



## A CRITICAL ANALYSIS OF THE REGULATION OF PORNOGRAPHY, WITH PARTICULAR ATTENTION TO THE PROTECTION OF ADOLESCENTS

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### Introduction

This contemporary issue results from modern pornography being comprised of ‘commercially produced narratives’<sup>1</sup> directed for ‘voyeuristic tastes’,<sup>2</sup> available on a platform difficult to regulate. The Internet is real life, not just a ‘side-line... or an escape’.<sup>3</sup> Whilst measures have been taken offline (i.e. restrictions for buying pornographic magazines, watershed on television, certifying films)<sup>4</sup> ‘the explosion of [sexually explicit internet material]... changes all that profoundly’.<sup>5</sup> However, the focus of this work is not adult access, or analysing the moral minefield of regulating pornography.

The expeditious development to modern pornographic material has created an assumption that pornography’s ‘present prominence’<sup>6</sup> comes from a gradual progression without investigation into how pornography’s ‘history is related to its contemporary manifestations’.<sup>7</sup> Pornography originates from the French *pornographie*, derived from Greek *pornographos* (*porne*: “prostitute”; *graphein*: “to write”). Thus, *pornographos* came to mean “depicting prostitutes”- a literal definition of pornography.

It is still to be determined what pornography will mean and what relevance the above literal translations hold. Providing a definition is precarious for encompassing its true meaning

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<sup>1</sup> Lyombe Eko, *The Regulation of Sex-Themed Visual Imagery* (New York, Palgrave MacMillan 2016), 52

<sup>2</sup> *ibid*

<sup>3</sup> David Cameron, ‘The internet and pornography: Prime Minister Calls for Action’ (22nd July 2013) <[www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action](http://www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action)> accessed 19th April 2019

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> Susan Gubar and Joan Hoff, *For Adult Users Only: The Dilemma of Violent Pornography* (Indiana University Press 1989), 17

<sup>7</sup> *ibid*

(without being both overbroad and under broad) is 'perhaps... impossible-or at least not yet accomplished'.<sup>8</sup> A US judge claimed that whilst he was unable to define pornography, he would recognise it when shown.<sup>9</sup> For the purposes of this work the definition provided by Section 15 of the Digital Economy Act 2017 will be adopted.

The major issue surrounding the consumption of Sexually Explicit Internet Material (SEIM) is:

a major phenomenon in contemporary society... sexual capitalism: the billion-dollar, globalized, industrial production, distribution, commercialization, and consumption of explicit, sexual imagery.<sup>10</sup>

This originated from the Internet being 'era-changing'.<sup>11</sup> Perhaps historically there was no harm in adolescents possessing magazines, yet SEIM cannot be equated to these photos. Adolescents now can access more hardcore material. This paired with ease of access and ability of private viewing has been enabled by the common possession of tablets and smartphones. Whilst the social reformation created a more liberal society, 'it is as if the sexual revolution of the 1960s and 1970s led us from the beach into the water and now, suddenly, the coastal shelf has fallen away and we are drowning in porn.'<sup>12</sup> Another generational difference is that now 'watching hard-core pornography is in danger of becoming a rite of passage'.<sup>13</sup>

The legal controls over pornographic material were 'promulgated nearly half a century ago'<sup>14</sup> and thus are 'inadequate'<sup>15</sup> facing 'the challenge of the internet age'.<sup>16</sup> SEIM 'cannot, in practice, be controlled by our existing laws',<sup>17</sup> thus the implementation of the Digital Economy Act.

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<sup>8</sup> James Lindgren, 'Defining Pornography' (1993) 141(4) *University of Pennsylvania Law Review* 1153, 1217

<sup>9</sup> *Jacobellis v Ohio* 378 US 184 (1964) per Justice Stewart

<sup>10</sup> Eko, n1

<sup>11</sup> Cameron, n3

<sup>12</sup> Rafael Behr, 'Generation X-Rated' (2013) *New Statesman* <[www.newstatesman.com/sci-tech/sci-tech/2013/03/generation-x-rated-owns-net-can-politicians-stop-children-watching-porn](http://www.newstatesman.com/sci-tech/sci-tech/2013/03/generation-x-rated-owns-net-can-politicians-stop-children-watching-porn)> accessed 17<sup>th</sup> April 2019

<sup>13</sup> Cameron, n3

<sup>14</sup> Andrew D. Murray, 'The Reclassification of Extreme Pornographic Images' (2009) 72(1) *The Modern Law Review* 73, 73

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> Home office, 'Consultation: On the possession of extreme pornographic material' (August 2005), 1

Chapter 1 will address the current legislation: from the Obscene Publications Act 1959 to the Online Pornography (Commercial Basis) Regulations 2019, with a particular focus on Part 3 of the DEA restricting adolescent access to SEIM. This progressive legislation is an improvement on the 'patchwork of individual schemes'<sup>18</sup> which precede it. Chapter 2 explores three perspectives on pornography (conservative, liberal, feminist), allowing the work to assess the restrictions and highlight how adolescents access differs to adult access. Chapter 3 examines the scientific research thus far conducted into pornography consumption, with focus on adolescent SEIM viewers. This will aid a constructive evaluation of the necessity and justification of regulation. Contemporary pornography's main issue is its distinction to what it supersedes. Evaluating SEIM's impact can improve understanding of the challenges faced by identifying changes to: sexual attitudes and sexual risk behaviour; social development; body image; mental health; addiction; and sexual violence. Chapter 4 identifies issues of jurisdiction, moralism and policing. Practicality is the greatest barrier to regulation, for legislation can only be as effective as its implementation and enforcement allows. 45% of adolescents say porn is their primary source of sexual education;<sup>19</sup> 71% having imitated what they viewed in their own sex-life;<sup>20</sup> however, 55% recognise that porn depicts sex as non-loving and non-consensual,<sup>21</sup> and 51% believe it focuses on male pleasure alone.<sup>22</sup>

Whilst the law is not 'a magic bullet'<sup>23</sup> it is 'the start of good things'.<sup>24</sup>

## **1 The Legislation**

Legislation covering pornographic material has been scattered, in attempts to keep up with changing moral standards and the rise of the internet.

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<sup>18</sup> TJ McIntyre, 'Internet Censorship in the United Kingdom: National Schemes and European Norms' in Lilian Edwards, *Law, Policy and the Internet* (Hart Publishing 2018), 34

<sup>19</sup> Moya Lothian-McLean, 'How do your porn habits compare with young people across Britain?', *BBC* (14<sup>th</sup> March 2019) <[www.bbc.co.uk/bbcthree/article/bb79a2ce-0de4-4965-98f0-9ebbcfcc2a60](http://www.bbc.co.uk/bbcthree/article/bb79a2ce-0de4-4965-98f0-9ebbcfcc2a60)> accessed 22<sup>nd</sup> April 2019

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

<sup>23</sup> Liz Longhurt quoted in GetReading, 'Justice for Jane as bill becomes law' (7<sup>th</sup> June 2013), <[www.getreading.co.uk/news/local-news/justice-jane-bill-becomes-law-4252311](http://www.getreading.co.uk/news/local-news/justice-jane-bill-becomes-law-4252311)> accessed 20<sup>th</sup> April 2019

<sup>24</sup> *ibid*

### Obscene Publications Act 1959

The OPA aimed to 'strengthen the law concerning pornography'.<sup>25</sup> Section 1 entrenches the Hicklin test for obscenity.<sup>26</sup> An article<sup>27</sup> is considered obscene if it is likely to 'deprave and corrupt'<sup>28</sup> (which is arguably Mill's harm principle).<sup>29</sup> However, there is an unlikelihood of being depraved or corrupted when the material has been actively sought.<sup>30</sup> Obscenity testing may be aided by 'the opinion of experts as to... [its] merits'.<sup>31</sup> The "public good" defence has been successfully utilised<sup>32</sup> with academic and literary critics testifying as to the work's merits. Obscenity however has been described as having 'no place in a modern liberal society'.<sup>33</sup>

### Criminal Justice and Immigration Act 2008

Section 63 covers the possession of extreme pornographic images: an image 'produced solely or principally for the purpose of sexual arousal'.<sup>34</sup> An "extreme image" requires portrayal to be 'in an explicit and realistic way',<sup>35</sup> encompassing acts which: 'threaten a person's life'<sup>36</sup>; 'results, or is likely to result, in serious injury to a person's anus, breasts or genitals'<sup>37</sup>; 'involves sexual interference with a human corpse'<sup>38</sup>; 'an act of intercourse or oral sex with an animal'<sup>39</sup> where a reasonable person would believe the animals in the image to be real.<sup>40</sup> Or it can be an image which involves the non-consensual penetration<sup>41</sup> of: 'a person's vagina, anus or mouth by another with the other person's penis'.<sup>42</sup> An extreme pornographic image is defined as 'grossly offensive, disgusting or otherwise of an obscene character'.<sup>43</sup>

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<sup>25</sup> Long Title, Obscene Publications Act 1959

<sup>26</sup> R v Hicklin (1868) LR 3 QB 360

<sup>27</sup> n25, s1(2): anything to be read or looked at: sound recordings, film etc

<sup>28</sup> *ibid*, s1(1)

<sup>29</sup> To be discussed in chapter 2

<sup>30</sup> Peter Beaumont and Nichi Hodgson, 'Obscenity law in doubt after jury acquits distributor of gay pornography' *The Guardian* (7<sup>th</sup> January 2012) <[www.theguardian.com/law/2012/jan/07/obscene-publications-act-future-doubt](http://www.theguardian.com/law/2012/jan/07/obscene-publications-act-future-doubt)> accessed 30<sup>th</sup> April 2019

<sup>31</sup> n25, s4(2): 'literary, artistic, scientific or other merits'.

<sup>32</sup> R v Penguin Books [1961] Crim LR 176

<sup>33</sup> David Allen Green, 'Fisting on Trial' *New Statesman* (5<sup>th</sup> January 2012) <[www.newstatesman.com/blogs/david-allen-green/2012/01/peacock-trial-fisting](http://www.newstatesman.com/blogs/david-allen-green/2012/01/peacock-trial-fisting)> accessed 30<sup>th</sup> April 2019; Liberalism is to be considered in chapter 2.

<sup>34</sup> Criminal Justice and Immigration Act 2008, s63(3); The image itself and the context in which the images occur are to be considered in such assumptions.

<sup>35</sup> *ibid*, s63(5A)(a) demands reference to s63(7)

<sup>36</sup> *ibid*, s63(7)(a)

<sup>37</sup> *ibid*, s63(7)(b)

<sup>38</sup> *ibid*, s63(7)(c)

<sup>39</sup> *ibid*, s63(7)(d)

<sup>40</sup> *ibid*, s63(5A)

<sup>41</sup> *ibid*, s63(7B)(a): 'a continuing act from entry to withdrawal'

<sup>42</sup> *ibid*, s63(7A)(a)

<sup>43</sup> *ibid*, s63(5A)(b)

The inclusion of an extreme pornography provision was consequential to campaigns following Jane Longhurst's murder.<sup>44</sup> The victim's mother created a petition which accumulated over 50,000 signatures<sup>45</sup> was supported by the Home Secretary David Blunkett.

