

Virtually Obscene: The Case For an Uncensored Internet

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Citation: AMY E. WHITE, VIRTUALLY OBSCENE: THE CASE FOR AN UNCENSORED INTERNET (McFarland & Company, Inc., 2006).

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Relevant Legal & Academic Areas: Constitutional Law, Internet Law, Censorship, Freedom of Speech, Government Regulation

Summary: Virtually Obscene is divided into seven chapters. Chapter 1 provides an overview of what the Internet is, describing its origin, structure, and various attempts to regulate it. Chapter 2 provides an overview of the current obscenity standards in the United States and discusses the problems therein, while providing the author's proposals and alternatives to the current standard. Chapter 3 discusses the First Amendment, particularly the freedom of speech clause and the arguments surrounding it, as well as the author's reasons why freedom of speech does not protect Internet obscenity.² Chapters 4, 5, and 6, introduce and analyze the arguments of Internet obscenity and its harm to children, women and the moral environment, respectively. Chapter 7 concludes with a discussion of why Internet obscenity regulation is "a bad idea."

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Chapter 1- The Unknown Territory and the Quest to Tame the Internet Beast

- **Chapter Summary:** Chapter 1 begins with an introduction briefly discussing pornographic websites. The chapter continues by examining what the Internet is, including its history and structure. The author touches upon different attempts at regulating the Internet and provides examples describing how foreign countries have

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² U.S. CONST. amend. I.

³ Ohio University – Zanesville Faculty Directory, <http://www.zanesville.ohiou.edu/pr/amywhitehire9-05.htm> (last visited Mar. 24, 2007).

⁴ *Id.*

implemented regulatory frameworks to assist in regulating the Internet. The chapter closes by discussing the problems of classifying the Internet which, in turn, reflect problems of regulating the Internet.

- **Chapter Discussion:** The chapter opens with an introduction that grabs the reader's attention by listing sexually explicit slogans that are displayed on numerous pornographic websites. The introduction briefly discusses how the Internet provides users with access to any type of sexually explicit material they desire and describes the popularity of pornography on the Internet in that, "pages containing adult oriented material are one of the biggest traffic generators on the Internet."⁵

The chapter's first section, *The Internet: History and Structure*, states the author's viewpoint on what exactly the Internet involves and how it operates. "The Internet's survival simply depends on the computer networks used and established by people all over the world. It operates by connecting millions of computer networks and hosts computers or international high-capacity 'backbone' systems to each other."⁶

The section lists three aspects of the Internet that have previously been the focus of concern for regulation: email, automatic mailing list services, and the World Wide Web.⁷ White lists peer-to-peer file sharing, instant messaging, Usenet, computer bulletin board systems, and Internet Relay Chat as avenues that can be used to pass sexually explicit material from one user to another. White proceeds to describe all of these,

⁵ AMY E. WHITE, VIRTUALLY OBSCENE: THE CASE FOR AN UNCENSORED INTERNET 11-12 (McFarland & Company, Inc., 2006).

⁶ *Id.* at 13.

⁷ *Id.* at 14.

providing technical details and listing the most popular software used for each avenue.⁸

The section closes by reiterating how each of these avenues can be used to transfer sexually explicit materials through a computer and even import them onto hand-held devices such as cell phones.

Chapter 1, Section 2, *Regulation: Attempts and Possible Regulatory Frameworks*, opens with arguments from proponents of Internet regulation. For example, this section includes the argument that “the Internet should be regulated in the same fashion that television and radio programs are regulated” and also the claim that “unregulated obscenity and pornography corrupts minors, harms women, and contributes to the degradation of morality in society.”⁹

The section describes examples of proposed regulation methods, the first of which is Internet Service Provider liability. The author illustrates this method with cases such as *Cubby, Inc. v. CompuServe*, *Stratton Oakmont, Inc. v. Prodigy Services*, and *Smith v. California*.¹⁰ Another method of regulation discussed in the section involves “defining a set or class of material that is to be banned and prosecuting those individuals who make the material over the Internet available.” The author provides examples of this use of regulation in countries such as Australia, Scotland, Singapore, and China.¹¹

Section 2 closes with commentary regarding the United States’ statutory attempts at regulation, including the Communication Decency Amendment and the

⁸ *Id.* at 14-18.

