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# Reclaiming Sex from the Pornographers: Cybersexual Possibilities

CARLIN MEYER\*

Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern.

—William Brennan, *United States v. Roth*<sup>1</sup>

There are so many educated people on the Internet—and what are they interested in? Stupid pictures which they could see better if they bought a copy of Playboy.

—Patrick Groeneveld, former “curator” of the University of Delft, Netherlands computer porn archives.<sup>2</sup>

A recent Carnegie Mellon study has confirmed that a lot of people are looking at a lot of explicit sex on computer screens.<sup>3</sup> Although imagery comprises only a small percentage of the material on the Usenet, a subset of the Internet, a good portion of the imagery being downloaded<sup>4</sup> is sexually explicit,<sup>5</sup> as is a high proportion of postings<sup>6</sup> (both images and text) to the Usenet.<sup>7</sup> Indeed, subscribers to commercial “adult” bulletin

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1. 354 U.S. 476, 487 (1957).

2. Jared Sandberg, *Electronic Erotica: Too Much Traffic*, WALL ST. J., Feb. 8, 1995, at B1, B9 (reporting that porn database closed when demand reached 30,000 downloads per day).

3. Marty Rimm, *Marketing Pornography on the Information Superhighway*, 83 GEO. L.J. 1849 (1995) [hereinafter *Carnegie Study* or the *Study*]. As one of a handful of systematic studies of pornography consumption patterns, the *Study* makes an important and original contribution for all those seriously interested in examining sexuality in American and Western culture. The *Study* defines pornography to include imagery and text depicting both sexual contact (labeled “hard-core”) and nudity or lascivious exhibition (labeled “soft-core”). For purposes of this comment, I adopt the study’s definition. *Id.* at 1849-50 n.1.

4. Downloading refers to bringing down to a computer screen text and imagery available on computer networks such as the Internet and services such as Prodigy. It can also be used to describe bringing these items “down” to be printed out. Downloading sexually explicit imagery, and even discussion groups, generally requires considerable effort, often requiring viewers to “go past a password and a warning label.” David R. Johnson, *Traveling in Cyberspace*, LEGAL TIMES, Apr. 3, 1995, at 26.

5. Measured by number of “posts,” 20.4% of the material on the top 40 bulletin boards on the Usenet is sexually explicit imagery. *Id.* at 1873.

6. Posting refers to sending items to newsgroups and bulletin boards on computer networks.

7. Of the top forty Usenet boards accessed by students and staff at a university studied, 32.5% focused on sexually explicit imagery. *Carnegie Study*, *supra* note 3, at 1870. During a four month period, 83.5% of Usenet postings were sexually explicit, and the Usenet’s tenth

boards (BBS) have downloaded pedo/hebephilic<sup>8</sup> images (containing children and adolescents), and paraphilic<sup>9</sup> depictions (fetishistic, S/M, bestial, or otherwise "deviant" images) nearly 8.5 million times.<sup>10</sup>

Moreover, if employees at AT&T, Citicorp, and Ford Motor Company are indicative, workers are taking a lot of online "sex breaks."<sup>11</sup> Production of CD-ROM pornographic collections and interactive sex games grows apace.<sup>12</sup> Even CompuServe<sup>13</sup> has a "Plain Brown Wrapper" library featur-

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most popular offering worldwide was a "porn" library (alt.binaries.pictures.erotica). *Id.* at 1872 Table 2. That same library was the second most popular choice at the university studied. *Id.* at 1870 Table 1.

8. Pedophilia is defined as "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child . . ." AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 528 (4th ed. 1994) [hereinafter DSM-IV]. Hebephilic is a term used to refer to a similar attraction to post-pubescent children, although it is not a DSM-IV term. Although the *Study* refers to imagery as paraphilic or pedo/hebephilic, the term is in a sense inappropriate, because an *image* does not determine by itself whether it will arouse "sexual urges," nor do all images of children or women having sex with animals raise these feelings in viewers. In addition, arousal by such images does not mean those who are aroused have "recurrent" or "intense" feelings or fantasies. Indeed, studies have shown that "pornographic depictions are sexually arousing for most persons, including many who report not being aroused." RICHARD S. RANDALL, FREEDOM AND TABOO: PORNOGRAPHY AND THE POLITICS OF A SELF DIVIDED 95 (1989) (describing research to date concerning arousal by and impact of pornography). Thus, arousal can hardly be equated with a condition requiring serious medical attention.

9. Paraphilias are disorders whose essential features are "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving (1) nonhuman objects, (2) the suffering or humiliation of oneself or one's partner, or (3) children or other nonconsenting persons . . ." DSM-IV, *supra* note 8, at 522-23. "Para" denotes deviation, "philia" refers to attraction, so the term refers to a variety of deviant attractions. Pedophilia is one of the paraphilias; others include exhibitionism, fetishism, frotteurism (involving rubbing and touching a nonconsenting person), sexual masochism, sexual sadism, transvestic fetishism, voyeurism, telephone scatologia (lewdness), necrophilia (corpses), partialism (exclusive focus on part of body), zoophilia (animals), coprophilia (feces), klismaphilia (enemas), and urophilia (urine). *Id.* at 523, 532.

10. Such imagery accounted for 48.4% of the downloads from 917,410 available images. *Carnegie Study*, *supra* note 3, at 1892.

11. Sandberg, *supra* note 2, at B9 (reporting that these companies are top users of University of Delft porn "archives"). The popularity of computer porn imagery is all the more striking considering that each image can take from 10 minutes to a half-hour to download (or read on-screen), the process is complex and conversion errors often block access, files occupy a large chunk of computer memory, and the images are generally of poorer quality than those available in magazines.

12. A variety of CD-ROM collections of hard- and soft-core images such as *Centerfolds on Disk*, *Variety Sets 1 & 2*, *Heavenly Bodies vols. 1 & 2*, and *Heavenly Hunks* have been advertised for purchase in mainstream computer magazines since the 1980s. See PHILLIP ROBINSON & NANCY TAMOSAITIS, THE JOY OF CYBERSEX: THE UNDERGROUND GUIDE TO ELECTRONIC EROTICA 18-76, 290 app. (1993) [hereinafter JOY OF CYBERSEX]; see also *id.* at 33-35, 78, 290 app. at 292 (describing computer sex resources and noting that large companies such as General Media, which produces *Penthouse* and *Event Horizons*, are producing discs as well as running adult bulletin boards).

13. CompuServe is one of the three largest commercial online services. (The other two are America Online and Prodigy). All of the online services provide easy access to the Internet and an electronic mail address to receive messages. They also offer access to electronic

ing nude women<sup>14</sup> in its Graphics Corner Forum. How should we respond to this news?

The most obvious response, and surely the most common one, will be to decry the phenomenon and call for increased regulation and suppression of cybersex.<sup>15</sup> This is the response embodied in the Republican Contract with America's support for the Family Reinforcement Act, which calls for "increas[ing] the offense level by 2 levels if a computer was used" in purveying child pornography.<sup>16</sup> This is also the response of Nebraska Senator James Exon, who recently introduced the Communications Decency Act to "protect the public from the misuse of the telecommunications network" by strengthening penalties and requiring communication service providers such as America Online and Prodigy to police their postings.<sup>17</sup> While Senator Exon recently revised the Act to remove penalties against service providers for mere transmission after the Act was widely criticized as unworkable,<sup>18</sup> the Act continues to criminalize posting or soliciting (which may include downloading) not only of obscenity, but of material which is "lewd, lascivious, filthy or indecent."<sup>19</sup> The response of many local legislators has been similar.<sup>20</sup> And the White House, too, recently announced that it is working on a plan to add "prosecutorial tools" to the effort to keep pornography off the Internet.<sup>21</sup> In the view of

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bulletin boards (live electronic chat services or "forums"). Most online services also typically offer access to news, reports, articles, job listings, stock quotes, and a variety of other services. Valencia Roner & Matthew S. Scott, *Are You Online Yet?*, BLACK ENTER., Apr. 1995, at 41; Sara Curtis, *Lust Online*, MACLEAN'S, Apr. 3, 1995, at A16.

14. Davis Merran, *Take it Off? Pornography on CD-ROM*, CD-ROM WORLD, Jan. 1994, at 60.

15. Online computer services such as CompuServe, America Online, and Prodigy already either automatically screen out messages containing certain words or offer subscribers ways to block access to certain bulletin boards and services. See Daniel Pearl, *Government Tackles a Surge of Smut on the Internet*, WALL ST. J., Feb. 8, 1995, at B1. Nevertheless, just as a new "adult" BBS appears for every "adult" BBS put out of business by prosecution, for every attempt to screen, there is soon another (or the same) image, described differently, in its place.

16. H.R. 11, 104th Cong., 1st Sess. § 301 (1995); David E. Rosenbaum, *The 1994 Campaign: The Republicans*, N.Y. TIMES, Nov. 1, 1994, at A20 (describing Family Reinforcement Act as part of the Republican Contract with America).

17. S. 314, 104th Cong., 1st Sess. § 2 (1995) (making computer networks liable for a \$100,000 fine and two years imprisonment if users engage in "indecent" conversations or certain other activities); see also Howard Rheingold, *Senator's Attempt at Censorship Deplorable*, DENV. POST, Feb. 17, 1995, at 26.

18. Susan Moran, *On-Line Firms Freed From Big Brother Role in Obscenity Bill*, CHI. SUN-TIMES, Mar. 27, 1995, at 41.

19. S. 652, 104th Cong., 1st Sess. § 402 (1995). The revised Exon bill was recently approved by the Senate Commerce Committee. Edmund L. Andrews, *Smut Ban Backed for Computer Net*, N.Y. TIMES, Mar. 24, 1995, at A1.

20. Pearl, *supra* note 15, at B1. See, e.g., N.Y. Assem. B. 3967, 218th Gen. Ass., 1st Sess. (1995) (penalizing communication via computer with minors if any communicated materials depict in whole or in part "actual or simulated nudity, sexual conduct or sado-masochistic abuse" and are harmful to minors).

21. *Banning Computer Smut*, L.A. TIMES, May 4, 1995, at A6. Senator Patrick Leahy, by

conservatives and many "moderate" liberals, pornography must be suppressed because it 1) precipitates antisocial acts like rape, child molestation, exhibitionism, and other deviant sexual behavior; 2) undermines moral standards and humane values by encouraging permissiveness and callousness in individuals and tolerance for these same qualities in others, by fostering loss of respect for women, and by demeaning love and affection by promoting sex acts without love; and 3) signals a general moral decline.<sup>22</sup> To conservatives in particular, as in many other areas, the solution is legislated suppression, banishment, and exile of immoral imagery and those who make it.<sup>23</sup>

Measures to cleanse cyberspace<sup>24</sup> of imagery claimed to be sexually degrading or abusive will likely be the response of many feminists as well.<sup>25</sup>

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contrast, has called on the Justice Department to seek ways to empower parents and users to screen out those materials they do not wish to view. Patrick Leahy, Congressional Press Release, Apr. 11, 1995, available in LEXIS, News Library, HILLPR file.

22. See RANDALL, *supra* note 8, at 91-92, 119-41 (describing conventional rationales for porn suppression); see also Colin Covert, *My Sex Life is OK, Your Sex Life is OK, and Porn is OK, too; Sallie Tisdale Talks Dirty To Us*, STAR TRIB., Nov. 21, 1994 (noting that "House Speaker-in-waiting" Newt Gingrich told the New York Times he will use his office to stem the general moral decline and spiritual rot he traces to the licentious 1960s).

23. As Linda Williams has noted, "[i]t is easy to see why the anti-pornography position has been so popular: it provides answers, albeit simplistic ones, whereas anti-censorship feminists mostly ask questions." LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE "FRENZY OF THE VISIBLE"* 26 (1989).

24. Although some feminists insist that the legislative measures they advocate avoid empowering governmental actors to censor by creating only civil suits for harm to pornography "victims," remedies do include suppression of offending imagery. See Carlin Meyer, *Sex, Sin, and Women's Liberation: Against Porn-Suppression*, 72 TEX. L. REV. 1097, 1112-15 (1994). Moreover, many feminists have tacitly supported forfeiture and seizure of pornography in connection with criminal prosecutions against pornographers.

25. I have elsewhere critiqued the argument that pornography generally harms and degrades women. See generally Meyer, *supra* note 24. Here, I address the question of what difference, if any, computer porn makes to the general argument. For an excellent review of efforts of social science to assess the impact of pornography, see generally RANDALL, *supra* note 8, and for a study pointing at the contradictory findings of, as well as challenging, laboratory studies of the effects of violent pornography, see William A. Fisher & Guy Grenier, *Violent Pornography, Antiwoman Thoughts, and Antiwoman Acts: In Search Of Reliable Effects*, 31 J. SEX RES. 23 (1994). For further arguments against efforts to suppress explicitly sexual materials, whether or not degrading to women, see generally NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* (1995); David Cole, *Playing by Pornography's Rules: The Regulation of Sexual Expression*, 143 U. PA. L. REV. 111 (1994); Susan E. Keller, *Viewing and Doing: Complicating Pornography's Meaning*, 81 GEO. L.J. 2195 (1993). For arguments in support of suppression, see CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 127-97 (1987). For views sympathetic to or supportive of limited suppression, see Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589; Robin West, *The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General's Commission on Pornography Report*, 1987 AM. B. FOUND. RES. J. 681 (1987). For a fascinating argument that the increasing presence "on/scene" of sexually explicit hard core pornographic images is a positive good in that these images play an "important transgressive role . . . in undoing the rigid hierarchies that underlie sexual difference" and, unlike slasher films, are "one of

No doubt they will see in the penchant of male hackers to download hard-core paraphilic and pedophilic imagery more evidence of the abusive and predatory nature of male sexuality<sup>26</sup> and a greater likelihood that today's computer hackers will become tomorrow's pedophiles (if they are not already pedophiles) or will use newly acquired ideas to increase their abuse of wives, girlfriends, and strangers.<sup>27</sup> And feminists will emphasize that the greater the demand for the imagery, the more pornographers will insert bottles and fists into women's vaginas, bind women, coerce them to have sex with animals<sup>28</sup> or to perform excruciatingly painful acts, or publicly humiliate them by circulating images of coerced performances.<sup>29</sup>

Finally, school and university officials are already considering limitations on student access to sexually oriented newsgroups and bulletin boards.<sup>30</sup> For instance, after learning of the *Study* and fearful of state obscenity laws, Carnegie Mellon blocked access to some Usenet groups containing porno-

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the few types of contemporary film narrative not to punish its female protagonists for seeking pleasure," see Linda Williams, *Pornographies on/scene*, in *SEX EXPOSED: SEXUALITY AND THE PORNOGRAPHY DEBATE* 233-34, 263 (Lynne Segal & Mary McIntosh eds., 1992) [hereinafter *SEX EXPOSED*].

26. See LYNNE SEGAL, *SLOW MOTION: CHANGING MASCULINITIES, CHANGING MEN* 207-17 (1990) (criticizing antiporn feminists for adopting nineteenth-century view of the inherently predatory nature of male sexuality).

27. See MACKINNON, *supra* note 25, at 188-89 (describing such abuse).

28. I suspect that many of the images purporting to show bestiality are, like one I downloaded, faked. Nonetheless, I assume for purposes of argument that many are not.

29. A full discussion of whether and to what extent sex workers should be viewed as presumptively coerced is beyond the scope of this comment. For arguments that we should not view sex workers in this way, see STROSSEN, *supra* note 25, at 179-98 (challenging notion that women who perform in pornography are "always and inevitably victims"); LEONORE TIEFER, *SEX IS NOT A NATURAL ACT AND OTHER ESSAYS* 129-34 (1995) (arguing that women sex workers need empowerment not protection); Anne McClintock, *Gonad the Barbarian and the Venus Flytrap*, in *SEX EXPOSED*, *supra* note 25, at 111, 114-15. See generally *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* (Frederique Delacoste & Priscilla Alexander eds., 1987) (expressing various viewpoints of sex workers on their work, often suggesting it to be no more degrading or coerced than many other trades).