The group 'Backlash' formed in opposition to the legislation, claiming to defend 'freedom of sexual expression among consenting adults in the UK'.<sup>46</sup> Differing from the OPA, the CJIA 'shifts the burden on to individuals in possession'.<sup>47</sup> Those in possession of images depicting legal and consensual adult sexual activity have been acquitted.<sup>48</sup>

### Digital Economy Bill: Part 3 (ss15-25)

Part 3 of this Bill saw cross-party collaboration<sup>49</sup> with MPs 'very often [working] in unison'.<sup>50</sup> The House acknowledged that 'the digital age brings with it responsibilities'<sup>51</sup> with Part 3 recognising that. Concerns were raised regarding the narrowing bounds compared to original intentions.<sup>52</sup> The government accepted an amendment which requested a requirement for the Secretary of State to produce a report on the 'impact and effectiveness of this regulatory framework',<sup>53</sup> in particular consulting on definitions to be used.<sup>54</sup> Getting the right balance is imperative as the legislation could end up 'treading a very thin line between protection and censorship'.<sup>55</sup>

The age verification is not determined by legislation, thus allowing legislation to keep up to date with technology as advancements will not require further legislation. There is an issue, however, on how to prevent the verification system from being 'easily bypassed',<sup>56</sup> whilst not

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<sup>44</sup> David Sapsted, '30 years jail for killer necrophiliac'. *The Telegraph* (2004) <[www.telegraph.co.uk/news/uknews/1453475/30-years-jail-for-killer-necrophiliac.html](http://www.telegraph.co.uk/news/uknews/1453475/30-years-jail-for-killer-necrophiliac.html)> accessed 3rd February 2019

<sup>45</sup> BBC News, 'Anti-Porn Petition Handed to MPS' (2005) <[news.bbc.co.uk/1/hi/england/4460828.stm](http://news.bbc.co.uk/1/hi/england/4460828.stm)> accessed 25<sup>th</sup> February 2019

<sup>46</sup> <[www.backlash.org.uk/](http://www.backlash.org.uk/)> accessed 27<sup>th</sup> April 2019; a main issue with regulating such an area.

<sup>47</sup> Myles Jackman, 'Extreme porn trial: consensual sex and the state' *The Guardian* (8<sup>th</sup> August 2012) <[www.theguardian.com/law/2012/aug/08/extreme-porn-trial-simon-walsh](http://www.theguardian.com/law/2012/aug/08/extreme-porn-trial-simon-walsh)> accessed 30<sup>th</sup> April 2019

<sup>48</sup> Nick Cohen, 'Simon Walsh: the vindictive persecution of an innocent man' *The Guardian* (12<sup>th</sup> August 2012) <[www.theguardian.com/commentisfree/2012/aug/12/nick-cohen-simon-walsh-cps-pornography-prosecution](http://www.theguardian.com/commentisfree/2012/aug/12/nick-cohen-simon-walsh-cps-pornography-prosecution)> accessed 30<sup>th</sup> April 2019

<sup>49</sup> HC Deb 26 April 2017, vol 624, col 1130

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

<sup>52</sup> *ibid*; 'provisions have grown beyond the narrow bounds of age-verification during the Bill's passage'

<sup>53</sup> *ibid*, col 1126

<sup>54</sup> *ibid*

<sup>55</sup> HC Deb 26 April 2017, vol 624, col 1130

<sup>56</sup> *ibid*

becoming 'far too complicated and intrusive'.<sup>57</sup> The key phrase to consider is 'privacy and proportionality'.<sup>58</sup>

The paramount importance placed on the Bill is illustrated by its discussion by government for years prior its implementation,<sup>59</sup> as well as its mention in the Queen's speech for the State Opening of Parliament in 2016.

### Digital Economy Act 2017

After the Bill completed its passage through Parliament and received Royal assent, it became the Digital Economy Act, which succeeded the 2010 Act of the same name, much of which had never come into force. The DEA 2017 is contravened if pornographic material is made available on a commercial basis to under 18s.<sup>60</sup> Material accessed in absence of charge does not equate to it not being made available on a commercial basis.<sup>61</sup> An ancillary service provider includes a person who advertises on a non-complying site.<sup>62</sup> It does not however apply to those offering an on-demand service.<sup>63</sup>

Material is considered pornographic if: it has been given an R18 certificate;<sup>64</sup> it is reasonable to assume from its nature that its inclusion was among the reasons why the certificate was an R18;<sup>65</sup> a certificate has not been applied but it is reasonable to believe it would be R18 classified;<sup>66</sup> it is 'produced solely or principally for the purposes of sexual arousal';<sup>67</sup> or it is material the video works authority has determined unsuitable for a classification certificate.<sup>68</sup> "18 certificate" refers to material which is only suitable for viewing by those who have attained the age of 18.<sup>69</sup> Material is classed as a series of visual images shown as a moving picture (with or without sound)<sup>70</sup>; a still image, or series of, either with or without sound,<sup>71</sup> or

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<sup>57</sup> *ibid*

<sup>58</sup> *ibid*

<sup>59</sup> Matthew Holehouse, 'David Cameron threatens new age verification law in war on porn' *The Telegraph* (2015) <[www.telegraph.co.uk/news/politics/david-cameron/11771861/David-Cameron-threatens-new-age-verification-law-in-war-on-porn.html](http://www.telegraph.co.uk/news/politics/david-cameron/11771861/David-Cameron-threatens-new-age-verification-law-in-war-on-porn.html)> accessed 3rd Feb 2019

<sup>60</sup> Digital Economy Act, s14

<sup>61</sup> *ibid*, s14(3)

<sup>62</sup> *ibid*, s21(5)(b)

<sup>63</sup> *ibid*, s14(6)

<sup>64</sup> *ibid*, s15(1)(a)

<sup>65</sup> *ibid*, s15(1)(b)

<sup>66</sup> *ibid*, s15(1)(c)

<sup>67</sup> *ibid*, s15(1)(d)

<sup>68</sup> *ibid*, s15(1)(g)

<sup>69</sup> *ibid*, s15(2)

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

sound alone.<sup>72</sup> One thing that stands out is the repetition of the material being produced solely or principally for the purposes of sexual arousal'.<sup>73</sup>

The DEA places a requirement for relevant persons to provide information as requested by the age-verification regulator (if the regulator believes that person to have information).<sup>74</sup> This is to enable the regulator to exercise, or make an informed decision, on whether to exercise any of its functions.<sup>75</sup> A "relevant person" is the ISP or 'any other person who the... regulator believes to be involved, or have been involved, in making pornographic information available on the internet on a commercial basis to persons in the United Kingdom'.<sup>76</sup>

"Extreme pornographic material" is defined under s22. It repeats the need for the material to have been 'produced solely or principally for sexual arousal',<sup>77</sup> with the addition of it being 'extreme'<sup>78</sup> as per s63(7) or (7A) CJA, or if it is 'grossly offensive, disgusting or otherwise of an obscene character'.<sup>79</sup> The regulator (BBFC) is to publish guidance for what constitutes making pornographic material available with compliance of s14(1),<sup>80</sup> and guidance for what equals 'enabling or facilitating the making available of pornographic material'.<sup>81</sup> This must be submitted as a draft to the Secretary of State,<sup>82</sup> who will present it before both Houses,<sup>83</sup> and await approval<sup>84</sup> or any modifications.<sup>85</sup>

Section 23 confers the regulator with power to require ISPs to block access to the material. Notice of any contravention may be given to the ISP,<sup>86</sup> as long as the Secretary of State<sup>87</sup> and the non-complying person<sup>88</sup> have been informed of the decision to do so. Notice does not need to be given if there is a conflicting issue.<sup>89</sup>

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<sup>72</sup> *ibid*

<sup>73</sup> *ibid*, s15

<sup>74</sup> *ibid*, s18(2)

<sup>75</sup> *ibid*, s18(1)

<sup>76</sup> *ibid*, s18(3)(b)

<sup>77</sup> *ibid*, s22(1)(a)

<sup>78</sup> *ibid*, s22(1)(b)

<sup>79</sup> *ibid*, s22(2)(b)

<sup>80</sup> *ibid*, s25(1)(a)

<sup>81</sup> *ibid*, s25(1)(b)

<sup>82</sup> *ibid*, s25(2)

<sup>83</sup> *ibid*, s25(3)

<sup>84</sup> *ibid*, s25(4)

<sup>85</sup> *ibid*, s25(5)

<sup>86</sup> *ibid*, s23(2)

<sup>87</sup> *ibid*, s23(10)(a)

<sup>88</sup> *ibid*, s23(1)(b)

<sup>89</sup> *ibid*, s24(3); i.e. national security, prevention/detection of serious crime (as per s263(1) Investigatory Powers Act 2016), or prevention/detection of offence listed in sch3 SOA 2003.

The regulator may exercise its functions when it believes a person to be making (extreme or non) pornographic material available online on a commercial basis to a 'large number of persons'<sup>90</sup> or those 'under the age of 18, in the United Kingdom',<sup>91</sup> or if they 'generate a large amount of turnover by doing so'.<sup>92</sup> A financial penalty may be imposed for contravening s14(1)<sup>93</sup> or failing to provide information.<sup>94</sup> This penalty cannot exceed £250,000 or 5% of the contravening person's turnover (whichever is greater).<sup>95</sup> Following the issuing of an enforcement notice, the regulator must allow an opportunity for the contravening person(s) to 'make representations about why that determination'<sup>96</sup> should not be made. An "enforcement notice" must include reasons for why the notice is being given and fixes a period in which the person must end the contravention.<sup>97</sup> Notice will be given to payment-services providers or ancillary services providers where there is a non-complying person.<sup>98</sup>

#### Online Pornography (Commercial Basis) Regulations 2018 - Motion to Approve

The regulations set out the basis on when to regard pornographic material as being made available on a "commercial basis"- a phrase that occurs throughout the DEA without definition. These new potential regulations have been described by Lord Ashton as 'a small part of the legislative jigsaw needed to implement age verification... the last piece'<sup>99</sup> It reviews the strictness of rules implemented across the world to prevent children from accessing adult material; however, these rules are yet to be transferred to the internet.<sup>100</sup>

Parliamentary discussion has raised disappointment in the regulations failure to encompass all online pornography, particularly the omission of social media and search engine results<sup>101</sup>- arguably the most common exposure. A major concern raised linking to the DEA, is where a child could find themselves 'stumbling across pornography on a free site where 30% of the content is pornographic'<sup>102</sup> as this does not fall under the protective umbrella the 2017 Act creates.

