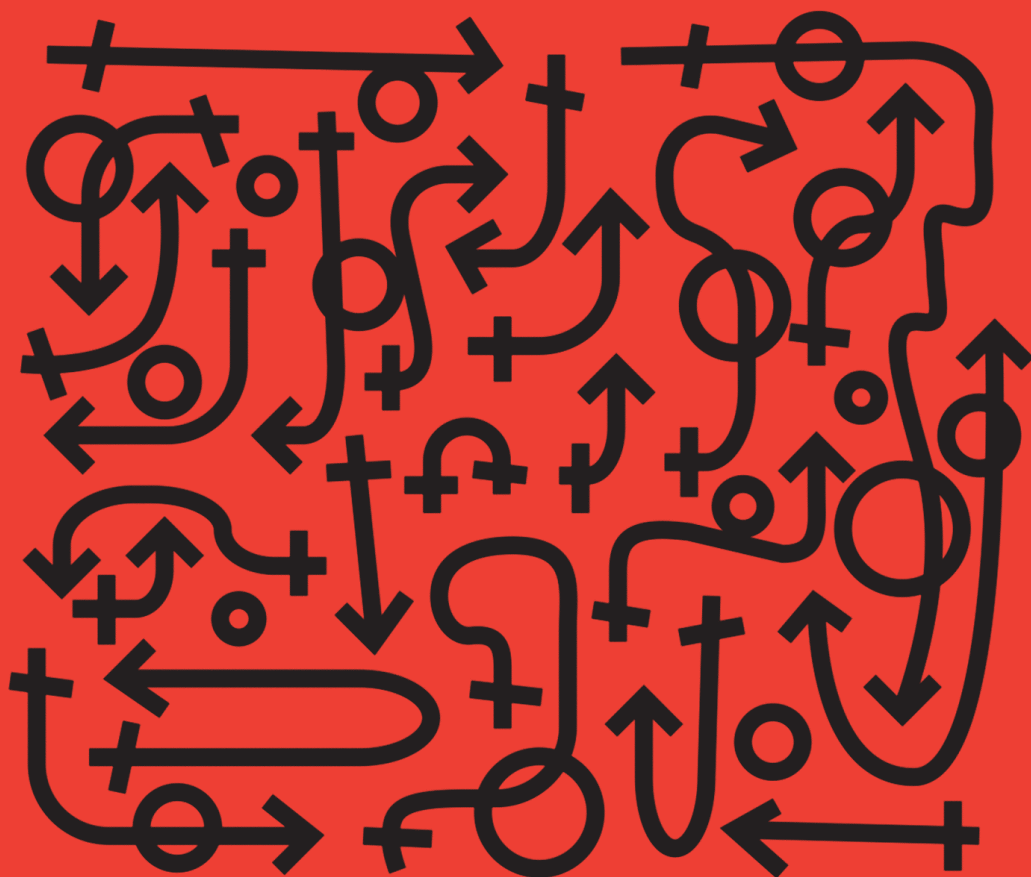


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Click “I agree”: Consent and feminism in commercial pornography

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Introduction

Adult video production is often regarded as controversial and culturally taboo. Due to social stigma concerning sexuality, including criminalisation and institutionalised offences prohibiting pornography, its industry remains largely unregulated and under-researched.

One of the most common misconceptions is that pornography exploits performer labour, namely women. Opposition to the industry and sex work at large claims that porn is the documentation of rape, preferring a singular narrative of female sexuality dependent on sexual abuse.

However, sex on an adult film set is one of the most consensual and statistically safest sexual environments.

Background

Commercial pornography¹ largely exists in digital video format on the internet, hosted on membership and video-on-demand websites. Most adult industry professionals (cast and crew) are employed as independent contractors, typically paid a day rate per project.

Adult films portray fantasy. Even when the intention is to show an honest depiction of the sex that actually happened, film language can be manipulated. Editing can rearrange a sexual timeline for a more dramatic narrative arc, moans in sound files are often duplicated, and, with “movie magic”, condoms and lubrication can appear and disappear in the final cut.

