



**HÁSKÓLI ÍSLANDS**

**Hugvísindasvið**

# **Permitting Pornography**

*A Critical Review of the History of Pornography Censorship in  
Iceland in a European Perspective*

**Ritgerð til BA-prófs í sagnfræði**

**Ásta Guðrún Helgadóttir  
Maí 2014**

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**Maí 2014**



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## **Abstract**

This dissertation will discuss Iceland's approach toward pornography censorship in a European perspective. The Icelandic laws banning pornography production and distribution date back to an article from 1869 and no substantial revisions have been made since then, only further additions to the article. The laws have generally been considered to be dead-letter laws, but have received a new life in the 21st century as the main antagonist in the quest for Internet censorship.

Iceland became synonymous with prestigious reform of laws relating to freedom of expression following a banking crisis in 2008 and consequently became reputable as a data and media haven. This dissertation examines the origins of the anti-pornography laws in Iceland, how they have been applied, and why they have remained stagnant compared to the development of laws on pornography in other European states.

This dissertation puts forth that the anti-pornography feminist discourse on the laws was adopted by the more conservative judicial system and that it, at the same time, suited traditional attitudes of a portion of the general public. The censorship of pornography has not only been a contested issue from a moral point of view, but also contested are the technical possibilities of censorship on the Internet. The issue is many layered and it has to be examined from several perspectives: in context of legal history, social development, feminist theories, and what censorship actually means in the era of the Internet.

## Introduction

The progress of the women's rights movement has often been portrayed by the shrinking hemlines, which continued to shrink until there was nothing left but the naked body. The body, or the female body to be more precise, can be presented as one of the most politically contested phenomena in history. The female body, and its representation in the media has continued to be scrutinized, but the right to breastfeed in public, and women's reproductive health remain frequently debated. Public presentation of the female body and sexual expression has, more often than not, been regulated. Called pornography, eroticism, or obscenity, the various levels of sexual representation of the female, and the male, in whatever context we can imagine, has been frowned upon and forbidden. While Iceland was no exception, it did not follow the global trend in the 20th century when it came to legalizing pornography on the basis of freedom of expression.

The origins of the Icelandic pornography ban dates back to 1869, when a printing and distribution ban of pornographic material was inducted into the criminal code in Iceland. This was just over a decade after Iceland acquired freedom of press laws from the Danish King, in 1855.<sup>1</sup> The pornography laws have largely remained intact since 1869 and when the general penal code was revised in 1940, no objections were made towards the pornography ban even though defamation and freedom of expression were hotly debated parliament during the very same reform. One paragraph was added to the porn article in 1940, a third paragraph banning pornographic shows and lectures, and then again in the 1990s with a paragraph banning child pornography. This paragraph regarding child pornography was then changed substantially in 2012 according to recommendations from the Council of Europe. The laws have thus not taken any substantial changes since 1869, making them close to 150 years old. This is in stark contrast to the development in Europe in the 20th century when pornography became more accepted and recognized as such by the legislature. It thus raises the question on why has there not been any kind of legal reform regarding pornography in the past 150 years.

Iceland has taken some internationally recognized steps to provide freedom of the press and whistle-blowers protection; however, it has simultaneously become prominent in the international press and politics for wanting to censor pornography on the Internet. Iceland has in many regards lagged behind in legal reform regarding freedom of expression, which can be apparent when Iceland's judicial actions are examined. Iceland has been criticized by the Council of Europe and the Organization for Security and Co-

<sup>1</sup> Gunnar Karlsson, "Fyrstu spor á lýðræðisbraut", 347-349.

operation in Europe (OSCE) for criminalizing certain kinds of speech, as the penalty framework includes prison sentences.<sup>2</sup>

The Icelandic legislative body has very recently taken steps towards redefining punishments for expression-based crimes, however the process is slow. A significant step was reached with the unified support from the Icelandic parliament for the Icelandic Modern Media Initiative (IMMI), by means of a parliamentary resolution promising reform on freedom of information laws, including whistle-blower protection and elaborate freedom of press laws. However, the issue of pornography censorship was not addressed in that context.<sup>3</sup> The IMMI resolution received unified support from the parliament and has been described as one of the most influential legal reforms in support freedom of expression in recent times.<sup>4</sup> This has resulted in a contradiction: on the one hand Iceland has gained notoriety for wanting to censor pornography on the Internet; on the other hand, it has established itself as an important role model on a global scale as a haven for freedom of information. .

Another explanation suggested in this dissertation for the persistence of the illegality of pornography is the advent of the anti-pornography feminist discourse from the 1980s. The anti-pornography movement discourse on pornography was revolutionary for the women's rights movement, as it argued that the representation of women in media was harmful for gender equality. Their definition of pornography was very precise, and was narrower than what had been considered pornography previously. It defined pornography as inherently demeaning towards women and always presenting violence, narrowing down the more conventional definition of pornography as being representation of sex for sexual stimulation. It will be proposed that this movement has been influential in the political sphere and while not attempting to ban pornography on the basis of a conservative or moral attitude, it aligned with a conservative interest in banning pornography.

This dissertation examines the legal history regarding pornography in Iceland from 1869 through the most recent contemporary developments. This contested issue is far from being simple to examine, and to understand its complexities it is necessary to examine it in international perspective. However, the development will here only be examined in a

<sup>2</sup> “OSCE media freedom representative concerned proposed legislation in Iceland could limit freedom of expression“, Organization for Security and Co-operation in Europe. Innanríkisráðuneytið, “Fundaröð innanríkisráðuneytisins um mannréttindamál 2011 - 2012 – samantekt”, 3-4.

<sup>3</sup> Alþingi, Parliamentary Resolution 23/138.

<sup>4</sup> Florencio Cabello Fernández-Delgado, María Teresa Vera Balanza, “Beyond WikiLeaks: The Icelandic Modern Media Initiative and the Creation of Free Speech Havens”, 2706–2729 . Thomas Hoeren, “*IMMI – The EU Perspective*”, 141-145.

European context. Factors such as the development of freedom of expression principles, the women's rights movement, anti-pornography feminist discourse and the more traditional standpoint towards sexual explicit material will be examined in the context of the Internet. The alignment of the anti-pornography movement with a more traditional conservative and moral standpoint towards pornography will be proposed as a defining factor in why Iceland has so far lacked motivation to legalize pornography. Furthermore, regarding the contemporary developments towards pornography censorship on the internet, it will be proposed that a limited understanding of the nature of the Internet and computer technology has ignited a fierce debate between the anti-pornography movement and anti-censorship movement. The legacy of a more conservative society was reactivated with the advent of the anti-porn feminist theories, enabling the anti-pornography activists to narrow down the definition of pornography within the already available laws, which in turn were originally representative of another world – another time in history.



## **Understanding the Pornography Debate**

The thin line between decency and indecency has frequently and constantly been renegotiated by the members of a society, oftentimes vigorously. Society tends to have limits on what should be considered decent and proper, from the shrinking hemlines of women's skirts to the acceptance of naked bicycle races. A society's morals and what it deems socially acceptable change considerably over time, as well as who has the authority to decide what is acceptable: the church, state or the individual. To understand the modern day pornography censorship debate, it must be reviewed in a broad and historical perspective.

The big picture of the pornography debate includes not only feminist ideologies and interpretation of pornography, but the history of the laws, the society they were made in and why. There are two factors which will be examined here: first the conservative past of Icelandic society and its legacy, to the reactionary nature of law. Second, a brief history of the anti-pornography feminist movement will be proposed, their main proposition in the pornography debate and how it has influenced the Icelandic women's rights debate. These two components are fundamental for the understanding of the origins of the law, the exercise of the law in modern times and the justification of Internet censorship.

### **Conservative Society**

In European, Christian societies, pornography has traditionally been considered immoral. Laws which touch upon banning distribution, or production, of pornography were traditionally based on conservative moral values. The law, banning distribution, presentation and making of pornography in Iceland was initially codified in the 19th century and understanding the society they in which they were promulgated is useful to get a holistic perspective of the pornography debate in Iceland.

The Icelandic 19th century society was, generally speaking, an underdeveloped agricultural society by European standards and there was not much which suggested that the Industrial Revolution was just around the corner. Iceland adopted Christianity three hundred years after settlement, or in the year 1000, according to preserved medieval literature. Iceland had become part of the Norwegian Kingdom in the 13th century, and few centuries later, it became part of the Danish Kingdom of which it was dependency until 1918 when it became a sovereign state. The 19th century was a turning point in social, economic and political development for Iceland, as it was for other European societies. As

Icelanders gradually acquired more personal freedom overcoming the vassal system, Iceland's political autonomy increased incrementally, eventually leading Iceland to become sovereign, independent republic from the Danish Kingdom in 1944.<sup>5</sup>

The farmers' society has sometimes been described as being conservative but yet able to take what would be considered as very progressive decisions. The conservative farmers' society regarded social status as valuable when it came to deciding on political participation, which explains why Icelandic women were able to vote on several occasions before women's suffrage was codified.<sup>6</sup> It has been argued by some scholars that the Old Icelandic farmers' society could readily be accepting towards new ideas, as long as they did not depart from the old way of living or the already existing interest in the society. This was apparent in the earliest debates on women's rights and suffrage in the late 19th century, when there was general acceptance of granting suffrage to women who had certain social status, but then came a backlash when the arguments pressed for political rights for women were justified with her gender, rather than her social status.<sup>7</sup>

The swift change from vassal system to city dwellers at the turn of the 20th century did not necessarily imply that the moral values or mind-set of the society changed as rapidly. This was apparent in a very public debate which lasted half of the 20th century, which revolved on the new fashion of young women when they cut their hair short, wearing silk socks and shorter skirts.<sup>8</sup> The legacy of a more conservative farmers' society may influence why the laws regarding the pornography ban were not changed in the 1940s when the penal code was revised. The conservative moral attitude towards pornography and sexually explicit material or shows was apparently in harmony with the values of the lawmakers at the time. No objections were made in parliamentary sessions, only a small remark stating the addition on banning pornographic plays and lectures; the article was then passed in unison.<sup>9</sup>

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<sup>5</sup> See for Example: Gunnar Karlsson, "Atvinnubylting og Ríkismyndun 1874", 5-291. Gunnar Karlsson, "Upphaf þjóðríkismyndunar 1830-1874", 167-361.

<sup>6</sup> Guðmundur Hálfðanarson, „Kosningaréttur kvenna og afmörkun borgararéttar – umræður um þátttöku og útilokun í íslensku samfélagi“, 22–41. Gunnar Karlsson, „Um kvenréttindavilja íslenskra sveitakarla á 19. öld“, 127–147.

<sup>7</sup> Sigríður Matthíasdóttir, "Kvenleiki og Kvennabaráttan fram til 1911," *Hinn sanni Íslendingur*, 173-233. Sigríður Matthíasdóttir, "Karlar og viðhorf þeirra til kvenréttinda á Íslandi um aldamótin 1900", 33—61. Svanur Kristjánsson, "Ísland á leið til lýðræðis. Frá kvenfrelsi og frjálshynda til feðraveldis", 63–90.