30. Despite what follows, I believe there are "time, place, and manner" restrictions that can legitimately and legally be imposed on the use of the already limited resources needed to view, download, and store imagery of all kinds, particularly if the imagery downloaded is not part of any enterprise related to the purpose for which computer systems have been provided. Imagery takes a great deal of memory space and computer time to download, and schools, universities, and workplaces are surely within their rights when they conserve computer resources for certain kinds of primary uses. Moreover, because of the sheer popularity of textual newsgroups such as alt.sex.stories, some universities have chosen to store these files on server computers for shorter amounts of time. This, too, is perfectly reasonable. What is not appropriate or wise is to seek to limit *all* (or most) access to sexual imagery and text. For one thing, as discussed more fully in Part I, *infra*, it cannot be done and it will simply cause students to waste valuable time figuring out clever ways to circumvent blocking devices. See *Carnegie Study*, *supra* note 3, at 1858-59 n.21 for a description of 12 ways to circumvent such devices. Further, as argued in Part II, *infra*, blocking sexual discussion would block one of the most important and valuable services computers offer us to alter the pornographic picture of Western sexuality.

graphic imagery.<sup>31</sup> Thus, the common response to the advent of cybersex seems to be to control and censor it.

My reaction is precisely the opposite. We should largely ignore the growing presence of cybersmut and concentrate instead on expanding access—especially for young people—to online sexual discussion and depiction and on joining them in discussion and criticism<sup>32</sup> of what they see and “hear.”<sup>33</sup> Rather than focus on the few who harass, libel, or stalk online, we should remember that any technology can be ill-employed, but that this one, in particular, offers what is probably the safest sex available.

Lack of information about sex and sexuality, along with societal norms that treat it as unmentionable, private, and to-be-hidden, contribute to societal problems from teen pregnancy to incest and sexual abuse.<sup>34</sup> Children are loath to report intrafamilial sexual abuse and incest, as well as

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31. *University Blocks Out Internet's Dirty Pictures*, PLAIN DEALER, Nov. 22, 1994, at 7A. Several high schools have followed suit. Philip Elmer-Dewitt, *Censoring Cyberspace*, TIME, Nov. 21, 1994, at 102.

32. I, as well as others, take direct issue with the growing and dangerous trend to prevent access by our young to any sort of sexual speech or depiction. See, e.g., Judy Blume, *Is Puberty a Dirty Word?*, 38 N.Y.L. SCH. L. REV. 37 (1993) (describing efforts by schools to censor sex from school libraries, texts, and curricula); Gloria Pipkin, *Confessions of an Accused Pornographer*, 38 N.Y.L. SCH. L. REV. 53 (1993) (same). It is dangerous not merely because it threatens to blindfold our children about life, but because it leads to the very sorts of sexual danger feminists decry. At least some evidence suggests that both victims and perpetrators of sexual aggression come from households that were sexually repressive and in which signs of sexuality were rebuked. See James Popkin & John Simons, *Natural Born Predators*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 64 (surveying literature on sex offenders and noting that majority of rapes and sexual abuse are not by strangers, and noting that while a third of pedophiles were victims of child abuse, the more common thread was a history of growing up in sexually strict or repressed families); Mensah Dean & Brian Reilly, *Profile Points to Quiet Man*, WASH. TIMES, May 5, 1994, at C5 (quoting experts that pedophiles “often are very prudish toward all sexual matters”); Fred S. Berlin & Edgar Krout, *Pedophilia: Diagnostic Concepts, Treatment, and Ethical Considerations*, 7 AM. J. PSYCHIATRY 13 (1986); see also Meyer, *supra* note 24, at 1127 n.134 (noting that *Deep Throat's* Linda Marchiano's ordeal began when she escaped a sexually repressive household with what turned out to be an abusive husband); McClintock, *supra* note 29, at 128-29 (arguing that Marchiano's abuse was caused by her husband's resentment of her affirmation of sexuality and that affirmation enabled her to escape from his abuse). Others have repeatedly noted the link between abuse of women and women's affirmation of their sexuality in such genres as horror films, in which asexual girls escape, while those who act in sexual ways are brutally punished. See, e.g., Tania Modleski, *The Terror of Pleasure: The Contemporary Horror Film and Postmodern Theory*, in STUDIES IN ENTERTAINMENT: CRITICAL APPROACHES 155, 155-66 (Tania Modleski ed., 1986); Carol J. Clover, *Her Body, Himself: Gender in the Slasher Film*, 20 REPRESENTATIONS 187, 199-204 (1987); Mary B. Oliver, *Contributions of Sexual Portrayals to Viewers' Responses to Graphic Horror*, 38 J. BROADCASTING & ELECTRONIC MEDIA 1, 1-2 (1994).

33. By “see” I mean viewing images. By “hear” I mean reading what online discussants have to say on chat boards and newsgroups.

34. Some research suggests that while there may be biological disorders in some cases, in other instances pedophilic and other sexually deviant behaviors correlate most closely to having grown up in sexually repressive families that chastised sexual expression. See sources cited *supra* note 32 (discussion of relationship between sexual aggression and sexually repressive households).

sexual abuse by teachers, priests, and scoutmasters. Not only does societal silence create a sense of shame about having engaged in even involuntary sex acts (even more so because children sometimes are excited by or derive short-term benefits from the sex),<sup>35</sup> it also encourages children to fear social condemnation of themselves and societal overreaction to those who may have abused them.<sup>36</sup>

Children (and adults) believe themselves deviant because they have natural sexual urges and fantasies, as there are few ways to learn that these feelings are ordinary and natural. Youngsters commit suicide because they have no access to information about homosexuality or ways to talk to other gay and lesbian youngsters. Or they develop psychiatric problems because they have no outlet to express nonconformist sexual longings.<sup>37</sup>

As long-time sex researcher John Money has noted, even "the most liberal ideological [sexual] norm is still so narrow that it is dangerous for a pubertal adolescent to reveal any part of his/her erotic/sexual imagery and fantasy that does not conform."<sup>38</sup> Indeed, sexual disfunction among Americans generally is fostered by lack of open, honest discussion of sexuality.<sup>39</sup>

In this context, the Internet offers tremendous possibilities. Although not yet democratically constituted because its users are largely white affluent males,<sup>40</sup> the Internet already boasts discussion of sexual issues among youth of both genders.<sup>41</sup> Not only is more information made more available, especially to those situated in sexually repressive families, reli-

35. See, e.g., DEREK JEHU, *BEYOND SEXUAL ABUSE: THERAPY WITH WOMEN WHO WERE CHILDHOOD VICTIMS* 11-15 (1988) (reporting high rates of victim shame reactions to abuse, and suggesting that, inter alia, victims experience guilt, shame and self-blame at having obtained benefit—affection, favors, rewards—for participating in the sex).

36. In one instance reported to me, two sisters concealed abuse by a teen male babysitter who exposed himself as he asked the girls to "sit on it," because they instinctively knew that either they would be condemned or disbelieved, or that the teen boy would be excessively punished, when the girls merely found the abuse amusing and unpleasant. Instead of reporting the sexual incident, the girls reported that he had pushed them on the stairs, causing one to fall.

37. The problem is, of course, made worse for those youth in social communities in which almost any sexual longing is treated as nonconformist. See *supra* note 34 and accompanying text.

38. JOHN MONEY, *LOVE AND LOVE SICKNESS* 38 (1980).

39. See generally TIEFER, *supra* note 29.

40. See John J. Oslund, *The Rush is On, Businesses Staking Claims on Internet's "World Wide Web,"* STAR TRIB., Mar. 6, 1995, at 1D (stating that 44% of World Wide Web users are between 26 and 30 years old, more than 90% are male, more than 87% are white, 71% are from North America, 23% are European, 3% are Australian, and 33% have university-level degrees). But see Alana Kainz, *Profiting from Internet,* OTTAWA CITIZEN, Jan. 11, 1995, at F3 (citing slightly lower statistics for males and white ethnicity and noting that median income is \$54,000).

41. It is difficult to be certain of the age or gender of any particular discussant, not only because participants need not identify age or sex to log on, but because it is simple to falsify both facts. But the nature of online discussion suggests that participants in sex-related discussions include both sexes, including teenagers. Author's review of several newsgroup discussions from February to April 1995. A recent example of someone representing herself



gious institutions, and social milieus, but also the Internet allows participants to compare real experiences and fantasy lives in anonymity and safety. Children can report and discuss sexual experiences with adults, talk to others about whether and how they perceive those experiences as abusive, and discuss how to change or end them. Women can compare notes on male behaviors and exchange recipes for resistance to those that they find unpalatable or abusive, as well as recipes for encouragement. Moreover, they can experiment in the sorts of sexual practices that give them pleasure. Men can discuss (indeed, they are already discussing) how women's sexual experiences may differ from their own and how mutuality can be substituted for force.<sup>42</sup>

In addition, the Internet holds wider possibilities for reformation and reconstruction of human sexuality. It makes it possible for people with enormously varied backgrounds, beliefs, and religious or moral belief systems to engage in distanced, and therefore relatively safe, discussion of otherwise emotional and difficult subjects such as sexual beliefs and practices.<sup>43</sup> Imagine, for example, an open, uninhibited cross-cultural discussion of the Columbia Caribbean Coast practice where teenage boys matriculate to manhood by having sex with donkeys.<sup>44</sup> Subscribers to sexual, anthropologic, zoophilic, or bestiality-related newsgroups could debate whether this ritual may be a more effective form of teen pregnancy prevention than those promoted by their own cultures.<sup>45</sup> They can argue about whether proving manhood with donkeys is worse than doing so by abusing young women<sup>46</sup> or purchasing the services of prosti-

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as a teenage girl is indicative:

I'm a teenage girl and I have some questions about masturbating. I have tried but I can't seem to get an orgasm—in fact I don't think I've ever had one. I asked my mother but she was vague and didn't tell me anything I didn't already know. This is NOT a come on to sicko 45 year old men aroused by teenagers. Could a woman please respond and explain how? Thank you very much.

*Message from Sunflrgrl*, Apr. 12, 1995 (on file with *The Georgetown Law Journal*).

42. Author's review of Internet discussion groups between February and April 1995.

43. Discussion is "safe" not only because there are no online fistfights, but because users can and frequently do disguise their identities, using false names and even rerouted addresses. While "flashing" (extremely hostile comments and nasty verbal abuse) and other misbehavior does occur online, the Internet is nonetheless a far safer environment in which to debate "hot topics" than most. See, e.g., Michelle Green, *Fatal Attraction: A Surprise Meeting on Jenny Jones Ends in a Shocking Shotgun Murder*, PEOPLE, Mar. 27, 1995, at 40 (describing rise of television talk show confrontation and debate about intimate issues, which in one instance provoked straight man to kill gay man who confessed attraction to him on the Jenny Jones show).

44. See MONEY, *supra* note 38, at 83.

45. See *id.* (hinting at but not positing pregnancy prevention aspect, noting that teens are also expected not to impregnate unmarried girls).

46. Jill Smolowe, *Sex With a Scorecard*, TIME, April 5, 1993, at 41 (describing 20 to 30 teenagers in conservative, middle class school who, calling themselves "Spur Posse," gained "points" according to how many different girls they had sex with, leading to indictment of

tutes.<sup>47</sup> Participants can be challenged about reflexive beliefs in an environment where, instead of tempers flaring as challenges to identity are instantaneously defended, any participant can turn the discussion off to think about the issues and discuss them with friends and family (or on a private chat board with a compatible member of the discussion group, or on the Internet in another discussion group). Discussion group members are then able to return later to the initial discussion with a perspective informed not by the intensity of immediate identity challenge, but with the calmness that distance in time and proximity provides.

Censorship will diminish all of these possibilities by diminishing the uninhibited freedom offered by the Internet. A subscriber who wants to know what the donkey ritual looks like and asks for a photograph to be posted would, under the Exon bill, face criminal indictment for soliciting a lewd posting.<sup>48</sup> Indeed, mere *discussion* of the donkey ritual could form the basis for such an indictment.<sup>49</sup> Under an effective censorship regime, the bulletin board or newsgroup containing such a discussion would likely be blocked from schools and universities, as well as other access systems, and might be shut down altogether.<sup>50</sup> This, not the possibility that some youthful browsers, or even some pedophiles and paraphilics, will look at "dirty" or sexist pictures, is the danger generated by porn on the Internet.<sup>51</sup>

The penetration of porn into cyberspace highlights the futility of the effort to banish explicit sexual imagery—even that which contains pedo-

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one for allegedly doing so with a 10-year-old girl); Melinda Henneberger & Michel Marriot, *For Some, Rituals of Abuse Replace Youthful Courtship*, N.Y. TIMES, July 11, 1993, § 1, at 1 (describing other abusive rituals such as "whirlpools," in which boys surround a girl in a swimming pool to physically harass and abuse her).

47. Not surprisingly, given the steady liberalization of moral strictures concerning sexual behaviors, the male practice of having one's first sexual experience with a prostitute seems to have been steadily diminishing in American culture since before World War II. EDWARD O. LAUMANN ET AL., *THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES* 330 (1994).

48. See S. 314 § 2, *supra* note 17. It would be impossible, as it is in most sex research, to determine whether the request to post arises from curiosity, prurient interest, or some probable combination of the two, and the Exon bill in any case makes no distinction between the two.

49. Both the earlier and current versions of the Exon bill treat images and text similarly. See S. 314, § 2, *supra* note 17 (original Exon bill); S. 652, § 402, *supra* note 19 (updated Exon bill).

50. Internet access via World Wide Web sites containing sexual matter, while most frequently used at the moment to advertise sex-related business, are also heavily used for educational purposes and to disseminate information among gay, lesbian, and bisexual organizations. *Carnegie Study*, *supra* note 3, at 1922 app. c. The World Wide Web is an increasingly popular graphic access system that enables users to quickly "hop" among discussion groups, enormously simplifying the process of retrieving information from the Internet.

51. Another danger of computer sex is the possibility that too many people, in substituting fantasy and anonymity for the perils of real sexual encounters, will not develop the skills needed to maintain healthy and lasting sexually intimate relationships. But it is equally plausible that Internet communication will *assist* in developing such skills, or develop other ones important to interpersonal communication.

philic, bestial, and paraphilic imagery of the sort most offensive to many—from our increasingly interconnected world.<sup>52</sup> Part I of this comment describes that futility.<sup>53</sup> Not only is implementation of a ban impractical; any ban would be necessarily overbroad. Against that backdrop, Part II argues that we should use the Internet as an opportunity to initiate an honest discussion and depiction of sexuality and to wrest control of it from advertisers, Hollywood-style filmmakers, and pornographers. While the *consumption* of pornography in our society may contribute to our consumer culture's narrow and misogynist picture of human sexuality, these harms cannot be "cured" by sexual censorship. Censorship contributes to the circumscription of sexual material consumed. While cyberporn may add to the harms associated with porn *production*, those harms are better dealt with by means other than censorship, especially because sexual censorship is itself a major cause of the (even greater) societal harms that some feminists wrongly attribute to *pornography itself*.<sup>54</sup>

For those who believe that no sex is safe because all sex (except procreatively driven, marital sex) is presumptively bad, my words will no doubt fall on deaf ears.<sup>55</sup> But for feminists and others genuinely concerned

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52. For an excellent analysis of the weaknesses of doctrinal justifications for according less First Amendment protection to sexual speech, see Cole, *supra* note 25, at 111. Cole argues that sexual speech is currently less protected, not because it is less valuable or less worthy, but because it is more threatening—among other things because it makes public what many believe to be quintessentially private. *Id.* at 131-40. Sex on the Internet is in many ways the wholesale importation of sex into the most public of all fora. Yet it enables the preservation of privacy: one can publicly discuss and fantasize about sex while preserving total privacy as to identity and as to the "truth" of one's sexual proclivities or activities, as well as to one's physical appearance and professional status. See JOY OF CYBERSEX, *supra* note 12, at 232.