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<sup>90</sup> *ibid*, s26(1)(a)

<sup>91</sup> *ibid*, s26(1)(a)

<sup>92</sup> *ibid*, s26(1)(b)

<sup>93</sup> *ibid*, s19(1)(a)

<sup>94</sup> *ibid*, s19(1)(b); failing to provide information under s18

<sup>95</sup> *ibid*, s20(2)

<sup>96</sup> *ibid*, s19(3)

<sup>97</sup> *ibid*, s19(8)

<sup>98</sup> *ibid*, s21(1)

<sup>99</sup> HL Deb, 11 December 2018, col 1284

<sup>100</sup> *ibid*

<sup>101</sup> HL Deb 11 Dec 2018, vol 794, col 1291-2

<sup>102</sup> *ibid*, col 1292-3



### Online Pornography (Commercial Basis) Regulations 2019

The Regulations exercise powers under s14(2)-(4) of the Digital Economy Act and details the ‘circumstances in which pornographic material is to be regarded as made available on a commercial basis’.<sup>103</sup> The circumstances encompass: if the material requires payment to access,<sup>104</sup> or if it is free to access but the person making it available online receives payment or a reward from doing so.<sup>105</sup> However the latter circumstance does not apply where the pornographic material is less than a third of the content.<sup>106</sup>

## **2 The Conservative, Liberal and Feminist Ideologies**

Conservative theory believes that consumers can become desensitised to immoral acts, since SEIM attacks fundamental societal (and religious) beliefs.<sup>107</sup> Their pro-censorship stance – traditionally adopted by the legislator- hinges upon the assumption of shared moral values. Liberal theory encompasses freedom of expression and bodily autonomy. Feminist perspectives believe pornography’s female portrayal either: reinforces preconceptions surrounding gender hierarchy; or it can contribute to empowerment.

### The Conservative Perspective

Conservatives advocate the censorship of pornography for societal good, to prevent negative promotions of socially harmful attitudes,<sup>108</sup> arguing that ‘a practice which most... find abhorrent... may be rightfully suppressed’.<sup>109</sup> Difficulty arises as to what beliefs a community holds, with a greater challenge in how this can be universally/nationally applied.

Their conventional viewpoint describes sexually explicit material as ‘intrinsically morally wrong’,<sup>110</sup> believing the State possesses a safeguarding duty against ‘activities that offend prevailing community standards of morality and decency’.<sup>111</sup> A generation raised with ease of access to SEIM may not possess such standards, thus harming fundamental contemporary conservative ideas of decency. The glaring omission with conservative theory is its predication upon outdated morals which are no longer widely held within society.

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<sup>103</sup> Online Pornography (Commercial Basis) Regulations 2019, s2

<sup>104</sup> *ibid*, s2(2)

<sup>105</sup> *ibid*, s2(3)

<sup>106</sup> *ibid*, s2(4)

<sup>107</sup> Daniel Linz and Neil Malamuth, *Communication Concepts: Pornography* Vol 5 (1993, 1<sup>st</sup> edn, SAGE Publications) 56

<sup>108</sup> Fred R. Berger, ‘Pornography, Sex, and Censorship’ (1977) 4(2) *Social Theory and Practice* 183, 184

<sup>109</sup> *ibid*

<sup>110</sup> <<https://plato.stanford.edu/entries/pornography-censorship/>> accessed 20/03/2019

<sup>111</sup> *ibid*

Their perception of sex as only 'proper... within the context of deep commitment'<sup>112</sup> as one of the 'citadels of privacy'<sup>113</sup> indicates that pornography 'constitutes an invasion of privacy'.<sup>114</sup> This notably 'presuppose[s] views... that many people reject'.<sup>115</sup> Comparatively, conservative views and views portrayed in SEIM fall at each end of a spectrum. Before justifying, and ultimately, implementing regulation an equilibrium must be reached. The pluralism of society means that to impose morals held only by a fraction would be inequitable.

Conservatives believe that pornography is, by its nature, 'immoral'<sup>116</sup> without consideration of adverse effects.<sup>117</sup> Notably, conservative perspectives do not mention under-age viewers. However, moral issues concerning adults viewing such content will likewise apply for adolescents.

The changing sexual attitudes evident in younger generations<sup>118</sup> could substantiate conservative views that SEIM dehumanises<sup>119</sup> sex through reducing or entirely removing empathy.<sup>120</sup> Conservatives maintain that the 'concealing and protective'<sup>121</sup> shame associated with sex is a 'natural'<sup>122</sup> function, whilst SEIM (wrongly) overcomes this. Psychologically, pornography can 'provoke...sexual regression'<sup>123</sup> by creating a euphoria which is 'not only a permanent temptation for the adolescent'<sup>124</sup> but can 'easily become a permanent, self-reinforcing neurosis'.<sup>125</sup> Directly opposing liberal belief, conservatives feel citizens can exceed the liberty granted to them.<sup>126</sup> Accordingly the law must employ its paternalistic function of justifiable interference, for 'the person interfered with will be better off or protected'.<sup>127</sup>

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<sup>112</sup> Berger, n110, 189

<sup>113</sup> George Steiner, 'Night Words: High pornography and human privacy' in *perspectives on Pornography*, 96, 106-7

<sup>114</sup> Berger, n110, 185

<sup>115</sup> Ibid, 189

<sup>116</sup> Ibid, 184

<sup>117</sup> As to be explored in Chapter 3

<sup>118</sup> Chapter 3

<sup>119</sup> Ernest Van den Haag, 'In Censorship: for and against', 146-48 in Fred R. Berger, 'Pornography, Sex, and Censorship' (1977) 4(2) *Social Theory and Practice* 183

<sup>120</sup> Ibid; however whether a causal link can be proven will be evaluated in chapter 3.

<sup>121</sup> Ibid, 187

<sup>122</sup> Ibid

<sup>123</sup> Irving Kristol, 'Pornography, Obscenity and The Case for Censorship', *The New York Times* (1971)

<sup>124</sup> Ibid

<sup>125</sup> Ibid; The potential result in addiction will be further explored in chapter 3.

<sup>126</sup> Walter Berns, 'Pornography v Democracy: The Case for Censorship' *The Public Interest* 22 (Winter 1971): 13 in Bruce Russell, 'Freedom, Rights and Pornography' (1990, Springer)

<sup>127</sup> <<https://plato.stanford.edu/entries/paternalism/>> accessed 24/03

### The Liberal Perspective

Most liberal arguments directly address the conservative counterpart. Liberalists reject paternalism and moralism regarding consenting adults.<sup>128</sup> Whilst this is acknowledged, this work focuses on adolescents, and therefore whether these principles should be extended or waived must be considered. Significantly for adolescents the consenting partner factor is absent, either due to external pressures instigating such situations or being too young to provide consent.

Whilst accepting the conservative's 'somewhat plausible claim'<sup>129</sup> that pornography can influence social harm,<sup>130</sup> liberals highlight the conservative argument of shared communion as 'an idealized, romanticized, unreal depiction',<sup>131</sup> which is outdated. The emotional barriers which exist with sexual relations can be removed with pornography, which allows the development of a sexual identity,<sup>132</sup> and improves comprehension.<sup>133</sup> Consequently it is argued that adolescents should be permitted, and perhaps encouraged, to consume SEIM, i.e. there is a societal benefit to be had.<sup>134</sup> Liberals campaign for free speech,<sup>135</sup> claiming pornography is 'taken seriously by almost no one but the censors'.<sup>136</sup> Whilst such behaviour is confined to private life, obstruction cannot be justified.<sup>137</sup>

The basis of liberal belief derives from Mill's *On Liberty*.<sup>138</sup> Liberal theorists contend that a 'freedom to discover'<sup>139</sup> is required for individuals to 'make rational choices'<sup>140</sup> and discern what 'appropriate sexual behaviour' is.<sup>141</sup> Liberals reject that pornography results in perceiving others 'as mere instruments of pleasure',<sup>142</sup> by inputting this notion into alternate contexts.<sup>143</sup> However, with their lack of social development, adolescents may not be as

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<sup>128</sup> n112

<sup>129</sup> Berger, n110, 196

<sup>130</sup> *ibid*

<sup>131</sup> *ibid*, 190

<sup>132</sup> Berger, n110, 191

<sup>133</sup> *ibid*

<sup>134</sup> *Ibid*; Linz and Malamuth n109

<sup>135</sup> Linz and Malamuth, n109, 9

<sup>136</sup> Berger, n110, 201

<sup>137</sup> *ibid*

<sup>138</sup> John Stuart Mill, *On Liberty, Utilitarianism and Other Essays* (Oxford World's Classics, 2<sup>nd</sup> edn, OUP 2015)

<sup>139</sup> Linz and Malamuth, n109,10

<sup>140</sup> *ibid*

<sup>141</sup> *ibid*

<sup>142</sup> Berger, n110, 190

<sup>143</sup> *ibid*, 191; a successful business partnership does not result in perceiving the other only as a source of income

capable as adults to distinguish between SEIM and reality. What 'appropriate'<sup>144</sup> sexual behaviour is can be negatively affected by SEIM consumption.<sup>145</sup> Furthermore, extreme pornography 'cannot conceivably be valuable expression'.<sup>146</sup> Anti-censorship cannot 'affirm unlimited rights to free expression'<sup>147</sup> but should prescribe limitations to state intervention.<sup>148</sup>

Overall, it must be acknowledged that Mill 'did not propose censorship as a solution'.<sup>149</sup> Liberals will concede on their anti-censorship standpoint where a causal link between pornography and harm can be demonstrated.<sup>150</sup> Freedom of expression, and the educational, developmental improvement pornography offers can only be revoked when 'grave harm to another person occurs as a result of exposure'.<sup>151</sup> A high threshold must be set for this to 'guard against frivolous attempts at censorship'.<sup>152</sup> Chapter 3 evaluates the harms of adolescent SEIM consumption so that whether this 'grave harm'<sup>153</sup> is met can be assessed.

### The Feminist Perspective(s)

Feminist criticism targets pornography for its contribution 'to larger patterns of oppression'.<sup>154</sup> Pornography encapsulates 'the material means of sexualizing inequality'.<sup>155</sup> A sexualised media, an increase in casual sex, and online dating<sup>156</sup> also contribute to a 'more sexually coarse, explicit'<sup>157</sup> society, with SEIM 'more sexually distorting, daunting, and aggressive than ever before'<sup>158</sup> and exposure occurring 'at earlier ages in... development than ever before'.<sup>159</sup> This can significantly be attributed to advancing technology, primarily the new-found accessibility.