<sup>8</sup> Sigríður Matthíasdóttir, *Hinn sanni Íslendingur*, 243-299.

<sup>9</sup> Alþingistíðindi 1939 54. löggjafarþing, B Umræður, (Reykjavík 1949), 770-789.

## **The Restraints of the Legal System**

This dissertation aims to research the laws and how they reflect a society. Laws are inherently stagnant unless change is initiated towards them. That is a factor which is important to keep in mind when discussing the legal actions against pornography. Hypothetically, should the legislative body be employed by individuals of conservative mind-set when it comes to the availability of pornographic material, that would explain why there has been no reform regarding abolishing the pornography ban in Iceland. The laws do not reflect the public perception towards pornographic material and consumption. The laws reflect the mind-set and moral values of those who passed the laws and do not necessarily demonstrate whether or not pornography literature was anyhow problematic in the 19th century Iceland, if the general public had access to pornography or consumed it on regular basis. It is highly unlikely that the laws were passed to protect the agency of female sexuality or well-being of children; rather they were laws of moral control.

## **The Sexual Revolution of 1960s**

Even where legal, pornography has been considered to be taboo in Western societies. The sexual liberation of the 1960s was a turning point in many regards, nominally the fact that the new contraception such as the Pill was available for women. Furthermore it was characterized by greater acceptance towards of homosexuality and legalization of abortion was also a heated debate. The acceptance towards pornography is also an important factor of the sexual revolution. Pornographic magazines such as *Playboy* and *Penthouse* became more acceptable and the re-issue of erotic novels like *Fanny Hill*, even though it was written in the 18th century, caused a significant stir on both sides of the Atlantic.<sup>10</sup>

Even though it is possible to point out significant events such as the advent of the pill and the legalization of abortion, it does not tell the whole story when it comes to pornography. In light of the events which became apparent to the world at the end of the Second World War, there was a strong consensus towards codifying human rights. The Universal Declaration of Human Rights was ratified in 1949 with the establishment of the United Nations. The Council of Europe adopted the declaration that became the European Convention of Human Rights, which came into force 1953. The effects of the codification of Human Rights meant that freedom of expression became one of the inalienable human rights in Europe, whereas in the much earlier First Amendment of United States had

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<sup>10</sup> *Memoirs v. Massachusetts*, 383 U.S. 413 (1966). Andenæs Bratholm, Anders Bratholm, *Spesiell straffret. Utvalgt emner*, 2nd edition, (Oslo 1990).

codified freedom of speech. It raised questions regarding the limits of freedom of expression: Did this mean that publication of pornographic content was legal? The answer to this question was positive in most countries in Europe where a pornography debate arose in the 1950s and 1960s. The first country to legalize pornography was Denmark in the 1960s.<sup>11</sup> The Supreme Court of United Kingdom argued that publication of pornography should be legal as it was a matter of expression.<sup>12</sup>

The cultural acceptance towards pornography may be related to the sexual liberation of the 1960s; however that can only be considered as one factor regarding legalization of pornography. The second factor, and more important in my opinion, is the advent of the concept of freedom of expression in the 1950s and onwards as a universal human right. I would argue that the sexual liberation of the 1960s was preceded by liberation of expression in 1950s with the acceptance of human rights.

## **The Pornography Question in Feminism**

Shrinking hemlines were not the core issue of the women's rights movement of the early 20th century, but rather suffrage and the right to participate in the public sphere. When the political aspirations of the women's rights movement were achieved, feminists noted that even though the formal and political rights had become equal between the genders, women still were not represented equally to men. The under-representation of women was duly noted by feminist scholars and activists who began critiquing the male-centric the academy and the evident lack of female representatives in the political sphere.

Feminist scholars and activists, searching for a reason why women were struggling so much on the road to recognition and success, argued that the sexual representation of women in the public sphere was undermining the gender equality. It was claimed that how women were presented in pornography, advertisements, and media, was undermining the equality between the genders and the very essence of why women were not taken seriously.<sup>13</sup> The idea of the woman had been dehumanized by the pornography industry,

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<sup>11</sup> Stephan Hurwitz et al., *Straffelovrådet betænkning om straf for pornografi*, 34-42.

<sup>12</sup> Andrew Murray, *Information Technology Law*, 351-384.

<sup>13</sup> As it says in a text-book focusing on feminist and gender studies in media: "The Major tasks of feminist work in media studies so far have been (a) making visible the *patriarchal* domination of media industries, in term of both ownership and *representation*; (b) critiquing the male biases in the field of study itself; (c) bring formerly neglected and undervalued "**women's genres**" (cultural entertainment forms targeting women audiences) to the foreground as legitimate areas of study; (d) beginning an examination of women's experiences as consumers of media imagery; and (e) encouraging women media producers to experiment with new approaches and themes." *Gender, Race and Class in Media. A text-reader*, edited by Gail Dines and Jean M. Humez, preface, xix.

presented as an object rather than a person, by their representation in various sexual acts where male dominance was the main theme. This debate was concurrent with new technological developments, nominally the advent of the personal television and VHS, and intensified in the 1990s with the advent of the Internet. Pornography, in the second half of the 20th century, had not only become widely available, new technology made it easier for people to produce, distribute and consume it in private.<sup>14</sup>

There was significant a change in the feminist discourse in the 1970s which turned its focus towards pornography and the representation of women in the media. It was characterized by a very specific discourse, relating pornography to violence and an inherent humiliation of women. It was argued as a fundamental reason why women had not acquired full equality, even while holding equal political rights to men. The pornography debate was a defining debate of the feminist movements in the 1980s and onwards, where the anti-pornography activists and liberal feminists argued about the right to pornography versus the potential harm. This debate was even nicknamed the 'Porn Wars' or the 'Feminist Sex Wars' and has ever since been, to some extent, a defining point within the general scope of feminists: whether one is pro or against pornography ever since.<sup>15</sup>

Among the most prominent anti-pornography activists from the 'Porn Wars' were Catharine MacKinnon, a legal scholar, and Andrea Dworkin, a writer. They shared the view that the current representation of women in pornography and in the media in general, was undermining women's ascension towards cultural and social equality with men. MacKinnon and Dworkin were close collaborators and very influential in the anti-pornography activist scene and beyond. MacKinnon, as a legal scholar, put forward a legal interpretation that pornography was not expression, but violence, and the that consumption and making of such material was, in itself, undermining women's rights and fundamental freedoms as she explained in her book, *Only Words*:

On the basis of its reality, Andrea Dworkin and I have proposed a law against pornography that defines it as graphic sexually explicit materials that subordinate women through pictures or words. ... This definition includes the harm of what pornography says – its function as defamation or hate speech – but defines it and it alone in terms of what it does – its role as subordination, as sex discrimination, including what it does through what it says. ... Pornography is not restricted here

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<sup>14</sup> Andrew Murray, *Information Technology Law*, 351-384.

<sup>15</sup> Gayle Rubin, "Misguided, dangerous and Wrong. An Analysis of Anti-Pornography Politics," 18-33.. Ellen Willis, "Feminism, Moralism, and Pornography," 460-467.

because of what it says. It is restricted through what it does. Neither is it protected because it says something, given what it does.<sup>16</sup>

Together, Dworkin and MacKinnon fought the pornography industry and sexual violence against women both as activists and academics. They are considered as influential well beyond the confines of the feminist discourse, and their work has been cited by the Supreme Court of Canada demonstrating why restriction for pornography distribution is not censorship, in a notorious case, *R vs. Butler*.<sup>17</sup>

Together they argued that 'male-supremacist' pornography was one of the representations of violence against women in which this became apparent.<sup>18</sup> This interpretation of the representation of women in the media was presented in a sensational way, to provoke the establishment, which dominated western civilization. Stating that in the name of freedom of speech, it supported male-supremacy by overlooking the effectively violent acts pornography presented upon women<sup>19</sup>

Another prominent anti-pornography advocate is Dr Gail Dines, a professor at Wheelock College in Boston. Her work has focused on the representation of women in media and pornography. Dines argues that the effects of the consumption on mainstream pornographic material have harmful effects, especially on boys and young men. It reinforces negative attitude towards women, and she argues 'that pornography is a form of violence against women; both in its production and consumption, and that pornography should be defined as a violation of women's civil rights'.<sup>20</sup>

The anti-pornography feminist movement has influenced not only the public debate, but has considerably effected the legal definition on pornography, as was apparent in the *R. vs. Butler* case in Canada, and was apparent in the redefinition on pornography in the Norwegian penal code in 1985. The anti-pornography feminist movement has been criticized for using anecdotal evidence in their argumentation. Despite that, the claims that gender inequality being reinforced through negative representation of women have encouraged critical thinking on the presentation of women in porn and media.<sup>21</sup>

The harmful effects of pornography have been up for considerable debate and the subject of various researches have come to different conclusions. It is difficult to conclude

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<sup>16</sup> Catharine MacKinnon, *Only Words*, 22-23.

<sup>17</sup> *R. v. Butler* 1992:1 S.C.R. 452.

<sup>18</sup> Andrea Dworkin, "Pornography and Male Supremacy", 237-243.

<sup>19</sup> Catharine MacKinnon, *Only Words*, 94-120.

<sup>20</sup> Gail Dines and Jean M. Humez, "Modes of Sexual Representation 2: Pornography", 231.

<sup>21</sup> Irene Diamond, "Pornography and Repression: A Reconsideration," 129-144.

and has not been possible to prove if there is statistical correlation between watching pornography, violent or non-violent, and a person's attitude towards violence against women. The vast literature on pornographic consumption has used different methods to measure statistical correlation between the attitude towards women and pornography consumption, which in turn makes it up for a debate whether or not the method chosen was optimal, questions asked and how the sample was chosen.<sup>22</sup> However, there does not seem to be a correlation nor causation between banning pornography and the frequency of reported rape, as different researches have concluded in various countries at different times.<sup>23</sup>

A negative stance towards pornography is apparent in the Icelandic feminist discourse. The Icelandic Feminist Organization (Feministafélag Íslands) and the Icelandic Women's Rights Organization (Kvenréttindafélag Íslands) have both publicly taken stance against pornography and the normalization of pornography in society.<sup>24</sup> Helga Sigurjónsdóttir, a prominent figure in the more political wing of women's rights movement in Iceland from 1970s, published a selection of essays in 1988, "Í nafni jafnréttis" or "In the name of equality". There, discussing the morals and politics of feminism and equality, she provided her personal opinion on pornography, citing both Dworkin and Steinem. There, she says that "Pornographic magazines and the porn industry as a whole has the objective to deprive women all human qualities, they are supposed to enjoy being tortured."<sup>25</sup> She quoted on several occasions Dworkin, Steinem and other feminist which have clearly identified themselves as anti-pornography and agreed fundamentally with the idea that pornography was harming gender equality. Kolbrún Halldórsdóttir, a Member of Parliament for the Left-Greens in 2003, previously part of the Women's Party and a

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<sup>22</sup> Carole S. Vance, "Gender Systems, Ideology, and Sex Research," 371-384. Gert Martin Hald, Neil M. Malamuth, and Carlin Yuen, "Pornography and Attitudes Supporting Violence Against Women: Revisiting the Relationship in Nonexperimental Studies", 1-7. Richard Jensen, "Pornography and the Limits of Experimental Research," 298-306.