53. We should never ignore the ways in which any of us may be coerced into making, or viewing, or participating in sexual activity. But in this regard, hype about pornography seems too often to be a way to avoid confronting the far more troubling issues which surround us (for example, intrafamilial incest and violence, that are generated by far more complex causes).

54. As one commentator writes, "[t]he social problem here is not sex, but men's misogyny, homophobia, and violence." Judith Kegan Gardiner, *What I Didn't Get to Say on TV About Pornography, Masculinity, and Representation*, 38 N.Y.L. SCH. L. REV. 319, 328 (1993) (arguing that censorship is more appealing because it is "more manageable" than addressing misogyny and redefining masculinity); see also Meyer, *supra* note 24, at 1100-01, 1123-34, 1146-57 (same).

55. Although many legislators seem to be listening to the well-organized religious right on these issues, there are many indications that they would be well-advised to reconsider. Studies by Rev. Andrew Greeley suggest that American Catholics have an active sex life, in which some 30% play around with erotic underwear. See David Briggs, *Study "Burst Bubbles" on Catholics and Sex*, ROCKY MTN. NEWS, Jan. 6, 1995, at 38A. More generally, the preachings of the religious right do not seem to be widely followed. Adult video sales and rentals soared 75% between 1991 and 1993 to \$2.1 billion in 1993. See John R. Wilke, *Porn Broker: A Publicly Held Firm Turns X-Rated Videos Into a Hot Business*, WALL ST. J., July 11, 1994, at A1. According to Dr. Ted McIlvenna, author of *The Complete Guide to Safer Sex* (1992) and a forthcoming longitudinal study of sex in America, and Director of the Institute for the Advanced Study of Human Sexuality, sex industry sales are currently at approximately \$2 billion annually, and adult sex toys represent 34% of that figure (compared with 3% in 1960). Telephone interview with Ted McIlvenna (Apr. 24, 1994).

about ending the cycle of sexual shame, ignorance, and violence, cybersex offers us a chance to oust the dominant masculinist and misogynist pornographers from their control over sexual territory and to begin reclaiming and reconstructing sexuality in the relative safety of cyberspace.<sup>56</sup>

### I. THE FUTILITY OF CYBER-CENSORSHIP

[N]o sane man thinks socially dangerous the arousing of normal sexual desires.

—Judge Jerome Frank<sup>57</sup>

People are desperately interested in sex. The result is that the computer is now becoming another tool, another avenue, another forum for sex.

—*The Joy of Cybersex*<sup>58</sup>

In this time of deficit anxiety and social and public service cut-backs, does it make sense to devote more energy and resources to developing ways to block access to cyberporn or to investigating and prosecuting its purveyors? I think not. My first reason for believing that censorship and prosecution are not the answers is a pragmatic one: Neither can be successful.

Two basic approaches have been advocated to halt the dissemination of pornography in cyberspace. The first is censorship—by legislation, by voluntary action, by technological innovation—of the images and text transmitted via computer networks.<sup>59</sup> The second is increasing prosecution of, and enhancing penalties for, purveying obscenity and child pornography via computer. The problem is that censorship very likely *cannot* be done and increased penalties and prosecution at best *might* result in the arrest of a few pornographers at great taxpayer expense and deterrence of a handful of others from entering or continuing in the business, while leaving most pornographers untouched, with previously uploaded pornography available online, circulating on CD-ROM disks, and available in “hard copy.”<sup>60</sup> Another entrepreneur with the small amount of capital required

56. See ROBERT T. MICHAEL ET AL., *SEX IN AMERICA: A DEFINITIVE SURVEY 1-14* (1994) (discussing the myths and false impressions of American sexual activity).

57. *Roth v. Goldman*, 172 F.2d 788, 792 (2d Cir. 1949) (Frank, J., concurring).

58. *JOY OF CYBERSEX*, *supra* note 12, at xvii.

59. See discussion *supra* notes 15-23 and accompanying text. See also Daniel Pearl, *Internet Cybermut Crackdown Expected But Can Network be Regulated at All? No One's Sure*, SAN DIEGO UNION-TRIB., Feb. 14, 1995, at 12 (describing Exon bill).

60. CD-ROM technology permits storage of up to 4500 images for computer view and can, in addition, offer interactive viewing. For example, purchasers can obtain Volume 3 of the “Erotica Disk Collection,” containing “dozens of high quality erotic images so hot they will melt your screen . . . gorgeous women sunning themselves in (and out) of skimpy bikinis and thongs—heart-stopping lingerie shots—and more!” for a mere \$3.50 plus \$.50 shipping and

to enter the business and a bit more sophistication in hiding his or her identity would easily be able to satisfy the demand previously met by those pornographers who are jailed or shut down.<sup>61</sup>

#### A. SYSOP<sup>62</sup> CENSORSHIP OR SELF-CENSORSHIP

Cyberspace cannot be effectively censored for reasons both technological and constitutional. Nevertheless, attempts at censorship are being made. One approach is to pass laws holding SYSOPs criminally or civilly responsible for sexual imagery and text posted on their networks.<sup>63</sup> Another is to encourage adoption of "voluntary" self-censorship by SYSOPs. Both approaches are unworkable, however, because it is virtually impossible for SYSOPs to police the imagery and texts posted to their systems, and it is even more difficult for them to screen or block postings available to their users through the Internet.<sup>64</sup> Further, because filtering efforts must be overbroad if they are to screen out effectively obscenity and child pornography, governmental screening requirements to eliminate obscenity

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handling. The Erotic Disk Collection is advertised on the Internet by JK Micro. See *\*\* HOT \*\* EROTIC Sampler Disc!*, Feb. 17, 1995 (electronic mail advertisement, on file with *The Georgetown Law Journal*). Other CD-ROM photo collections and graphic interactive sex games are described in JOY OF CYBERSEX, *supra* note 12, at 23-38, 43-50. Once on CD-ROM, they can be "uploaded" onto the Internet.

61. It is inexpensive and relatively simple for someone with minimal equipment and a small amount of capital to create an "adult" BBS. See *Carnegie Study*, *supra* note 3, at 1914; see also Peter H. Lewis, *Internet for Profit*, COMPUTER SHOPPER, Nov. 1994, at 178 (reporting start-up costs as ranging from \$200, if equipment already owned, to \$7000-\$20,000 per year); Lon Wagner, *On-line Sex: At a Virginia Beach Computer Bulletin Board Company, Business is Pleasure*, VIRGINIAN-PILOT, Nov. 27, 1994, at D1 (reporting start-up costs of *Pleasure Dome* adult BBS at \$600 and equipment needed as phone line, computer, and modem). Those willing to risk the occasional FBI sting, or to hire sufficiently experienced legal counsel to skirt the law, can do quite well financially at little risk. See Andrea Gerlin, *Electronic Smut Is Drawing Fire of Prosecutors, Raising Questions*, WALL ST. J., May 27, 1994, at B3 (noting that materials can proliferate because it is easy for distributors to mask identities, move in and out of e-mail boxes, and destroy evidence); see also Wilke, *supra* note 55, at A1 (describing economic success of one pornography business, South Pointe Enterprises, whose profits doubled in 1993, to \$507,000 on \$9.6 million of sales).

62. SYSOP refers to "systems operator." The term denotes the person, persons, or corporation that runs a system (e.g., Prodigy, America Online, and CompuServe, and also those who run smaller private BBS such as Amateur Action's "adult" board).

63. Although some such legislative proposals, like Senator Exon's, would exceed governmental authority under existing First Amendment doctrine because it seeks to reach not only obscene imagery and child pornography but lewd and lascivious display as well, this is not the forum in which to address fully the constitutionality of such proposals. For a discussion of the constitutionality of the Exon bill, see Moran, *supra* note 18, and John Schwartz, *Senate Bill to Punish On-Line Obscenity Draws Sharp Criticism*, L.A. TIMES, Mar. 4, 1995, at D1. Rather, I assume for purposes of argument that a law could be narrowly drawn to require SYSOPs to exclude only such imagery and text that could legally be the subject of governmental censorship. But see *infra* text accompanying notes 102-04 (discussing problem of establishing community standards in computer context).

64. I use the term "Internet" to include the "Usenet," which was the subject of the *Carnegie Study*. For purposes of this argument, they are interchangeable.

and child pornography surely run afoul of the First Amendment.<sup>65</sup>

As elaborated hereafter, neither screening of postings nor blocking of access to sexually-oriented bulletin boards can be accomplished without also restricting access to speech that is neither legally obscene nor constitutes child pornography.<sup>66</sup> Software filters attempt to identify obscene postings using word-identifiers (dictionaries) that are unable to distinguish texts or images which appeal solely to prurient interest (shameful or morbid desire) and lack literary, artistic, or scientific value, much less to assess whether they violate particular community standards.<sup>67</sup> BBS that are sexually-oriented typically contain a wide variety of material, some of which might be legally obscene in some communities, but much of which is largely nonobscene.<sup>68</sup>

While private entities are free to restrict speech, once government *requires* screening (for example, by holding system operators legally respon-

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65. A very small amount of the sexual imagery and text contained in the approximately 92,000 bulletin boards worldwide constitutes obscenity or child pornography. *See PrimeTime Live: Moment of Crisis—The Hicksville 5:33* (ABC News television broadcast, Dec. 9, 1993) (discussing "Modem Romance," transcript #327-4). Because screening cannot effectively capture obscene imagery and text and child pornography without also screening out enormous amounts of nonobscene information, any governmental screening requirement constitutes a requirement to censor imagery and text that is fully protected by the first amendment. *See infra* text accompanying notes 102-05.

66. *Miller v. California*, 413 U.S. 15, 24 (1973) (sexual speech protected unless obscene; obscene speech appeals to prurient—shameful or morbid—interest, is patently offensive according to relevant community standards, and, taken as a whole, lacks serious literary, artistic, political, or scientific value). *See also* *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504-05 (1985) (obscene matter must appeal to "shameful or morbid" sexual desires, not a "normal interest in sex"); *Stanley v. Georgia*, 394 U.S. 557, 565-66 (1969) (First Amendment bans criminalization of obscenity in the home). Where child pornography is concerned, however, restriction of mere consumption, as well as production and dissemination, is constitutionally permissible, even when the materials are not obscene. *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (*Miller* and *Stanley* tests relaxed due to "compelling" state interest in "safeguarding the physical and psychological well-being of a minor"); *Osborne v. Ohio*, 495 U.S. 103, 108-11 (1990) (Ohio statute criminalizing possession as well as production and dissemination of child pornography upheld against First Amendment challenge due to compelling state interest in protecting minors). Moreover, broad definitions of child pornography as including lascivious exhibitions where neither nudity nor sex acts are involved have been upheld against constitutional challenge. *See United States v. Knox*, 32 F.3d 733, 743-51 (3d Cir. 1994), *cert. denied*, 115 S. Ct. 897 (1995) (upholding against First Amendment challenge federal child pornography statutes criminalizing possession of "lascivious exhibition of the genitals or pubic area" despite lack of nudity or discernibility of genitalia).

67. *Pope v. Illinois*, 481 U.S. 497, 500-01 (1987) ("community standard" is to be measured according to a reasonable person within a given community). *See infra* text accompanying notes 102-04 for discussion of the difficulties associated with assessing community standards on the Internet.

68. Material which depicts or describes sexual activities that are neither prurient nor offensive—safe sex manuals, anthropological descriptions or images of bestial practices, artistic depictions ranging from the photographs of Mapplethorpe to Titian's and Rodin's nudes to the literary depictions of Joyce to graphic discussions of any of these (as well as similar amateur attempts)—would likely be excluded by any such effort.

sible whenever obscenity is available online), or governmental actors like public universities forbid access to BBS containing protected speech because of its sexual, but not necessarily obscene, content, the First Amendment is presumptively violated. The overbroad regulation of speech necessitated by software screening not only captures nonobscene protected speech, but chills SYSOPs and citizens from engaging in protected speech.<sup>69</sup> Wholesale restriction of these Boards by governmental actors or by legislative fiat would likewise pose grave First Amendment difficulties.<sup>70</sup> Even restriction of BBS claiming to be oriented toward imagery featuring children would be problematic, because there are many images of children in postures that might be interpreted as sexual, yet which are artistic or scientific.

It is simple to "post" sexually explicit images and text on computer networks such as Usenet and the Internet.<sup>71</sup> Images can be scanned from photographs, magazines, CD-ROM discs, and other sources and posted to any one of a number of "chat boards,"<sup>72</sup> "newsgroups," or BBS.<sup>73</sup> A user need only link up and post messages or images to those boards to which he links.<sup>74</sup> The only control on message posting on the Internet is an informal but ardently maintained etiquette about what types of postings belong where.<sup>75</sup>

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69. *Dombrowski v. Pfister*, 380 U.S. 479, 485-89 (1965) (noting that facial challenges to overly broad statutes regulating the freedom of expression are permitted because otherwise, constitutionally protected right of free speech would be impermissibly chilled). See generally LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* §§ 12-27, 28 (2d ed. 1988). Indeed, Scott Charney, Chief of the Justice Department's computer crime section, has indicated that his section does not attempt to screen computer bulletin boards in order to "stumble" onto crime because it would have "a chilling effect on networks." Henry J. Reske, *Computer Porn a Prosecutorial Challenge*, A.B.A. J., Dec. 1994, at 40.

70. Reasonable time, place, and manner restrictions on access to such Boards would, by contrast, probably be permissible. See *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) (upholding regulation of parade permits when regulation was solely of time, place, and manner).

71. There are many networks within the Internet; unless noted otherwise for convenience, I use the term Internet to refer to other subsidiary networks as well.

72. Chat boards and newsgroups are areas for public and private conversations known in the jargon as "unmoderated," meaning that no one edits or censors contributions. Both images and text can be posted to them.

73. "Listservs" are mailing lists that automatically forward messages to a user's e-mail on those subjects to which s/he subscribes, and automatically send the user's e-mail messages to all other subscribers to the "listserv." Mason's *Sex Resource Guide* lists over 65 sex-related listservs. Phillip Mason, *The Complete Internet Sex Resource Guide*, Feb. 21, 1995 (electronic mail, on file with *The Georgetown Law Journal*). "Hot chatting" refers to explicitly sexual discussion on adult BBS. JOY OF CYBERSEX, *supra* note 12, at 84.

74. Many links, such as Inlink, offer total access to all Internet boards, but at the same time offer a more limited service that excludes some boards by virtue of their titles and descriptors. See Robert Manor, *Uplink: Little Firm on Ground Floor of Internet Access*, ST. LOUIS POST-DISPATCH, Feb. 20, 1995, at 3.

75. See Benjamin Wittes, *Law in Cyberspace: Witnessing the Birth of a Legal System on the Net*, LEGAL TIMES, Jan. 23, 1995, at S27 (describing informal system of self-regulation on

It is far from simple, however, to limit or screen postings constituting obscenity or child pornography.<sup>76</sup> Because of the sheer volume of postings, viewing or skimming every image or message posted is impossible. There are more than 75,000 daily transmissions on Prodigy alone, and it is only one of several major systems operators.<sup>77</sup> With users of the Internet estimated at over twenty-five million and growing,<sup>78</sup> thousands of full-time censors would be required to screen every posting, thus delaying postings for so long that the value of the Internet's "instant communication" would often be undermined.<sup>79</sup> Prodigy found that its individual review delayed postings twenty-one hours when it received only 1000 postings a day. In 1992, it wholly ceased individual review, instead relying on software "filters" to delete obscenities and racial slurs.<sup>80</sup> And, as Prodigy spokespersons readily admit, even with a large dictionary of words they consider to be obscene or racist, it is simply not feasible for SYSOPs to police downloads from the Internet (as opposed to postings to their service)—no matter how desirable this might be—because there is so much material already on the Internet that users can download.<sup>81</sup> Service agreements like that of America Online, which permit the corporation to excise any offen-

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Internet). Apparently, despite their pornographic inclinations, computer users are able to maintain quite effectively etiquette and civility in establishing the boundaries of newsgroups and boards without police or bureaucratic structures. On the other hand, some anti-pornography users have been less civil. See David Evans, *UK: Internet Porn Fans Face Threat of Electronic Fox*, COMPUTER WKLY, Aug. 25, 1994, available in LEXIS, News Library, TXPRIM file (describing "electronic venereal disease" spread by virus aimed at users of sexual imagery).

