminists to male chauvinists. Many believe that pornography is damaging to women by eroticizing subordination and damaging to children by prematurely exposing them to sexual content. Newly proposed changes to existing laws address these concerns, providing for a less exploitative pornography industry. This comment briefly describes the criticisms as well as the potential benefits pornography can provide. Potential changes might include the introduction of the female pornographer, the revision of age restrictions in the context of pornography, and the implementation of zoning laws in internet pornography.

II. BACKGROUND

A. Individual Harm

Many feminists believe that women who participate in pornography are harmed emotionally by being physically exploited and subjected to sexualized violence.¹ As the frontrunner of the Dominance Theory, Catharine MacKinnon argues that "Sex [is] forced on real women so that it can be sold at a profit and forced on other real women."² MacKinnon believes that by "sexualize[ing] rape, battery, sexual harassment, prostitution,

and child sexual abuse; [pornography] thereby celebrates, promotes, authorizes, and legitimizes them.” Although great efforts are being made to diminish the prevalence of male-oriented pornography, a vast majority of pornographic films are produced by men.4

B. False Consciousness

The concept of false consciousness is often cited by anti-pornography advocates. It is the idea that women sometimes “act against their own self-interest because they have internalized male norms and standards as part of their consciousness. For example, one might regard a woman who chooses to have breast implants, despite having healthy breasts, as doing so because of ‘false consciousness.’”5 In this way, the “choice” made by a woman who participates in pornography is not a meaningful one.

C. Benefits for the Viewer

Proponents of pornography argue that pornographic films have undiscovered social value. They believe that sexual liberation is a form of self-fulfillment, self-awareness, and capacity for pleasure. Susie Bright, a sex therapist, accounts that women are less in touch with their own sexual selves.6 She once observed that, “In many years of teaching and talking sex, I have never had a man come up and say, ‘I don’t know where my penis is, and I’ve never had an orgasm.’”7

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3 Id. at 171.
7 Id.
Psychologists attest that the healthy couple may watch pornography to stimulate sexual desire. They also state that sexually explicit films are often helpful in the treatment of people with sexual problems. Pornography has the potential to stimulate sexual fantasy in couples with sexual problems because a "rebellious sex life within the bounds of a couple can be the cement of marriage." From this perspective, pornography can be utilized in ways that benefit women.

III. FUTURE DEVELOPMENTS IN PORNOGRAPHY

Hopefully, future developments will address pornography's problems while its potential benefits fully come to fruition. This section will discuss certain upcoming movements, including the emergence of female-created pornography, the revision of current consent laws, and modifications to website domain names. All of these proposals will improve the current state of pornography so that women can fully enjoy in its benefits.

A. The Female Pornographer

Many pornographic films center on male pleasure and eroticism, while the female caters to the male's needs. Although this may be an enjoyable aspect of sex for many, it is not a complete portrayal of sexuality. The internet is commonly criticized as being a harbor for child pornography and snuff films; it can, however, provide an opportunity for women to "express their sexual desires free from patriarchal constraints." It "may prove to be a sexually liberating medium for women, and subsequently become a mechanism to broadly disseminate female-
centered and/or female-created pornography that depicts women’s sexuality from a feminist perspective.”\textsuperscript{13} Mary Becker, a relational feminist, has theorized that our culture overvalues masculine qualities and undervalues feminine qualities.\textsuperscript{14} Becker believes that women must seek their own sexual fulfillment, as opposed to seeking only sexuality that is desired by men.\textsuperscript{15}

While the concept of pornography by women, for women may seem novel, many women are already taking advantage of this lucrative and liberating opportunity. Candida Royalle, a pornography director, is in business to show that it is possible to produce non-sexist, life-enriching, explicit porn that has integrity.\textsuperscript{16} Most notably, actors in Royalle’s films are required to wear condoms.\textsuperscript{17} Royalle also provides a more feminine depiction of sexuality, focusing on “sensuality, tenderness, and mutual respect.”\textsuperscript{18} These films lack gratuitous sexual footage, and in them, women are shown as being ‘in charge’ of their sexual destinies.\textsuperscript{19}

Evidence exists to show that female-produced pornography depicts sexual intercourse differently than mainstream pornography. The British Content Analytic Assessment Tool compares pornographic videos in certain delineated categories. It found that male directors were more likely to portray male actors ejaculating on the female partner’s face whereas the films directed by women provided more instances of females situated on top of their partners and facing them during sexual activity.\textsuperscript{20} Wicked Pictures, whose Vice President of Special Projects is Joy King,