<sup>23</sup> Cees Maris, "Pornography is going on-line: The harm principle in Dutch law\*," 1-23. Aleksandar Stulhofer, Vesna Busko, and Ivan Landripet, "Pornography, Sexual Socialization, and Satisfaction Among Young Men," 168-178. Gert Martin Hald, and Neil M. Malamuth, "Self-Perceived Effects of Pornography Consumption," 614-625.

<sup>24</sup> The Icelandic Feminist Organization celebrated the Internet pornography censorship initiative of Mr. Jónasson in 2013. The Women's Rights Organization of Iceland has, in various reviews and resolution stated concerns about the effects of the normalization of pornographic presentation of women.

<sup>25</sup> "Klámritin og allur klámiðnaðurinn miðar að því að rýja konur öllum mannlegum eiginleikum, þær eiga meira að segja að njóta þess að láta kvelja sig." Hulda Sigurjónsdóttir, *Í nafni jafnréttis*, 110.

prominent feminist in Iceland<sup>26</sup>, publicly proposed a possible legal definition of pornography in a debate, stating that:

Pornography is content which unites sex/intercourse and/or exposed sexual organs and abuse or humiliation in a way that the behaviour seems supported, not addressed or aggravated<sup>27</sup>

This definition accords with the anti-pornography discourse of the feminist movement from the 80s, specifically the writings of MacKinnon and Dworkin. Both Sigurjónsdóttir's and Halldórsdóttir's statements regarding pornography confirm that at least part of the women's rights movement agreed with the anti-pornography feminist discourse and that it was being actively discussed within the movement. However, further research on this topic would be necessary to confirm this.

## Summary

As has been explored above, the pornography question involves many different factors, from the proposition of a conservative aspect of a society, the restraints of the legal system, the sexual liberation of the 1960s and the feminist approach towards pornography. There was a significant change from the 1950s and onwards which led to the gradual acceptance of pornography and presentation of sex to the public in greater part of the West. As this dissertation is dealing with laws originating from the 19th century, it is possible to conclude that they derive from a more traditional and conservative society than what we live in today. The legal system is inherently stagnant, as laws do not change unless change is initiated towards them.

The sexual liberation of the 1960s has been considered by some a defining point when it comes to explaining the normalization of pornography. However, I consider it partly inaccurate to give sexual liberation too much credit as it was not the factor which induces the political and legal change towards pornography, but the advent of the Human Rights declarations in the 1950s. The 1950s and 1960s were characterized by conflicts between moralists wanting to ban pornography and the liberalists, claiming that banning it was censorship. This led to gradual acceptance and trend towards legalization of pornography in many countries in Europe and in the United States.

<sup>26</sup> The Women's Party was a political party established in 1983. Its political objective was to encourage women to participate in politics, so that half of the officially elected members of parliament would become women. Its goal was reached in 1999 and the party was discontinued.

<sup>27</sup> "Klám er efni sem sameinar kynlíf/samfarir og/eða afhjúpuð kynfæri og ofbeldi, misnotkun eða niðurlægingu á þann hátt að slík hegðun virðist studd, látin óátalin eða til hennar hvatt." "Allir ábyrgir í baráttunni við klám." Web: "Allir ábyrgir í baráttunni við klám", *mbl.is*, April 5 2003.



The anti-pornography feminist movement provided a critique of the poor representation of women in media, advertisement and pornography. It has been a defining debate for soon to be three decades both in the international arena of feminist discourse as well as in Iceland, which engaged with the ideas from the 1980s. Feminists have defined themselves as anti-porn, pro-porn or sex positive in the debate on the women's right issues and the debate surrounding pornography has continued to be contentious, especially since easy access to the internet became more common.

## **Pornography and censorship – European perspective**

Icelandic laws and development thereof should be perceived and understood in context with the international political sphere, with particular attention to Europe. Iceland has for the majority of its history been dependent upon foreign legislation, either from Denmark or in later times, the European Union and the Council of Europe. This necessitates a close examination of the approach towards regulating pornographic material in Europe, with a special focus on the Scandinavian countries.

Pornographic material, by global standards, is lightly regulated in most member states of the Council of Europe. The most notable measure regarding harmful and illegal material online has been taken in Budapest 2001, with the *Convention on Cybercrime*. It has been ratified by most members of the Council of Europe, notably including Iceland.<sup>28</sup> The convention addresses the importance of fighting distribution of child abuse material and other illegal and harmful activities against children, but it does not address pornography. According to recommendations of the European Parliament and the Council, legislative measures are needed to protect children from harmful material.<sup>29</sup>

### *The European Union*

The European Union, as a supra-legislative body and an economic area, has not taken a definite stance on the legality, of pornography or censorship thereof, neither in terms of international harmonization nor as recommendation for national legislations. The European Union's institutions seem to avoid the topic of pornography in their documentation, as reports from the institutions of the Union systematically do not address pornography, even when it would be appropriate.<sup>30</sup> Although pornography is rarely addressed, the European Union has taken a clear stance against child abuse material and towards protection of children.<sup>31</sup>

The first Pan-European program that addressed these issues was the Safer Internet Program which was launched in 1999, and was most recently renewed for the period of

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<sup>28</sup> Council of Europe, ETS No. 185, Convention on Cybercrime, Budapest, 23rd November 2001.

<sup>29</sup> European Parliament and Council, 952/EC. There it says: “Legislative measures need to be enacted at Union level on the protection of physical, mental and moral development of minors in relation to the content of all audiovisual and information services and the protection of minors from access to misappropriate adult programmes or services”

<sup>30</sup> The policy report, “Consumer Behaviour in Digital Environment” does not address pornography, however, discusses child pornography. Similarly the study, “Strengthening Security and Fundamental Freedom on the Internet” does not discuss pornography at all, even when it addresses censorship.

<sup>31</sup> European Commission, IP/96/930, “The protection of Minors and Human Dignity and Information services”.

2008-2013.<sup>32</sup> Most of the issues concerning usage of the Internet are answered with either self-regulation of companies and parental control or public-private partnership, i.e. cooperation between the officials and private companies to advocate for safer internet usage and eliminate child abuse material on the Internet.<sup>33</sup> Any legal or extra-legal measures on access to pornography, or censorship thereof, are decided on a national level or pursued by private companies. In response to increased political pressure to confront children's access to pornography on the Internet, the EU spokespersons have recommended home-filters in cooperation with Internet service providers.<sup>34</sup>

### *United Kingdom*

In 2008 The United Kingdom passed a revised act regarding pornography. There, the possession of extreme pornographic images was made illegal, along with violent abuse material and sexual child abuse material. A pornographic image was defined to be “of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.”<sup>35</sup> An 'extreme' image was defined as an act which was “grossly offensive, disgusting or otherwise of an obscene character”, as well as life-threatening acts, damaging acts on a person's genitals or sexual parts, necrophilia, and bestiality.<sup>36</sup> The Act considered the core of the definition on what pornography is and what it is not, to lie in the purpose of the production rather than the end result. Accordingly, images which are not made with the purpose of being sexually stimulating for the viewer but happen to be so never the less, are not 'pornographic' by definition of the act.<sup>37</sup> The recent amendments were influenced by a tragic occurrence: a violent murder and sexual abuse of Jane Longhurst in 2004, conducted by Graham Coutts who reportedly was inspired by extreme pornographic videos he acquired online.<sup>38</sup> The amendments were highly debated; by some they were considered to be necessary measures to prevent recurrences of the same; others claimed it to be censorship.<sup>39</sup>

Concurrent with the criminalization of 'extreme pornography', Internet filters were introduced in 2004-2008 and currently operate an 'opt out' filter system; an internet

<sup>32</sup> European Parliament and Council, 1351/2008/EC.

<sup>33</sup> European Commission, European Strategy for a Better Internet for Children, COM(2012) 196.

<sup>34</sup> Ivana Katsarova, “Protection of minors in the media environment”, 2-4.

<sup>35</sup> United Kingdom Criminal Justice and Immigration act, 63, paragraph 3,

<sup>36</sup> United Kingdom Criminal Justice and Immigration act, 63 paragraph 6(a).

<sup>37</sup> “An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.” Criminal Justice and Immigration act, 63, paragraph 3 & 7.

<sup>38</sup> Web: “MP calls for violent porn ban”, *BBC*, February 9 2004.

<sup>39</sup> Web: “Criminalizing Extreme Porn”, *New Statesman*, October 28 2008.

connection is automatically filtered unless the buyer asks specifically for it not to be.<sup>40</sup> The system is officially named 'The BT Anti-Child-Abuse initiative' but has been nicknamed 'Cleanfeed' and is co-operated by the Internet Watch Foundation, a non-profit organization, Internet Service Providers (ISPs) and the British Law Enforcement. The main objective of the filtering is to eradicate and fight child abuse material and extreme pornography on the Internet. The Cleanfeed filter has been criticized for various reasons, nominally for lack of transparency meaning that there is no way to know what is blocked and what not.

The Internet censorship practised in the United Kingdom has recently become more invasive, with ISPs providing filtering ordered by the Government in addition to the Cleanfeed filter. According to discussions which took place in the House of Commons on October 23<sup>rd</sup> 2013, the Prime Minister stated his interest in censoring 'extreme' political speech in name of security and common well-being.<sup>41</sup> As of December 2013, the Internet Service Providers are obligated to provide opt-out child-protection filters.<sup>42</sup>

### *Denmark*

Iceland has historically had strong ties with Denmark, as Iceland was a Danish dependency for centuries, and as such, adopted Danish laws and regulations. After a period of strict laws on pornography and its censorship, Denmark was the first country in Europe to legalize pornography; this occurred in two steps during the 1960s. The legalization of pornography was not a spontaneous event in Denmark: publishers and individuals had pushed the limits of what should be considered pornography in the 50s and throughout the 60s.<sup>43</sup> This apparent change in acceptance of pornography did not go unnoticed; the Minister of Justice appointed the Penal Code Committee to undertake an elaborate research on pornography and prepare possible amendments to the laws.

The Penal Code Committee delivered a report in 1966 where it described difficulties regarding the definition of pornography and obscenity within the law; what possible harm pornography could have on individuals and society; the people's desire to read pornographic literature; and the juxtaposition of freedom of expression and trade with the role of criminal law in society.<sup>44</sup> The committee came to the conclusion that

<sup>40</sup> Web: "BT default 'pom filter' switched on" *BBC*, December 16 2013.