Lubrication and “movie magic”

Despite working in porn myself, I was once fooled by “movie magic” and a convincing actress. A friend showed me her performance for the fetish site

UltimateSurrender.com.² In the video, two women wrestle and earn “style points” for sexual aggressions performed during wrestling holds, such as kissing or fingering an opponent while she is pinned.

As the site’s tagline promises: “The winner fucks the loser” and the final “round” of the match culminates in a sex scene featuring strap-on penetration. In my friend’s video, the defeated performer cried out: “Please! Can’t I have more lube? Please, I need more lube!”

She looked like she was in pain so I scolded my friend, pointing at the screen: “Seriously!? Why didn’t anyone give her lube?” But she rolled her eyes and laughed: “It’s porn. Of *course* she had enough lube. She was just acting.”

For viewers who fetishise rough sex and punishment, the elements of a more “brutal” conquest, one where the performer is “uncomfortable” or humiliated, acts to heighten the sexual fantasy. The application of lube is done during a camera pan or removed in editing. Such tricks and acting performance through pre-agreed role playing is *de rigueur* in pornography, yet it even fooled me. Most people believe the abuse they see in porn is “real”, but forget that Coleridge’s “suspension of disbelief” applies to porn as it does to any other film genre.

Regardless of whether or not the final product depicts a narrative of consensual sex, consent is integral to a commercial pornography shoot, where the sexual activity is a performance of labour.

One of the most common questions consumers ask in discussions of feminism and porn is: “How can I be sure what I’m watching was ethically produced?” The underlying assumption is that an unethical porn production would involve exploitation of its labourers through non-consensual actions such as coercion and abuse.

While porn movies that feature enthusiastic verbal consent in a variety of sex acts exist, one should not assume that a production wouldn’t employ consensual sexuality by analysis of its film narrative alone. The “Please, more lube!” example demonstrates that videos depicting non-consensual

¹ For the sake of brevity, I’ve chosen to focus on the legal form of sex work that is commercial digital pornography produced in the United States where it is protected by law in two states: California and New Hampshire. My argument is that this specific legal business requires guidelines through which consent is *evident*. Outside these areas, broad concepts of porn contain situations where consent may be unclear in production or distribution (i.e. so-called “revenge porn”).

² ultimatesurrender.com

fantasies can also be created through ethical production and are common desires that many viewers want to see, and which many porn labourers themselves prefer to express.

Consent behind the scenes

A performer's sexual agency and ability is queried multiple times throughout the production process. Such query and validation exist to ensure performer safety as well as adhere to legal business practices.

Many forms of consent can appear throughout the production process:

- *Implied consent* occurs through a performer's application seeking work or a casting agent's list of the kinds of sex acts a performer is willing to do on camera.
- *Informed consent* is most evident in sexual health testing protocols. Performers know that any form of sexual activity is a risk to their personal health as well as their career. Through testing, use of barriers, and risk assessment of various sex acts, performers ascertain the best options for overall safety in a performance.
- *Expressed consent* comes in verbal or written correspondence. It pertains to information about the nature of the performance, pay, and other details. Many productions will also consult performers for a "yes" or "no" list of potential co-stars. Expressed consent also occurs while on set, when a performer can call a production hold or effectively "kill" a shoot if the performance becomes something they no longer consent to. This can be expressed through a verbal command of "stop" or "hold", or in the case of bondage and discipline, dominance and submission, and sadomasochism (BDSM) performances, through the use of safe words. (In the case of deaf performers, a sign language interpreter may be present to assist in communication between cast and crew to ensure clear affirmation of consent.)³