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<sup>144</sup> Walter Berns, 'Pornography v Democracy: The Case for Censorship' *The Public Interest* 22 (Winter 1971): 13 in Bruce Russell, 'Freedom, Rights and Pornography' (1990, Springer)

<sup>145</sup> Chapter 3

<sup>146</sup> Nick Cowen, 'Millian Liberalism and Extreme Pornography', (2016) 60(2) *American Journal of Political Science* 509, 510

<sup>147</sup> *ibid*, 511

<sup>148</sup> *ibid*

<sup>149</sup> *ibid*, 514

<sup>150</sup> *ibid*

<sup>151</sup> Linz and Malamuth, n109

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> Ellen Willis, 'Feminism, Moralism, and Pornography' 38 *N.Y.L. Sch. L. Rev.* 351 (1993), 351

<sup>155</sup> Dworkin, n193

<sup>156</sup> Mary Eberstadt and Mary Anne Layden, *The Social Costs of Pornography: A Statement of the Findings and Recommendations*, (1st ed., The Witherspoon Institute 2010) 34

<sup>157</sup> *ibid*

<sup>158</sup> Jill C. Manning, 'The Impact of Pornography on Women: Social Science Findings and Clinical Observations' in James Stoner, 'The Social Costs of Pornography: A Collection of Papers'

(Witherspoon Institute, 2010)

<sup>159</sup> *ibid*

Liberals protect pornography as free speech, whereas feminists suggest it preserves a male imposed perspective of females;<sup>160</sup> with pornography being 'a practice of sexual politics, an institution of gender inequality'.<sup>161</sup> Although not fundamentally against pornography, rather what it conveys, feminists favour sexual liberation.<sup>162</sup> Feminist pornography seeks 'revision [of] sexual subjectivity'.<sup>163</sup> Feminists believe 'censorship is deeply misunderstood'<sup>164</sup> as 'some foggy effort to suppress ideas'.<sup>165</sup>

The feminist pornography debate revolves around objectification versus empowerment.<sup>166</sup> Mainstream pornography appeals to the mass-market, whilst feminist pornography attempts to free women from the cultural confinement of maintaining male domination,<sup>167</sup> since men predominantly 'determine what views are aired'.<sup>168</sup> Most feminists are anti-pornography, not anti-obscenity:<sup>169</sup> pornography being harmful; obscenity lacking value.<sup>170</sup> This distinction is what some theorists fail to recognise.<sup>171</sup>

Feminists categorise explicit material into: violent pornography, dehumanising pornography, and erotica (neither violent nor sexist). They object to the specific SEIM that is mass-produced, especially with violence and subjugation increasingly present, not necessarily the existence of or access to SEIM itself. Pornography amalgamates sex with abuse or degrading treatment, ostensibly supporting like behaviour.<sup>172</sup> However the context of SEIM consumption may cause this, as put in another context the material may not be deemed inappropriate. For example, some artwork encourages similar messages.

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<sup>160</sup> Linz and Malamuth, n109, 12

<sup>161</sup> Catharine A. MacKinnon, 'Not a Moral Issue' in Drucilla Cornell *Feminism & Pornography* (1st edn, OUP, 2000) 172; see also Rachael Liberman, 'It's a really great tool': feminist pornography and the promotion of sexual subjectivity' (2015) 2(2-3) *Porn Studies* 174, 180

<sup>162</sup> A.W.B Simpson, *Pornography & Politics: A Look Back to the Williams Committee* (1983, London, Waterlow Publishers) 69

<sup>163</sup> Rachael Liberman, 'It's a really great tool': feminist pornography and the promotion of sexual subjectivity' (2015) 2(2-3) *Porn Studies* 174, 174

<sup>164</sup> Dworkin, n193, 19

<sup>165</sup> *ibid*

<sup>166</sup> *ibid*

<sup>167</sup> Linz and Malamuth, n109

<sup>168</sup> *ibid*

<sup>169</sup> Linz and Malamuth, n109,13

<sup>170</sup> Lindgren, n8, 1159

<sup>171</sup> *ibid*, 25

<sup>172</sup> *ibid*

Pornography 'invariably'<sup>173</sup> propounds the 'insult'<sup>174</sup> that sex is 'accomplished in the active subordination of women'.<sup>175</sup> Social subordination consists of hierarchy, objectification, submission, and violence, all of which contribute in the creation of pornography.<sup>176</sup> This leads to the perception of pornography as 'an act of male supremacy'<sup>177</sup> which uses sexual subordination as a 'central mechanism'<sup>178</sup> by 'means of systematising the definition of women as a sexual class'.<sup>179</sup>

The genesis of thought is that 'pornography is the theory: rape the practice'.<sup>180</sup> Dworkin details the inevitable harm caused by portraying women as whores, whose purpose is sex; who 'like to be hurt'. Pornography generates confusion surrounding consent, proposing ideas like 'she wants to be taken against her will'.<sup>181</sup> The impact on sexual attitudes and the consequences of what messages SEIM conveys, is a basis for feminist opposition.<sup>182</sup> Extreme views present that SEIM instigates violence and is violence<sup>183</sup> by suggesting women are 'to be used, abused, broken and discarded'.<sup>184</sup> The inequality is 'a system of social reality'.<sup>185</sup>

Problematically, regulation would 'entrench stereotypes of femininity'<sup>186</sup> whereas feminism 'expresses an aspiration to struggle beyond [such] accommodations'.<sup>187</sup> Feminists generally place weight on pornography as a 'powerful medium of sexual documentation as a catalyst for healthier societal perceptions of sexuality',<sup>188</sup> similar to liberals. Many feminists are thus liberal-feminists. Creating change within the 'capitalist... industry'<sup>189</sup> requires a dual approach of 'infiltrat[ing]... and creat[ing] change'.<sup>190</sup> Liberal-feminists view pornography as

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<sup>173</sup> Andrea Dworkin, 'Against the Male Flood' in Drucilla Cornell *Feminism & Pornography* (1st edn, OUP, 2000) 30, 19

<sup>174</sup> *ibid*

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*, 31

<sup>177</sup> MacKinnon, n186

<sup>178</sup> *ibid*

<sup>179</sup> *ibid*

<sup>180</sup> Simpson, n211, 69-70

<sup>181</sup> Dworkin, n175, 27

<sup>182</sup> Further explored in chapter 3

<sup>183</sup> A.W.B Simpson, *Pornography & Politics: A Look Back to the Williams Committee* (1983, London, Waterlow Publishers) 69, 71

<sup>184</sup> *ibid*, 70

<sup>185</sup> Dworkin, n175, 32

<sup>186</sup> Drucilla Cornell, 'Pornography's Temptation' in Drucilla Cornell *Feminism & Pornography* (1st edn, OUP, 2000) 554

<sup>187</sup> *ibid*

<sup>188</sup> Madison Young, 'Authenticity and its role within feminist pornography' (2014) 1(1-2) *Porn Studies* 186, 186

<sup>189</sup> *ibid*

<sup>190</sup> *ibid*

free speech and a case of personal autonomy<sup>191</sup> which should be protected; yet what constitutes a violation of these values is not unanimous.<sup>192</sup> Liberal-feminists approve of and employ Mill's harm principle for ethical guidance.<sup>193</sup>

Alternatively, radical feminism believes the violence in pornography is 'intrinsically unethical'<sup>194</sup> through the permanence of women as objects and subordinate to male desire.<sup>195</sup> They may propose absolute censorship, yet this is unlikely to eradicate violence which could be 'be entrenched by its invisibility'.<sup>196</sup> The goal and intention correlation is questionable.

### Concluding Remarks

A conservative approach presents many restrictions. Pornography has always existed in various forms throughout history. Removing sexually explicit material entirely (an impossible task) encapsulates a generation (with a failing education system)<sup>197</sup> in darkness surrounding sexual relationships and sexuality as a whole. Ignorance is not advantageous, and access to certain types of SEIM is arguably constructive. Like the feminist viewpoint, it is not necessarily SEIM that should be regulated but its contents.

A liberal viewpoint holds valid for adult pornography consumption; however, fairly substantial and persuasive evidence exists presenting the consequential harms of SEIM consumption,<sup>198</sup> potentially fulfilling the harm principle. The paternalistic function of the law should protect citizens, but more specifically the most vulnerable in society. Adolescents (in stages of crucial development biologically, socially and sexually) should have encouraging and safe examples to learn from. Liberals may grant too much freedom for those lacking in maturity. Fundamentally, the feminist perspective objects to the negative portrayals in pornography, which strongly links to the adverse effects on relationships, sexual attitudes and body concepts.<sup>199</sup> Thus it is suggested here that a liberal-feminist perspective should be employed.

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<sup>191</sup> María José Pietrini Sánchez, 'Some Ethical Considerations About Pornography Regulations' (2016) 51 *Tópicos*, *Revista de Filosofía* 229, 231

<sup>192</sup> *ibid*, 236

<sup>193</sup> *ibid*

<sup>194</sup> María José Pietrini Sánchez, 'Some Ethical Considerations About Pornography Regulations' (2016) 51 *Tópicos*, *Revista de Filosofía* 229, 231

<sup>195</sup> *ibid*, 235

<sup>196</sup> *ibid*, 244

<sup>197</sup> See chapter 4

<sup>198</sup> Explored in chapter 3

<sup>199</sup> Discussed in chapter 3

### **3 The Impact on Social and Sexual Development**

Understanding the legal issues alongside scientific research permits a determination on how to stage intervention and justify paternalism.<sup>200</sup> If adolescents are ‘one of the most susceptible audiences’,<sup>201</sup> pornography can have an increased effect on their still-developing brains.<sup>202</sup> Whether they should be granted freedom of choice, as adults are, must be examined.

Pornography has always existed. But what can now be accessed completely differs. SEIM is affecting adolescents in ‘unprecedented and diverse ways’,<sup>203</sup> with the images likely ‘processed differently by the brain’<sup>204</sup> making its lasting impact differ from e.g. word stimuli. The nature of the material has become more hardcore, becoming increasingly ‘explicitly degrading and dehumanising’.<sup>205</sup> Consequentially and problematically, older adolescents are believed to have become too familiar with ‘weaker’ stimuli, thus requiring stronger stimuli to elicit a response.<sup>206</sup> This correlates with the conservative argument for regulation: consumers can become desensitised to immoral acts.