<sup>41</sup> "...setting out a whole series of steps that we will take to counter the extremist narrative, including by blocking online sites." David Cameron, *House of Commons*, October 23 2013.

<sup>42</sup> Web: "BT default 'porn filter' switched on", *BBC*, December 16 2013.

<sup>43</sup> Stephan Hurwitz et al., *Straffelovrådet betænkning om straf for pornografi* 34-42. Berl Kutchinsky, "Pornography, sex crime, and public policy", 43.

<sup>44</sup> Stephan Hurwitz et al., *Straffelovrådet betænkning om straf for pornografi*, 48-55.

decriminalization of pornographic writings would be reasonable as long as no harm was committed in the production process, but it should not necessarily include decriminalization of pornographic pictures and objects.<sup>45</sup> The proposal of the Penal Law Committee on decriminalization of pornographic writing was accepted in 1967 and two years later, the legislature decided to legalize pornographic objects and pictures as well.<sup>46</sup> Denmark was thus one of the first western countries to legalize pornography. However, child pornography remained illegal. A child was first defined as a person under the age of 15, later the age was raised to 18 in accordance with international conventions.<sup>47</sup>

### *Sweden*

In comparison with its neighbour which was first to legalize pornography, Sweden was one of the first countries in the world to guarantee freedom of speech. This occurred in 1766 under the Law of Freedom of the Press, and it has generally been codified ever since. From 1991 onwards the Swedish fundamental law, *Yttrandefrihetsgrundlag*, has had an elaborate chapter on freedom of expression. Sweden followed the Danish precedent and legalized pornography in 1970, although public screening or distribution of films was restricted to a permit from the Swedish Film Censorship Board.<sup>48</sup> Furthermore, along with distributing or providing viewings of pornographic or otherwise obscene material to children and youth, pornography that includes violence, children, or animals is illegal in Sweden.<sup>49</sup> Child abuse material is viewed as a very serious crime, and thus its distribution and production of it is illegal, included animated pornography. This resulted in what became a high profile case in 2010-2012. The accused was found guilty of possession of child pornography, as the district courts considered Japanese styled 'manga' drawings in his possession to depict children in sexually explicit situations. The accused was acquitted in the Supreme Court in 2012 based on the freedom of expression principal; no children were harmed and the pictures were not considered to be realistic in any way.<sup>50</sup>

### *Norway*

While Sweden and Denmark took a liberal approach towards pornography and regulation thereof, neither Iceland nor Norway followed their precedent. In the case of Norway,

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<sup>45</sup> Stephan Hurwitz et al., *Straffelovrådet betænkning om straf for pornografi*, 66.

<sup>46</sup> Berl Kutchinsky, "Pornography, sex crime, and public policy", 43.

<sup>47</sup> Lena Espersen, Sagsforløb 2002/1 LF 117, 1-5.

<sup>48</sup> *Yttrandefrihetsgrundlag*, Chapter 3. no. 14 (1991:1496).

<sup>49</sup> Swedish Penal Code, Section 10-13 (1999:36).

<sup>50</sup> Swedish Supreme Court, Case B 6389-10.

pornography may or may not have been legal since 1985.<sup>51</sup> Norwegian law regarding pornography and its enforcement has taken substantial changes in the past thirty years, the first major change was made in 1985, initiated by a few members of the Labour Party, under strong influence of the feminist discourse against pornography, and the legal reforms have been described as a highly unconventional race between the Ministry of Justice and the Labour Party.<sup>52</sup>

The revision was meant to modernize, as it originally only referred to ‘indecenty’.<sup>53</sup> The addition of the word ‘pornography’ gave the laws more precise penalty framework, furthermore, the word pornography was defined.

With indecent or pornographic portrayals is meant, in this paragraph, sexual portrayals that are offensive or in any other way meant to promote human degradation or violent, including sexual portrayals which include children, animals, violence, coercion and sadism.<sup>54</sup>

This definition draws from the anti-pornography feminist discourse defining pornography as essentially portraying non-consensual sexual activities. Up until 1985, the Norwegian Supreme Court had considered all pornography, inclusive of soft-core pornography, cartoons as well as literature to fall under the criteria of ‘indecent’. Public screening or distribution of indecent or pornographic films or books were on several instances penalized, either by suppressing further distribution, by serving time in prison, or by facing fines. The Supreme Court had an effective precedent which considered mainstream pornography to be indecent and the changes of 1985 did not reverse that.<sup>55</sup>

Pornography was effectively illegal in Norway until 2005, when the Supreme Court ruled in favour of the accused, which was charged with distribution of mainstream pornographic material. The Supreme Court concluded that the magazines in question could not be considered to be offensive according to modern social standards, thus the images did not portray anything which the law from 1985 considered to be pornographic. The accused was found not guilty.<sup>56</sup> This verdict was a turning point in Norwegian legal history, as until then even mainstream pornography had been illegal. In 2005, a small revision was made to

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<sup>51</sup> Norwegian Penal Code, art. 317/2005.

<sup>52</sup> Johs. Andenæs og Anders Bratholm, *Spesiell straffret*, 120-24.

<sup>53</sup> The word used in Norwegian is ‘utuktig’ which translates as indecent or lewd; not as strong as the English word ‘obscene’.

<sup>54</sup> Norwegian Penal Code, 317/2005.

<sup>55</sup> Johs. Andenæs og Anders Bratholm, *Spesiell straffret*, 122-123

<sup>56</sup> Norwegian Supreme Court, nr. 2005/1084.

the pornography law, where it was added that pornography did not encompass “sexual portrayals which could be considered artistic, scientific, informative or similar purposes.”<sup>57</sup>

## Summary

Pornography itself is not illegal in any of the countries examined. Where the possession and distribution is legal, the laws examined all share their primary aim: the criminalisation of the distribution and possession of pornography portraying children, animals, or other non-consensual sexual performances. The crime itself is then violence or promoting violence against people or animals.

Pornography was only defined in the laws of Norway and the United Kingdom. The United Kingdom act on pornography defines pornography based on the purpose of the production, i.e. that the objective is to be sexually arousing for the viewer. The pre-2005 Norwegian laws define pornography as non-consensual sexual activities in its very nature. This resulted in laws which do not reflect what was commonly understood as pornography, therefore making mainstream pornography and sexually explicit content illegal to distribution in Norway until 2005, when the Norwegian Supreme Court revised the previous interpretation.

The Danish ISPs are in cooperation with the police and child protection NGOs and since 2005 they have impeded child abuse material via DNS blocking<sup>58</sup> in order to comply with existing laws prohibiting child abuse material.<sup>59</sup> Swedish telecommunication operators have similar opt-in services provided by the telecommunication companies and large public-private partnership cooperation between Europol and the Norwegian ISP, Telenor.<sup>60</sup> Controversy concerning the Danish filter has on occasion caught international attention: the full list of the blacklisted webpages was released on WikiLeaks in 2008, providing information of over-blocking in several cases.<sup>61</sup> Another case of over-blocking occurred in 2012, when Google and Facebook were unintentionally blocked; the police cited human error as the cause.<sup>62</sup> The Anti-Child Pornography DNS blocking has also been used to

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<sup>57</sup> Norwegian Penal Code, 317/2005.

<sup>58</sup> DNS stands for Domain Name System.

<sup>59</sup> Web: Rigspolitiet, “Nyt børnepornofilter”, October 18th 2005. Rigspolitiet, “Om blokeringsordningen mod børneporno”, March 20th, 2012.

<sup>60</sup> John T. Picarelli, *Moving Public-Private Partnerships From Rhetoric to Reality*, 3-4. Web: Polisen i Sverige, *Test av barnpornografifiltre*.

<sup>61</sup> Web: “Denmark: 3863 sites on censorship list, Feb 2008”, WikiLeaks, December 23, 2008.

<sup>62</sup> Web: Rigspolitiet, “Fejl blokerede internetsider kortvarigt”, March 1st, 2012.

block file sharing web pages, such as The Pirate Bay, ordered by the Danish courts with an apparent acquiescence from the parliament.<sup>63</sup>

Europe is diverse, but with the philosophy of solidarity the European Union has managed to unite the disparity by giving nations the space to create their own legal actions where appropriate. Defining the term ‘pornography’ and actions regarding censorship are selective issues which the European Union does not regulate on Union level, but instead leave up to the individual member states to decide for themselves. The European Union funds initiatives to tackle illegal activities on-line, with the focus on child abuse material and further more promotes best-practices and better Internet habits for children and parents. It is necessary to conclude that the European Union has systematically ignored regulating or even discussing pornography – whether it is as an industry to regulate, a market to examine, or possible consumer protection initiatives.

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<sup>63</sup> Hanne Agersnapm, Folketinget, B 137 (August 2008). Web: “Danish Copyright Censorship Proposal Revealed”, *TorrentFreak*, May 17, 2008.



## Censorship of Pornography in Iceland

According to a report released by the Commissioner of Police for Reykjavík in 2000, there were a total of 46 charges put forth to the district courts regarding to violations of the pornography ban in between 1995-2000; of those were five violations of the first or second paragraph of Article 210 and did not involve sexual misconduct of children in any way, while the remainder involved child sexual abuse images. Only two of the five convictions were appealed to the Supreme Court of Iceland.<sup>64</sup> In the 1990s, there was an exponential growth of convictions under Article 210, which to some extent can be explained with the addition of the fourth paragraph in 1996 which made child abuse material explicitly illegal. In the 21st Century there has been only one case from the Supreme Court where the accused was convicted under the first or second paragraph of Article 210.<sup>65</sup>

### The Icelandic Pornography Laws

The origins of the Icelandic pornography law can be traced back to 1869 and it was inducted in what became the General Penal Code of Iceland, Article 210 in 1940.<sup>66</sup> The parliamentary documentation shows that the law had remained unchanged from the 1869 when it was adapted to the Penal Code in 1940. The first paragraph, addressing printing and publication of pornography remained unchanged. The second paragraph initially addressed only distribution of pornography or making of objects of pornographic nature, but received a small addition regarding public plays or lectures. The third paragraph addressed the act of giving a person younger than eighteen years of age pornographic material.<sup>67</sup>

The fourth paragraph was not added until 1996, and involved material which presented sexual abuse of children. Production and possession of pornography for private use yet to be addressed in the law, and can be regarded as legal, but this does not apply to child sexual abuse material. The amendments regarding child abuse material were again reviewed in 2000 and 2002<sup>68</sup> with the most recent review occurring in 2012, regarding child sexual abuse images and participation of children in the sex trade or viewing of pornography. This is the most substantial change so far, creating two new articles, 210 a. and 210 b., both concerning with sexual abuse towards children.

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<sup>64</sup> Lögreglustjórinn í Reykjavík, *Ársskýrsla lögreglustjórans í Reykjavík fyrir árið 2000*.

<sup>65</sup> Icelandic Supreme Court. H 2000:4418.

<sup>66</sup> Icelandic General Penal Code, Article 210, no. 19/1940.