In the United States, legal documents create formal records of expressed consent. All productions are required to have key documentation for content distribution, including a Model Release Form in addition to an affidavit of 18 US Code § 2257 Compliance with the Child Protection and Obscenity Enforcement Act of 1988, title VII, subtitle N of the Anti-Drug Abuse Act of 1988⁴ ensuring that

the performer is over 18 years of age (under many jurisdictions minors are legally unable to give consent) and not under the influence of recreational drugs or alcohol (as someone who is intoxicated, asleep or otherwise unconscious is unable to express consent). Commonly referred to as "2257" or "Performer Source Document", it requires record keeping of performers' government-issued identification, generally a scanned image of a state driver's licence, identification card, or US passport. This form additionally requires a photographic image of the performer holding their proof of identification on set to prove the performer's age corresponds with the date of the film's production. The camera crew and producers also sign a release acknowledging workplace safety protocols in compliance with Occupational Safety and Health Administration (OSHA) regulations. As independent contractors, cast and crew file W9 paperwork with the production company to ensure proper tax documentation.

Through various forms of consent (implied, informed, expressed and documented), porn productions strive to create and maintain sexual efficacy. But in many ways, the final act of consent occurs through consumer transaction.

The exchange of money as a symbol of sex worker consent

Porn performer and vice president of the Adult Performer Advocacy Committee⁵ Conner Habib once wrote: "What is money if not a symbol of consent? While money is not the be-all and end-all of consent, it can symbolize and clarify it. Sex workers and their clients use money as a component of mutual understanding."⁶

Fiscal compensation defines porn performance as labour, qualifies the value of the work, and validates the ownership of the image.

The porn consumer engages in consent when accessing the website through site navigation culminating in a payment transaction. Purchasing porn online requires access through at least three processes: entrance, navigation and purchase.

An *age page* is the entrance into a porn website. It serves two main legal purposes: 1) it confirms that the viewer is old enough by legal jurisdiction to access the content within, and 2) it requires the viewer to "agree" to enter the site, effectively grant-

³ CrashPad Episode 71. Performers: Asteroid and Peyton. Director: Shine Louise Houston. <https://crashpadseries.com/queer-porn/?episode=episode-71-asteroid-and-peyton>

⁴ 18 U.S. Code § 2257 – Record-keeping requirements. Pub. L. 114-38. www.gpo.gov/fdsys/pkg/FR-2005-05-24/html/05-10107.htm

⁵ apac-usa.com

⁶ Habib, C. (2015, 24 June). If You're Against Sex Work, You're a Bigot. *The Stranger*. 2015. www.thestranger.com/features/feature/2015/06/24/22436683/if-youre-against-sex-work-youre-a-bigot

ing immunity to the company and its employees from obscenity charges.

Once through the age page, visitors utilise website *navigation* to browse for content. Through categories, search functions and other discerning factors they select a video best suited to their interest. This process involves an interactive element of trust between producer and consumer. Some companies display search results by filtering personal preference so that the viewer can avoid materials they may not wish to see.

In an attempt to help viewers find the porn they want to see, and avoid the porn they don't, membership site CrashPadSeries.com⁷ uses visual icons that viewers can toggle on or off to filter content with keywords such as "anal sex", "fisting" or "ejaculation". TrenchCoatX.com⁸ takes that idea further by offering customisable filters created by registered viewers with tags for content they either don't want to see ("squick") or do want to see ("squee"). The "Squick Protector" allows a visitor the option to either hide unwanted content while they browse the site, or display a warning that will alert the visitor and let them make the choice to view the material at their discretion. The "Squee Enhancer" prioritises favourable tags so that content the visitor prefers to see becomes more relevant within their navigation of the site. Through personalised navigation, consent becomes interactive between the producer and browsing customer.

At the time of the payment transaction, a customer effectively consents to view a video. After site navigation and information provided from video tags, previews and descriptions, the customer ideally has been given all the information necessary to make a satisfactory purchase. However, just like a performer can terminate a porn shoot, so can the customer retract their decision by cancelling a membership subscription or requesting a sale refund.

Commercial pornography (as opposed to a home video or other production not intended for public distribution) is comprised of agreements that bind symbolic and documented consent between porn labourers and end consumers.

This system benefits all parties involved, from performer to viewer, and encourages ethical labour conditions within production, as well as ethical viewership.