The crucial issue is how ‘porn has become a default sex educator’,<sup>207</sup> and a ‘substitute’<sup>208</sup> for formal education. SEIM being used ‘in lieu of, formal sex education’<sup>209</sup> is extremely problematic, chiefly as it influences the sexual attitudes and sexual risk behaviour of an entire generation. A multi-layered approach to addressing the adverse effects of SEIM, including sex education programmes, would be beneficial.<sup>210</sup>

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<sup>200</sup> Guy Kelly, ‘The Scary Effects of Pornography: How the 21<sup>st</sup> Century’s Acute Addiction is Rewiring our Brains’ *The Telegraph* (11<sup>th</sup> September 2017) <[www.telegraph.co.uk/men/thinking-man/scary-effects-pornography-21st-centurys-accute-addiction-rewiring/](http://www.telegraph.co.uk/men/thinking-man/scary-effects-pornography-21st-centurys-accute-addiction-rewiring/)> accessed 4<sup>th</sup> March 2019

<sup>201</sup> Eric Owens and others, ‘The Impact of Internet Pornography on Adolescents: A Review of the Research’ (2012) 116 *Sexual Addiction and Compulsivity* 99, 101

<sup>202</sup> Maree Crabbe, ‘Young People Need To Hear About Porn Before They See It’ *Huffington Post* (Australia, 4<sup>th</sup> August 2016) <[www.huffingtonpost.com.au/maree-crabbe/we-need-to-talk-to-our-kids-about-porn\\_a\\_21444679/](http://www.huffingtonpost.com.au/maree-crabbe/we-need-to-talk-to-our-kids-about-porn_a_21444679/)> accessed 4<sup>th</sup> March 2019

<sup>203</sup> Eric Owens and others, n209, 99

<sup>204</sup> *ibid*, 115

<sup>205</sup> Miranda Horvath and others, “‘Basically... Porn is Everywhere”. A Rapid Evidence Assessment on the Effects that Access and Exposure to Pornography has on Children and Young People’ (2013) Office of the Children’s Commissioner for England, 63

<sup>206</sup> Silvia Bonino and others, ‘Use of Pornography and Self-Reported Engagement in Sexual Violence Among Adolescents’ (2006) 3(3) *European Journal of Developmental Psychology* 265, 283

<sup>207</sup> Crabbe, n210

<sup>208</sup> Horvath and others, n213, 38-9

<sup>209</sup> *ibid*, 39

<sup>210</sup> To be discussed in chapter 4



### Sexual Attitudes and Sexual Risk Behaviour

SEIM's influence creates a new set of norms, values and perceptions.<sup>211</sup> Increasing consumption generates a belief that other adolescents are engaging in sexual behaviour (descriptive norms), and approve of such (injunctive norms).<sup>212</sup> Yet SEIM is unrealistic and misleads regarding attitudes towards relationships.<sup>213</sup> This contributes to an increasing acceptance of sexual abuse<sup>214</sup> and likelihood of objectification.<sup>215</sup> Feminists argue this 'pervasively harmful influence'<sup>216</sup> demands legal intervention.

Adolescent susceptibility to SEIM's presentations<sup>217</sup> has been attributed to them being 'uncritical and incompetent receivers of sexual media content'.<sup>218</sup> This is problematic, since SEIM portrays sex as 'primarily a physical and unaffectionate game between uncommitted partners'.<sup>219</sup> Adolescents can struggle to understand and distinguish between SEIM and sexual reality. Consequently, although already susceptible to sexual risk taking, adolescents are being greatly influenced.<sup>220</sup> In the absence of education on the consequences, adolescents viewing high sexual risk taking behaviour are more likely to personally engage in such acts.<sup>221</sup> However, confusion over a causal link exists: do adolescents who watch SEIM already have a 'more recreational attitude towards sex',<sup>222</sup> or does SEIM exposure generate more recreational attitudes whereby they 'influence each other reciprocally'.<sup>223</sup> Notably, other studies<sup>224</sup> dispute adolescent vulnerability to SEIM and its influence on sexual risk behaviour. Some report SEIM use originated out of educational curiosity, but maintain retention of an awareness of the distortion illustrated.<sup>225</sup>

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<sup>211</sup> Suzan M. Doornwaard and others, 'Sex-Related Online Behaviors, Perceived Peer Norms and Adolescents' Experience with Sexual Behavior: Testing an Integrative Model' (2015) 10(6) PLoS ONE

<sup>212</sup> *ibid*

<sup>213</sup> Artemis Tsitsika and others, 'Adolescent Pornographic Internet Site Use: A Multivariate Regression Analysis of the Predictive Factors of Use and Psychosocial Implications' (2009) 12(5) *CyberPsychology and Behavior* 545, 549

<sup>214</sup> Bonino and others, n214, 266

<sup>215</sup> Jochen Peter and Patti M. Valkenburg, 'Adolescents' Exposure to a Sexualized Media Environment and Notions of Women as Sex Objects' (2007) 56(5) *Sex Roles* 381, 385

<sup>216</sup> Linz and Malamuth, n109, 1; content not existence.

<sup>217</sup> Of themes and attitudes

<sup>218</sup> Jochen Peter and Patti M. Valkenburg, 'The Influence of Sexually Explicit Internet Material on Sexual Risk Behavior: A Comparison of Adolescents and Adults' (2011) 16(7) *Journal of Health Communication* 750, 751

<sup>219</sup> *ibid*, 752

<sup>220</sup> *ibid*

<sup>221</sup> Owens and others, n209, 108

<sup>222</sup> *ibid*, 106

<sup>223</sup> Jochen Peter and Patti M. Valkenburg, 'Adolescents' Exposure to Sexually Explicit Online Material and Recreational Attitudes Toward Sex' (2006) 56 *Communication Research* 639–660, 654

<sup>224</sup> Elisabet Häggström-Nordin and others, "'It's Every- Where!' Young Swedish People's Thoughts and Reflections About Pornography' (2006) 20 *Scandinavian Journal of Caring Science* 386

<sup>225</sup> Owens and others, n209, 107

### Social Development

Degrees of social interaction and bonding have a negative correlation with the likelihood of SEIM use.<sup>226</sup> Research suggests that adolescent porn use (particularly SEIM) results in: 'lower degrees of social integration, increases in conduct problems, higher levels of delinquent behavior, higher incidence of depressive symptoms, and decreased emotional bonding with caregivers.'<sup>227</sup> Half of the young people surveyed felt porn affects relationships, and believe SEIM accessibility should be limited.<sup>228</sup> Even though some can identify the lack of reality, SEIM's impact remains. Arguing consumer's awareness that SEIM is not reality does not alter the impact established.

### Body Image

Body-image and self-concept are growing issues amongst younger generations.<sup>229</sup> Whilst SEIM is not solely responsible, its contribution alongside other pressures<sup>230</sup> is felt by adolescents.<sup>231</sup> Females report insecurities with their body image arising following pornography consumption. Already 97% are critical of their bodies.<sup>232</sup> Their male counterparts express similar feelings when comparing their sexual performance to SEIM.<sup>233</sup> A negative correlation exists between self-confidence and SEIM consumption.<sup>234</sup>

Mainstream pornography teaches women self-objectification,<sup>235</sup> resulting in 'anxiety, body dissatisfaction, and a lack of sexual enjoyment'.<sup>236</sup> The unrealistic expectations created by the 'distorted, enhanced imagery burdens teenage girls... with damaging ideas'. Between

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<sup>226</sup> Gustavo Mesch, 'Social Bonds and Internet Pornographic Exposure Among Adolescents' (2009) 32 *Journal of Adolescence* 601, 615

<sup>227</sup> Owens and others, n209, 116

<sup>228</sup> Horvath and others, n213, 38

<sup>229</sup> Linda Smolak, 'Body Image in Children and Adolescents: Where Do We Go from Here?' (2004) 1(1) *Body Image* 15, 15

<sup>230</sup> i.e. social media

<sup>231</sup> Lindsey Piercy, 'What a New Study Reveals About Selfies and Teenage Body Image' (University of Kentucky, 30<sup>th</sup> May 2018) < <https://phys.org/news/2018-05-reveals-selfies-teenage-body-image.html> > accessed 4<sup>th</sup> March 2019

<sup>232</sup> Vivian Diller, 'Internet Porn and Body Image' *Psychology Today* (4th September 2012) < [www.psychologytoday.com/intl/blog/face-it/201209/internet-porn-and-body-image](http://www.psychologytoday.com/intl/blog/face-it/201209/internet-porn-and-body-image) > accessed 29th April 2019

<sup>233</sup> Lotta Lögren-Mårtenson and Sven-Axel Månsson, 'Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography' (2009) 46 *Journal of Sex Research* 1, 9

<sup>234</sup> *ibid*, 8

<sup>235</sup> Niki Fritz and Bryant Paul, 'From Orgasms to Spanking: A Content Analysis of the Agentic and Objectifying Sexual Scripts in Feminist, for Women, and Mainstream Pornography' (2017) 77 *Sex Roles* 639, 650

<sup>236</sup> *ibid*

Photoshop, social media portrayals and SEIM, a common theme of unattainability emerges. Diller questions whether adolescent male expectations of female appearance and sexual performance 'duties' from SEIM will transfer into their real relationships. The aftermath of inevitably not reaching this bar is a further undermining of her 'already fragile self-esteem'. Dissatisfaction with body image results from contemporary 'beauty-obsessed culture,' 'media-driven illusions' that are 'completely unrealistic,' and 'false advertising'. SEIM appeals to the mass market to sell, 'not... convey truth and honesty'<sup>237</sup>. Adolescents should be taught<sup>238</sup> to enjoy SEIM but identify its inaccuracy to evade its detrimental effect. Informed, they can 'make safe and smart choices as adults'.<sup>239</sup>

### Mental health

Those consuming SEIM are increasingly likely to experience clinical depression symptoms.<sup>240</sup> Higher levels of depression, less life satisfaction, increased pornography viewing, more sexual partners, and more acceptance of violent/coercive pornography during adulthood are associated with earlier exposure to pornography.<sup>241</sup> The impact has greatest effect on those exposed when significantly young (7-11 years old).<sup>242</sup> Higher levels of depression and overall less life satisfaction following progression into adulthood was demonstrated.<sup>243</sup> The impact is real, damaging and lasting.

A 'chicken and egg' argument may exist: do adolescents seek refuge in pornography or does pornography create mental health issues: either way the cyclical process is disturbing. Mental health is an increasing concern in modern society, and with evidence demonstrating that 'chronic pornography use is associated with depression and unhappiness',<sup>244</sup> restricting potential catalysts and contributors must be considered.

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<sup>237</sup> Vivian Diller, 'Internet Porn and Body Image' *Psychology Today* (4<sup>th</sup> September 2012) <[www.psychologytoday.com/intl/blog/face-it/201209/internet-porn-and-body-image](http://www.psychologytoday.com/intl/blog/face-it/201209/internet-porn-and-body-image)> accessed 29<sup>th</sup> April 2019

<sup>238</sup> Further explored in chapter 4

<sup>239</sup> Diller, n245

<sup>240</sup> Michele Ybarra and Kimberly J. Mitchell, 'Exposure to Internet Pornography Among Children and Adolescents: A National Survey' (2005) 8 *CyberPsychology and Behavior* 473

<sup>241</sup> Bonnie Young, 'The Impact of Timing of Pornography Exposure on Mental Health, Life Satisfaction, and Sexual Behavior', (Master of Science Thesis, Brigham Young University 2017), 20-21

<sup>242</sup> *ibid*, 21

<sup>243</sup> *ibid*, 21

<sup>244</sup> Mary Eberstadt and Mary Anne Layden, *The Social Costs of Pornography: A Statement of the Findings and Recommendations*, (1st ed., The Witherspoon Institute 2010) 34, 38

### Addiction

An innovative discovery<sup>245</sup> compared the brain's reaction to SEIM in those who are frequent users, with how alcoholic and drug user's brains responded to the anticipation of alcohol or drug consumption respectively.<sup>246</sup> Ultimately, a scientific link to pornography being capable of forming the basis of addiction is implied. Dependency likely exists alongside anticipation of the "high" following consumption.