76. As David Banisar, a lawyer for the Electronic Privacy Information Center, colorfully put it, trying to filter out sex-related material from the internet "is like shooting an ICBM at a gnat." See Peter H. Lewis, *Despite a New Plan For Cooling It Off, Cybersex Stays Hot*, N.Y. TIMES, Mar. 26, § 1, at 1, 34. Indeed, screening out any particular class of text or imagery is virtually impossible to do without screening out a great deal more than the targeted text or imagery. See *infra* text accompanying notes 84-97.

77. Catherine Yang, *Flamed With a Lawsuit*, BUS. WK., Feb. 6, 1995, at 70-71 (reporting that CompuServe, Inc. and Prodigy have said they cannot police the activities of their thousands of subscribers and, in Prodigy's case, read or edit the 75,000 notes transmitted daily).

78. *Id.* at 70. (reporting that 5.2 million people logged on to commercial networks in 1994, compared to 1.72 million in 1990). Current estimates are that Internet users are increasing by 850,000 per month!

79. Indeed, in a libel suit against Prodigy, one business argued that because Prodigy did choose to try to exercise editorial control of its service, it ought to be held liable for what it carried, while other services that make no attempt at control might not be liable. See *id.* at 70-75.

80. *Id.* at 75. If an obscene or racist term is found, the entire message is blocked. Prodigy has never attempted to screen items on the Internet, which can be accessed via its system. It only filters postings by its subscribers to Prodigy itself. And its software "filter," although extensive, screens only for specific terms regarded as obscene or racist. It does not seek to screen out a wide variety of sexual terminology, such as bestiality, zoophilia and the like; nor does it search for symbolic, allusive, or other sexual conversation, or scan imagery. Telephone Interview with Mike Darcy, Communications Manager for Prodigy (Feb. 28, 1995).

81. Telephone interview with Mike Darcy, *supra* note 80.



sive items posted by its more than 700,000 subscribers,<sup>82</sup> are largely symbolic gestures.

Universities and other large institutions that share Internet access systems are in a similarly impossible position. A typical system stores ("mounts") on particular dedicated computers some, but not all, of the information on the Internet for limited periods of time; new information periodically displaces the old. Students, staff, and faculty are able to access information from a dedicated computer. But the information cycled in and out is simply too voluminous to screen; the best that can be accomplished is a rather gross limitation of particular boards and newsgroups believed to be offensive or the development of a software dictionary filter of the type discussed above, and subject to the difficulties described below.<sup>83</sup>

Using software filters to screen for pornography is problematic, because they are necessarily both under- and vastly over-inclusive. While failing to screen out a good deal of obscenity and child pornography, filters do screen out a great deal of non-pornographic discussion and imagery. This occurs because the filters rely on "dictionaries" of words and phrases to "filter" messages and the words used to describe images.<sup>84</sup> No matter how inclusive such a dictionary is, it cannot possibly embrace the enormous variety of terms—especially symbolic, allusive, and tongue-in-cheek terms—used to create obscene stories or to describe obscene or pedophilic images. Pedophilic imagery can easily be described in terms unlikely to be included in a dictionary of off-limits<sup>85</sup> terminology, such as "young girls" or "lovely young girls."<sup>86</sup> Bestial image descriptors such as "Woman! Horse! Hot!" would escape capture by a filter that screened for scatological terminology. To include such terminology in the dictionary would likely mean screening out film criticism involving films like *National Velvet*, newsgroups related to female sports (horseracing, women jockeys, show jumping), and many other valuable subjects.

Even the most narrowly limited filter would screen out important discussions and images, or even whole listservs and BBS. Suppose, for example, that the filter screens for the words "fuck," "sex(ual/ly)," "erotic(a)," "pornographic," "penis/vagina," and "nude/nudism/nudist or naked." One

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82. See Gerlin, *supra* note 61, at B3.

83. See Erwin R. Steinberg, *Living On the Slippery Slope*, 1-2 (1995) (unpublished manuscript, on file with *The Georgetown Law Journal*).

84. We do not have the technological capability to screen either the images themselves or the binary codes through which they are transmitted.

85. See LYNDA NEAD, *THE FEMALE NUDE: ART, OBSCENITY AND SEXUALITY* 18 (1992).

86. Although the imagery described in the *Study* is marketed by the "adult" BBS in quite graphic terms (such marketing takes place even on the Internet and Usenet), it is easy for BBS to change terminology to avoid software screening dictionaries. Amateur Action BBS may have switched its descriptions of some "pedophilic" imagery from "she is spreading" to "girl, naked" to avoid easy identification of illegal child pornography. Telephone Interview with Marty Rimm, *Carnegie Study* author (Feb. 28, 1995).

compilation of online "Sex Resources" lists more than 170 newsgroups and chat boards that would probably be excluded by such a filter, including "alt.christnet.sex" (a Christian discussion group about sex), "alt.sex.safe," "alt.politics.sex," "clari.news.sex," "clari.news.crime.sex," and more.<sup>87</sup> The discussions on these boards are not for the most part pornographic, much less legally obscene. Yet our software filter would not have captured other listings such as "alt.girlfriends," "alt.tasteless.jokes," "alt.pantyhose," "de.alt.binaries.pictures.female," "de.alt.binaries.pictures.male," "alt.feet," and "alt.personals.spanking," which might well contain some obscene items.<sup>88</sup> If a board oriented toward legal debate were to discuss *Cohen v. California*,<sup>89</sup> in which the words "Fuck the Draft" were accorded First Amendment protection, our filter would eliminate it (or bar use of the word, which would render the discussion of the case, if not ridiculous, at least awfully difficult to comprehend). Any discussion of pornographic imagery that seeks to describe particular images for reference purposes would be filtered out. Literally hundreds if not thousands of conversations concerning censorship, health issues, sexuality, and other topics would be suppressed. Any dictionary sufficiently expansive to include allusive and symbolic language<sup>90</sup> would capture still more legitimate imagery and conversation about altogether nonsexual subjects and perfectly "respectable" sexual ones.<sup>91</sup>

Efforts to implement the sort of screening implicit in the feminist porn-suppression effort—that is, of words and images degrading to or abusive of women and children—would be even more futile.<sup>92</sup> What dictio-

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87. See Mason, *supra* note 73 (sex resource guide). These newsgroups feature discussion ranging from erudite to raunchy of the topics noted. Images can be posted to them, and their contents vary as each new item is posted and older ones are eliminated. The "clari" series are commercial news subscription services. Mason's online guide would itself likely be screened out by such software.

88. *Id.* "Alt.pantyhose," for example, contains imagery showing women in pantyhose and often other sexual regalia, some of it pornographic if not legally obscene. Many of the items are cross-referenced as appearing on other adult and commercial services.

89. 403 U.S. 15 (1969).

90. For example, apples and other fruit have long been used to symbolize women's breasts. See Linda Nochlin, *Eroticism and Female Imagery in Nineteenth-Century Art*, in *WOMEN, ART, AND POWER AND OTHER ESSAYS* 136, 139 (1988).

91. One source suggests the example of alt.sex.intergen, a discussion group focusing on whether pedophilia is a good or bad thing. Carl M. Kadie, Applying Library Intellectual Freedom Principles to Public and Academic Computers (Nov. 6, 1994) (unpublished manuscript, on file with *The Georgetown Law Journal*).

92. This sort of screening could only be done voluntarily by non-governmental institutions, because its overbreadth would violate constitutional dictates. See *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986) (finding ordinance's content-based definition of pornography unconstitutional). Indeed, computer filters reveal the absurdity of the effort to determine the import of an image solely by considering its description. Because most computer porn imagery is described in words to enable and encourage viewers to download what they prefer to see (or to encourage them, via tricky marketing, to download images they might not want to see), a software dictionary filter could

nary could possibly screen out supposedly degrading depictions of child nudity from other non-degrading depictions? Would the terms "nude" and "naked" always be screened out? How could one ensure that such words are only screened out when they are part of a "degrading" (or violent or abusive) image or text? Would boards screen out the words "nude," "nudity," and "naked" whenever they occur within five words of "child," "teen," "youth," "girl," or "boy," or are accompanied by certain "buzz words?"<sup>93</sup> Would this catch part or most of the allegedly degrading imagery?<sup>94</sup> Would not it also screen out a great deal of imagery and discussion that not only is non-degrading but is useful to women and children?<sup>95</sup> Would the word "rape" be screened out? Or screened out only when it acts as a descriptor of an image?<sup>96</sup> Interestingly, the Carnegie Study never found such descriptors as "snuff," "kill," "murder" and rarely found such others as "pain," "torture," "agony," "hurts," "suffocates," and the like. The term "rape" appeared less than a dozen times in descriptors of over 900,000 images.<sup>97</sup>

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be developed to screen images particularly offensive from a feminist perspective. But suppose an art photograph depicting a frontal view of a naked young girl playing the flute is described by the words "Naked nubile—she is mouthing a flute." Should it be filtered as degrading to women or children? One BBS marketed just such an image, no doubt intending it for a "pedophile" (or curious) audience, but this did not make the quite lovely image degrading to its subject. And how could a software filter dependent on words be designed to distinguish pictures that degrade from those that do not? What words would trigger censorship? Nubile or naked within the same sentence as girl or teen? How could the filter tell if a designation such as "Woman! Beauty! Beast!" described an image or discussion of the stage production of *Beauty and the Beast*, or a zoophilic image? And are all images depicting women in sexual settings with animals presumed degrading to women? What of all the art images containing nude women and dogs (a trope of Western art)? See, e.g., MARCIA POINTON, *NAKED AUTHORITY: THE BODY IN WESTERN PAINTING 1830-1908*, at 119-23 (1990) (plates showing Gustave Courbet and Frank Hyde nudes with dogs). What about a satirical portrayal of Catherine the Great (with horse)? Indeed, the Amateur Action BBS descriptor of nudes, "spreading," applies quite forcefully to Gustave Courbet's *L'origine du monde*, a painting of a spread-legged woman's naked torso with a direct view of her pubic and genital region. See PETER BROOKS, *BODY WORK: OBJECTS OF DESIRE IN MODERN NARRATIVE* 143 (1993) (plate #18).

93. Among those identified by the *Carnegie Study* as describing pedophilic imagery were five "subclasses": "virgin," "genital exhibition," "no pubic hair," "no breast development," and "nudist." In just the "exhibition" subclass, the terms "spread, spreads, spreading, close-up, kinky, kinkiest, candid, poses, posing and open-leg" were used. *Carnegie Study*, *supra* note 3, at 1902-03. For the subclass "virgin," the words "sweet, tender, sprouting, budding, virgin, and innocent" were used. *Id.*

94. For a fuller discussion of why imagery cannot, by its mere content, be identified as degrading to women, see Meyer, *supra* note 24, at 1111-23.

95. Whether or not one finds Manet and Rodin's nudes or Titian's photos and paintings degrading to women, surely we would all concede that discussion of whether or not they are degrading is important both to feminism and to the history of western art. See generally DAVID FREEDBERG, *THE POWER OF IMAGES: STUDIES IN THE HISTORY AND THEORY OF RESPONSE* (1989).

96. One might screen out "rape" whenever it was related to a "binaries" address, but images can be posted on boards not designated as binary.

97. Telephone Interview with Marty Rimm, *Carnegie Study* author (Feb. 22, 1995).

A governmentally imposed requirement to control obscenity and child pornography online, such as that contained in the Exon bill, would not only be ineffective but also unconstitutional.<sup>98</sup> Because it is impossible to individually screen each posting, legislation would force the use of dictionary-type filtering software, and, as we have seen, such filters would necessarily screen out constitutionally protected imagery and discussion.<sup>99</sup> Screening software cannot possibly determine whether an online conversation, story, or image appeals to prurient interest and, taken as a whole, lacks serious literary, artistic, political, or scientific value. Still less can it determine whether the posting offends "community standards."<sup>100</sup> Even assuming that extremely sophisticated software is developed—software that can screen first for specific words, then scan groups of words to assess context (to some degree), and then rescan using a dictionary of phrases whose presence might signal the seriousness or legitimacy of the discussion—it is simply impossible for a program, however sophisticated, to make the sort of detailed, contextual examination performed by the courts in determining whether items are obscene. Even if such a contextual examination were possible, the filter could not thwart those persons determined to post or download obscenity online for very long. Indeed, a writer to one chat board recently suggested that writers of potentially obscene stories should "drop in" social commentary (about "a half page of material") to ensure First Amendment protection.<sup>101</sup>

The problem of community standards may cause governmentally required screening to be unconstitutional. When Prodigy or other services voluntarily screen, there is no constitutional problem because they are free to adopt whatever norms they choose concerning the services they wish to provide. But when the government requires them to screen, presumably they must screen differently for New York City than for Utah or Tennessee, because text and imagery deemed obscene in the latter locales often would not be in the former.<sup>102</sup> This, in turn, would require SYSOPs to determine community standards throughout the country, first determining whether, legally, a community is constituted by each different urban center

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98. Numerous commentators criticized the original Exon bill as unconstitutional. Many still consider the revised version to be because, although it no longer seeks to penalize system operators for inadequate policing, it forbids creating and posting not only of obscenity, but lewd, lascivious and indecent materials, all of which are or may be constitutionally protected. See Moran, *supra* note 18; Schwartz, *supra* note 63.

99. See *supra* text accompanying notes 84-97.

100. See *Miller v. California*, 413 U.S. 15, 30-34 (1973) (finding that jury instruction to consider contemporary standards of California is constitutionally adequate). See *infra* text accompanying notes 102-04 for further discussion of this issue.

101. Posting by paul@tdr.com to alt.sex.wizards, Feb. 11, 1995 (on file with author).

102. *Miller*, 413 U.S. at 32. As Robert Peck, legislative counsel for the ACLU, put it, if Tennessee Bible Belt standards can be used to prosecute a BBS in California, "nothing can be put on the Internet that is more racy than would be tolerated in the most conservative community in the U.S." See Pearl, *supra* note 59, at 12.

or municipality, county, or state, then assessing the standard in each community, and then screening materials according to its rating system for each community.<sup>103</sup> Such an effort would be both technologically and economically infeasible, and many SYSOPs would probably opt for unconstitutionally overbroad screening, using the most conservative community standard as a baseline.<sup>104</sup>

Finally, there is the problem of encryption. Sophisticated users are always able to "hide" obscene images and text within other seemingly innocent postings; within the sex underground, decoding techniques can easily be circulated. A constantly vigilant Internet or SYSOP police force would be required to follow and invade chat and news boards to discover circulation and locations of encoded materials, as well as the passwords for decoding them.<sup>105</sup> It is unlikely that, even if legislation like Senator Exon's first proposal were to be enacted and found constitutional, SYSOPs would be held legally responsible for failing to engage in this level of policing.<sup>106</sup>

In conclusion, filtering and screening are unlikely to be effective means of cleansing the Internet of obscenity and child pornography. More than likely they will cause overzealous suppression of sexual conversation and imagery, create complex and costly constitutional litigation, and employ a lot of computer experts (who are probably the very persons who have been posting and encoding sexual imagery in the first place).