<sup>67</sup> Frumvarp til almennra hegningarlaga, Þskj. 43/1939, 389

<sup>68</sup> Icelandic Statute, 39/2000.

The most recent change in the 20th and 21st century on the pornography act has been in accordance with an international harmonization of laws regarding children's rights. The latest addition to this was a response to a request from the Council of Europe following the ratification the Convention of The Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>69</sup> While first and second paragraphs of Article 210 have remained unchanged since 1940, later additions regarding child abuse material have been revised much more substantially. There has thus been no thorough revision of the ban of printing, distributing and presenting publicly pornographic material since 1869, as the General Penal Code in 1940 adapted the paragraphs directed on pornography.

## **Defining pornography in the Courts of Law**

The term 'pornography' was not legally defined in the laws of the 1869 legislation or in the 1940 adaption of it. One of the enduring questions for the modern debate about pornography has been on the specific definition of pornography. The legislature of the 19th century and the early 20th century saw no reason to define pornography specifically. This implies that the common understanding of the concept of 'pornography' was not as contested as it is in modern times. Defining pornography has thus been in the hands of the Icelandic courts, and in the course of the 20th century certain changes can be detected in the rulings, which may reflect the social changes in Icelandic society caused by sexual liberation, the media revolution and an exceptionally vibrant feminist discourse. The outline of three major cases in the Supreme Court from 1973-1990 demonstrate the changing perception and attitude towards pornography in Iceland.

### *Silhouette Drawings*

The first case reached the Supreme Courts of Iceland in 1973 when two men were convicted for the distribution of calendars picturing twelve silhouette drawings of heterosexual couples in intimate and sexually explicit situations. The pictures were, according to the court, bereft of any aesthetic purpose and far more pornographic than anything produced for sale in Iceland before. The silhouette drawings were deemed pornographic, and the pair convicted for the distribution of pornography and the calendars were confiscated.<sup>70</sup> The court provided no explanation in the argumentation as to *why* those images were pornographic, stating they simply were. The lack of specificity shows that it

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<sup>69</sup> Icelandic Statute, 58/2012.

<sup>70</sup> Icelandic Supreme Court. H 1973:452.

was more what the word pornography encompassed in the 1970s, without explicitly defining why or how.

### *Satirical Paper*

The second case where the pornography question came before the Supreme Court was in 1983-4 and it regarded the production and distribution of a satirical paper called *Spegillinn* (The Mirror). The paper attempted to raise the issues about gender, politics and sexual behaviour for discussion. It consisted both of written material and explicit pictures. The general theme was the emasculation of men; depictions included models pretending to be women, in the act of harming their penises, or as being impotent. The court failed again to provide an explicit definition of pornography, but rather argued individually why each particular image or text should be considered pornographic or obscene. It was also brought to the court's attention that the content of the paper was satirical, and not intended to titillate the reader, but to provoke debate about recent changes in the local political landscape, mainly the success of the Icelandic Women's Party which had recently won seats in Parliament.

The court did not consider the context of the material, being satirical, to be an acceptable defence. The pictures were not deemed pornographic by themselves; rather, when combined with a commentary which either had the goal of emasculation or describing sexual acts, the court deemed the whole message obscene, pornographic and crude; having no positive influence on society. The publisher of the paper was convicted of violating the first and second paragraphs, of printing and distributing pornographic content.<sup>71</sup> The pictures were explicitly not intended for sexual arousal, rather to provoke debate about gender and politics, through the emasculation of men.

### *Mainstream Porn*

The Supreme Court failed to define porn until the 1990 conviction of Stöð 2, a television broadcasting company. Stöð 2 was found guilty of broadcasting 'pornographic' movies on several occasions, named 'The Zodiac Movies'. The accused argued that it was against the constitutional protection of freedom of expression to censor the broadcast of the aforementioned movies. The Supreme Court rejected this defence and confirmed the ruling from the district courts where pornography had been defined:

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<sup>71</sup> Icelandic Supreme Court. H 1984:855.

On behalf of the Expert Committee of the United Nations Educational, Scientific and Cultural Organization, in March 1986, a distinction was made between the concepts of 'porn' (pornography) and 'sexual art' (erotica), whereas porn was defined as aggressive representation of sex to make money, without love, tenderness or responsibility, and sexual art of literary or artistic expression of love.<sup>72</sup>

The court argued that since the aforementioned movies presented sex in a provocative way without any literary or artistic purposes, they should be regarded as pornography. The broadcasting company was therefore convicted of violating the second paragraph of Article 210, forbidding distribution of pornography.<sup>73</sup> This set a legal precedent regarding pornography as, for the first time, a definition was established by the verdict. This definition has been referred to as a precedent to define pornography in district courts and confirmed by the Supreme Court in at least three cases, two in 1998 and one in 2000, which all had in common to distribute in one way or another what would be considered as 'mainstream' pornography, produced and sold purely for sexual arousal.<sup>74</sup>

The definition provided in the verdict is derived from a UNESCO document. The verdict in 1990 does not cite the original document, which proved difficult to locate as no official definition of pornography or erotica is readily available from UNESCO. All secondary literature on pornography laws in Iceland cite the Supreme Court definition, but fail to trace its original source. Following a thorough search, an eighteen page document on sexual abuse towards women and gender inequality came to light, written in 1986 by an 'International meeting of experts on the social and cultural causes of prostitution and strategies for the struggle against procuring and sexual exploitation of women'. Given to the information provided in the verdict, it is very likely this definition was taken from this particular document, labelled as 'final report'. This meeting convened in Madrid 1986 to discuss sexual exploitation of women in society and also discussed the concept of pornography. This meeting of experts was never referred to as a 'committee' within the formal document and the report was classified for limited distribution. The definition of pornography and eroticism in Icelandic law was most likely taken from the following paragraph:

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<sup>72</sup> “Af hálfu sérfræðinganevndar Menningastofnunar Sameinuðu þjóðanna var í mars 1986 gerður greinarmunur á hugtökunum klám (pornografía) og kynþokkalist (erotika), þannig að klám var skilgreint sem ögrandi framsetning á kynlífi í auðgunartilgangi, án ástar,blíðu eða ábyrgðar, en kynþokkalist sem bókmenntaleg eða listræn tjáning ástar.” H 1990:1130 (1990).

<sup>73</sup> Icelandic Supreme Court. H 1990:1103.

<sup>74</sup> Icelandic Supreme Court. H 1998:516, H 1998:969 and H 2000:4418.

30. Concurrently with sex tourism, the use and manipulation of sex has become extremely widespread because of the trade in pornography. It was noted that the ultimate aim of pornography, unlike eroticism, was always to make money, that it was characterized by a deliberately illusory view of sexual relations and of women and always accompanied by a relationship of inequality between the sexes and by increasing violence. The group thus rejected all attempts to place eroticism and prostitution on the same footing, and for practical reason defined pornography as a representation of sexual organs or sexual acts, sold or hired out for provocative purposes.<sup>75</sup>

The verdict did not use a direct translation from the document. The similarities in the word order, as well as the practical information provided, show this particular UNESCO document is most likely the source for the definition used in the verdict. The definition, later used in the court decision, provided narrowed down 'pornography' to suit the topic of the report, which was heavily directed towards sex-work and surrounding businesses. Defining pornography as inherently promoting inequality between the sexes, and made for the purpose of making profit is in line with the objections of the anti-pornography activists of the 1980s, such as the aforementioned Andrea Dworkin or Gail Dines. The focus on 'making money' as a defining point to characterizing pornography had been a novelty, provided largely by the anti-pornography discourse.

Pornography has traditionally been defined by its intention. The Oxford English Dictionary, for example, describes pornography as “explicit description or display of sexual organs or activity, intended to stimulate erotic rather than aesthetic or emotional feelings” and Merriam-Webster dictionary that pornography “show or describe naked people or sex in a very open and direct way in order to cause sexual excitement”.<sup>76</sup> Neither of those dictionary definitions defines pornography as inherently demeaning, presenting violence or non-consensual sexual acts or that it is always made for financial gain. It has rather be defined by the effect it is intended to have on the viewer than by the side effects its production may have had.

The document does not seem to have been meant for official purposes, but rather as a working document within UNESCO, as it presented different views within the document itself, especially when addressing pornography.

32. Regarding pornography, one of the participants ... considered that this was an interference with the intimacy of a person's private life and its inviolability, which

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<sup>75</sup> UNESCO, “International meeting of experts on the social and cultural causes of prostitution and strategies for the struggle against procuring and sexual exploitation of women. ” Final Report, Vol. SHS- 85/CONF.608/14.

<sup>76</sup> Oxford English Dictionary: Pornography. Merriam-Webster Online English Dictionary: Pornography.

was still an accepted legal principle in many countries. In addition she thought the prohibition of pornography was a matter that concerned one of man's basic rights, which was that of freedom of expression.<sup>77</sup>

It is not clear what purpose this document was meant to serve and why it inspired the definition of pornography in the Icelandic courts. The participants of the meeting were voicing their own opinions, anecdotal stories proposed as evidence for gender inequality and an undisputable influence from the anti-pornography feminist discourse is noticeable throughout the report. This meant that pornography was defined as inherently promoting inequality and was always for profit.

## **Summary**

It is highly unlikely that the Icelandic courts had the same objective as the anti-pornography movement in their crusade against pornography. It is more likely that the courts perceived the definition as useful for that particular case, based on more conservative attitudes towards pornography. The perceived authority of a final report from UNESCO could have heightened the legitimacy of the definition provided. As the document itself is under the influence of a certain wave of anti-pornography discourse, these views were clearly incorporated in the verdict, perhaps unwittingly. The court's objective was to follow the stagnant act banning distribution of pornography based on 19th century moral restrictions, not 20th century feminist gender equality ideology.

The verdict in 1990 was handed down by the Supreme Court, creating precedent on the definition of pornography. For the first time, it was not considered to be sufficient to have a tacit agreement on what was indecent or pornographic, which the films in questions undoubtedly were. The Supreme Court found it necessary to define pornography to justify its verdict, and this definition happened to be taken from a document influenced by the anti-pornography discourse. This verdict of the Supreme Court has been referred to ever since, and the last case which went before the Supreme Court occurred in 2000, where a shopkeeper of an erotic shop was found guilty of distributing and copying pornographic material.<sup>78</sup>

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<sup>77</sup> UNESCO, "International meeting of experts", (1986).

<sup>78</sup> Icelandic Supreme Court, H 2000:4418.

## Reform or retention of the Pornography Question

Censorship of pornography in Iceland was active throughout the 20<sup>th</sup> century but since the turn of the 21<sup>st</sup> century, the investigations of pornography distribution have not led to further actions by of the police. This reflects how the social perception in Iceland regarding pornography has changed. Only a single case reached the Supreme Courts in the 2000s respective of pornography, and public complaints on violations of the pornography laws have not been taken seriously by the police.<sup>79</sup> In a review from the 2008 Icelandic Human Rights Centre, 'Notes on Iceland's Sixth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women' it was stated:

Finally, Article 210 of the Icelandic Penal Code, prohibiting the distribution of pornography, is a dead-letter, in part because of the lack of a definition of pornography in the law. Despite the prohibition, pornographic material can be found in any gas station, bookshop or video rental store.<sup>80</sup>

The altered perception of acceptance towards pornography is highlighted by this public statement, which had not escaped the legislature's notice.