The problematic nature of this is illustrated by 'the magnitude of efforts by some consumers to extricate themselves from addiction' (including reading specialised books, purchasing filtering systems designed to prevent access, and visiting counsellors).<sup>247</sup> This ostensibly fulfils a conventional perception of addiction, where consumers come to view something as constraining and take measures to remove their reliance on said thing.

### Sexual Violence

Sexual violence is this not work's focus and features widely in others; thus whilst necessary to establish potential links, a brief overview only will be given. Difficulty arises in using this argument pro-regulation, for a causal link cannot be established. Many convicts may have possessed extreme pornography,<sup>248</sup> but it is unestablished whether those who consume extreme pornography are predisposed to commit serious (sexual) violence. The two may be 'linked to the same sociodemographic variables'<sup>249</sup> and correlations exist,<sup>250</sup> but an accurate reflection considering all SEIM usage is yet to be made. Many limitations prevent this research.<sup>251</sup> Frequent SEIM exposure does not correspond with an increase in sexual aggression 'generally',<sup>252</sup> although a strong link exists between consequence (sexual

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<sup>245</sup> Valerie Voon and others, 'Neutral Correlates of Sexual Cue Reactivity in Individuals with and without Compulsive Sexual Behaviours' (2014) 9(7) PLoS ONE

<sup>246</sup> Hoy Zeyn, 'What are the Effects of Porn on the Brain' (13<sup>th</sup> October 2014) <[www.youtube.com/watch?v=OtQBxsf1st8&t=66s](http://www.youtube.com/watch?v=OtQBxsf1st8&t=66s)> accessed 21<sup>st</sup> October 2018

<sup>247</sup> Eberstadt and Layden, n259, 40

<sup>248</sup> Martin Evans, 'Murder of April Jones 'proves porn link to sexual assaults' *The Telegraph* (30<sup>th</sup> May 2013) <[www.telegraph.co.uk/news/uknews/crime/10090331/Murder-of-April-Jones-proves-porn-link-to-sexual-assaults.html](http://www.telegraph.co.uk/news/uknews/crime/10090331/Murder-of-April-Jones-proves-porn-link-to-sexual-assaults.html)> accessed 29<sup>th</sup> April 2019; David Brown, 'Call for ban on violent porn as photographer admits Georgia murder' *The Times* (2<sup>nd</sup> December 2013)

<[www.thetimes.co.uk/article/call-for-ban-on-violent-porn-as-photographer-admits-georgia-murder-9c9f8xxv2r6](http://www.thetimes.co.uk/article/call-for-ban-on-violent-porn-as-photographer-admits-georgia-murder-9c9f8xxv2r6)> accessed 29<sup>th</sup> April 2019; BBC News, 'Suitcase body murder accused viewed 'extreme porn'' *BBC News* (23<sup>rd</sup> March 2011) <[www.bbc.co.uk/news/uk-england-stoke-staffordshire-12842970](http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-12842970)> accessed 29<sup>th</sup> April 2019; Ian Drury, 'Extreme internet pornography driving people to inflict sexual violence and murder, country senior judge warns' *Daily Mail* (27<sup>th</sup> January 2015)

<[www.dailymail.co.uk/news/article-2928864/Extreme-internet-pornography-driving-people-inflict-sexual-violence-murder-country-s-senior-judge-warns.html](http://www.dailymail.co.uk/news/article-2928864/Extreme-internet-pornography-driving-people-inflict-sexual-violence-murder-country-s-senior-judge-warns.html)> accessed 29<sup>th</sup> April 2019

<sup>249</sup> *ibid*

<sup>250</sup> Bonino and others, n214, 269

<sup>251</sup> Horvath and others, n213, 40

<sup>252</sup> *ibid*

offending) and catalyst (SEIM) even if the catalyst does not always result in the consequence. The tenuous link between the potential causal relationship ‘remains controversial among many academics.’<sup>253</sup>

Whilst pornography cannot be a ‘predictor of passive sexual violence among boys’,<sup>254</sup> viewing pornography ‘significantly increased the likelihood of being a victim of sexual violence among girls.’<sup>255</sup> Studies raise concerns of imitation, yet concerns alone lack substantiation and consequently justification, regardless of evidential indications.

The evidence discussed relates to adult offenders,<sup>256</sup> yet the issue remains that SEIM creates fantasies for adolescents.<sup>257</sup> Although no research directly claims porn causes sexual violence, it has been argued that porn appears ‘to be giving young men “permission” to treat women [as in porn]’.<sup>258</sup> Such claims whilst unsubstantiated, could be true.

### Opposition

Even though SEIM can be degrading, and the ease of access<sup>259</sup> and its omnipresence is problematic,<sup>260</sup> it can contribute ‘to greater openness about sexuality’.<sup>261</sup> However, adolescents differ from adults and are perceived to lack an ability ‘to discern truth from falsehood... and to choose between better and worse alternatives’.<sup>262</sup> Libertarians must be urged to consider the various harms presented above before permitting adolescent access to SEIM hinging upon free speech arguments.<sup>263</sup> Many libertarian arguments oppose regulation due to the lack of harm in privately satisfying personal preferences, and consumers distinguishing between reality and ‘cyber-reality (contrived scenes of rape and

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<sup>253</sup> Eberstadt and Layden, n189

<sup>254</sup> Bonino and others, n214, 281

<sup>255</sup> *ibid*

<sup>256</sup> since a lack of research exists with adolescent specific focus

<sup>257</sup> Krissy Storrar, ‘Alesha MacPhail murder: Teens now desensitised to violent sexual material online, claim experts’ *The Sunday Post* (24<sup>th</sup> February 2019) <[www.sundaypost.com/fp/teenage-boys-desensitised-to-violent-sexual-material-claim-expertsticking-timebomb-teens-now-desensitised-to-violent-sexual-material-online-say-experts/](http://www.sundaypost.com/fp/teenage-boys-desensitised-to-violent-sexual-material-claim-expertsticking-timebomb-teens-now-desensitised-to-violent-sexual-material-online-say-experts/)> accessed 27<sup>th</sup> April 2019

<sup>258</sup> Martin Daubney, ‘Does watching porn really turn people into violent criminals?’ *The Telegraph* (29<sup>th</sup> January 2015) <[www.telegraph.co.uk/men/thinking-man/11376283/Doeswatching-porn-really-turn-people-into-violent-criminals.html](http://www.telegraph.co.uk/men/thinking-man/11376283/Doeswatching-porn-really-turn-people-into-violent-criminals.html)> accessed 29<sup>th</sup> April 2019

<sup>259</sup> Colleen Bryant, ‘Adolescence, Pornography and Harm’ (2009) *Trends & Issues in Crime and Criminal Justice* Australian Institute of Criminology (386) 1- ‘The proliferation of pornographic materials and their ease of access are such that it is not a matter of whether a young person will be exposed to pornography but when’.

<sup>260</sup> Horvath, n213

<sup>261</sup> Bente Traeen, Kristin Spitznogle, Alexandra Beverfjord, ‘Attitudes and Use of Pornography in the Norwegian Population 2002’ (2004) 41(2) *The Journal of Sex Research* 193, 195

<sup>262</sup> Linz and Malamuth, n109

<sup>263</sup> Eberstadt and Layden, n189, 31

violence)<sup>264</sup> Whilst likely true for older users, the research examined above suggests it is not for younger viewers. Thus the libertarian perspective and accompanying arguments (welfare and autonomy) may not apply when regulating adolescent access is supported by empirical evidence.

### Summary

More focused research is required to prove patterns already insinuated. Implications alone are insufficient. Long term effects are also not yet possible to concretely identify.<sup>265</sup> Current evidence strongly indicates SEIM's addictive potential, similar to established addictions,<sup>266</sup> while relationships and perceptions are also affected.<sup>267</sup>

SEIM's impact is arguably compulsive, addictive and 'a global trend'.<sup>268</sup> Adolescents 'are believed to lack... integrity in frontal cortices necessary to exert cognitive control required to suppress sexual cravings, thoughts, and behaviors elicited by pornographic content'.<sup>269</sup> Many claim initial use stems from curiosity and education supplement, yet 'whether [it is] accurate, helpful ... or whether it skews... understandings'<sup>270</sup> should be considered.<sup>271</sup>

Regulation based upon minimal criminality 'might alarm libertarians'<sup>272</sup> yet 'psychologists increasingly agree [on]... the desensitisation effect porn is having on young brains.'<sup>273</sup> Feminism and liberalism believe SEIM's current portrayals cause adverse effects, which are scientifically validated.

Undeniably pornography consumption is 'morally problematic'<sup>274</sup> and difficult to regulate, as evidenced by the length of time it has been discussed on a political platform, compared to the usual legislative process. Despite the prevailing arguments for autonomy (which does not necessarily apply for adolescent use) harm has been sufficiently indicated.<sup>275</sup> Paternalism can justify regulation if in citizens' best interests (as with drug classifications) and evidence suggests that the area is 'pervasive' and 'causes tangible harm'.<sup>276</sup>

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<sup>264</sup> *ibid*

<sup>265</sup> Bonino, n214

<sup>266</sup> Mary Eberstadt and Mary Anne Layden, *The Social Costs of Pornography: A Statement of the Findings and Recommendations*, (1<sup>st</sup> ed., The Witherspoon Institute 2010), executive summary

<sup>267</sup> *ibid*

<sup>268</sup> Owens and others, n209

<sup>269</sup> *ibid*, 114

<sup>270</sup> Horvath and others, n213, 64

<sup>271</sup> Links back to feminist perspective in Chapter 2

<sup>272</sup> Daubney, n276

<sup>273</sup> *ibid*

<sup>274</sup> Eberstadt and Layden, n189, 41

<sup>275</sup> Although not demonstrated; however, see environmental law policy approach below

<sup>276</sup> Cass R. Sunstein, 'Preferences and Politics' (1991) 20(1) *Philosophy & Public Affairs* 3, 32

Whilst initial evidence may not be substantial, the indications are there. Lacking a detailed consensus<sup>277</sup> ‘can make it difficult to... [establish an] appropriate response... but these are precisely the sorts of conditions that often demand hard and fast decisions.’<sup>278</sup> The precautionary principle, as in environmental law, could be adopted to permit decision making in an area lacking certainty. Scientific uncertainty does not justify a lack of action where continued harm could be inflicted. The European Commission refers to a requirement of “reasonable grounds for concern” which this work submits is met by the scientific research explored above. Ultimately, ‘if we want to help young people to build relationships and sexualities that are respectful, safe, mutually pleasurable and fully consenting, then we must tackle porn’s influence.’<sup>279</sup>

#### **4 The Adequate Enforcement of Regulations and ‘the C-Word- Censorship’<sup>280</sup>**

Assessing how to implement adequate enforcement requires reiteration of modern societal development. Previous pornographic material (e.g. top-shelf magazines) compared to SEIM is ‘prelapsarian’.<sup>281</sup> The impacts<sup>282</sup> of the ‘digital red-light zone’<sup>283</sup> highlights the significance of regulation being actively and adequately enforced. Minors (theoretically)<sup>284</sup> can no longer access commercial pornographic websites. However, laws require enforcement for their implementation to have effect; legislation alone is insufficient.