#### B. CENSORING ACCESS TO SEXUAL IMAGERY AND CONVERSATION

Another way to control cyberporn is for institutions or individuals to block access to it. Schools, colleges, and corporations seek either to protect

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103. Arguably, newsgroups and boards constitute new non-geographic communities, which cannot constitutionally be assessed by the standards of a geographic community from which the postings will never take material form (unless someone who can be independently held responsible chooses to download them). It is beyond the scope of this comment to address this issue in depth. Suffice it to suggest that the worldwide and nationwide subscribership to commercial adult BBS raises a serious legal question as to what standard should govern those boards.

104. There is ample evidence that unsophisticated screening and censorship systems tend to be overinclusive. For example, a school board in Bay County, Florida required its teachers to review all materials and categorize them as (I) wholly free of any vulgar or sexually explicit material, (II) containing a "sprinkling" of such references, or (III) containing "a lot" of vulgarity or sexual references. As a result, 64 novels and plays were placed in Category III, including *Hamlet*, *The Red Badge of Courage*, *The Scarlet Letter*, *The Autobiography of Benjamin Franklin*, and others. See Pipkin, *supra* note 32, at 57.

105. Of course, serious hard-core types could simply find euphemistic code words to describe carefully encoded images.

106. The sophistication and staffing that would be required to discover the existence of and keys to encoded materials is beyond the capability even of the United States government. See, e.g., David Kahn, *Scrambling for Privacy*, NEWSDAY, June 21, 1993, at 50 (describing federal proposal that government be given password to all scrambling—or encoding—devices, known as "Clipper Chip"). The "chip" idea was later dropped. See Ken Warn, *US Plans for Spy Chip Abandoned*, FIN. TIMES, July 22, 1994, at 2. It is therefore highly unlikely that the government would pursue, or a court would uphold, criminal prosecution of a SYSOP for failure to discover encoded obscenity or pornography (although it might be otherwise with the person or persons who encoded and posted the material).

students and employees from viewing such imagery or to prevent them from wasting time and valuable resources downloading it. Parents have similar concerns, although it is far easier to police household access by monitoring phone costs and observing computer use.<sup>107</sup>

The problem with blocking access, however, is that the Internet was explicitly designed to provide multiple access routes; if any one connection is destroyed, the severed link can be replaced simply by rerouting.<sup>108</sup> Thus, any effort to block access to a particular file, bulletin board, or set of files is nearly impossible to effectuate because such blocks can be easily circumvented. As computer hackers are fond of saying, "for every roadblock, there is a detour."<sup>109</sup> When Carnegie Mellon learned about its students' and staff's porn-viewing habits and attempted to block access via the University's servers<sup>110</sup> to six sets of bulletin boards (in the alt.binaries hierarchy),<sup>111</sup> individuals were able to fully access the blocked boards directly from the Internet via other computers on campus.<sup>112</sup>

There are two basic ways to limit access to sexual imagery. The first is to set up a system whereby all boards and groups are accessed but certain of them are then selectively blocked or cut-off;<sup>113</sup> the second is to block all access to the Internet and selectively include only certain boards and groups. Under the first approach, a sophisticated user can simply find a non-blocked board or group with an access route to a forbidden (blocked)

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107. Parents can also hook up to the Internet through access providers who will block access to "sexually related" parts of the Internet. One such service is Inlink, in St. Louis. See Manor, *supra* note 74, at 3. Other methods under development include filters that bar users with "underage passwords" to commercial systems, and personalized encrypted codes that only let through material that passes individualized pre-programmed standards. Jonathan Freedland, *The Writing on the Toilet Wall*, THE GUARDIAN, Feb. 14, 1995, at 18 (describing Internet "erotic corners" and exploring ways of creating "electronic top-shelf" to keep porn from children). But just as most of us were able to access pornographic magazines in the past, most youngsters will find ways to access such imagery, either by achieving "backdoor" access via another non-blocked service, by gaining access to items downloaded by others onto disks, or by purchasing CD-ROM disks, which neither require telephone access nor leave access trails for parents to track.

108. The military designed the Internet to withstand outages (such as terrorist attacks) and still function. Thus, there are always backdoor routes to files and systems. ED KROL, THE WHOLE INTERNET: USER'S GUIDE & CATALOG 11 (1992). Since its inception, the Internet has enlarged exponentially at enormous expense, primarily incurred by the National Science Foundation, and it would be prohibitively expensive (and complex) to start again, even were it desirable, and design it differently. *Id.* at 12-13.

109. I am grateful to Marty Rimm, *Carnegie Study* author, for bringing this cyberspace aphorism to my attention.

110. Server is the term for a "dedicated" computer onto which Internet information is downloaded and through which students and staff gain information from the Internet.

111. See Steinberg, *supra* note 83, at 1. Alt.binaries typically contain images, many of them sexual although not always obscene.

112. *Id.* at 1-5 (stating that Carnegie Mellon did not prevent staff and students from accessing the same materials via the Internet because "it is impossible").

113. This is the method used by Inlink, one access provider to the Internet. See Manor, *supra* note 74, at 3.

one and route through. Because all services are within the subscription, access will not be difficult.

The second method will work only if all of the services included have the same limited sex-access policy—that is, they block all the same boards.<sup>114</sup> If any service included allows access to sexually oriented boards or groups, users will be able to route through it to obtain pornography. If any included service allows more or less universal access, then users can reroute to any of the thousands of sexually oriented BBS, “hot chat” boards, and newsgroups.<sup>115</sup>

Average and unsophisticated users might not have the knowledge or wherewithal to reroute. Some advocates for blocking access may be motivated by concerns that Network browsers will be harmed by the accidental scanning of textual sex references. Others may believe that browsers will download text or images (despite the difficulty of the endeavor) if they are reminded of the presence of sex but will not download if the image is not right “there” and extra rerouting is required. For these advocates of blocking, limiting access might make a difference.<sup>116</sup>

But within most schools, universities, and workplaces, information on rerouting around sex blockades tends to be rapidly shared.<sup>117</sup> Those who have the wherewithal to access and download imagery will surely find ways to copy it onto discs or print it out—the better to circulate its “forbidden fruit.” And, of course, many computer users will simply avoid the network altogether, as well as the costs and complexities of downloading, by purchasing the ever-widening array of CD-ROM discs featuring everything from soft and medium-core body displays to super hard-core imagery and interactive sex games.<sup>118</sup>

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114. It is estimated that there are thousands of “adult” boards in the United States alone. See JOY OF CYBERSEX, *supra* note 12, at 81. Prohibition of initial access to sexual materials can only be secured if censors continually scout for boards and newsgroups known to be carrying sexual imagery or conversation and reinvestigate from time to time to ensure that no group has widened its sexual purview. As of February 21, 1995, Phillip Mason’s *Complete Internet Sex Resource Guide* reported more than 170 newsgroups (exclusive of commercial adult boards), and more than 65 listservs that were clearly sexually oriented. Mason, *supra* note 73. While censors would clearly be able to identify some of these as primarily oriented toward the sexually explicit, others are less easy to “type”—e.g., alt.girlfriends; alt.safe.sex; alt.supermodels; clari.news.gays; clari.tw.health.aids; talk.abortion; triangle.motss; acd.q-news. *Id.*

115. Mason’s list, *supra* note 73, includes only the “free” Internet BBS, not the thousands more commercial “adult” BBS. See JOY OF CYBERSEX, *supra* note 12, at 81.

116. Then again, the limitation itself might heighten interest. See *Carnegie Study*, *supra* note 3, at 1912-13 (discussing the heightened interest in Amateur Action BBS after the Thomas prosecution).

117. Students in my day were able to easily access ribald Shakespearean puns by comparing our edited school versions with the unexpurgated Shakespeare in our parents’ homes. And computer users are an educated, sophisticated lot. See Howard Fineman, *The Brave New World of Cybertribes*, NEWSWEEK, Feb. 27, 1995, at 30.

118. See JOY OF CYBERSEX, *supra* note 12, at 23-76, 290 app. (describing adult disk products and explaining where to get them); David S. Bennahum, *Getting Cyber Smart*, N.Y. TIMES, May 22, 1995, at A15 (noting that children who want access to sexual text or imagery will easily find it elsewhere if it is not available online).

Moreover, when public colleges and universities engage in this sort of censorship they are damned if they do and damned if they don't. Not only will they—because their censorship cannot help but be underinclusive—be unable to wholly escape possible prosecution under laws that purport to hold them responsible for what they make available to those under age eighteen;<sup>119</sup> they could also be subjected to civil suit because of First Amendment overbreadth. As I argued in Part I, it will be impossible to zero in precisely on imagery (much less text) that can constitutionally be blocked, even with the most sophisticated software.<sup>120</sup> And given the pace of new postings, it is highly unlikely that adult censors, whether university bureaucrats or FBI agents, will be able to keep up with our increasingly computer-literate youth.

Indeed, there is significant danger that overzealous censors, eager to ensure against parent complaints, will follow the path of many school boards by censoring all nudity and even allusive sexual references. As a result, persons determining which services to block may well exclude discussion of such critically important issues as AIDS and safe sex, teen pregnancy, sexually transmitted diseases, birth control, incest, gay and lesbian issues, and endless others.<sup>121</sup> Those inclined to sexual conservatism will exclude most of these sorts of discussions—not merely for one school but, because of the way networks are linked, for whole networks of schools, universities, hospitals, and others. Even those inclined to be more liberal may play it safe; they may indiscriminately exclude groups and boards with designations or content that might offend others in order to protect themselves from the inevitable criticism or even job discipline and job loss that might ensue if a few hard-core images slip through.<sup>122</sup> In a world in which communication and education increasingly depend on computer discussion groups and information sharing, cyber-censorship of this sort, if even semi-effective, would be extremely harmful.

### C. THE PROSECUTORIAL APPROACH

Another way to limit the growing presence of cybersex is to increase prosecutions of those who offer sexually explicit material online for a profit

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119. See, e.g., 18 PA. CONS. STAT. § 5903 (1994) (criminalizing the knowing dissemination of obscenity to children under age 18). This statute would apply to private colleges and universities as well. But all might well escape punishment on the ground that dissemination was not "knowing."

120. See *supra* text accompanying notes 84-97.

121. These are precisely the sorts of issues that school boards have chosen to censor most in recent years. MARCIA PALLY, *SEX AND SENSIBILITY: REFLECTIONS ON FORBIDDEN MIRRORS AND THE WILL TO CENSOR* 1-13 (1994) (reporting rise in school board censorship of sexually related items, and reporting finding by People for the American Way that sex was among the most frequent reasons for censorship).

122. Pity the poor cyberselectors at public universities, who will have to maneuver between the Scylla of angry parents and administrators and the Charybdis of litigation by civil liberties unions and the court wristlapping that will undoubtedly follow in many cases.



or, alternatively, to increase the penalties for those convicted of doing so.<sup>123</sup> However, the prosecutorial approach is both enormously costly and highly unlikely to be successful.<sup>124</sup> Further, it raises complex legal issues that, because of the nature of computer imagery and of the Internet, threaten to topple the entire legal structure supporting obscenity prosecution in the first place.<sup>125</sup>

First Amendment doctrine currently links the definition of obscenity to an already vague and much-criticized assessment of "community standards." But however indeterminate the concept may appear when a court seeks to assess whether a legislative prohibition adequately captures the standards of the geographic community for which it legislates, when the assessment is to be based on the "community of the Internet," it simply cannot be made. If the determination as to whether community standards are offended is made according to the place of *upload* or *posting*, bulletin boards will simply choose Times Square, Scandinavia, or their equivalents as the locus from which to operate. If, the place of *download* determines the community standard, then prosecutors can censor nearly any sexually explicit text or image simply by downloading it in the so-called Bible Belt, thus forcing all Internet presentation and discussion of explicit sex to conform to fundamentalist values.<sup>126</sup> Arguably, enforcing such a standard would violate not only the First Amendment's speech protections, but its requirement that the government not establish religion. And if the Internet community is not viewed as geographic, but is instead comprised of users of the Internet, then either there simply *is* no community standard (how can there be a worldwide community of millions with *one* standard of morality), or each BBS or newsgroup constitutes its own community.<sup>127</sup> If the latter is the case, newsgroups and BBS can hardly be held to be violating their own standards if their members choose to permit posting and downloading of pornography.<sup>128</sup>

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123. See H.R. 11, § 301, *supra* note 16; *Sending of Computer Porn Draws Jail Terms for California Couple*, CHI. TRIB., Dec. 3, 1994, at 16.

124. Scott Charney, Chief of the Justice Department's computer crime section, estimates the number of prosecutions of computer transmission of sexually explicit materials to be in the "dozens"; others say the number is smaller. See Reske, *supra* note 69, at 40 (noting experts' views that policing is impossible because "there is simply too much to view").

125. This might not, in my view, be a bad thing. But if it gives way to a simpler standard that accords much greater authority to government and to institutions to censor sex, then it might be a very bad thing indeed.

126. Or, as Jerry Berman, head of the Center for Democracy and Technology, said of the Exon bill, "What they're trying to do is design a whole city to look like Disney World." See Andrews, *supra* note 19, at D7.

127. See Johnson, *supra* note 4, at 26 (arguing that such groups are simply seeking to "assemble a like-minded group" for discussion, and that laws designed to address a context in which there is "imposition of unwelcome content on an unwilling victim" are inapposite).

128. Arguably, prosecution of those who deliberately take up board or newsgroup space with pornographic or other imagery not within that group's purpose or "standard" ought to be subject to censure for doing so, but this should be accomplished via generalized rules for

Although figures are difficult to come by, the cost of prosecuting computer porn is clearly high.<sup>129</sup> One effort to shut down an adult board involved investigation by both federal and state authorities in two states and a full trial; there will undoubtedly be lengthy appeals.<sup>130</sup> There are literally thousands of commercial "adult" BBS in the United States alone;<sup>131</sup> it would be prohibitively expensive for our law enforcement structures to attempt to police them all, let alone the worldwide postings available on the Internet.<sup>132</sup>

The best law enforcement officials can do is occasionally to prosecute a particular offender in order to provide an example, as they did in the case of Robert and Carleen Thomas.<sup>133</sup> While such prosecutions do have a deterrent effect,<sup>134</sup> it is unlikely that the thousands of other adult boards, many of them advertised in mainstream computer magazines and books like *The Joy of Cybersex*, will shut up shop because a few are prosecuted. The vast majority of adult boards are small, relatively inexpensive "basement" operations, which are easy to close down and restart under a new name.<sup>135</sup> The profits to be made from computer sex are such that, despite the threat of prosecution, new adult boards are likely to quickly take the place of those shut down.

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abiding by all standards set by the board or group, not merely those concerning sexuality. See Wittes, *supra* note 75, at S27 (describing system of self-governance and enforcement mechanisms on the Internet).

129. The Department of Justice's Bureau of Statistics keeps no statistics (aggregate or annual) on either the cost or number of obscenity or child pornography prosecutions.

130. See sources cited *infra* note 133 (describing the conviction of Robert and Carleen Thomas for sending pornographic images via computer). The Thomases have appealed to the Sixth Circuit, and their case may well reach the Supreme Court on the issue of whether Tennessee's community standards can be constitutionally applied to a BBS located in California. See Howard Mintz, *Offensive to Professional Standards*, LEGAL TIMES, Jan. 23, 1995, at S35.

131. See sources cited *supra* note 114.

132. See Gerlin, *supra* note 61, at B3 (noting that much material is outside the jurisdiction of local and national authorities, and describing U.S. Customs Service's effort to police child pornography as resulting in only 31 arrest warrants and half as many guilty pleas).

133. See *Carnegie Study*, *supra* note 3, at 1896 n.89 and accompanying text; *Sending of Computer Porn Draw Jail Terms for California Couple*, *supra* note 123, at 16. To catch purveyors like the Thomases, postal inspectors and prosecutors must train personnel in sophisticated computer skills to keep up with the increasingly complex technology and sophistication of users (downloading imagery can be rather complex, as can be deciphering encoded messages), pay for specialty equipment, scan the networks and computer publications regularly, and set up "sting" operations in cooperation with local law enforcement.