⁹ *Id.* at 19.

¹⁰ WHITE, *supra* note 5, at 20 (citing *Cubby, Inc. v. CompuServe Inc.*, 776 F. Supp 135 (S.D.N.Y. 1991) (Court concluded that ISP was not liable); *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, *1 (N.Y. Sup. Ct. May 25, 1995) (Court concluded that ISP was liable); *Smith v. California*, 361 U.S. 147 (1959)). (Author states that the “bookseller could not reasonably be expected to know the content of all the books he or she offers for sale.”)

¹¹ WHITE, *supra* note 5, at 20-21.

Telecommunications Act of 1996, and also discusses challenges to these statutes in cases such as *Reno v. ACLU* and *FCC v. Pacifica*.¹²

Chapter 1 ends with Section 3, *The Internet Platypus*, which asserts the difficulties in classifying the Internet and how this affects the ability to regulate it. The section describes the amount of First Amendment protection (presented through various examples of case law) afforded to communicative technologies such as radio, cable TV, and the telephone, and states that the Internet is “clearly different from any of these aforementioned communication technologies.”¹³ The section describes the problems associated with deciphering the origin of Internet content in that it is physically and geographically different from that of a local newspaper or a signal provided for radio and television. The author concludes by stating, “it is unlikely that any preexisting regulatory framework can be applied to the Internet.”¹⁴

Chapter 2- The Failure of Current Legislation: Obscenity and Community Standards in the United States

- **Chapter Summary:** Chapter 2 begins by introducing the standard currently used to regulate Internet obscenity in the United States. The chapter provides an overview of Internet regulatory standards, along with a history of the current standard and subsequently discusses the problems of the current standard. The chapter discusses three “community standards” for the Internet and ends with a list of objections to the community standard as well as addresses the author’s proposal that the current standard is unworkable.

¹² *Id.* at 22-23 (citing *FCC v. Pacifica Found.*, 438 U.S. 726 (1978); *Reno v. ACLU*, 521 U.S. 844 (1997); Communications Decency Act of 1996 (Title V of the Telecommunications Act of 1996) Pub. L. No. 104-104, 110 Stat. 56 (1996)).

¹³ WHITE, *supra* note 5, at 24-25.

¹⁴ *Id.* at 26.

- **Chapter Discussion:** Chapter 2 opens with an introduction presenting the recent Supreme Court decision of *Ashcroft v. ACLU*, which upheld an injunction against the Child Online Protection Act of 1998.¹⁵ The author points out that one of the Court’s concerns in upholding this injunction was that “a ‘community standards’ based regulatory approach might not be appropriate for the Internet.”¹⁶ The “community standard” approach is derived from the Supreme Court decision in *Miller v. California*.¹⁷

Chapter 2, Section 1, *The Current Standard: An Obscene History*, illustrates the early roots of obscenity prosecutions, beginning with the British case *Regina v. Hicklin*.¹⁸ The chief justice of that case, Lord Justice Cockburn, held that the test for obscenity was “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.”¹⁹ More recently, the Supreme Court found in *Miller* that the appropriate standard was a three prong test outlined by the court as follows:

1) Whether the average person, applying contemporary community standards would find that the work taken as a whole, appeals to the prurient interest; 2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and 3) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value.²⁰

¹⁵ *Id.* at 27 (citing Child Online Protection Act (COPA), 47 U.S.C.S. § 231 (1998)); *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

¹⁶ WHITE, *supra* note 5, at 27.

¹⁷ *Id.* at 27 (citing *Miller v. California*, 413 U.S. 15 (1973)).

