EROTICS: An Exploratory Research on Sexuality and the Internet

Policy Review

For
Association for Progressive Communications
Women's Networking Support Program

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1. Introduction

This study will review existing policy and regulation documents related to the control of internet use and their relation to sexuality and sexual rights. This is the first part of the project, "EROTICS Sexuality and the Internet: An Exploratory Research Project", developed by the Association for Progressive Communications, Women's Networking Support Program (APC WNSP). The review is part of the first stage of this project and aims to analyse and take into account existing international and regional policies and regulations with reference to selected national policies insofar as they are related to sexuality and sexual rights.

This is a subject matter little addressed by feminists and women's groups, despite their considerable use of this technology. As pointed out by Magaly Pineda from the Dominican Republic in a recent interview[1], "women do not have a significant profile in the debate about new technologies and their regulations and policies, thus allowing for the existence of aspects that are negative for women, some of which are harmful".

This review raises many questions and tries to uncover some of the answers, such as who are the key stakeholders involved and what adaptations have been made upon demands by users, NGOs, governments and companies involved. The impact that regulations and terms of use have on users and on the international agenda, censorship and discourses will be analysed. For example: Do they include a gender perspective? Are girls and women considered users, citizens or victims of trafficking? Is there consensus on the definition of pornography, or do multiple meanings coexist? Are these based on laws or on users' customs? What is their relationship to women? Can explicit vs. implicit content be deciphered? Is eroticism subject to censorship to the same degree as pornography? What measures of control exist? How is punishment applied? How are power abuses considered? How is the internet used as a tool for transmitting information about sexual and reproductive health? What information is transmitted? Do censorship and control mechanisms also apply to sites framed in educational terms? How is the right to sexual education and to seek, receive and impart information related to sexuality protected/secured by current content regulation regimes and mechanisms? How is the promotion of sexual roles considered? Are sexual rights respected? Are gender violence and discrimination promoted? How does the internet promote sexual rights? Are users able to exercise these rights free of violence and coercion? What constitutes harm and how is it defined?

We also analyse the important heterogeneity of these policies and regulations insofar as they affect women's lives and particularly aspects related to their sexuality and their sexual rights. Many tensions exist between these policies and regulations and the principles of human rights, as established by the Universal Declaration of Human Rights, whose 60th anniversary we celebrate this year. Paradoxically, while the internet is primarily held to be the technical tool with most capacity for permitting and

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[1]Monitor de políticas TIC de APC en América Latina y el Caribe; "Cibercrimen ¿una mirada con lente de género?" At: http://lac.derechos.apc.org/es.shtml?apc=he_1&x=5538350.
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guaranteeing the right to freedom of expression and to communicate for the people, it also holds an intrinsic potential for the violation of these same rights, which can be manipulated not only by governments but also by lucrative multinational private enterprises who impose their laws and norms on users without being held accountable for their actions.

Methodological framework

As mentioned above, this research was developed in the framework of the project "Sexuality and the Internet: An Exploratory Research Project", which is being developed by Women's Networking Support Programme of the Association for Progressive Communications (APC WNSP). This project will conduct cross-country research to respond to questions such as: How do emerging debates and the growing practice of online content regulation either limit or facilitate different ways women use the internet and its impact on their sexual expression, diverse sexualities and the assertion of their sexual rights? The first stage of this research focuses on mapping the research landscape through a literature review of existing writings and research reports on the topic of sexuality and the internet and a review of policy documents, interviews with key informants and documentation of select case studies in order to strengthen the research design. FEIM was selected to carry out a review of policies and regulations on the use of the internet insofar as these are related to sexuality and particularly to sexual rights, including how censorship practices found in different policies and regulations impact sexual rights as well as the rights to freedom of expression and communication of users. Terms such as "harm", "indecency", "pornography", "protection of minors", "moral norms" and others specifically limit and violate the right to freedom of expression given the poor control exercised by civil society organisations and feminist groups in particular.

Another aspect included in this research will be privacy regulations and how they impact the right to freedom of expression as well as sexual rights, especially for women and girls and other sexual diversities. As Carlos Gregorio mentioned, "there is still tension and conflict between the right to access information, the right to a public trial and the right to privacy for the victims, which has not been resolved by legislation".[2]

The **methodology** is based on a feminist approach which calls for the incorporation of women into research processes and which has resulted in the development and implementation of new research topics and specific methodologies, as well as the critique of research findings containing sexist or gender biases. We adopt a feminist methodological perspective, based on Sandra Harding's proposals[3] established as early as 1985, in order to explore some of the main issues developed in policies and regulations.