\begin{itemize}
\item \textsuperscript{13} Id.
\item \textsuperscript{14} Mary Becker, Patriarchy and Inequality: Towards a Substantive Feminism, 1999 U. CHI. LEGAL F. 21, 47 (1999).
\item \textsuperscript{15} Id. at 50-51.
\item \textsuperscript{16} Candida Royalle, Porn in the USA, in Feminism and Pornography 540 (Drucilla Cornell ed., 2000); See also Candida Royalle, http://www.candidaroyalle.com (last visited April 25, 2012).
\item \textsuperscript{17} Candida Royalle, Porn in the USA, in Feminism and Pornography 540 (Drucilla Cornell ed., 2000).
\item \textsuperscript{18} Id. at 549.
\item \textsuperscript{19} Britton, supra note 4, at 215.
\item \textsuperscript{20} Id. at 214-15.
\end{itemize}
Jenna Jameson’s former manager, allows women to choose their own partners. Additionally, King personally watches every weekly video. She said, “If I’m offended by it, I am certainly going to say something and try to have it taken out of the movie.” King has attested to the fact that there is a “whole niche market that caters to women,” showing that there is a demand for female-produced pornography.

The movement toward creating more woman-centered porn would be supported by sex-positive feminists because it works to explore female sexuality. Additionally, third-wave feminists “have embraced sexual pleasure as a fundamental aspect of their feminist platform.” Feona Attwood attests that female producers of pornography will challenge existing gender norms. Atwood believes that female participation in pornography will help change societal conceptions of sexuality by increasing the visibility of female perspectives on sexual relationships and by portraying female desire. Female-centered pornography offers society a fresh perspective on sex; hopefully, a perspective that women can embrace.


23 Id.

24 Id.


26 Bowman et al., supra note 5, at 399.

27 Id. at 187.


29 Id.
B. Higher Age of Consent Laws for Pornographic Participation

In spite of pornography's potential for women, it has a nasty habit of targeting young girls. Even women who work in the pornography business have observed that girls who still attend high school are not old enough to work in pornography. Stormy Daniels, a pornographic actress, does not agree with girls of this age working in the industry because they do not "think long-term enough." In an interview, Ms. Daniels stated, "I didn’t think long-term enough when I was eighteen – you’re just not ready. I was twenty-three when I did my first movie and that five years makes a huge difference."31

A practical and noncontroversial avenue for improvement in this regard would be to simply increase the age of consent for those whose sex acts are being recorded. A legal world that provides an increased age of consent (and hopefully, an increase in maturity) for individuals who are recorded having sex would ensure that producers, who tend to be older, guard the age of the participants more seriously. The state is allowed to construct age classifications as long as the classification is rationally related to a legitimate state interest.32 “[A] State may rely on age as a proxy for other qualities, abilities, or characteristics that are relevant to the State’s legitimate interests. That age proves to be an inaccurate proxy in any individual case is irrelevant.”33 An age classification is presumptively rational because they are so prominent in American society; they control who may vote.34

30 Calvert, supra note 25, at 281 (quoting Stormy Daniels).
31 Id. at 281-82 (quoting Stormy Daniels).
33 Id. at 84.
marry,\textsuperscript{35} consume alcohol,\textsuperscript{36} who may enlist in the military,\textsuperscript{37} rent a car,\textsuperscript{38} or run for office.\textsuperscript{39}

The aim will be that pornographic actors continue to enjoy choice and sexual liberty while making such decisions at an age that comes with more wisdom and less impulsivity. Adult women will, theoretically, have less naïveté than their younger counterparts, and be in a better position to make informed decisions regarding their bodies and their careers. Such policy justifications are premised on the same justifications that alcohol limitations rely on. As recently as 2007, the Illinois Appellate Court declared that the Illinois public policy of preventing alcohol consumption by minors is to protect them from the dangers inherent in consuming alcohol.\textsuperscript{40} Other states provide that age restrictions are meant to protect those persons who are “incompetent to handle the effects of alcohol”\textsuperscript{41} and “to protect minors’ health and safety interests against the effects of alcohol.”\textsuperscript{42} Justice Morgan of the Washington Appellate Court said it best when he stated that age restrictions on alcohol address the fact that “persons under 21 [sic] years of age are neither physically nor mentally equipped to handle the consumption of intoxicating liquor.”\textsuperscript{43} The State of Washington has decided that age restrictions on alcohol serve, in part, to deter commercial vendors of alcohol from selling alcohol to minors by holding them accountable for determining the age of their customers.\textsuperscript{44}

In the same way, an older age restriction for pornography will protect more people by ensuring that pornographers and producers alike will be held accountable in determining the partici-
ator's age before filming. Adults are criminally sanctioned for contributing to the delinquency of minors when allowing them access to alcohol.\footnote{235 ILL. COMP. STAT. 5/6-20(a) (2010).} A pornography age restriction will enable the law to punish those adults who contribute to the delinquency of minors by allowing them to participate in pornography.