¹⁸ WHITE, *supra* note 5, at 28 (citing *Regina v. Hicklin*, 3 L.R.-Q.B. 360, 362 (1868)).

¹⁹ *Id.*

²⁰ *Miller*, 413 U.S. at 24.

Chapter 2, Section 2, *Problems with Miller*, presents the reader with the author's criticism of the Miller standards. Particularly, the author points out that the terms laid out in the standard are too vague: "What one person finds offensive another may not...what excites one person sexually (creates a prurient interest) may not excite another and what one person considers to be of serious value, another may not."²¹ Secondly, the author finds problems with determining through content alone what is obscene, stating "[o]bscenity is a legal term, not a moral one. It, in and of itself, does not describe any characteristic or group of characteristics contained in any object."²² Moreover, the author points out that deciphering what is considered a community is an additional problem with the *Miller* standard.²³

Chapter 2, Section 3, *Community Standards for the Internet*, asks the question of "what would be an appropriate community standard to guide obscenity regulation of Internet materials."²⁴ The author introduces, and thoroughly describes three possible community standards that could be applied to the Miller Standard: the community in which the viewer downloads the material, the community from which the material originates, and finally, the Internet itself as an independent/virtual community.²⁵

The section points out various problems with each of the standards ranging from the problem of users not having knowledge of the community standards in every community where members reside (community of the viewer standard) to the problem of

²¹ WHITE, *supra* note 5, at 30.

²² *Id.* at 31.

²³ *Id.*

²⁴ *Id.* at 32.

²⁵ *Id.*

users transferring their accounts rapidly and knowing exactly where the sexually explicit material originated.²⁶ The section further describes the necessary characteristics of a community: “shared experiences, feeling of belonging, personal investment among members, established boundaries, the ability to distinguish members from non-members, group control over governance and sustained interaction among members.”²⁷ These characteristics are applied to the virtual community multi-user dungeon (MUD), which is described at the end of the section, as well as the author’s opinions on the differences between virtual and real communities. The section closes with the author offering her own proposal that “the possibility to admit that community standards cannot be used for Internet regulation.”²⁸

The final section of Chapter 2, *An Alternative and Objections*, closes by proposing another “arena” for obscenity regulation: that of a community which could decide they do not want Internet obscenity all together.²⁹ The author subsequently presents objections to this proposal and concludes the chapter with a brief summary of the main points of the chapter.

Chapter 3 – Why Free Speech Alone Should Not Protect Internet Obscenity and Pornography

- **Chapter Summary:** Chapter 3 presents the reader with the widespread rationales regarding why speech and the Internet should be protected and through this discussion, analyzes why these arguments fall short when pertaining to regulation of obscenity on the Internet. Specifically, the chapter touches upon the “discovery of truth” argument, the

²⁶ WHITE, *supra* note 5, at 32.

²⁷ *Id.* at 39.

²⁸ *Id.* at 45.

²⁹ *Id.*

autonomy and dignity arguments, and the democratic necessity argument for freedom of speech. The chapter then briefly discusses the negative justifications for freedom of speech and closes by offering alternative suggestions and objections. In short, the author believes the First Amendment should not and does not apply to most content on the Internet.

- **Chapter Discussion:** The chapter opens with a short introduction, supplying the reader with the First Amendment of the United States Constitution and the common arguments as to why Internet Obscenity and pornography should be protected.³⁰ The author then presents her arguments, mainly that the common rationales are “flawed” and “not applicable to most sexually explicit Internet materials.”³¹

Chapter 3, Section 1, *The Appeal to Authority and Definition of Speech*, discusses a background of the First Amendment, specifically the intent of the framers of the Constitution when they wrote the First Amendment and includes arguments by noted scholars such as Alexander Meiklejohn.³² The section continues by answering the question, “what counts as speech” and the author presents her definition of speech: communication involving “conveying or attempting to convey a message from one person to another (or many others)...without communicative intent, a communicated message and a recipient of the message, a communicative act cannot be complete.”³³

³⁰ U.S. CONST. amend. I.