134. See Naaman Nickell, *Obscenity Convictions Raise Fears on Bulletin Boards*, ARIZ. REPUBLIC, Aug. 8, 1994, at E3 (reporting that after the Thomas verdict, a Phoenix BBS operator posted a notice that it would not permit members from other states access to adult files, while another operator was extremely concerned about the effect on his and other BBS).

135. JOY OF CYBERSEX, *supra* note 12, at 78-81. Big businesses like General Media's *Penthouse Online* and *Event Horizons* offer online sex of the softer-core variety. *Id.* Although they are unlikely to be subjected to prosecution, given the increasingly conservative bent of courts and communities, even these businesses may find themselves under scrutiny.

Moreover, not only can American operators move to nearby "off-shore" locations, making prosecution difficult because of jurisdictional issues,<sup>136</sup> American users can simply download the same sorts of imagery from worldwide networks even if U.S. boards are shut down.<sup>137</sup> Because many countries are far more liberal than many U.S. locales in their tolerance of obscenity, the same images that are commercially marketed by adult boards in the U.S. can be obtained from overseas on CD-ROM discs or on the Internet.<sup>138</sup>

But perhaps we should persevere. Perhaps we should spend the enormous sums required to continue prosecution of adult BBS operators and Internet purveyors of porn; train our schools and universities to be ever more vigilant in blocking access (or at least impeding it for unsophisticated users); and urge our courts to support a narrowing of First Amendment protection. We might decide that the benefits would outweigh the costs if we empowered public universities to censor without worrying about overbreadth, perhaps by according them the flexibility that public school boards have in controlling school library and textual materials, and enabled government to mandate cleaning up cybersmut (or cybersexism), even if it means shutting down some protected sex talk.

Before we contemplate this enormous leap into sexual censorship, it is worth reasking the question: why censor sexually explicit depiction?

## II. SEX ON THE INTERNET: WHY LEAVE IT TO PORNOGRAPHERS?

Sex is dirty, save it for someone you love.<sup>139</sup>

The problem with mainstream pornography does not lie in its existence but in its relentlessly singular, tyrannical, cartoon view of sexuality (misogynist, homophobic, racist), which, in turn, potentially fuels shame and alienation—which, in its turn, is good for profits.<sup>140</sup>

I have elsewhere argued that pornography censorship and suppression

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136. *Customs Fighting Child Pornographers on Info Superhighway*, PR NEWSWIRE, Nov. 22, 1994. See also Patrice Burchkalter, *Arrestation de deux Américains soupçonnés de vente d'imagerie pornographique*, AGENCE FRANCE PRESS, Sept. 23, 1994, available in LEXIS, News Library, AFPFR file (American couple arrested by Mexican police and charged with transmitting child pornography images by computer to the U.S.).

137. See Lewis, *supra* note 76, at 34.

138. See *BBS Pornographer Found Guilty*, NEWSBYTES NEWS NETWORK, Apr. 21, 1994 (describing CD-ROM discs containing hard-core porn available in Germany and Amsterdam). Uploading images from such discs onto the Internet is relatively easy.

139. Apocryphal saying, attributed by one writer to Sol Gordon. See Debra Haffner, *Sexuality Education: Issues for the 1990's*, 38 N.Y.L. SCH. L. REV. 45, 51 (1993).

140. Connie Samaras, *Feminism, Photography, Censorship, and Sexually Transgressive Imagery: The Work of Robert Mapplethorpe*, Joel-Peter Witkin, Jacqueline Livingston, Sally Mann, and Catherine Opie, 38 N.Y.L. SCH. L. REV. 75, 92 (1993).

efforts are harmful to women.<sup>141</sup> Do the revelations of the Carnegie Study, particularly those indicating that a large portion of the imagery downloaded from the Usenet contains bestial and paraphilic images featuring women, as well as sexualized images of children, warrant a different conclusion? Would Internet censorship—were it practicable—help women?

Surely not. Futile efforts to censor Internet sex will do little to impact exploitation of women's sexuality, given its presence in all sorts of mainstream depiction. The exploding repertoire of sexual depiction on the Information Superhighway is occurring in a world already saturated with sexual imagery of all kinds.<sup>142</sup> From advertising's use of barely concealed breasts and crotches<sup>143</sup> to television soap opera sex scenes,<sup>144</sup> Hollywood films' steamy on-screen encounters, Madonna's "music" videos and mylar-wrapped *Sex*, and women's magazines'<sup>145</sup> and romance novels' use of explicit sex to sell,<sup>146</sup> sex is everywhere available and everywhere on view.<sup>147</sup> It shouldn't surprise us that the hard-core corner of the sex

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141. See generally Meyer, *supra* note 24 (arguing that sexual censorship had historically hurt women, and, in the present political climate, empowers those who favor using government to restrict women's freedom, especially women's sexual freedom).

142. Our national obsession with sex reflects the place sex has come to hold in late twentieth-century culture. For men, as lineage, property, physical prowess, and even wealth are no longer the defining characteristics of masculinity, possession of the phallus has become the single attribute that continues to belong to all men (and no women). bell hooks, *BLACK LOOKS: RACE AND REPRESENTATION* 94 (1992). Indeed, for all of us, as success has come to be significantly measured by attainment of physical enjoyment, self-expression, and pleasure, sex has become increasingly central. Moreover, companionship and intimacy, and the role of sex in achieving and maintaining them, have become increasingly important as the anchors of geographic community, especially because job security and skill have increasingly been displaced by mobility, technology, and bureaucracy. Sex has thus become a focal point not only for masculine status and social identity but also for individual hopes, self-esteem, and fulfillment. See TIEFER, *supra* note 29, at 11, 25-26 (1995) (citing these reasons for increased focus on and anxiety about sex and discussing the harmful effects on men and women that result from the ignorance and shame about sexuality).

143. See, e.g., *NEW YORKER*, Apr. 3, 1995, at back cover (advertisement for Versace jeans, showing two topless models concealing their breasts with their hands and arms). The recent interpretation of child pornography prohibitions on "lascivious exhibition of the genitals" and female breasts to include fully clothed "exposure" brings us one step closer to censorship of Calvin Klein jeans advertisements, in which male genitals and female breasts are fully on view in outline form. See, e.g., *Knox v. United States*, 32 F.3d 733, 747-48 (3rd Cir. 1994) (affirming on vacatur and remand from Supreme Court that non-nude visual depictions of ten to seventeen-year-old girls in bathing suits, leotards, and underwear can qualify as lascivious exhibitions).

144. See Meyer, *supra* note 24, at 1179 n.391.

145. See, e.g., Nina Darnton, *For British Women's Magazines, Sex is a Recipe for Success*, *N.Y. TIMES*, Feb. 13, 1995, at D6 (describing the increasing and successful use of "exposed flesh" to sell women's magazines in England).

146. See Meyer, *supra* note 24, at 1178-79 nn.389-90 (describing literature on the overtly sexual nature of romance novels).

147. And it is just as exploitative of women and children as is pornography. *Id.* at 1178-83. See, e.g., *N.Y. TIMES MAG.*, Sept. 27, 1992, at 28 and pullout Revlon advertisement (advertising display of young, barely clothed models dressed in leather and studs appears in the same issue as article reporting the controversy over the sexual overtones of Sally Mann's haunting photographs of children).

market, which offers the most transgressive and taboo imagery, is "exploding" along with every other segment of the sex market, and doing so especially in a forum—cyberspace—that permits private and anonymous access by its predominately male audience.<sup>148</sup> Futile efforts to censor Internet sex will do little to impact exploitation of women's sexuality, given its presence in all sorts of mainstream depictions.<sup>149</sup>

What such efforts *will* do is limit the opportunity for open exploration and hopefully reassessment and reconfiguration of sexuality on the Internet. Instead of enabling more of us to participate in shaping sexuality by exposing our longings, fantasies, and fears by discussing our sexual practices and those of our neighbors (and of strangers), and by allowing us to see and post a variety of sexually explicit images, censorship of cyberporn will reinforce the silence that surrounds sexuality generally. It is simply impossible to engage in the massive policing effort necessary to rid the Internet of sexually explicit imagery that is obscene, degrading to women, or child pornography without enormously chilling all posting of sexually explicit imagery. *Someone* will undoubtedly complain about educational and safe-sex imagery,<sup>150</sup> about gay and lesbian imagery and discussion,<sup>151</sup> about any description, much less depiction, of teen sex, however benign, not to mention about discussion and depiction of masturbation and its techniques.<sup>152</sup> And such complaints will generate investigations because law enforcement offices and SYSOPs cannot afford to appear lax where complaints about pornography are concerned. Investigations and prosecutions, regardless of their ultimate outcomes, will chill those engaging in explicitly sexual posting and discussion.<sup>153</sup>

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148. Still less should we be shocked that this imagery is being frequently downloaded in workplaces and universities, where access is free, where males congregate and "bond," where computer literacy is increasing, and where sex has always been used to liven up the otherwise dull daily routine. As one graduate student suggests, Internet sex viewing breaks up the daily routine and is fun, free, and relatively private; moreover, viewers can appear to be working. See Sandberg, *supra* note 2, at B9.

149. The Study found that Amateur Action BBS, which featured the widest array of paraphilic, bestial, and pedophilic imagery, had approximately 1.6 million downloads in a 40-month period. After its prosecution, however, it tripled its subscribership, gaining another 2.1 million downloads in a mere nine months. *Carnegie Study*, *supra* note 3, at 1912-13. Censorship will also create demand for the most offensive material viewed on the Internet.

150. See generally, Haffner, *supra* note 139 (reporting efforts to limit and censor sex education); Leanne Katz, *Introduction: Women, Censorship, and "Pornography,"* 38 N.Y.L. SCH. L. REV. 9, 10 n.2 (1993) (describing targeting of feminist sex education book *Our Bodies, Ourselves*; as well as Betty Friedan's *The Feminine Mystique*, *MS. Magazine*, and others).

151. See Meyer, *supra* note 24, at 1143 n.198 (describing censorship of gay and lesbian materials that are not even explicitly sexual on the grounds that such materials foster homosexuality).

152. See Blume, *supra* note 32, at 39-43; see also Bob Cohn, *Goodbye to "Condom Queen,"* NEWSWEEK, Dec. 19, 1994, at 26 (describing removal of United States Surgeon General Joycelyn Elders for suggesting that schools teach teens masturbation as safe sex method).

153. Although ultimately vindicated, the amateur photographer, whose class project in-

The question is not, as some suggest, whether women and others are benefitted by imagery that portrays them bound and gagged, nailed to tables, or penetrated by beer bottles and snakes.<sup>154</sup> While some pornography is surely sexually liberating for women, my argument is not that these sorts of images are by themselves liberating. It is rather that women's liberation is dependent upon women gaining bodily and sexual freedom and that these gains will be enhanced by an open and robust Internet and undermined by a sexually censorious régime that cannot help but lead to censorship and self-censorship of valuable imagery and discussion, as well as to *empowering the very political forces that seek much broader restrictions on women's bodily and sexual freedom*.<sup>155</sup> It is no coincidence, for example, that Senator Exon is a staunch opponent of reproductive choice for women and has voted against legislation to protect women seeking abortions from harassment.<sup>156</sup>

And while it may be the case that the availability of hard-core, pedophilic, bestial, and other paraphilic imagery on the Internet will make it more accessible to those with a pre-existing taste for it, and may even surface such a "taste" in some newly introduced to it, it is hardly likely to be crucial to the creation or development of societal views of sexuality, or even of a "taste" for such imagery, more broadly. As I have argued elsewhere, not only is pornographic imagery a minuscule segment of that

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cluded nude photos of his son thus provoking a child pornography investigation, was ordered to leave his own home for several months and forced to pay large sums in legal fees as well as psychiatric costs for the child as a result of the investigation. Others have faced similar fates. See Doreen Carvajal, *Photographer Focuses On His Year of Pain*, N.Y. TIMES, Mar. 13, 1995, at B5 (describing ordeal of Ejlat Feuer, who was jailed, ousted from his home for ten weeks because forbidden contact with his daughter, made to spend \$80,000 on his defense and forced to agree to a 12-month probation program because he could not afford a trial to vindicate himself, for photographing his six-year-old daughter naked); Doreen Carvajal, *Family Photos or Pornography? A Father's Bitter Legal Odyssey*, N.Y. TIMES, Jan. 30, 1995, at A1 (describing the experiences of both Ejlat Feuer, who was handcuffed and banned from the home and from contact with his child for two months for having photographed his six-year-old daughter nude for an art class project, and of the photographed daughter, who was suffering "not from the pictures, but from her father's arrest"); see also Doreen Carvajal, *Pornography Meets Paranoia*, N.Y. TIMES, Feb. 19, 1995, § 4, at 4 (describing several instances in which parents and artists were investigated and sometimes prosecuted for having taken nude photos of their own children).

154. It may benefit us to understand more about why some males are aroused by such imagery, which might be easier to explore if such images were not suppressed.

155. For a history of the way in which this has already occurred, see Carole S. Vance, *More Danger, More Pleasure: A Decade After the Barnard Sexuality Conference*, 38 N.Y.L. SCH. L. REV. 289, 314 (describing way in which, "between 1982 and 1992, a series of moves brought the subject of pornography from inside feminism—where it was only one strand in a complex, multilayered discourse about sexuality—into mainstream politics, where it is being used by conservative groups as a major weapon to overturn feminist gains").

156. See Jerry Gray, *Senate Extends Deduction for Self-Employed*, N.Y. TIMES, Apr. 4, 1995, at D23 (describing Sen. Exon's authorship of amendment to budget bill to limit use of Federal money to pay for abortions even in cases of rape and incest); 52 CONG. Q. 1258 (1994) (reporting Sen. Exon's nay vote on Senate Bill 636, the Abortion Clinic Access bill).

which is explicitly sexual (if not sexually explicit) in our culture,<sup>157</sup> but on the Internet it is even more difficult to access than nearly anywhere else in our culture. Late night cable video is more easily tapped into than is Internet porn.<sup>158</sup> Moreover, as mere imagery, it is hardly likely to influence our sexual attitudes, understandings, or practices as intensely as are institutional and other factors.<sup>159</sup> What creates or constructs societal views and understandings concerning sexuality is complex and deeply-rooted in our religious, legal, and social structures—and is unlikely to be greatly influenced by some “dirty pictures” on the Internet, however frequently downloaded. Constricting open discussion of sexuality—pictures and all<sup>160</sup>—in all of these realms and concerning all of these institutions is thus far more potentially damaging than are the pictures themselves.

Though undoubtedly some fetishists and pedophiles are part of the alt.binaries.sex crowd, surely many more are viewers downloading out of curiosity or for the “kick” of seeing whatever is most hidden, most outrageous, and most taboo.<sup>161</sup> The largely youthful, affluent males who are the predominant users of the Internet seem to be following the pattern of youth of earlier generations in seeking to “peek” at the sex that is otherwise kept hidden from them.<sup>162</sup> That they are choosing to use newly

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157. Meyer, *supra* note 24, at 1172-83.

158. See generally Johnson *supra*, note 4.

159. Meyer, *supra* note 24, at 1158-72. Indeed, as researchers looking into the effects of viewing violent pornography have noted, not only is brief exposure unlikely to influence greatly thoughts, attitudes, and acts which are at variance with strongly ingrained values and beliefs, even exposure across time is not typically as great as exposure to the societal reinforcement for “self-restraint and decency.” Fisher & Grenier, *supra* note 25, at 26-27.