### First attempt for legislative reform

At the turn of the millennium, pornography was much discussed within parliament, largely initiated by the Left-Green party. Three members of Parliament from the Left-Greens put forward a bill proposing heavier punishment towards advertisements of pornography in 2001. The argument was chiefly built around the perceived harm pornography was doing towards gender equality, reflecting the anti-pornography debate.<sup>81</sup> The Minister of Justice, Ms Sólveig Pétursdóttir (in office 1999-2003) ordered two reports to be prepared, following a written request supported by the Left-Greens; one on prostitution in Iceland and another with a comparison of regulatory environments in Iceland and other Nordic countries, again with regard to pornography and prostitution.<sup>82</sup>

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<sup>79</sup> As an example, the Gay Pride parade was reported to the police for violation of the pornography laws. The case was dismissed by the Police. Web: "Gylfi Ægisson kærir vegna gleðigöngu", *Visir*, September 11 2013.

<sup>80</sup> The Icelandic Human Rights Centre, *Notes on Iceland's Sixth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women*.

<sup>81</sup> Sigríður Ingvarsdóttir, Bragi Guðmundsson, and Erna Hauksdóttir, *Skýrsla nefndar sem falið var að gera tillögur um úrbætur vegna kláms og vændis*.

<sup>82</sup> Bryndís Björk Ásgeirsdóttir, Hólmfríður Lydía Ellertsdóttir, and Inga Dóra Sigfúsdóttir, *Vændi á Íslandi og félagslegt umhverfi þess*.

The latter of the two reports provided factual information about the regulatory environment but did not suggest any changes for the Icelandic regulatory framework. However, it pointed out that of the Nordic Countries pornography is only illegal in two of them: Iceland and Norway. Although a pornography ban had been revoked in the other Nordic countries, there were still some restrictions on pornography in public and child abuse material. The report paid special attention to the Swedish laws from 1998, which made internet service providers liable for any illegal content which may be hosted on their servers.<sup>83</sup>

Following the two reports, a committee was appointed to write a report with the aim of improving the legislation concerning pornography and prostitution, delivered in 2002. The paper referenced the previous reports, and reiterated that according to research conducted, there was no correlation between consumption of pornography and the occurrence of sexual offences. It also showed that the law enforcement bodies did not apply consistent enforcement of the law and precedents of the Supreme Court when implementing the pornography ban. This implied two options for enforcement. First, to implement all aspects of the law fully, the second option was to lift the ban. In the first case, the committee acknowledged that enforcement of the pornography ban was cost-intensive and required excessive resources to be effective. The second option was to lift the ban on distribution and publication of pornography, albeit with some restrictions, such as with child abuse material and animal pornography. The committee supported the latter of the two options, however no changes were made.<sup>84</sup>

From 1869 there has thus been no complete legal reform of the pornography act in the Icelandic penal code. There has been no political will to follow recommendations from the Penal Law Committee regarding abolition of the current laws. The stagnant status of the laws can to some extent be explained as a result of arbitrary conservative ideas about sexuality and pornography. Furthermore, the current pornography laws align with certain anti-pornography feminist ideologies, which have been prevalent in Icelandic feminist discourse since the 1980s. The enforcement of pornography censorship was tested in Iceland until 2000, and was not exclusively directed at mainstream pornographic content, which likewise demonstrates the ambiguity of laws directed towards this specific, one type of censorship. In the cases examined the material which was considered 'pornographic' varied from silhouette drawings, satirical pictures and stories involving emasculation of

<sup>83</sup> Svala Ólafsdóttir, *Skýrsla dómsmálaráðherra um samanburð á lagaumhverfi á Íslandi og annars staðar á Norðurlöndum*.

<sup>84</sup> Sigríður Ingvarsdóttir et al., *Skýrsla nefndar*.



men, to more mainstream pornographic videos. The purpose was not always to stimulate sexual arousal for the viewer: in some cases it was intended for artistic purposes, and in another to provoke political debates.

## **Interlude for Porn Panic**

The psyche of the Icelandic nation had been focused on a perceived, but ultimately speculative economic boom, followed by a bank crisis in 2008, resulted in a near bankruptcy of the Icelandic state. A turbulent political landscape following the crisis led the incumbent government, a coalition between the Progressive Party and the Independent party, to resign in early 2009. It was followed by a left-wing government; a coalition between the Left-Greens and the Social Democrats. Mr Ögmundur Jónasson assumed office of The Ministry of Interior in 2009 for the Left-Greens. Iceland had been pictured as beacon of hope for freedom of expression and a safe haven for media following the crisis in 2008. This can largely be attributed to the International Modern Media Initiative (IMMI) and their eponymous *Icelandic Modern Media Initiative*, a parliamentary resolution led by Birgitta Jónsdóttir, Member of Parliament in 2011, and passed with unanimous support in Parliament. The *Icelandic Modern Media Initiative* is a comprehensive reform of the Icelandic media laws in areas such as source protection, net neutrality and intermediary liability limitations. Though the reform has not been completed, but according to a preliminary report produced by IMMI in 2012, source protection has been fully integrated into Icelandic laws.<sup>85</sup>

Other democratic initiatives such as the citizen procured constitution and the national assembly following peaceful uprising, were hailed in international media as redemption for the collapse. The atonement of the government for the alleged abuse of power which led to the bank crisis in 2008 was considered unique.<sup>86</sup> It is debatable whether or not those initiatives were successful; however this experience was a unique action on behalf of a government following a crisis, which made Iceland stand out in a global perspective.

Contemporary events are in many regards challenging to explain as the lack of official documents or reports make it difficult to pin down anything of certainty from the Ministry. Work is still being done and it is possible that substantial changes will be made on the pornography laws. The following account is therefore based on information

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<sup>85</sup> Smári McCarthy and Eleanor Saitta, *Island of Resilience*, 42.

<sup>86</sup> Caroline Nelleman, "Country Reports: Iceland".

available on the Internet, from the media, the home page of the Ministry and blog posts and opinion pieces.

## **Ideas for Online Pornography Censorship**

The emergence of the controversial online pornography censorship initiative was, according to information from the Ministry of Interior, a part of a gender equality law project, which began in 2010. The work on changing the legislation on pornography was mainly done within the ministry prior to autumn 2012. The Ministry of Interior in cooperation with the Ministry of Education and Ministry of Welfare hosted a day-long event on pornography and laws in October 2012.<sup>87</sup> The main guest of the event was Dr Gail Dines, a professor from Wheelock College in Boston. Her research has been focused on how pornography can have a negative effect on gender equality in its portrayal of violence against women and children. There, she discussed the harmful effects of consumption of increasingly violent pornography material available on the Internet and how it influences young men's perception on gender equality. Dr Gail Dines is a self-proclaimed anti-porn activist and amongst other things, co-founded the National Feminist Anti-Pornography Movement in America.<sup>88</sup>

The intention of the event was to raise awareness on the harmful effects of pornography on society; according to the opening speech of Mr. Jónasson, sexual violence against children and women has been influenced by trends evident in the pornographic industry. The fact that children had easy access to violent pornographic material should be a concern to the whole of society, not only the parents.<sup>89</sup> Following the event, the discussion was taken up by the local media, and the next couple of weeks featured detailed accounts on the harmful effects of pornography. So far, the discussion was not about internet filters, but, rather how readily available pornography had become with the advent of the Internet and what role it played in sexual abuse according to emergency care specialists.<sup>90</sup>

Proposed plans for the online censorship of pornography came to the surface in late January 2013 when Mr. Jónasson presented a memo at a government meeting commissioning the penal law committee to draft a proposal for legislation, in order to

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<sup>87</sup> Web: Innanríkisráðuneytið, “Samráðsfundur um klám út frá lagalegu og samfélagslegu sjónarhorni”.

<sup>88</sup> Web: “Gail Dines”, *Wheelock College*.

<sup>89</sup> Web: Ögmundur Jónasson, “Klámvæðing. Ávarp Ögmundar Jónassonar innanríkisráðherra á ráðstefnu um samfélagsleg áhrif kláms í Háskóla Íslands 16. október.”

<sup>90</sup> Web: Una Sighvatsdóttir, “Augljós áhrif kláms í kynferðisbrotum”, *mbl.is*, October 16 2012.

counter the current developments on easy access to pornography. According to the memo, the committee would define pornography; assess the possibility of making possession of pornography illegal, as it is with child abuse material; and consider possibilities for the police to force internet service providers to limit, or exclude distribution of undesirable content.<sup>91</sup> The memo itself was not made publicly available; therefore it is not possible to verify this information, which was leaked to the left-green web-newspaper, *Smugan*, which no longer is in operation.

This news spread quickly, and raised a fruitful debate on pornography and internet censorship in the Icelandic media the next few weeks. Mr Jónasson elaborated his stance on this matter and confirmed to some extent the information, which had leaked, however without any specifications or technical details. He explicitly expressed his dismay with the fact that Icelandic children have easy access to 'violent porn', and on average are exposed to porn for the first time around the age of 11. In the name of childhood innocence, he declared a War on Porn and the appointment of a working group within the penal law committee which

...should map out the police's resources to enforce the ban of pornography, particularly with regards to children's access to violent and harmful material ... discuss what is technically possible and what not and submit their proposals, which will make it possible to build further upon political policies.<sup>92</sup>

Mr Jónasson did not value allegations that this constituted censorship, and argued that the main responsibility of the society should be to protect the children. The comments from the Ministry were vague, and implied without being too precise that they were considering internet censorship, which in return was heavily objected to by some politicians, technologists and activists.<sup>93</sup>

The debate in the Icelandic media was merely the calm before the storm. The notion of porn censorship caught the eye of the international media in mid-February 2013, around the time the debate had been on the wane in Iceland. *The Daily Mail* published an interview with Mr. Jónasson and his assistant, Ms. Halla Gunnarsdóttir. Mr Jónasson claimed this initiative was to protect the children, and did not regard it as censorship, and emphasizing it was not anti-sex, but rather to counteract violence against children and women. Ms

<sup>91</sup> Web: Ólafur Kjartan Árnason, "Ögmundur íhugar að refsa fólki fyrir að eiga klám", *DV*, January 22 2013.

<sup>92</sup> "Í annan stað hef ég, að tillögu undirbúnignshópsins, lagt til að skipaður verði starfshópur sem kortleggur úrræði lögreglu til að framfylgja banni við klámi, einkum með hliðsjón af aðgengi barna að gófu og skaðlegu efni. Sá hópur mun fjalla um hvað er tæknilega mögulegt og hvað ekki og skila sínum tillögum, sem unnt verður að byggja frekar pólitíska stefnumótun."