³¹ WHITE, *supra* note 5, at 50.

³² *Id.*; U.S. Const. amend. I.

³³ WHITE, *supra* note 5, at 52.

In Chapter 3, Section 2, *Speech and Truth*, the author introduces the “most predominant” argument for freedom of speech: the discovery of truth argument.³⁴ The section cites arguments from John Stuart Mill’s *On Liberty*, and from Justice Oliver Wendell Holmes in support of the discovery of truth argument.³⁵ The author argues that this argument is not relevant for protection of pornography and poses the question “what is the truth that is to be gained from a picture depicting bestiality?”³⁶ The author finds that the discovery of truth argument has a “limited scope” and “simply does not cover most Internet obscenity and pornography.”³⁷

Chapter 3, Section 3, *The Arguments from Autonomy and Dignity*, examines the arguments of autonomy and dignity and how they pertain to freedom of speech. Specifically, it is claimed that personal autonomy is “good” and that freedom of speech is “necessary for autonomy to occur.”³⁸ The argument for dignity, the section states, is that “autonomous individuals should be afforded dignity and space to exercise their autonomy.”³⁹ The author again refutes these arguments, claiming that the dignity argument does not “justify a special status for speech” and that the autonomy argument “is not effectual if the general population is unwilling or unable to exercise it in such a

³⁴ *Id.*

³⁵ *Id.* at 52-53.

³⁶ *Id.* at 56.

³⁷ *Id.*

³⁸ WHITE, *supra* note 5, at 56.

³⁹ *Id.*

fashion...and such exposure will cause persons to close themselves off and become narrowly focused.”⁴⁰

Chapter 3, Section 4, *Speech and Democracy*, argues that freedom of speech is necessary in order for democracy to function. This argument stems from the rationale that “in order to be sovereign and for democracy to function, the individuals in democracy must be informed and autonomously make decisions.”⁴¹ The author finds the argument plausible for speech in general, but argues that this only protects political speech and therefore “does not provide the coverage needed to afford special status to much speech.”⁴² For example, the author states that it would be hard to defend access to hard core pornography on the bases that voters will not be able to make autonomous decisions without such access.⁴³

Chapter 3, Section 5, *The Negative Argument: A Slippery Slope*, examines the argument that “governments are not worthy censors” and the theory that regulating speech could lead to undesirable consequences.⁴⁴ The author hypothesizes that this argument will lead to a slippery slope in that other material that should remain unregulated will begin to “fall prey to censorship.”⁴⁵ The author refutes this argument, however, because proponents have failed to provide rationale as to (1) why the slippage is inevitable and further, (2) why it will not slide the other way.

⁴⁰ *Id.* at 58-60.

⁴¹ *Id.* at 61.

⁴² *Id.* at 62.

⁴³ WHITE, *supra* note 5, at 62.

⁴⁴ *Id.* at 63.

⁴⁵ *Id.*

Chapter 3, Section 6, *Speech and Action*, presents the reader with the difficulty of distinguishing speech from action. The author illustrates this by providing an example of how wearing a shirt with a peace sign could be construed as communication as well as action.⁴⁶ Chapter 3, Section 7, *The Political Alternative and Objections*, presents the arguments and objections that only political speech warrants heightened protection. The author presents one author's view, Rodney Smolla, and refutes each of his four reasons "to treat self-governance as a rationale for specially protected speech, but not as the exclusive rationale."⁴⁷

The Section concludes with the author reiterating that these common rationales will not apply in the regulation of sexually explicit Internet materials. The author transitions into the next chapter by providing the reader with a formula: "[i]f the harm caused by regulating sexually explicit Internet materials is less than the harm these materials produce, they should be regulated in the interests of utility."⁴⁸

Chapter 4 – Harm to Children

- **Chapter Summary:** Chapter 4 examines the argument that Internet pornography should be regulated because it is harmful to children. The chapter introduces the standard along with a brief history in Section 1, and defines the word "harm" in the phrase "harm to children" throughout Section 2. Section 3 discusses pedophiles and perverts on the Internet as a threat to children and Section 4 examines the argument that children on the Internet have access to inappropriate material. Section 5 discusses an additional argument that childhood innocence will be lost by exposure to pornography and in

⁴⁶ *Id.* at 65-66.