Nowhere before has pornography ever been permitted to be so ‘freely available... with less social control’.<sup>285</sup> If adolescents cannot physically purchase such material, continuing to allow digital access is inconsistent and illogical. Modern-era technology generates ‘practical and legal restraints’<sup>286</sup> to consider alongside ‘political and ethical considerations.’<sup>287</sup> It is

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<sup>277</sup> Commission, ‘The Precautionary Principle: decision making under uncertainty’ (2017) 18, 3: ‘incomplete information, inconclusive evidence and public controversy’

<sup>278</sup> *ibid*

<sup>279</sup> Crabbe, n210

<sup>280</sup> Rowland Manthorpe, ‘Why the UK’s porn block is one of the worst ideas ever’ *Wired Opinion* 17<sup>th</sup> April 2019 <[www.wired.co.uk/article/porn-block-uk-wired-explains](http://www.wired.co.uk/article/porn-block-uk-wired-explains)> accessed 22<sup>nd</sup> April 2019

<sup>281</sup> Behr, n12

<sup>282</sup> See chapter 3

<sup>283</sup> Behr, n12

<sup>284</sup> ‘The Guardian view on regulating porn: wrong step, right direction’ *The Guardian* (20<sup>th</sup> March 2019), <[www.theguardian.com/commentisfree/2019/mar/20/the-guardian-view-on-regulating-porn-wrong-step-right-direction](http://www.theguardian.com/commentisfree/2019/mar/20/the-guardian-view-on-regulating-porn-wrong-step-right-direction)> accessed 01/04/19

<sup>285</sup> *ibid*

<sup>286</sup> *ibid*

<sup>287</sup> Michael Flood and Clive Hamilton, ‘Regulating Youth Access to Pornography’, The Australia Institute, Discussion Paper Number 53 (March 2003), vi

often argued that ‘nothing can be done’<sup>288</sup> since the ‘Internet knows no national borders’.<sup>289</sup> Therefore, jurisdiction is a key consideration.

Restricting what adolescents can feasibly access<sup>290</sup> is a sensible first step. Current ease of access is widely recognised as problematic.<sup>291</sup> Regulation must be balanced against oppression: ‘managing people’s sexual fantasies... [could] do more harm than good.’<sup>292</sup> An internet audience (like broadcasting) possess ‘fundamental rights, values and expectations’.<sup>293</sup> Consequently, the DEA’s implementation has faced numerous delays.<sup>294</sup> The method set to be employed ‘eventually’<sup>295</sup> requires users to upload an identification document to verify their age, or alternatively purchase passes from stores.<sup>296</sup>

### Challenges of Regulating Online

The sheer volume of content and various mediums of SEIM make it ‘impractical to review... case-by-case’.<sup>297</sup> However, a blanket ban on minors accessing all SEIM means content need not be assessed. The internet is regarded as ‘an unrivalled tool’<sup>298</sup> to express views; undermining freedom of expression must be avoided. US Congress attempts to legislate on minors accessing SEIM, whilst ‘vigorous’,<sup>299</sup> have thus far faced Supreme Court rejection for being unconstitutional by violating free speech.<sup>300</sup> Article 10 ECHR provides an exception for ‘restrictions... as are prescribed by law... for the protection of health or morals’.<sup>301</sup> OFCOM argues that ‘far from *undermining* freedom of expression, effective regulation can *promote* it.’<sup>302</sup>

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<sup>288</sup> *ibid*, vi

<sup>289</sup> *ibid*, 10

<sup>290</sup> *ibid*,

<sup>291</sup> *ibid*, 7

<sup>292</sup> Miodrag Popovic, ‘Establishing New Breeds of (Sex) Offenders: Science or Political Control?’, (2007) 22(2) *Sexual and Relationship Therapy* 255, 255

<sup>293</sup> Ofcom, ‘Tackling Online Harm’, <[www.ofcom.org.uk/about-ofcom/latest/media/speeches/2018/tackling-online-harm](http://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2018/tackling-online-harm)> accessed 18<sup>th</sup> April 2019

<sup>294</sup> Helen Johnson, ‘Porn block: UK porn website ban delayed- how the new proof of age laws will work (eventually)’ *inews* <<https://inews.co.uk/news/technology/porn-block-free-website-ban-when-date-delay-how-ageid-law-explained-494705>> (8 September 2019) )accessed 2 October 2019

<sup>295</sup> *ibid*

<sup>296</sup> Where their age will be confirmed via the cashier; Chris Hoffman, ‘How the UK’s New Internet “Porn Block” Will Work’, *How-To Geek* 19<sup>th</sup> April 2019 <[www.howtogeek.com/411748/how-the-uks-new-internet-porn-block-will-work/](http://www.howtogeek.com/411748/how-the-uks-new-internet-porn-block-will-work/)> accessed 22<sup>nd</sup> April 2019

<sup>297</sup> Ofcom, n313

<sup>298</sup> *ibid*

<sup>299</sup> Flood and Hamilton, n269, 10

<sup>300</sup> *ibid*

<sup>301</sup> ECHR, Art10(2)

<sup>302</sup> Ofcom, n313



Jurisdiction - instantaneous access to the 'borderless virtual space'<sup>303</sup>

Jurisdiction forms the greatest barrier to regulating the online world, which would be made easier with the cooperation of multiple states; however, this may not be 'feasible... due to the moral, cultural, economic, and political differences.'<sup>304</sup> The problem originates from the 'pace of growth and innovation'<sup>305</sup> of the internet which 'no traditional industry has been able to match'.<sup>306</sup> Inevitably the law lags behind this.

Law enforcement agencies have demonstrated capability of dealing with 'internet-related illegalities if the perpetrators are within the jurisdiction'.<sup>307</sup> If practically ineffective, a lack of uniformity will exist across platforms - with broadcasting and online content governed differently.<sup>308</sup> Overcoming such practical issues could be achieved if the legislation was viewed not as eradicating all access, but making it more difficult.

Perceived Boundaries (Moralism)

Some claim<sup>309</sup> the government 'masked a moral agenda'<sup>310</sup> behind its ostensible reasoning for regulation. Nevertheless, these reasons have been substantiated. Empirical evidence indicates harm has been caused and suggests it will continue. This work takes the view that the evidence explored in Chapter 3 is substantial. Regardless of the government's true motive, the legislation is a crucial development in lessening the negative influence of SEIM and the adverse long-term effects it causes.

Difficulty with Enforcement (Policing)

The DEA has been described as 'laughably easy to get around'.<sup>311</sup> It has been criticised for being 'both... too onerous and too easy to evade'.<sup>312</sup> Age verification becomes 'only a minor obstacle'<sup>313</sup> when 'circumvention tactic[s]'<sup>314</sup> are utilised. VPNs<sup>315</sup> could be an 'escape

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<sup>303</sup> Lopamudra Sengupta, 'Using Morality to Censor Speech: Justifying Social Conservatism Through Children', (2010) 30(4) Child. Legal Rts. J. 1, 30

<sup>304</sup> Akdeniz, n24, 310

<sup>305</sup> Ofcom, n313

<sup>306</sup> *ibid*

<sup>307</sup> Yaman Akdeniz, 'Internet Content Regulation: UK Government and the Control of Internet Content' (2001) 17(5) Computer Law and Security Report 303, 305

<sup>308</sup> Ofcom, n313

<sup>309</sup> Writers such as Sengupta

<sup>310</sup> Sengupta, n323

<sup>311</sup> Davey Winder, 'U.K. Government Delays 'Laughably Easy To Circumvent' Porn Block- Here's What You Need To Know' *Forbes* 28<sup>th</sup> March 2019 <[www.forbes.com/sites/daveywinder/2019/03/28/u-k-government-delays-laughably-easy-to-circumvent-porn-block-heres-what-you-need-to-know/#3b2a5fdf40bd](http://www.forbes.com/sites/daveywinder/2019/03/28/u-k-government-delays-laughably-easy-to-circumvent-porn-block-heres-what-you-need-to-know/#3b2a5fdf40bd)> accessed 01/04/19

<sup>312</sup> The Guardian, n304

<sup>313</sup> McIntyre, n20, 23

<sup>314</sup> McIntyre, n20, 23

<sup>315</sup> (Virtual Private Networks)

hatch'.<sup>316</sup> The troubles willingly endured to circumvent the age-verification systems are yet to be seen. Whilst in essence verification should work akin to the cashier in an adult store, the restrictions may 'encourage inquisitive minors, a honey-pot effect'.<sup>317</sup>

Credit cards are one method of age verification but storing this data introduces a minefield of further issues. Whilst age verification technologies (AVT) are 'to date... [the] most effective against minor's deliberate access' there are 'potential high costs in terms of inconvenience and loss of privacy for adult consumers'.<sup>318</sup> To be effective, all content providers (including free content providers) must utilise AVT.<sup>319</sup> However, all filters implemented use technologies which will 'make errors of omission and commission'.<sup>320</sup> A kind of 'black market' may arise, making the material 'a whole lot dodgier than it was in the first place'.<sup>321</sup>

Beneficially, it is unlikely that minors could access SEIM through aid from adults (unlike alcohol). A multi-layered approach is 'inevitable'.<sup>322</sup> Measures working alongside regulation, particularly education through increasing awareness, would ameliorate the effectiveness of implementation..<sup>323</sup> This is a responsible approach, for whilst age verification makes accessing SEIM impossible in theory, and more difficult in practice, 'adults should act responsibly... rather than relying on technical solutions'.<sup>324</sup>

### Sexual Education

One problem raised in Chapter 3 is reliance on SEIM for education, which consequently impacts sexual attitudes. It is problematic that a source being used for education 'strip[s] away humanity and celebrate[s] cruelty'<sup>325</sup> with 'even soft porn contain[ing] pernicious signals about power, consent and respect'.<sup>326</sup> Providing adequate educational services so adolescents no longer rely on SEIM as a teaching tool, should be considered as part of a wider strategy.<sup>327</sup>

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<sup>316</sup> Hoffman, n316

<sup>317</sup> Flood and Hamilton, n269, 20

<sup>318</sup> *ibid*

<sup>319</sup> Age verification technologies; as covered by the DEA (see chapter 1)

<sup>320</sup> *ibid*, 18

<sup>321</sup> Manthorpe, n300

<sup>322</sup> Akdeniz, n366

<sup>323</sup> Akdeniz, n24, 306; 'among parents, their children, teachers and other consumers'

<sup>324</sup> Akdeniz, n386

<sup>325</sup> Behr, n12

<sup>326</sup> *ibid*

<sup>327</sup> Flood and Hamilton, n269

Part of the attraction of pornography... emerges from the failure of the government to provide effective sex education.<sup>328</sup> A multi-layered approach encompassing education is imperative, since it is impossible to prevent all minors viewing such content.<sup>329</sup> Relying on abstinence is not well-advised, which is why alcohol, drugs and sex are discussed in schools; the aim is 'to minimise the harms associated'<sup>330</sup> and 'promote healthy attitudes'.<sup>331</sup> Flood and Hamilton comment:

The principal advantages of social and educational strategies are that they encourage children's moral and ethical development and resilience... [being] more effective than technological solutions in the long term... minimis[ing] the negative effects of exposure... if and when it does occur... if children's ethical maturity is nurtured, their internalisation of appropriate values and principles will guide their future choices and behaviour.<sup>332</sup>

It would be highly beneficial to teach adolescents to understand and critique pornography, to distinguish between fantasy and reality, and develop ethical norms.<sup>333</sup> The government has announced plans for a broader curriculum on sexual education, due to commence September 2020, which will cover topics such as identifying the unhealthy perspectives on sex that are conveyed online.<sup>334</sup>

#### Internet Watch Foundation

The IWF reports sexually inappropriate online content to take them down,<sup>335</sup> thus preventing further access. They primarily focus on eradicating child pornography<sup>336</sup> within the UK, but they also work with partners internationally.<sup>337</sup> Beneficially, their approach could expose non-compliant sites. However, their technologies identify offending content, not who is accessing it. In many instances the content does not need removal, but who can access it requires restriction.