160. Censoring sexually explicit imagery, but not sexually explicit text, while intuitively appealing, addresses neither the arguments of sexual conservatives (including feminist porn suppression advocates) nor my own. Conservatives and feminists decry both sexually explicit text and imagery; arguing that sado-masochistic sex acts or women enjoying rape is as harmful, in their views, as depicting it. It is probably for this reason that the Exon bill punishes text as well as imagery. See *supra* note 49. And while suggestive writing can, in my view, sometimes be more arousing than explicit imagery because it allows more room for imagination, see Meyer, *supra* note 24, at 1184 n.413 (regarding relation between the suggestive and the explicit in imagery), it is also true that primates are visually oriented animals, and hence for educational purposes, especially, imagery is important. See, e.g., Stephen J. Gould, N.Y. TIMES, June 1, 1980, § 7, at 45. It can be difficult to conceptualize proper methods of sexual and safe-sex activities from mere description, which is why most sex education materials (like most fix-it, carpentry, and other manuals) contain drawings and images.

161. For an interesting discussion of taboo and transgression in relation to pornography, see Cole, *supra* note 25, at 166-69. Bestiality is, not surprisingly, one of the Old Testament prohibitions. *Leviticus* 18:23 (King James) (“Neither shalt thou lie with any beast to defile thyself therewith: neither shall any woman stand before a beast to lie down thereto: it is confusion.”); *Leviticus* 20:15-16 (King James) (“And if a man lie with a beast, he shall surely be put to death: and ye shall slay the beast. And if a woman approach unto any beast, and lie down thereto, thou shalt kill the woman, and the beast: they shall surely be put to death; their blood shall be upon them.”).

162. Indeed, one CD-ROM disc, the Vasta Collection, has accumulated some 300 of the “dirty postcards” that constituted the peep show for earlier generations. JOY OF CYBERSEX, *supra* note 12, at 52-54.

acquired computer skills to avoid purchasing magazines or renting videos from local sex outlets is hardly surprising, especially for those who, because of age or geographic location, might not be able to access these images at all.<sup>163</sup> Others surely are taking advantage of the ability to use computer porn to indulge in sexual fantasy and titillation while appearing to be hard at work.<sup>164</sup> And many are likely intrigued by the fact that "bulletin boards are a place where people can lose their inhibitions" in a wholly safe environment in which their own real physical and professional stature are unknown and unimportant and where what matters is cerebral ability—to communicate, to spin stories and fantasies, and to engage in wordplay.<sup>165</sup> What they see when they download imagery may be cartoon-like, vulgar, and sexist. The way to change that picture is not to engage in futile suppression efforts, but to offer alternative pictures and foment discussion about what is wrong with existing ones.

Moreover, it is not clear that the pedophiles and fetishists who indulge their tastes on the Internet, or those who merely indulge their curiosity or sexual pleasure in viewing such taboo imagery,<sup>166</sup> thereby become more harmful to society:<sup>167</sup> the opposite conclusion is more logical. Easy access to private viewing in circumstances in which masturbatory fantasy can be

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163. Paraphilic images are difficult to find even in locales that make XXX-rated sex available and those who are under 18 never have access. In addition, most of us, especially young men and women, are ashamed (or afraid) to admit we have a desire to see such imagery.

164. See Sandberg, *supra* note 2, at B9 (noting high usage at AT&T, Citicorp, and Ford Motor Co.).

165. See JOY OF CYBERSEX, *supra* note 12, at 232 (describing sex BBS as places to "establish instant intimacy without fear of disease").

166. Research indicates that many persons are aroused by pornographic images even when they consciously prefer not to be, and report that they are not, aroused. See RANDALL, *supra* note 8, at 95-97. It is not surprising that images which represent activities we might not choose to engage in (or have perpetrated on us, in the case of rape, S/M, and some of the paraphilic acts) nonetheless turn us on. Arousal is a complex phenomenon related apparently as much to danger as to pleasure, as much to guilt as to conquest. See Elizabeth Cowie, *Pornography and fantasy: Psychoanalytic perspectives*, in SEX EXPOSED, *supra* note 25, at 132, 152 (discussing psychoanalytic view that sexual signification and sexual fantasy involve "complex realm[s] of subterfuges and satisfactions as well as terrors"); Lynne Segal, *Sweet sorrows, painful pleasures*, in SEX EXPOSED, *supra* note 25, at 65 (describing complexity of sexual pleasure). Thus women's reported arousal by rape fantasies has been attributed to a variety of factors, including traditional associations of femininity with submission and masculinity with power. See Eugene J. Kanin, *Female Rape Fantasies: A Victimization Study*, 7 VICTIMOLOGY: INT'L J. 114 (1982) (discussing presence and equivocal meaning of rape fantasies in women); Danielle Knafo & Yoram Jaffe, *Sexual Fantasizing in Males and Females*, 18 J. RES. PERSONALITY 451, 459-60 (1984) (analyzing women's force and submission fantasies as related to traditional associations). Moreover, many of us write about or view unusual, forbidden, and even frightening sexual activities because fantasies are a realm in which to safely test our reactions to them.

167. Scientific study has not and is unlikely to resolve the question of whether pornography increases or decreases the incidence of sexual aggression in society. See RANDALL, *supra* note 8, at 92-94; Fisher & Grenier, *supra* note 25; sources cited in Meyer, *supra* note 24, at 1098 n.8.



indulged is as likely to alleviate the need or desire to pursue actual children as it is to encourage taking action in real space rather than cyberspace. Experience from computer games suggests that such games decrease, not increase, other forms of social activity; Internet users report that cyberplay is addictive.<sup>168</sup> In addition, "studies clearly do not lend much support to fears that exposure [to porn imagery] leads to new or sustained higher levels of sexual activity or to marked changes in an individual's established sexual behavior."<sup>169</sup> Rather, studies show that repeated exposure to the sort of sexual imagery marketed online leads either to a lower sexual "charge" (that is, to boredom) or to a maintenance of the same level of sexual activity.<sup>170</sup>

Indeed, for children developing their sexuality, open access to sexual discussion and depiction on the Internet may *prevent* them from becoming future pedophiles or sex criminals. Those whose biological or psychological makeup seems to be propelling them in dangerous directions can seek help and understanding, despite rigid and repressive families. Those who falsely believe themselves unredeemably deviant can discover they are not alone, and that their proclivities need not lead them to underground or even criminal activity.

Finally, focusing mainly on the imagery misses the main significance of cybersex on the Internet: imagery is only a small percentage of the Internet's sexual content.<sup>171</sup> Far more newsgroups are devoted to debate, discussion, storytelling, and verbal fantasizing than to images. Many alt.sex. newsgroups do not only contain information on bestial, urophilic, or sexually violent fantasy stories and how and where to obtain sex toys or ways of engaging in safe S/M sex. These newsgroups also contain discussions of whether various sexual phenomena are social problems and why, what makes certain fetishes so compelling to certain people, and other socially valuable conversations. On "hot chat" boards, users are able to play out all sorts of outrageous fantasy encounters without treading on real bodies or feelings. Some harmful things can happen: cyberstalking and harassment may well occur, just as they can on streets. But surely they are safer on screen than on streets; surely we would rather know someone's fantasies than have them acted out on our bodies.<sup>172</sup>

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168. I call it a social activity because several expert psychologists have argued persuasively that computers, unlike television, are highly interactive media, thus fostering rather than inhibiting social skills. *Only Three More Lives. . .; The Effect of Video Game Playing on Children*, EXE, Dec. 1993, at 48.

169. RANDALL, *supra* note 8, at 102.

170. *Id.*

171. It is worth remembering that only a small percent of Usenet traffic overall is imagery (surely because it is difficult, costly, and time-consuming to download). *Carnegie Study*, *supra* note 3, at 1871. The high percentages of taboo imagery may reflect the accessibility of "non-taboo" porn elsewhere.

172. For situations in which someone inflicts emotional or other harm on another, such as

This is not to say that no harm can come from cybersex. First, to the extent that demand for hard-core and pedophilic cyberporn<sup>173</sup> results in increased demand for “new” images, it is possible that more women and children will be coerced, economically or physically (or both), to perform acts in front of the camera that are degrading, painful, or harmful.<sup>174</sup> But increasingly advanced technology may actually decrease exploitation. Easy pirating, posting, and sharing could, at least temporarily, *reduce* the necessity for production of new images.<sup>175</sup> And sophisticated graphic techniques of the sort already employed in Hollywood films may soon eliminate the need for real actors to perform.<sup>176</sup> Bodies can be created and manipulated out of old images; faces can be reused with slight alterations to create new pornography. While this may not be a gain to those who believe the images

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the Michigan student who used the name of another student in a sexually violent fantasy tale, tort laws and general rules regarding Internet harassment provide the appropriate response. See Maryanne George, *Rape Fantasy Gets Student Suspended; FBI Investigating After He Posted Three Stories on the Internet*, HOUS. CHRON., Feb. 4, 1995, at A12. But see Johnson, *supra* note 4, at 26-27 (suggesting that Internet harassment, from “flaming” to unsolicited advertising, does require new legal remedies). But I, for one, would rather know about the word fantasies before they are acted out, so that a judgment about whether counselling is warranted can be made, than allow such fantasies to fester, unexpressed, until they become more harmful. On the Internet, words are used; anonymity is the norm. This is not so in parks and streets.

173. The Study found that pedophilic images consisted mainly of child nudity, and that hebephilic imagery portraying penetration or masturbation featured women who appeared to be over 18 years of age. *Carnegie Study*, *supra* note 3, at 1902-04. Thus, the extent to which increased Internet demand will cause increased harm to children may be exaggerated especially when compared with the harm of, for example, intrafamilial sexual abuse and incest, which may well increase as a result of the sexually repressive attitudes fostered by cybercensorship.

174. This is not the place to engage in a full debate concerning the degree to which women in pornography are economically or physically coerced to perform painful, humiliating, and psychologically or physically damaging acts. While I believe the amount of such coercion is far less than that claimed by feminists who advocate suppression, surely some women are physically coerced, and others find the activities more painful (physically or psychologically) to perform than other sorts of work. But see sources cited *supra* note 25, especially Keller, *supra* note 25, at 2198-2203 (arguing that antipornography ordinance provisions concerning harm to models depend on unstated and incorrect assumptions about the inevitable message of pornography). For issues dealing with coercion of children, see *infra* note 182 and accompanying text.

175. The ease with which new entrants to the pornography business can set up shop suggests that sharing of imagery may not reduce the economic incentive to produce new images. At the same time, although the study surveyed over 900,000 images, it appears that many were scanned from existing rather than newly produced images. However, once the existing market is absorbed online, market forces will likely encourage continued, if not expanding, production.

176. See Reske, *supra* note 69, at 40 (describing how the image of a mature naked woman can be “transformed into the figure of a child” through a technique called “morphing”); Bruce Weber, *Why Marilyn and Bogie Still Need a Lawyer*, N.Y. TIMES, Mar. 11, 1994, at B18; see also Diane Werts, *Here’s Looking at You, Kid*, NEWSDAY, Feb. 12, 1995, at 16 (describing technological ability to create almost undetectably faked still photos and noting that the technology to create similarly faked moving images will be available within a few years).

themselves cause harm, it at least reduces any harm caused by creating them.

If harm to women or children does result from increased demand for new images, censorship is not only an ineffective response, but will increase other, greater harms to women and children, as well as to men. The way to protect women from physical coercion is to empower them to resist it by ending the sex underground, so that commercial sex workers can join unions, working conditions can be policed, civil and criminal remedies can be created to address coercive behaviors, fair wages bargained for and paid, and injunctive remedies can be afforded to suppress those images that are coercively produced.<sup>177</sup> For instance, Amsterdam, where prostitutes are unionized, has among the lowest rates of HIV infection in the world (as well as a smaller number of prostitutes per capita than many other countries where prostitution is illegal).<sup>178</sup> Prostitutes are well-paid in Tokyo; surely not unrelated to the "more relaxed attitude" of the Japanese toward prostitution and the small number of arrests.<sup>179</sup> London, where "legal position" prostitution (what might be termed "normal sex" prostitution) is legal but soliciting is not, has among the lowest rates of prostitution in the world.<sup>180</sup> Legalization and regulation of saunas and health clubs offering prostitutes in Edinburgh has created safe, drug-free environments that encourage health checks and offer protection from violent customers.<sup>181</sup>

And while protecting children is more difficult because of the inherently coercive relationship between children and adults, the thousands of street children engaged in the sex trades from prostitution to porn production will not be much helped by increased policing of cyberspace. For although the demand for kiddie porn images might decrease very slightly if such images were kept off the Internet, the demand for child prostitutes could well increase, both because images would be less available in many locales as a substitute, and because pedophiles might be found patrolling the streets rather than perusing their screens. Moreover, to the extent that the sexually repressive atmosphere fostered by cybercensorship inhibits chil-

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177. These remedies would also afford a voice to sex workers who wish to dispute claims that their work is inherently degrading or abusive.

178. See John Earls, *Lays of the Lands . . . World Guide to Prostitution*, THE PEOPLE, Sept. 11, 1994, at 3 (noting that Bangkok and Paris, where prostitution is illegal, have much greater numbers of both prostitutes and disease).

179. *Id.*

180. *Id.*

181. See Kay Mellor, *Time to Turn the Red Light Green*, DAILY MIRROR, Mar. 27, 1995, at 6 (arguing in favor of legalization, noting that regulation decreases dependence of prostitutes on pimps, decreases child prostitution, protects prostitutes from violent customers, and encourages health checks and safe sex); see also Thomas Larkin, *A Green Light on Red Light World*, SOUTH CHINA MORNING POST, Dec. 18, 1994, at 15 (noting that "authorities in European cities" where legal red light districts exist believe licensing to be "the only way" to control disease, limit children's involvement, and reduce criminal involvement).

dren from feeling free to talk about sex, the harms they experience from unreported incest and sexual abuse, which often lead to child prostitution, are likely to be far greater. What might help would be to *de-criminalize* the use of graphically manufactured and “morphed” child pornography, to encourage its substitution for real pictures.<sup>182</sup>

What will help is permitting and fostering the possibility of extraordinarily open Internet discussion of all things sexual. Through the Internet, we can come to know the full dimensions of sexuality in modern times. Conversing, fantasizing, and story-telling with one another—using but not remaining limited to the portrayals of commercial pornographers—will likely do more to end the sexual regime that currently harms women and children than will banning or restricting pornographic images.<sup>183</sup>

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182. While space does not permit an extended discussion of the subject of child pornography, my argument that Internet sexual discussion should be open, robust, and accessible, especially to youth (teenagers and preteens), raises questions related to, although not the same as, those raised by child pornography. While it may be appropriate to presume that youngsters cannot consent to circulation of photographs of themselves engaged in sexual activity (or naked) because they do not have the experience to imagine the embarrassment and psychic pain this may cause them in later life, we need badly to examine the extent to which this pain is itself *caused by* our refusal to acknowledge and celebrate (even in photographs) the sexuality of children. Virtually every parent I know admits photographing their young children naked or partly so, at the beach, in the bath, and at home. What does it mean that all of these parents can be prosecuted for doing so (if they are unlucky enough to take their photographs to be commercially developed in a state that requires reporting)? What does it indicate to our children, that what we celebrate by photographing, we simultaneously condemn by criminal prosecution? For a discussion of one family's experience with such a prosecution, see sources cited *supra* note 153.

How should children react when art photographs that capture (or deliberately highlight) children's sexuality are condemned, and published back to back with advertisements that sell makeup using women so young that they look childlike, in sexually provocative clothing and poses? To note one particularly ironic example, the same issue of the *New York Times Magazine* whose cover story was a feature article discussing the possibly pornographic nature of Sally Mann's photographs of her children (photographs that clearly acknowledge and portray the sexuality of the children, although they are far from “explicit”) also displayed a series of Revlon cosmetic advertisements of youthful models in various seductive poses. One of the models, who could easily pass for age 18, was shown in a series of photos in a revealingly low-cut black bra and tight brass-studded leather jeans and vest with a chain belt. See N.Y. TIMES MAG., *supra* note 147, at 28 and pullout Revlon advertisement.