⁴⁷ *Id.*

⁴⁸ WHITE, *supra* note 5, at 66-67.

Section 6, the author examines the psychological arguments surrounding a child's exposure to pornography. The chapter concludes with a brief summary and discusses the "last attempts" by proponents wishing to regulate the Internet.

- **Chapter Discussion:** Chapter 4 opens with an introduction quoting Senator Exon regarding the Exon-Coats Communication Decency Act. Exon notes the act "stands for the simple premise that it is wrong to provide pornography to children on computers just as it is wrong to do it on a street corner or anywhere else."⁴⁹ The introduction then briefly mentions the Child Online Protection Act along with *Ashcroft v. ACLU*, the case which granted an injunction blocking enforcement of the law.⁵⁰

Chapter 4, Section 1, *History and the Current Standard*, discusses the history of the "harm to children" argument and introduces the reader to the "harmful to minors" standard. Section 1 illustrates that there is a compelling state interest in protecting the welfare of children and, when dealing with the distribution of indecent material to children, this action can be barred by the state.⁵¹ The author argues that there is a circular argument present, in that "what is obscene is that which is harmful and that which is harmful is what is obscene."⁵² The "harmful to children" standard is then compared with the *Miller* standard. Section 1 offers criticism on the "harm to children" standard.

Specifically, Section 1 states that the standard is community based (communities will

⁴⁹ *Id.* at 69; Exon-Coats Communication Decency Act 47 USCS § 223 (1992).

⁵⁰ Communications Decency Act (Title V of the Telecommunications Act of 1996), Pub. L. No. 104-104, 110 Stat 56 (1996); *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

⁵¹ *Ginsberg v. New York*, 390 U.S. 629 (1968).

⁵² WHITE, *supra* note 5, at 71.

have a hard time agreeing on what is obscene) and that because it is ultimately subjective, it is therefore “unreasonable to use as a legal standard for Internet materials.”⁵³

In Chapter 4, Section 2, *The “Harm” in Harm to Children*, it is argued that the definition of harm is too narrow. Further, it is argued that although children *could* be harmed by viewing pornography, children *could* also be harmed “riding a bike on a sidewalk or even walking down the street.”⁵⁴ The author argues that the real question to be answered is whether the harm caused is substantial and “not easily avoidable.”⁵⁵

Chapter 4, Section 3, *Pedophiles and Perverts*, argues that although children can be exposed to online sex predators in chat rooms, there is also possible harm for children being abducted in public spaces such as malls and parks. It would certainly be unreasonable to close these types of areas based on the threat of abduction, the author argues, and still parents let their children play in parks and go shopping in malls.⁵⁶

Chapter 4, Section 4, *Material Inappropriate for Children*, provides an analysis, history, and criticism of the childhood innocence argument. Chapter 4, section 5, *Harm and Exposure*, further criticizes the argument that childhood innocence will be lost due to exposure to pornography. This argument is examined by the author, who ultimately defends the Internet by advocating for parent’s responsibility when purchasing a computer that has access to the Internet to first know the risks involved and the potential

⁵³ *Id.* at 72.

⁵⁴ *Id.* at 74.

⁵⁵ *Id.*

⁵⁶ *Id.*

for exposure. “If parents believe their children are at risk, they may elect not to enter into the association.”⁵⁷

Chapter 4, Section 6, *Pornography as the Cause of Deviance and Psychological Instability?*, refutes the argument that children who view pornography do not grow up to be “traumatized... sex offenders, sex addicts, [or]...disturbed criminal deviants.”⁵⁸ Numerous studies are provided by the author in support of this view.