#### Concluding Remarks

While representing a *de jure* liberalisation of online pornography, the proposed system of

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<sup>328</sup> Cowen, n149, 517

<sup>329</sup> *ibid*, 11

<sup>330</sup> *ibid*, 13

<sup>331</sup> *ibid*

<sup>332</sup> *ibid*, 14

<sup>333</sup> *ibid*

<sup>334</sup> Lothian-McLean, n25

<sup>335</sup> Internet Watch Foundation, 'Our history' <<https://www.iwf.org.uk/what-we-do/why-we-exist/our-history>> accessed 30<sup>th</sup> April 2019

<sup>336</sup> *ibid*

<sup>337</sup> *ibid*

filtering, classification and age verification would represent a stringent *de facto* tightening of access to pornography by minors.<sup>338</sup> The DEA porn block is yet to be implemented, thus its effectiveness cannot be evaluated. This work can only discuss viewpoints expressed in anticipation of AVT. The Commercial Regulations<sup>339</sup> will also require consideration alongside the DEA when all are fully enforced.

Whilst childhood has been deemed 'under siege from technology and commerce',<sup>340</sup> with technological advancement 'inevitable',<sup>341</sup> governments are not 'powerless to intervene'.<sup>342</sup> Not all enforcement can be 100% effective - some content will slip through, but the verification process makes accessing SEIM more difficult and is therefore a deterrent. The future accomplishment of the new regulations is doubtful, yet what they resemble is a significant step: 'the first signs of a society that is reconsidering its attitudes to the uninhibited consumption of pornography'.<sup>343</sup> However, the possibility that the regulations could introduce more problems than they solve must be considered;<sup>344</sup> only time will confirm the truth of this.

The privacy risks in requiring personal information in verification are at the forefront of concerns, especially with recent mass data breaches.<sup>345</sup> The data being held is 'sensitive by definition'.<sup>346</sup> consumers' sexual preferences can be monitored and recorded, and will now be linked to their identity.<sup>347</sup> Even if the risk of hacking is small, no site is immune and 'the consequences are so enormous you have to wonder why the information is being gathered at all'.<sup>348</sup> Additionally, the 'centralized databases complete with... real names and passports [will] be a juicy target for hackers'.<sup>349</sup> Proper data handling is voluntary and thus dependant on which certification process is utilised by the particular website visited.

The Age-ID technology is designed and owned by MindGeek which raises questions regarding porn sites blocking access to porn sites.<sup>350</sup> The verification process (and consequently effective implementation of the DEA) largely relying on this technology results

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<sup>338</sup> Flood and Hamilton, n269, vii

<sup>339</sup> 2018 and 2019

<sup>340</sup> Behr, n12

<sup>341</sup> *ibid*

<sup>342</sup> *ibid*

<sup>343</sup> The Guardian, n304

<sup>344</sup> *ibid*

<sup>345</sup> McIntyre, n38, 21

<sup>346</sup> *ibid*

<sup>347</sup> *ibid*

<sup>348</sup> Manthorpe, n300

<sup>349</sup> Hoffman, n316

<sup>350</sup> Manthorpe, n300

in 'handing the keys to PornHub's parent'.<sup>351</sup> It could be problematic relying on the 'benevolence of those tasked with enforcing'<sup>352</sup> the regulations.

Overall, the 'policy is simultaneously oddly strict while being so full of holes'<sup>353</sup> but the general consensus amongst critics is that 'as long as the porn block catches most people, it's still worth it'.<sup>354</sup>

## **Conclusion**

Pornography has been described as a "ticking timebomb"<sup>355</sup> which requires urgent action, for 'with the turn of the century, pornography not only has expanded to the internet but also has diversified'.<sup>356</sup>

Free expression entitles individuals to access SEIM if they so desire, and 'equally importantly' entitles them to freedom from 'unwanted exposure'.<sup>357</sup> More needs to be done to prevent adolescents accessing SEIM from a younger age, especially when it is inadvertently discovered and not sought out. SEIM should not be so easily accessible, for whilst the DEA age-verification system is not yet live anyone can access anything regardless of age. An issue for legislators is how to protect without censoring. Measures need to be comprehensive yet not too restrictive. They must filter out adolescents from accessing SEIM with minimal disruption to adults wishing to access the same material.

Chapter 2 highlighted the importance of autonomy, distinctions between pornography and reality, and SEIM consumption being a private act. However, Chapter 3 established that adolescents lack the maturity and development that adults possess, which aids them in decision making. Many adolescents cannot distinguish between reality and SEIM, which affects attitudes and relationships. A conservative perspective cannot be employed, as it is inequitable to impose such a strict belief on so many. Liberal arguments are largely overridden since the harm is too great to permit free speech and autonomy to prevail. Taking

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<sup>351</sup> Isobel Asher Hamilton, 'Porn is being age-blocked across all of the UK in July. Here's why people think it's a terrible idea' Business Insider 17th April 2019, <[www.businessinsider.com/the-uk-porn-block-is-coming-why-people-think-its-a-bad-idea2019-3?r=US&IR=T](http://www.businessinsider.com/the-uk-porn-block-is-coming-why-people-think-its-a-bad-idea2019-3?r=US&IR=T)> accessed 21st April

<sup>352</sup> *ibid*

<sup>353</sup> Hoffman, n316

<sup>354</sup> Manthorpe, n361

<sup>355</sup> Daubney, n276

<sup>356</sup> Fritz and Paul, n219

<sup>357</sup> Cowen, n149, 516

a liberal-feminist perspective suggests pornography access should not be restricted, but rather acknowledges that some content is harmful.

Studies have shown that community standards are non-existent,<sup>358</sup> with 'opinions on pornography appear[ing] to be rooted not in general political attitudes but in specific beliefs about pornography and its effects.'<sup>359</sup> Equally, personal perspectives are perhaps not reliable as evidence of the 'third-person effect' hypothesis which 'predicts that people believe exposure to mass communication has a greater effect on others than on themselves'.<sup>360</sup>

It is the submission of this work that the scientific evidence explored is too substantial and significant to ignore. However, the proposed comprehensive ban for adolescents is perhaps too stringent and difficult to implement. Therefore a classification system is proposed, since it is not necessarily the consumption of SEIM causing adverse effects, but more so the specific content. Classifications balance these perspectives and form a compromise.

Further scientific research with a particular focus on adolescents and varying types of SEIM could enable legislation to become more specific and potentially less restrictive for some age brackets. If evidence indicated that adolescents were not as affected by certain types of SEIM then access may not need to be comprehensively restricted. Permitting access to softer content removes negatives explored in Chapter 3, as such portrayals will not adversely impact attitudes and behaviours. SEIM can be beneficial and educational in terms of discovering sexuality. Ultimately it must not be forgotten that curiosity and such acts are natural. However, Chapter 4 identifies that many practicality issues with enforcement relate to restricting content and not the age verification system itself, so this may be problematic and generate too great a logistics barrier.

The greatest change needed is sex education. SEIM has the greatest detrimental impact upon sexual attitudes and behaviours, and this can be addressed through an education programme. The issue at hand 'is about access and it's about education',<sup>361</sup> and as such neither should be neglected in the resolution. Ultimately, 'we've got to be more aware, more active, more responsible about what happens online'.<sup>362</sup> This should include government

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<sup>358</sup> Margaret E. Thompson, Steven H. Chaffee and Hayh H. Oshagan., 'Regulating Pornography: A Public Dilemma', (1990) 40(3) *Journal of Communication* 73, 80

<sup>359</sup> *ibid*

<sup>360</sup> *ibid*, 82; W.P. Davison, 'The Third-Person Effect in Communication' (1983) 47(1) *Public Opinion Quarterly* 1

<sup>361</sup> Cameron, n3

<sup>362</sup> *ibid*

legislation, parents, internet providers and platforms better monitoring what is happening online, and educators helping to ensure adolescents have a safe online experience of pornography and are taught to take precautions with their physical relationships. Whilst 'we can't "turn off the tap" ... we can – as with alcohol – urge responsible consumption'.<sup>363</sup> A multi-layered approach is therefore highly advisable to increase the effectiveness of regulations.

A classification system could be beneficial, since multitudes of generations have consumed pornography in their adolescent years and have not experienced the same adverse effects. However, SEIM cannot be compared to what previous generations possessed. As opposed to prohibiting all pornography access, the focus needs to be on preventing access to "the wrong kind" of porn'.<sup>364</sup> The question can also be raised why is it necessary to restrict access to SEIM to 18, whilst the age of consent remains at 16? From a liberal-feminist perspective, it is the more hard-core SEIM which should be restricted. Alleviating the material likely responsible for the adverse effects is indisputable, but it must be accepted that adolescents will reach an age (whether that be adulthood or some other measure of maturity) where bodily autonomy must prevail and the paternalistic function of the law must concede to this. Until more evidence exists to prove it should not be so (reiterating the precautionary principle raised in Chapter 3), soft-porn (that is not degrading or violent or would have a negative influence on perceptions of sexual relations) should be available to access for older adolescents. Exact ages to set these thresholds should originate from research, and since only a limited amount currently exists to provide guidance, it is submitted that 16-year-olds and above should have restricted access but should not be denied access. This is primarily founded upon the belief that it is illogical to prevent the consumption of sexually explicit material, whilst legal to provide consent to engage in sexual activity.

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<sup>363</sup> Daubney, n276

<sup>364</sup> Diller, n245