<sup>93</sup> Web: Ögmundur Jónasson, "Ofbeldisklám og börn", *Vísir*, January 28 2013.

Gunnarsdóttir commented that: 'At the moment, we are looking at the best technical ways to achieve this. But surely if we can send a man to the moon, we must be able to tackle porn on the Internet.' While the reporter noted that it was the first initiative by a Western democracy to censor internet pornography, there was a growing consensus within the British government to do the same. Thus, Iceland was taking an important step towards protecting children by limiting pornography on the Internet within their borders.<sup>94</sup>

## **International Porn Panic**

The news of the Icelandic pornography censorship spread like wildfire in the following days, receiving mixed reviews. While some hailed it as a much needed safety mechanism to protect the children, others were more sceptical, and surprised by what appeared to be change of heart of the Icelandic government. There was not much information on what exactly was to come in Iceland, and misleading information allowed the press to interpret it as an already a foregone conclusion. The Minister of Interior repeatedly declared that no bill had been put forward, and that the Ministry was merely exploring the possibilities.<sup>95</sup>

### *Opinion Pieces*

The debate took place in cyberspace, as well on sites such as the *Guardian* and *Daily Mail*. Both Birgitta Jónsdóttir and Halla Gunnarsdóttir wrote opinion pieces in the *Guardian*. Ms Jónsdóttir acknowledged that while the initiative of the Minister of Interior was well intended, it was highly misguided as it was technically impossible, as well as being against the idea of freedom of expression. Furthermore, Jónsdóttir claimed the bill already had a negative effect on Iceland's reputation as a haven for freedom of expression.<sup>96</sup>

Ms Jónsdóttir was one of the initiators of the aforementioned freedom of information regulations, which had made Iceland, stand out in international perspective and was concerned about the effects of such a proposal. In Ms Gunnarsdóttir's reply, likewise presented as an opinion piece in the *Guardian*, she defended the initiative. She claimed the impact of the harm done by the mainstream pornography industry justified censorship,<sup>97</sup> as pornography promoted misogyny, and had become the main source of sex education for

<sup>94</sup> Web: Tanith Carey, "Iceland's bid to ban web porn", *The Daily Mail*, February 12 2013.

<sup>95</sup> Web: Ögmundur Jónasson, "Ekkert frumvarp um klám fram komið!", *Vísir*, January 28 2013.

<sup>96</sup> Web: Birgitta Jónsdóttir, "Iceland's internet 'porn shield' is misguided and unworkable", *The Guardian*, February 15 2013.

<sup>97</sup> "Critics of this effort have argued that any such attempt automatically involves censorship and unlawful restriction on the protected freedom of speech. It is important to emphasise that our freedom of speech and behaviour is limited in many ways, without it being considered in violation of our universal human rights. The obvious example is the general consensus on the illegality of child pornography..."

children and teenagers. Ms Gunnarsdóttir refuted one of the main critiques, that the pornography 'shield' was technically impossible with the following statement:

It has also been maintained that even the best technical solutions to limiting the distribution of violent online pornography can never be fully implemented because the porn industry will always find a way to circumvent restrictions.<sup>98</sup>

The argument posed by Ms Jónsdóttir and other critiques had not been regarding the pornography industry's ability to circumvent restriction, but the other way around. It is not the porn industry which has to circumvent anything, rather people acquiring desired content. Technical means such as proxy servers<sup>99</sup>, VPN<sup>100</sup> or TOR<sup>101</sup> are easily utilized to overcome the Internet porn-shield. The opponents did not argue about the moral values of the Ministry and the good intentions, rather the technical solutions implied.

### *Open Letters*

The debate continued in the public sphere with open letters to the Ministry, both from anti-censorship and anti-pornography activists. The first significant input came from privacy and human rights advocates, on the 28th of February where they expressed concerns about the Ministry's plans on censoring pornography. This letter contained forty-two signatories from high-profile human rights organizations and activists, such as Jillian C. York of the Electronic Frontier Foundation and Richard Stallman, the President of the Free Software Foundation. The letter stated that the technical solutions to Internet censorship would be on par with those offered in totalitarian regimes and would compromise privacy and freedom of expression; two of the cornerstones of a democratic society. The letter advocated for decentralized family filters for home computers, but maintained it would be technically possible to sidestep it. It also criticized the ambiguity of the Ministry's proposal, as it had only vaguely described their desires of fighting Internet porn without explaining clearly how, but at the same time respect their concern about children getting sex education from pornography.<sup>102</sup>

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<sup>98</sup> Web: Halla Gunnarsdóttir, "Iceland's internet 'porn shield' will confront hardcore violence", *The Guardian*, February 26 2013.

<sup>99</sup> "All circumvention tools use the same basic method to bypass this sort of network filtering: they proxy connections through third party sites that are not filtered themselves." Hal Roberts, Ethan Zuckerman, Jillian York, and John Palfrey, *Circumvention Tool Usage Report*, 3.

<sup>100</sup> "VPN services use virtual private network software to encrypt and tunnel all Internet traffic through a proxy machine." Hal Roberts et al., *Circumvention Tool Usage Report*, 8.

<sup>101</sup> TOR is a so-called "onion network" which is based on the concept of encrypted information going through at least three computers of proxies before it is decrypted for the user. Its main goal is to provide anonymity for the user.

<sup>102</sup> Open letter to the Ministry of Interior, Mr. Ögmundur Jónasson, (2013).

The letter received considerable attention in the international media; however it received limited coverage in the Icelandic media. A month later, the Ministry subsequently received an open support letter with 110 signatories from various scholars and activists, mainly involved in feminist studies, amongst others, Gail Dines and Gloria Steinem, both prominent figures promoting anti-pornography feminism. They celebrated the Ministry's boldness on taking the fight against the multi-billion dollar industry by initiating Internet censorship in order to protect women and children from violence. The support letter was evidently well received within the Ministry and in a press release from the Ministry but Mr Jónasson thanked them for the support. Simultaneously he published an answer to the critique from the first open letter. There, he stressed the importance of having an open, democratic discussion about the negative effects of pornography, the importance of protecting children from being exploited by the porn industry and the duty of the government to discuss this uncomfortable topic. He took the accusation of censorship to heart:

This has nothing to do with freedom of speech or sharing information. Rejecting the idea that the porn industry should have unlimited access to children and young people to shape and control their ideas about sex, sexuality and human interactions is not equivalent of censoring the Internet, as can be inferred from the letter sent to me.

Having said that, I also emphasise strongly that any measures taken to address the distribution of violent pornography on the Internet must be transparent and consistent with the principles prevailing in a democracy governed by the rule of law.<sup>103</sup>

The moral objective of Mr Jónasson's argument is the assumption that pornography has damaging effects on society as a whole and thus, must be eliminated. However, Mr Jónasson does not regard that as censorship, as he states on multiple occasions.<sup>104</sup> The arguments of the harmful effects of pornography are highly debated, and in the report written for the Ministry in 2000, it was stated that there was no clear correlation between pornography and sexual violence.<sup>105</sup> Various studies on pornography have reached differing conclusions regarding its effects and it is difficult to conclude anything about effects of pornographic consumption as has been discussed previously.

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<sup>103</sup> Web: Ögmundur Jónasson, "Re: Response to open letter on measures to combat violent pornography".

<sup>104</sup> Web: Nadia Sayej, "A Chat with the Icelandic MP Who Wants to Ban Porn", *Motherboard*. "Klámatakörkun er ekki ritskoðun", *Mbl.is*.

<sup>105</sup> Sigriður Ingvarsdóttir et al. *Skýrsla nefndar (Dóms- og Kirkjumálaráðuneytið, 2002)* 38-40.

## Summary

Pornography remains illegal in Iceland; however nothing concrete, by way of reform, has been put forward from Mr Jónasson or the current Minister of Interior. A working group was appointed in May 2013, and was tasked to lay out possible resources for the police to fight porn on the Internet, but the work so far has not been made public. The work of the Penal Code Committee has not been released, but their task was to write a proposal for a new bill and provide a definition on pornography with regard to violence.<sup>106</sup> Former Minister of Interior, Mr Jónasson, has claimed in the international media that he plans to put forward a bill in the coming year, without revealing any specifics. At the Safe Internet Day, 11th of February 2014, a spokesperson from the Ministry of Interior announced plans on establishing private-public partnership program to filter illegal content on the Internet, by which are meant, extra-legal measures where mandatory parental filtering would be applied on Internet connections, with the option to 'opt-out'. This will be built upon the British approach towards censoring illegal material on the Internet, as spear-headed by David Cameron.<sup>107</sup>

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<sup>106</sup> Web: Innanríkisráðuneyið, “Starfshópur um kortlagningu úrræða lögreglu vegna dreifingu kláms á netinu”.

<sup>107</sup> Alþjóðlegi Netöryggisdagurinn, *Ávarp Hönnu Birnu Kristjánsdóttur*, 11th February 2014.

## **Conflict of Ideologies**

The shrunken hemlines have forced society to redefine how short is too short. The pornography question will remain an interesting test case on the limits of freedom of expression in modern Western civilization. The laws surrounding pornography and the industry vary greatly around Europe, as was summarized earlier. Bearing this in mind, the European Union aims to create a single market, and the pornography industry does not seem to have the attention of the lawmakers, not even as a potential market sphere. Pornography, however, has proven itself as a popular scape-goat as justification for applying censorship on the Internet.

The pornography debate in Iceland was for the most parts, a conventional one. Debates on pornography censorship on the Internet have occurred in most European countries. The difference has been that pornography was already illegal in Iceland according to the letter of the law and that Iceland had visibly attempted to be a haven for freedom of expression with the International Modern Media Initiative. The debate demonstrated furthermore two factors which have been prevalent in the debate on Internet censorship of pornography in general. First, how to define pornography; secondly, the question of what is censorship, especially within the technical infrastructures of the Internet.

## **What is Pornography?**

The question of defining pornography is at the core of the discussion. Defining pornography is not straight forward, and if possible, is it best done by the legislature or is it part of the duties of the judicial body to define pornography according to the current moral standards? The open letter from the anti-porn activists encouraged Mr Jónasson to define pornography “narrowly” as “as sexual material involving violence and degradation”. Claiming it is “naïve and unrealistic to expect parents and schools to counter effectively the influence of this powerful and pervasive industry” concluding it was the responsibility of the society as a whole to protect women and children from violence and redefining pornography:

That said, we commend your government’s stated intention to define pornography narrowly (as sexual material involving violence and degradation), thus ensuring Icelandic citizens’ access to the fullest possible range of online information consistent with the protection of children and of women’s civil right to equality. <sup>108</sup>

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<sup>108</sup> Letter of Support to Mr. Ögmundur Jónasson, (2013).