It is surely inappropriate to assume that children do not have rich and complex sexual lives and fantasies that they—and we—need to be able to explore and discuss. To the extent that the hysterical attitude toward child pornography reflected in investigation and prosecution of parents for photographing their children naked, and in controversies for photographers like Sally Mann, contributes to an atmosphere in which children and adults are afraid to admit, explore, and discuss the sexuality of children, it may be necessary to rethink and thoroughly revise our child pornography laws. If all sexually explicit depictions of children could be “morphed” so as to protect identity, would it not be valuable to have such depictions available, not only to foster sexual understanding, but to assuage the impulses of those who might otherwise seek out living children on whom to enact masturbatory fantasies?

183. Some people tried to create a network of sexual sharing even before the Internet, via home-produced sexually explicit videos of their own sexual encounters. That these quickly became among the most popular video rentals is indicative that what many people are looking for is genuine examples of “real” sex. See Michael deCourcy Hinds, *Starring in*

Just as I would not assert that no harm can come of cybersex, I make no claim that pornography in general causes *no* harm. Rather, the harm it causes is mischaracterized by conservatives, who see in pornography the root and reflection of moral decay, and by feminists, who greatly exaggerate its generative force in fomenting violence against women and sexism in society.<sup>184</sup> The primary harm of pornography is quite different, and it comes from the censorship of it, not from its sexually explicit nature. In a society in which there is little candid discussion or depiction of sex, porn is the only place people get a chance to look at sex: to compare their anatomy with that of others, to measure their performance with that of others, and to learn what other people do. And porn presents a wholly false picture of human sexuality, one which is largely sexist and homophobic and which often portrays women (and men) in offensive and sometimes degrading ways.<sup>185</sup> And while most viewers do not—as some feminists think—take literally porn’s presentation, surely men and women raised in a society that incessantly teaches that real manhood depends upon phallic performance are made anxious by porn’s world of gigantic penises and unflagging erections and aggressively sexual, always available, unblemished and balloon-breasted super models.<sup>186</sup>

The more we censor the “explicit” corner of the sex market, the more we leave it to pornographers to define, delineate, and influence our beliefs, imaginings, and even our sexual desires,<sup>187</sup> and the more we encourage the

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*Tonight’s Erotic Video: The Couple Down the Street*, N.Y. TIMES, Mar. 22, 1991, at A14 (noting popular appeal of home porn videos).

184. Computer porn, like most pornography, features females as its central objects of sexual display. Ninety-nine percent of the surveyed images of bestiality featured women with animals; other paraphilic imagery similarly highlights women. Moreover, images increase in popularity when they are verbally “marketed” as unpleasant for or degrading to women, although they are relatively rarely marketed as violent toward them. *Carnegie Study*, *supra* note 3, at 1898-1901. This seems to mirror norms from the world of pulp and video porn, where violent imagery represents less than 7% of all imagery—and that number seems to be diminishing. See Lynne Segal, *Introduction in SEX EXPOSED*, *supra* note 25, at 6 (describing survey finding between 3.3% and 4.7% violent imagery in random sample of porn films 7% S/M or bondage with women submissive in porn magazines (9% with men submissive) and noting decline in violent imagery since 1977). For the best surveys I have encountered assessing (and finding wanting) the evidence that pornography causes male aggression against women, see RANDALL, *supra* note 8, at 90-115, and Fisher & Grenier, *supra* note 25 (surveying conflicting and contradictory results of studies and concluding from its own study that such evidence is lacking).

185. As one writer notes, “pornography [has] long been a myth of sexual pleasure told from the point of view of men with the power to exploit and objectify the sexuality of women.” WILLIAMS, *supra* note 23, at 22.

186. See *id.* at 45, 48-49 (observing the manner in which pornographers “produce,” by purporting to “reveal,” our beliefs about what sex is like, and try to convince us that what they display is true and real by eschewing artistry that might add to arousal, creating instead a falsely “clinical-documentary” quality); see generally *id.* (describing hard-core pornographic film as purporting to portray women’s unknowable and invisible sexual desire).

187. Of course, *feminists* have power to cabin and control sexuality as well through their support for conservative antisex ideology. See Meyer, *supra* note 24, at 1142-46.

resort to porn for information, titillation, security, and satisfaction. Pornographers respond, as we might expect, with the same techniques of marketing used in mainstream advertising: playing on and fostering anxiety by presenting an idealized yet not quite attainable world, a world to envy, which requires continuous replenishment of the product to retain the fantasy of perfection. Porn presents a world of insatiable women who are aggressive yet compliant, experienced but appreciative, unresisting and never rejecting of the men whose ever erect, gigantic, and unflagging members promise limitless pleasure to women and status and fulfillment to men. It is a world that uses film technique to present itself as scientifically "real": it offers air-brushed bodies, silicon-enhanced breasts, selectively stretched members, slow-motion ejaculation extension, and ridiculously amplified moans, groans, and smacking sounds as the "reality" of normal sexual experience.<sup>188</sup>

Instead of addressing men's real anxieties about their loss of economic, political, and social power over women and children, porn frequently plays on those anxieties—promising men phallic power yet challenging them to prove that power—to increase its sales.<sup>189</sup> And that, in turn, leads to efforts to prove masculine status and prowess, among other ways through the assertion of sexual power.<sup>190</sup> Sexual censorship, whether of that which is explicitly sexual or that which is purportedly sexually exploitative of women, will do nothing to transform the demand for sexual information or the propensity of those able to find ways around censorship to play on anxieties to market their products.

For all of our obsessive talk about sex, we refuse to speak candidly about it. As Leonore Tiefer, psychologist and associate professor of urology and psychiatry, has noted, "[t]here is so little honest conversation about sex that most people really have no idea what's going on in the lives of others."<sup>191</sup> The University of Chicago's recent survey of sexual beliefs and

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188. Porn's fantasy world is attractive because in it women never reject men's sexual advances, men's performance never fails, and men are all-powerful yet relieved of the necessity of always being the sexual initiators and aggressors. But to the extent that today's sexist pornographers have a near monopoly on the sexually explicit, the only temporary relief men have from the everyday anxieties and demands of modern masculinity is a world that increases their performance anxiety at the same time that it largely reinforces hostility to and fear of women.

189. See generally WILLIAMS, *supra* note 23 (arguing that contemporary hard core pornography seeks unsuccessfully to reveal women's sexual desire, which cannot actually be represented); *id.* at 276 (noting that pornography "begets" more pornography in the pursuit of the "truth" of this desire, which cannot in fact be seen).

190. See, e.g., SEGAL, *supra* note 26, at 217-32 (discussing pornography's simultaneous appeal and tendency to feed male anxiety about sexual adequacy); Carlin Meyer, *Snips and Snails and Puppy Dogs' Tails, That's What Little Boys Are Made Of*, 38 N.Y.L. SCH. L. REV. 443 (1993) (book review) (reviewing books on sports and history of masculinity showing, inter alia, ways in which modern masculine status has become dependent on assertion of power over and denigration of women).

191. TIEFER, *supra* note 29, at 2 (indicating the perniciousness of the thesis that sex is a

practices reiterated the same theme, noting that most of us are quite wrong in our beliefs about one another's sexual practices and habits.<sup>192</sup> This is not merely unfortunate, it is dangerous. The one common theme found among sex offenders is not, as most believe, that they were sexually abused as children, although roughly a third say they were. Nor is it socioeconomic background. Rather, it is that "they grew up in sexually strict, even repressed, homes, where any sign of sexuality was rebuked."<sup>193</sup>

The information superhighway offers us an opportunity to break pornography's monopoly;<sup>194</sup> we can augment porn's imagery with other images and discuss what porn presents in an atmosphere conducive to openness and candor.<sup>195</sup> Cyberspace offers the possibility for genuine, unembarrassed conversations about *accurate* as well as fantasy images of sex. It offers the opportunity for richer sexual fantasies because it is a safe space in which to explore the forbidden and the taboo.<sup>196</sup> Finally we have a way

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simple, natural, biological function because it positions sex as central yet creates immense anxiety, ignorance, insecurity, confusion, and rigid thinking about it).

192. LAUMANN ET AL., *supra* note 47, at 87-89, 133-46, 212-16 (1994) (reporting that contrary to popular belief, Americans hardly ever engage in extra-marital sex, greatly prefer the missionary position for their (at most) twice-or-thrice-weekly and equally common *twice monthly* experiences of intercourse, and rarely use pornography or masturbation to substitute for the lack of a partner). Critics of the Chicago study have suggested that its findings may not be wholly accurate (e.g., 20% of the respondents were interviewed in front of another family member, which is hardly likely to produce accurate figures on sexual satisfaction or extra-marital affairs), but, even if the figures are off, they are probably not as far off as the beliefs of many Americans. See Mike Males, *Sex Survey's "Warm Oatmeal" Sold as Solid Social Science*, EXTRA, Jan.-Feb. 1995, at 24.

193. Popkin & Simons, *supra* note 32, at 67 (reporting variety of studies on sexual offenders and noting that most abuse is at the hands of family members, not strangers). As Paul Goodman has suggested, "[t]he social question is not the freedom of a venal purveyor . . . [but] whether the sexual climate of the community is being perverted by the censorship." Paul Goodman, *Pornography, Art and Censorship*, in *FORMAT AND ANXIETY: PAUL GOODMAN CRITIQUES THE MEDIA* 75, 75-76 (Taylor Stoehr ed., 1995) (reprinted from COMMENTARY, Mar. 1961).

194. I do not wish to credit pornography alone with all of these ills. Rather, it is sexual censorship, coupled with many institutional, social, and even biological phenomena, that contribute to male anxiety and aggression. See generally SEGAL, *supra* note 26; Meyer, *supra* note 190. Yet, as Paul Goodman has suggested, "the censorship itself, part of a general repressive anti-sexuality, causes the evil, creates the need for sadistic pornography sold at a criminal profit." Goodman, *supra* note 193, at 75 (arguing, based on Freudian theory of repression, that censorship creates pornography). While I disagree with Goodman's positing of a steady historical progress toward de-repressing sex so that some sort of pre-existing natural (and healthy) sexual impulses can "reappear as themselves and come to their own equilibrium," I agree that censorship impacts the form and *power* of pornography by allowing it to serve as the main source of visual information about sex acts and organs, which creates the "black market" of sexual fantasy.

195. One writer suggests that, "sexually explicit representations, images, and texts are neither reactionary nor liberating in and of themselves. To hide them away reinforces and confirms rather than undermining their power." Elizabeth Wilson, *Feminist Fundamentalism: The Shifting Politics of Sex and Censorship*, in *SEX EXPOSED*, *supra* note 25, at 15, 26-27 (arguing that antiporn campaign "simply reproduces the assumptions and ideology of the dominant culture" concerning sexuality).

196. Unsurprisingly, the *Carnegie Study* found that images are more popular when they are

to speak the unspeakable in a place where no one can see the imperfections in our bodies, hear the trembling in our voices as we admit being aroused by rape fantasies and wonder how that came to be, and inhibit or stigmatize our revelations of the assumed "worst" of ourselves (whether this is perverse fantasies and desires, wholesale disinterest in or distaste for sex, inability to achieve orgasm, or other assumed failure). Finally, we can challenge one another without fear of coming to blows.<sup>197</sup>

Rather than worry about the exposure of young people to cybersmut, we should accept cybersex as an opportunity for our youth to anonymously explore, in the privacy of their rooms and in the anonymity of conversation in which they are both invisible and unknown, what other children and adolescents are feeling and thinking about their bodies and sexuality. Rather than focusing, as the mainstream media does,<sup>198</sup> on the lone pedophile who lures children into close encounters of unsavory kinds, we should remember that it is far less likely that pedophiles will succeed in luring children via the Internet than in a local park.<sup>199</sup> If we encourage children to talk about their growing and changing bodies; about physical contact with others (or the lack of it); about differences between the sexes; and about advances from teachers, priests, and relatives, we are likely to protect them not only from the relatively uncommon stranger-pedophile but also from the far more ordinary scourge of intrafamilial incest. Perhaps if we talk about the air-brushed, organ-enhanced unreality that pornographers and their cousins in advertising present, fewer people will believe they need breast implants, cosmetic surgery, and therapeutic or drug-enhanced capacity for multiple orgasms to feel sexually adequate.

The *Carnegie Study* supports the notion that it is the creation of sex as a taboo subject that creates the market for hard-core and paraphilic imagery. The more we seek to suppress, to regulate, and to render off-scene and taboo that which is explicitly sexual, the more we are likely to increase

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marketed as portraying the transgression of multiple taboos, even when the taboos, such as incest, are simply marketing devices (because one cannot "see" family relationships). Among the most popular images from the Amateur Action BBS were "She holds the dog cock! Stuffs it in her daughter's ass!" (incest, anal penetration, bestiality) and "She sucks her son's cock! Father is fucking his daughter!" (double incest, fellatio). *Carnegie Study*, *supra* note 3, at 1901.

197. The worst that can happen on the net is "flaming" (computerized incivility)—that is, word violence.

198. See, e.g., Barbara Kantrowitz et al., *Child Abuse in Cyberspace*, NEWSWEEK, Apr. 18, 1994, at 40.

199. Pedophiles' on-the-spot stories of lost dogs, or offers of candy, or claims to be acting for an injured family member, where there is little chance for reflection by the child and often physical threat or induced panic, are far more compelling than an online lure, which can be checked with parents and others. Moreover, pedophiles' online lures don't depend on sex and are unlikely to cease even if it were possible to purge the Internet of sexual talk and imagery. See Bennahum, *supra* note 118, at A15 (noting that pedophiles do not and need not use obscene material to form friendships and establish trust with intended victims, and that the privacy cyberspace affords children actually *protects* them from pedophiles).



the revenues of pornographers like the Thomases,<sup>200</sup> and to enhance the desire of children and adolescents as well as adults to access whatever images pornographers have to offer.

What the *Carnegie Study* ultimately shows is the tremendous potential the Information Superhighway offers us to break the pornographers' monopoly on sexually explicit expression and to formulate, through discussion, stories, fantasies, and pictures online, a new sexual "truth." Many readers of the alt.sex newsgroups are engaging in this process already. If we devoted even half the resources currently spent on porn investigation and prosecution to ensuring women's equal access to the Internet and to erasing its class and national boundaries so that the perspectives on sex of the less affluent can democratize the growing international discussion of it, we might actually begin to reformulate, in the safety of anonymity and privacy, our ideas about sex.

But lest it appear that the Information Superhighway will, without attention, be a panacea for all our social and sexual ills, it bears emphasizing that it is a roadway that belongs largely, at the moment, to relatively affluent, youthful, white males. And so long as that is the case, sexual communication and discourse on the Internet will be seriously skewed. Thus, the main lesson of the *Carnegie Study* may be that government should intervene, not to censor, but to increase access to the Internet by women, by persons of color in the United States and worldwide, and by older persons. Legislation shifting funds from prosecution of porn to programs providing training in computer literacy to these groups might be a first step. Tax breaks to companies for increasing access to these groups is another possibility.

Perhaps the ultimate lesson to be gleaned from the prevalence of porn on the Information Superhighway is that in this instance, at least, Justice Brandeis was right: What we need on the Internet is not an impossible-to-achieve "enforced silence" about sex but rather more, more diverse, and richer sexual speech.<sup>201</sup>

#### CONCLUSION

Human beings are, and always have been, fascinated by sex. That we are expressing that fascination on the avenues of the most technologically advanced information system the world has ever seen should surprise no one. It would be a tremendous waste if the *Carnegie Study* were used as fodder for a futile but damaging effort at cybercensorship instead of as support for wider and more democratic access to the open, informal, anonymous and yet public world of the Internet.

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200. *Carnegie Study*, *supra* note 3, at 1912-13.

201. See *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.").