Feminist porn production

As cheaper technology and web hosting make porn more affordable to produce and consume, the "one-porn-fits-all" monopoly of "what sex should look like" is challenged to reveal new visions of porn that feature different kinds of sexuality, bodies and desires. This expansion improves porn's potential to reflect the complex biological truth that human sexuality is both diverse and natural.

Increased access to production modalities creates agency and entrepreneurial ownership for previously underserved populations. This grants the power of creating images to women, queers, people of colour, transgender individuals, and other marginalised producers. Now in a position of power, these producers can adopt new pay standards, for example, implementing equal pay for equal work.

Traditional pay rates for performers are generally negotiated per project and based on an industry standard that considers the performer's gender and type of sexual performance. However, various external factors also play a role in the negotiation of rates. For example, large production companies can generally afford to cover performers' sexually transmitted infection (STI) lab fees, travel and wardrobe, and offer higher rates. Fan marketability can also skew payments by favouring idolised Anglo-Saxon beauty standards, where people of colour, trans performers, and people of size and differing abilities are subject to casting discrimination and lower pay.

Due to a desire to create porn with diverse performers and desires, some feminist-identified producers enact an "equal pay" policy by compensating performers equally regardless of gender, experience or the kind of sex performed. A flat rate encourages performers to select their preferred co-star and perform sex acts as they choose. By paying performers equally regardless of race, size, ability or marketability, it democratises the casting process and broadens the selection of hireable performers.

In this way, porn production addresses feminist issues of labour and representation, made possible through systematic modalities of consent and sustainable commercial consumption.

Conclusion

Digital pornography incorporates systems of consent and sustainable income for an increasingly diversified market. Because it is commercial, it provides opportunity for entrepreneurial advancement, as well as a financially viable avenue for depictions of diverse desires and sexual expressions. This feminist potential includes producers who are women, trans, queer, people of colour, and

⁷ <https://crashpadseries.com/queer-porn/episodes>

⁸ trenchcoatx.com

those from other under-represented demographics. Their creative control broadens representations of human sexuality and values ethical production, respect and economic and socio-political equality. The greater our access to technology, the more feminist, sex-positive and consensual the web/world can become.

Porn literacy: A way forward

Our interest in consent and sexual imagery is not limited to commercial porn. The desire to share explicit images with one another is a natural aspect of human sexuality. As increased access to internet technology connects a global population, we struggle with the question of consent and the regulation – or rather, navigation – of sexual images. Anyone with a smartphone now has access to the tools to become a porn producer, porn distributor, and porn star.

With this new power as performer-producer, we have to consider modalities of consent with guidelines that offer protection and privacy, rather than sexual censorship and criminalisation.

Now, with the understanding of consent systems that take place behind the scenes, advocates can educate on “porn literacy” and push for improved navigation rather than place internet protocol (IP) bans on consensually produced porn and BDSM sites (such as the case of countries including India⁹ and the United Kingdom (UK)).¹⁰ Porn is the canary in the coalmine of free speech and, as such, must be protected.

Let us take a lesson from the porn industry as we, as a greater society, grapple with increasing expressions of human sexuality online.

- Consider the porn performer as the agent of consent, regardless of your interpretation of the content.
- Be an ethical customer through consensual porn consumption.
- Be aware of a site’s terms of service, and advocate improved navigation over sexual censorship.
- Involve porn labourers as consultants in the legal process.
- Invite porn labourers to engage in academic discussion.
- As with all sex workers, respect porn labourers’ ability to advocate as experts in their field.
- Rather than ban consensual sexual expressions, educate on “porn literacy” to share and improve the methods in which consent occurs in adult film productions.

9 Barstow, D. (2015, 3 August). India Blocks 857 Pornography Websites, Defying Supreme Court Decision. *New York Times*. www.nytimes.com/2015/08/04/world/asia/india-orders-blocking-of-857-pornography-websites-targeted-by-activist.html?_r=0

10 Blake, P. (2014, 3 December). Hyperkinks: ATVOD anti-porn law edition. *Pandora Blake*. pandorablake.com/blog/2014/12/hyperkinks-atvod-anti-porn-law-edition

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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