Chapter 4 concludes with Section 7, *Unsatisfactory Evidence and Last Attempts*, with the author citing cases where courts have thrown out the requirement for harm in order for regulation to occur. In addition, the author states that through television, most American children have been exposed to numerous acts of violent sports and crime, and further, the author argues that although pornography sites are poised for censorship, violence sports and crime websites would most likely remain “untouched by legislation.”⁵⁹ The author concludes Chapter 4 by reiterating that the harm to children argument is not justified when attempting to regulate sexually explicit materials.

Chapter 5 – Harm to Women

- **Chapter Summary:** Chapter 5 presents the reader with the argument that an unregulated Internet could cause harm to women. Section 1 offers the reader the feminist’s definition of pornography and leads into Section 2, which provides arguments that models and actresses in the pornography industry are harmed and mistreated.

Section 3 examines the argument that after men watch pornography they are more prone

⁵⁷ WHITE, *supra* note 5, at 79-80.

⁵⁸ *Id.* at 81.

⁵⁹ *Id.*

to harm women and transitions into Section 4, which examines the argument that watching pornography contributes to sexual violence and sex crimes. Sections 5 and 6 discuss the arguments that pornography constitutes sexual discrimination and that pornography is a form of libel. Section 7 examines whether pornography impedes the liberties of women and the chapter concludes with Section 8, discussing sexual images in our society.

- **Chapter Discussion:** Chapter 5 opens with the question of “whether easy access to pornographic materials is, in fact, harmful to women?”⁶⁰ Chapter 5, Section 1, A *Feminist Definition of Pornography*, provides an eight-factor definition of pornography, as articulated by Catharine MacKinnon.⁶¹ The definition is criticized by the author as being broad, vague and over inclusive, and this is illustrated throughout the section by examples of different movies, artwork and other media.⁶²

Section 2, *Harm and the Production of Pornography*, presents the argument that the pornography industry mistreats its actresses and that women working in the industry are “both physically and mentally abused.”⁶³ The author challenges this theory with examples of adult entertainers who are supportive of the industry and compares the services the adult entertainer provides to that of a taxi driver:

When a taxi driver is giving me a lift, I am only interested in him or her for the service he or she is providing me. I pay him or her and walk away after the cab reaches its destination. I do not care who he or she is or what he or she feels. I just want to use the service to obtain my goal.⁶⁴

⁶⁰ *Id.* at 89.

⁶¹ *Id.*

⁶² WHITE, *supra* note 5, at 90-91.

⁶³ *Id.* at 92.

⁶⁴ *Id.*

Further, the author argues that in every industry there is someone who is mistreated by their boss (the author cites migrant workers on farms as an example) and that working in the industry is not something that is mandatory, but rather a voluntary association.⁶⁵ Moreover, the author suggests that if “productions were driven underground, it would be nearly impossible for models and performers to seek legal protections against violence and duress in the workplace.”⁶⁶

Section 3, *Pornography and Sexual Violence*, introduces the argument that men are more likely to commit acts of violence against women after watching pornographic movies. This argument is challenged and contested by the author’s use of empirical data from laboratory experiments, surveys and statistics of crime rates in foreign countries.

Section 4, *Pornography and Incitement*, argues that while some pornography may portray violence, it does not endorse it. The author illustrates this with an analogy to a newspaper by stating: “[t]o claim that pornography endorses violence is similar to claiming that newspapers endorse crimes simply because they depict them.”⁶⁷ In addition, the author argues that it is ambiguous as to what exactly pornography is expressing. Section 5, *Speech as Sex and Sex as Speech*, presents and criticizes the argument of pornography as a sexual act and constituting sexual discrimination.

In Section 6, *Pornography as Libel*, the author examines the argument that pornography libels woman. The author argues that although certain movies and pictures

⁶⁵ *Id.* at 92-93.

⁶⁶ *Id.* at 93.