The anti-porn activists, such as Gail Dines, argue that the porn industry is becoming increasingly violent and is influencing sexual behaviour negatively with increasing abuse, which affects teenagers and children the most. This may be, in accordance with their observation of the pornography industry, but, correlation does not imply causation; therefore one should be careful by asserting pornography as harmful in its nature given the lack of consistent and conclusive evidence to back their claims. Defining pornography narrowly according to the description of an industry is counter-intuitive, as it raises questions about pornography which does not fit into the prescribed definition but is still commonly regarded as pornography. This was the case with the Norwegian laws on pornography. If pornography should be defined in the laws, it should be defined by the standards of the society, not what the standards of a limited industry, as observed by academics and researchers.

Icelandic pornography laws were not codified based upon feminist principles of abusive pornographic material produced by a porn industry. Rather, the laws are remnants from more conservative period in Iceland's history, when it was considered pornographic to have short hair or wear thin socks and should be considered dead letter laws.<sup>109</sup> The act of redefining 'pornography' to encompass modern ideas based on an observation of a 'porn industry' would give the law new life and meaning. The existing pornography ban in Iceland and a narrower definition on pornography, could legitimate Internet censorship of pornographic content. This would, in turn, require some kind of technical surveillance infrastructure to enforce the censorship initiative.

With the change of Government in May 2013, there does not seem to be any imminent paradigm shift respective to the pornography censorship initiative. This can partly be explained by the fact that even if there are frequent changes of ministers due to of elections, the people who do the work within the ministry are the same, as people are not appointed according to political ideologies with in governmental institutions.

## **Medium, the Message and Censorship**

The question of defining pornography was one side of the debate; however, technical understanding of the Internet was another crux of conflict. While the anti-censorship activists stated that it was neither possible nor feasible, the anti-pornography activists turned the argument around and said it was the pornography industry which would get

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<sup>109</sup> Web: Icelandic Human Rights Centre, *Notes on Iceland's Sixth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women*.

through hindrances. Regardless the majority of the Icelandic population uses the Internet, and interacts with computers on daily basis, not withstanding the fact for most of them their understanding of the technical infrastructure is limited. This conclusion can be applied to other European countries, given the practice of rapid evolution on the technology in the past thirty year.

### *Internet – A Technical infrastructure*

The advent of the computer is one of the greatest achievements of the 20th century, along with the Internet a de-centralized protocol which enabled them to interact with each other. The Internet spread as a means of communication rapidly in the 1990s when it became available for the public, after its predecessor, the ARPANET had been available for universities since the 1960s.<sup>110</sup> The abstract of the Internet is often confusing, often described as series of interconnected tubes which enable computers to communicate with each other; however that is a gross over-simplification.

The Internet essentially is a network built upon what is called ‘Internet Protocol Suite’, the technical standard enabling communication between computers. For a computer to interact with the Internet, it has to be connected to the Internet protocol suite in same way. With this protocol, it is possible to exchange information with various applications and other protocols. The ‘browser’ is the most frequent way people interact with information on the Internet, but that is only one method of many, which only can interact with certain protocols which the application is meant to support. Other applications such as the Internet Relay Chat (IRC) support decentralized chat, often text based only, and Simple Mail Transport Protocol (SMTP) is the application protocol which delivers mail through the Internet, either through a browser or an independent application.<sup>111</sup>

The Internet consists of layers of protocols and applications which are interdependent of one other: In order to send information to someone with the IRC protocol, the receiver has to have the IRC protocol active in order to receive the information. The biggest breakthrough which made the Internet accessible and easily interactive was the invention of the World Wide Web – the Browser. That is what most people interact with nowadays, be it Facebook, the news or e-mail. The protocol ‘Hypertext Transfer Protocol’ was invented

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<sup>110</sup> Paul Deitel, Harvey Deitel, Abbey Deitel, *Internet & World Wide Web*, 42-34. Arnold Burdett, Diana Burkhardt, Aline Cumming et al. *A Glossary of Computing Terms*, 39-42

<sup>111</sup> Arnold Burdett, Diana Burkhardt, Aline Cumming et al. *A Glossary of Computing Terms*, 42-47, 50-51.

by Sir Tim Berners-Lee in 1989-1991 and was a breakthrough allowing people to browse information more easily.<sup>112</sup>

### *Prevention of Access to Information*

There are various means of blocking and, getting past any blockage on the Internet. Internet Protocol blocking (IP-blocking) and Domain Name System filtering (DNS), and are the types of blocking which are most relevant to this research, search result removal. Search result removal is simply when search engines censor certain kind of material from coming up in their search engines; example of search result removal is 'safe search' on Google, which ensures child-friendly search results.<sup>113</sup> IP-blocking is when access to an IP-address is denied and (DNS) blocking is when the Domain Name is blocked. In these cases the Internet Service Providers (ISP) are the ones who ensure that their consumers cannot use their service to get to the information, how the decision is made that said which IP or DNS should be blocked can vary greatly. Those methods do not remove the webpages from the Internet; rather they make the information less easily available.<sup>114</sup>

The user can therefore get past blockage on the Internet by use of proxies, such as Virtual Private Network (VPN) or through the TOR-browser, (The Onion Router-browser). VPN allows you to connect to the Internet through another computer elsewhere in the world and makes it available to access sites which are blocked *in situ*.<sup>115</sup> The TOR-browser is a browser which allows the user to access information on the Web through at least three encrypted stops in a network of 'onion nodes'. The network is often referred to as 'onion-network' and is, simply another way to interact on the Internet. The user does not go directly to the desired web page, instead through at least three computers, and all communication between those computers is encrypted resulting in increased anonymity and circumventing any kind of blockage.<sup>116</sup>

The anarchic character of the Internet makes it nearly impossible to enforce effective censorship, as it would require a more restricted standard of communication. With the current structure and openness, effective censorship *a priori* will not be possible. Theoretically, it would be possible to change the protocols making efforts to censor more

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<sup>112</sup> Web: Tim Berners-Lee, R. Cailliau, "WorldWideWeb: Proposal for a HyperText Project", 12 November 1990.

<sup>113</sup> Web: Google, "SafeSearch: Turn on or off".

<sup>114</sup> Christopher S. Leberknight, Mung Chiang, Harold Vincent Poor, and Felix Wong, "A taxonomy of Internet censorship and anti-censorship", 3-6, 11-17

<sup>115</sup> Web: Microsoft, "Virtual Private Networking: An Overview".

<sup>116</sup> Web: The Tor Project, "Tor: Overview".

Hal Roberts, Ethan Zuckerman, and John Palfrey, "2007 Circumvention Landscape Report", 72-77.

effectively but that would essentially mean a different Internet, making a new infrastructure which would have to be developed.

Anti-pornography activists are overly optimistic if they think it is possible to censor porn on the Internet by implementing a 'porn-shield' of some sort. As for most users of the Internet nowadays, if their idea of the Internet is limited to the browser, then it should be possible so provide solutions but they would be restricted to the browser. A successful censoring method of the Internet would require complete surveillance and analysis of all traffic, which not only is difficult and costly, put financial transactions at risk and is almost never successful. Censorship does not have a simple definition, but in essence it is the act of suppression or limitation of information, and has taken many forms and faces through the ages. Furthermore, censorship of the Internet is bound to certain limits – it is drawn on how the Internet works.

When Mr Jónasson claimed the enforcement of the pornography ban was not about freedom of expression or censorship, his opponents were trying to explain that it was exactly about freedom of expression, sharing information and respecting the infrastructure of a free and open Internet as it is. Both the anti-pornography and anti-censorship arguments provide different views which simultaneously argue that human rights should be held in great respect. The confusion between the medium and the message, technicalities of the Internet and the contradictory ideas on what censorship is, has meant that the two forces of the debate haven't been speaking the same language, although both have the best in mind for the society.

## Conclusion

To censor or not to censor pornography remains an open question. The Icelandic legislative approach towards pornography has, for the most part, remained stagnant. The idea of enforcing the pornography laws has been revived in most recent times by activists who believe pornography undermines gender equality. The enforcement of pornography prohibition becomes even more complex when modern technology is examined, as the Internet is a medium which cannot easily be censored *a priori*. It has also proven itself to be a slippery slope to implement any kind of restrictions which undermine the neutrality of the Internet, as was the case with the United Kingdom where the Prime Minister has openly said he wishes to censor political speech.<sup>117</sup> This does not mean that censorship by dissuasion cannot be exercised within the rule of law.

Iceland did not engage in the legislative reforms during the 1960s and 1970s regarding decriminalization of pornography distribution, which European countries undertook during that period. The legislature has not touched upon the original phrasing of the first three paragraphs of pornography laws in Iceland – there have only been additions; what had originally been two paragraphs in 1869 were three in 1940 and four in 1996, were finally transformed into two new paragraphs regarding child sexual abuse material were made, dividing the laws in three. The laws were not contested in the Supreme Court till 1970s, reflecting to some extent the change of attitude towards sexually explicit material, and simultaneously remnants from a more conservative society were passed on in the form of laws.

The anti-pornography feminist discourse which became prominent in the 1980s and onwards is an important factor in why the laws were suddenly the central focus of the legislature in the 21<sup>st</sup> century. Influenced by the sensational argumentation of the anti-pornography activists, pornography was re-defined to encompass their understanding of pornography, which is narrow, and in its essence involves sexual misconduct. The Icelandic courts redefined pornography in 1990, which demonstrates two things: The definition of pornography was no longer as clear regulation, therefore further definition was needed, and second, that the anti-pornography movement had managed to reach the ears and eyes of higher authorities. The anti-pornography feminist definition of

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<sup>117</sup> “We have put in place some of the toughest controls that one can possibly have within a democratic Government, and the TPIMs are obviously one part of that. We have had repeated meetings of the extremism task force—it met again yesterday—setting out a whole series of steps that we will take to counter the extremist narrative, including by blocking online sites.” Gordon Brown, House of Commons, (October 23 2013).

pornography was to some extent, adopted by the Icelandic Supreme Court in the 1990s. However, it does not mean that the laws or the court suddenly wanted to censor pornography based on the same gender equality principles as the anti-pornography feminist movement, rather that the conservative institution of the judicial body and the anti-porn feminists united in their wanting to censor pornography.

The most recent debate of pornography censorship in Iceland was popularized by the international media. The working proposal of the ministry was exaggerated by the international press, and one can speculate whether or not that was done intentionally to bolster support for British censorship. Two main arguments were examined, on what should be defined as pornography and the logistics of censoring the Internet. It was concluded that the Left-Green Minister of Interior was influenced by the anti-pornography discourse, referring to the proposal of filtering not as censorship but rather as damage control.

Censorship initiatives targeting the Internet on a technical level rather than judicial imply total surveillance. The Icelandic pornography laws were initially made for another kind of society, where sexual matters, including pornography, were taboo and thus meant for another time in history. Applying the anti-pornography feminist interpretation of pornography to these laws entails several obstacles, both because they do not harmonize with the common understanding of the word, and that they would revive what was otherwise effectively a dead-letter law, with scant and contradictory precedent of contemporary enforcement. It should be considered as a remnant from another time in history, when the hemlines of women's skirts reached below their ankles.

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