In statutory rape cases, courts have addressed whether those meant to be protected by the laws should also be punished for violations. In \textit{Michael M. v. Superior Court}, the Supreme Court decided that a statutory rape law meant to prosecute only males did not violate the equal protection clause because the purpose of the law was to deter teenage pregnancies, which affects young mothers more than young fathers.\footnote{Michael M. v. Superior Court, 450 U.S. 464, 472-75 (1981).} Similarly, pornography age restriction laws should punish only producers, not the underage actors. It would be counter-productive to create a law to protect young peoples’ interest in safety and health by prosecuting or penalizing them under a law that is cognizant of the fact that they do not always make the best choices.


\begin{enumerate}
\item reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or
\item advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains
\end{enumerate}
(i) an obscene visual depiction of a minor engaging in sexually explicit conduct;

(ii) or a visual depiction of an actual minor engaging in sexually explicit conduct.\footnote{Id. at § 503.}

Thus, the federal government has already implemented measures to ensure a minimum age of eighteen to be a pornographic actor, whether directly or indirectly through a desire to criminalize the manufacture of child pornography. Despite this federal effort, certain state laws create an age of consent lower than eighteen.\footnote{Worldwide Ages of Consent, AVERT: AVERTING HIV AND AIDS http://www.avert.org/age-of-consent.htm (last visited Mar. 10, 2012).} In sum, the movement to safeguard a minimum age for pornographic actors is already in place, if not by the states, then by the federal government.

C. Accessibility and Children

The feminist critique of pornography is closely intertwined with its availability on the internet.\footnote{See Amy Adler, All Porn All the Time, 31 N.Y.U. REV. L. & SOC. CHANGE, 695 (2007).} Prevalence on the internet leads to the consumption of pornography by children.\footnote{See Dr. Michele L. Ybarra and Kimberly J. Mitchell, Exposure to Internet Pornography among Children and Adolescents: A National Survey, 8 CyberPsychology & Behavior 437 (Oct. 2005).} Most in society acknowledge this as a problem because young people are taking on the challenge of making choices about their sexual lives at an age before they are mature enough to do so.

The easy access to pornography by society’s youth is a main concern among feminists and Congress-people alike.\footnote{U.S. Dept. of Justice, Attorney General’s Commission on Pornography (July 1986); see also Adler, supra note 47.} The Attorney General’s Commission on Pornography in 1986 acknowledged that pornography is harmful to children, and while reasonable minds may disagree about the value of pornography,
almost all reasonable minds will agree that children should not be exposed to it.53

In order to decrease access to such sites and equip parents with more control to limit access, some argue for the implementation of .xxx websites, which would provide for website URLs ending in .xxx.54 Although pornography has been defended on constitutional grounds such as privacy and freedom of speech, the U.S. Supreme Court has authorized the government to make "time, place, and manner" restrictions on speech.55 In most cases, these restrictions take the form of protest permits or zoning laws, restricting protests in certain places,56 or restricting adult bookstores in certain neighborhoods.57 It is an easy leap to assert that adult websites be restricted to certain "zones" of the internet.

In recent years, the internet has skyrocketed in popularity and availability. Due to the increasing access to illicit content on the internet, children's access to pornography has been steadily climbing. The current situation calls for a change in the fabric of the internet and those websites that feature pornographic videos. The regulation of .xxx websites will enable parents to more adequately monitor children's access to the internet. So many internet pornographic sites exist that neither parents nor schools have the ability to block every single one. The adaptation of .xxx websites will assist greatly in the effort to reduce child access to pornography.

Drucilla Cornell, a Professor of Political Science at Rutger's University, believes that "[t]he purpose of zoning is precisely to keep pornography safely resting in its jackets, out of the view of those who seek to inhabit or construct an imaginary domain in-

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54 Bowman et al., supra note 5, at 401.
dependent of the one it offers." ICANN (Internet Corporation for Assigned Names and Numbers) governs the domain name system and provides generic top level domains such as "\texttt{.org}, \texttt{.com}" and "\texttt{.net}," to those who wish to start a website. As of March 18, 2011, ICANN has approved a registry agreement with ICM Registry for websites ending in a \texttt{.xxx} URL. ICM Registry allows its clients to create websites with a \texttt{.xxx} URL. In making this determination, ICANN’s Board obligated ICM “to promote the development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parent control of access to content.” Thus, the proliferation of \texttt{.xxx} website is well under way, as explicitly authorized by ICANN.

### IV. Conclusion

Although there are real problematic issues surrounding pornography, future progression will hopefully be favored by feminists in general. With an increase in female producers of pornography showcasing the female perspective of sex, and greater regulation of access to and participation in explicit films,

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59 See What Does ICANN Do?, \textsc{Internet Corporation for Assigned Names and Numbers}, http://www.icann.org/en/about/participate/what (last visited Apr. 25 2010).
60 Draft Rationale for Approving Registry Agreement with ICM’s for .XXX sTLD, \textsc{Internet Corporation for Assigned Names and Numbers} (Mar. 18, 2011), http://www.icann.org/en/groups/board/documents/resolutions-18mar11-en.htm#5.
pornography's detrimental affect on young people and women will diminish while its potential for all adults will gain steam.

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