⁶⁷ WHITE, *supra* note 5, at 98.

might be degrading to some women, this may not be true to *all* women.⁶⁸ Further, the author argues that pornography is a fantasy. The author makes the presumption that “[a]nyone who lives and interacts with women will readily be able to ascertain that they are not like the characters in pornography.”⁶⁹ A comparison is then made of pornography to romance novels and the author argues that men could bring a libel claim against romance novels as being portrayed as “nothing more than studs” but, “this would be preposterous because romance novels are fantasy.”⁷⁰ Section 6 closes by arguing that pornography might not be considered speech at all because “producers of pornography do not intend to communicate anything: they only intend to arouse the purchaser.”⁷¹

Section 7, *Pornography and Equality*, offers the claim that this degradation of women leads to the point that women’s liberties are impeded. The author rebuts this by offering evidence that if this were true, then why has production of pornography grown and attitudes about women changed positively.⁷² Further, the author mentions briefly the horrible treatment towards women when pornography was limited centuries ago, and if pornography was not a cause in that treatment, then “there is little support for the argument that pornography causes subordination of women.”⁷³

Chapter 5 closes with Section 8, *Sex in Society and the Slippery Slope*, where the author presents other examples of sexual images in society and how they degrade women

⁶⁸ *Id.* at 100.

⁶⁹ *Id.* at 101.

⁷⁰ *Id.* at 102.

⁷¹ *Id.* at 102-3.

⁷² WHITE, *supra* note 5, at 104.

⁷³ *Id.* at 105.

ranging from vintage television to commercials. The section closes with the author again reiterating her claims in opposition to the argument that pornography is harmful to women. Moreover, a slippery slope is articulated because if this harm to women argument was accepted than literature that was racist and “any other speech that any group believes portrays them in a negative light” would then be subject to regulation.⁷⁴

Chapter 6 – Harm to the Moral Environment and Offense

- **Chapter Summary:** Chapter 6 begins with background regarding the history of sexually explicit material as the cause for moral decline. The author presents an examination of the Hart-Devlin Debate, and challenges the premonition that there is a communal morality in the Internet Age. The chapter also explores whether the availability of sexually explicit material could create an uncomfortable environment. The chapter closes by posing the question of when such offensive material should be regulated by considering if it could be ignored or avoided.
- **Chapter Discussion:** Chapter 6 opens with the author examining the claim of whether pornography could lead to “moral slippage” and whether it should be regulated because it harms communities. Section 1, *Background*, traces the history of sexually explicit material as the target for the cause of “moral decline.”⁷⁵ The section describes other types of government legislation pertaining to sexually explicit material and also describes other types of organizations and their fight against “moral decline.”⁷⁶

⁷⁴ *Id.* at 106.

⁷⁵ *Id.* at 110.

⁷⁶ *Id.* at 110-11.

Section 2, *Moral Ecology*, discusses the rationale that morality should be regulated because it appeals to the public good. The author examines and criticizes the argument that “public morality is a public good” and therefore, “immoral acts, even between consenting adults, can do public harm.”⁷⁷ Section 3, *The Hart-Devlin Debate*, describes the well known Hart-Devlin debate regarding the Wolfenden Committee Report.⁷⁸ The section continues by addressing some of the flaws of Devlin’s arguments, including the author’s opinion that although Devlin’s claims are sound, “the argument fails when applied to the Internet and modern society.”⁷⁹

Section 4, *A Common Morality in the Internet Age*, questions whether morality can exist in the Internet age. The author argues that this is not possible. “Basing morality/legality on Christianity will clearly not suffice in a modern pluralistic world or on the Internet, where users do not share a common background or common mold.”⁸⁰ The author states there is no “universal moral code” and each individual will not likely agree on what is or is not obscene.⁸¹

Section 5, *Offense and Offensive Environments*, discusses the potential harm that an unregulated Internet can cause on a community. Proponents argue that because the harm can be severe, there are grounds for regulation.⁸² The author argues that it is nearly impossible to go through life without offending people and just because people are

⁷⁷ WHITE, *supra* note 5, at 110-11.

⁷⁸ *Id.* at 114-16.

⁷⁹ *Id.* at 117.

⁸⁰ *Id.*

⁸¹ *Id.* at 118.

⁸² WHITE, *supra* note 5, at 119.

offended does not mean that legislation is the answer. The section ends by providing some examples of offensive speech that should be regulated.

The last section of chapter 6, *When to Regulate Offense*, examines Joel Feinberg's Offense Principle, articulating "four stringent conditions being fulfilled before the offense in question merits restriction," and Donald VanDeVeen's analogy of comparing "the states of persons offended unreasonably to the distress experienced by persons with allergic reactions."⁸³ The author argues that sexually explicit material is "easily avoidable" (aside from spam) and concludes the chapter by reiterating the difficulty of determining which sexually explicit material is offensive because taste varies from person to person.⁸⁴

Chapter 7 – Regulation: A Bad Idea

- **Chapter Summary:** The chapter examines the two types of harms that would likely be caused by regulations: (1) those specific to a regulated Internet and (2) those caused by regulation of sexually explicit materials. The author concludes that regulation of the Internet will undoubtedly cause harm.
- **Chapter Discussion:** Chapter 7 opens with Section 1, *The Price of Liberty*, and argues that if sexually explicit material is regulated, this will significantly impair the liberty of those who not only wish to post the material, but also those who wish to view it.⁸⁵ Further, the author discusses views from John Stuart Mill and John Locke pertaining to liberty and property rights. Section 2, *The Value of Sexually Explicit Materials*, discusses

⁸³ *Id.* at 123.

⁸⁴ *Id.* at 125-26.

⁸⁵ *Id.* at 127-28.

the value pornography has to those who purchase it, such as being instructional to couples to help “enhance the pleasure” and as a “catalyst for new technologies.”⁸⁶

Chapter 7, Section 3, *The Harmful Application of Regulation*, describes the over-inclusive effects of regulating material that might be considered sexually explicit to some, but in reality could contain artistic value.⁸⁷ Further, the author points out, Internet filters might pick up on information useful to users, for example material on safe sex but because of the filter, it would block access to it.⁸⁸ Moreover, the author notes that “regulation has been applied in a biased manner.”⁸⁹ Finally, concentrating on regulation of sexually explicit material takes attention away from society’s other pressing matters.⁹⁰ Section 4, *Internet Specific Harm*, briefly examines how regulation would change the structure of the Internet, thereby lessening its value.⁹¹

Chapter 7, Section 5, *The Great Potential*, discusses how the Internet can act as a forum for anyone’s voice to be heard. Further, Section 5 discusses how the Internet provides a forum for those with handicaps as they can express themselves better than in the physical world and “can serve as a mouthpiece for traditionally unrepresented groups.”⁹²

⁸⁶ *Id.* at 130.

⁸⁷ WHITE, *supra* note 5, at 133.

⁸⁸ *Id.* at 133-34.

⁸⁹ *Id.* at 134-35.

⁹⁰ *Id.* at 135.

⁹¹ *Id.* at 136.

⁹² WHITE, *supra* note 5, at 138.

Section 6, *Two Objections and Answers*, introduces and criticizes two objections in favor of Internet regulations: (1) regulation won't hinder the free flow of information and (2) that the Internet will not be influential in political and social change.⁹³ The final section, *Normative Questions and Technicalities*, addresses additional problems with regulation of sexually explicit material on the Internet. The author presents the example that regulation could lead to a slippery slope which could lead to government viewing of personal emails. Further, this regulation comes with expensive labor costs and resources in order to achieve the goals.⁹⁴ In addition, the author discusses the struggle between "filter makers and filtered sites" and the filtering problem with peer-to-peer searches.⁹⁵ The author ends the chapter with a summary of the harms associated with Internet regulation.

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⁹³ *Id.* at 139-42.

⁹⁴ *Id.* at 143.

⁹⁵ *Id.* at 145.