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[2] Monitor de políticas TIC de APC en América Latina y el Caribe, Op. Cit.

[3] Harding, Sandra. "¿Existe un método feminista?". In Bartra, Eli: *Debates en torno a una metodología feminista.* UAM-X, Mexico, 1994, pp. 9-34. In this article, Harding establishes the basic guidelines for a feminist research project: include new empirical and theoretical resources centred on women's experiences, the research findings should provide explanations of social phenomenon that women want and need. Lastly, the aim is to situate the researcher on the same critical level as the object of study, keeping in mind her class, ethnicity, culture and other factors that determine her subjectivity.

The **goal** of this research is to develop a review of policies and regulations that govern the internet and censorship practices in relation to sexuality, at international and regional levels and including some national case studies, as well as the main stakeholders, communications rights advocates and participants in this debate, focusing on the presence and the role of women's and feminist groups and organisations as well as those of other sexual diversities.

The **specific goals** are to:
- Identify and analyse the main content regulations and how they operate on the internet.
- Identify and describe the tension that exists between sexual and reproductive rights, privacy right and freedom of expression.
- Identify and describe regulation discourses and they ways they affect content restrictions.
- Identify the main actors that intervene in the development and implementation of content regulation policies.
- Assess the impact of these regulations on users' ability to exercise their sexual and reproductive rights.
- Identify and describe the gaps in this subject matter.
- Identify and describe tendencies in this subject matter.

The **universe of analysis** consists of internet regulations and policies at international and regional levels and at some at the national level to exemplify important case studies.

This is a descriptive and exploratory research project, which makes use of qualitative methodology to review regulations, laws and discourses.

Information was collected through the research and review of existing documents primarily via the Internet and some accessible literature, as well as interviews with key informants and consultations with many colleagues who provided their suggestions and input.

The documents explored via the internet were from: the United Nations; international, regional and national government meetings; internet-based and regional organisations; private sector meetings; related laws and court decisions; and existing studies and research.

The "Terms of Use of the main platforms were reviewed and the community standards of these platforms were explored based on the following criteria: minimum number of users -established at 20,000,000-, and regional representation, in order to ensure that the most popular platform from each region be included[4]. It was based on these parameters, that the following platforms were selected for study: Bebo, Blogger, Cyworld, Facebook, Flickr, Friendster, Google, Hi5, MSN Windows Live, Myspace, Netlog, Orkut, Pornotube, Reunion, Tagged, Yahoo and Youtube.

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[4]The sources consulted in order to establish these parameters were: ComScore, Top Global Web Properties, May 2008. At: http://www.comscore.com/press/data/top_worldwide_properties.asp. Fulgoni, Gian. Consumer Trend in Local Networking. October 2008. At: http://www.comscore.com/blog/2007/10/consumer_trends_in_social_netw.html.

Using the most popular search engines (Google, Yahoo and MSN Search) as well as specialized libraries (Scielo, Bireme and BVS Gensalud), a search for the following key words, either by themselves or in combination with others, was carried out in English, Spanish and Portuguese: internet, harmful, regulation, legislation, policies, community standards, violence against women, pornography, content regulation, cybercrime, body, censorship, sexuality, sexual and reproductive rights, sexual education, protection of minors, privacy, freedom of expression.

Finally, the websites of organisations with a long work history in this field were consulted for documents, news and debates[5].

Interviews with key informants were carried out in order to identify and corroborate the field of debate and the actors and the critical issues that exist in this field. The interviews were semi-structured[6] and were held over telephone, by e-mail or personally on the basis of a quick interview guide developed especially for this review. The guide has three modules: the first module is about national, regional and international policies and regulations; the second module is about the main issues for debate and critical points related to sexual rights and sexuality from a feminist perspective; and the third module is about the main actors that are involved in these debates. In the selection of interviewees, their careers and past experiences in the research field were considered, and the Association for Progressive Communications collaborated by providing the contact information for several of the interviewees. The Appendices include a list of the interviewees as well as their responses. In the end, only six interviews were done. Two informants were not able to participate due to their activities and two others did not respond to the requirements.

Conceptual Framework

Since the mid-1990s deregulation processes have occurred in the area of communications. Liberal laws have concentrated on regulating information and communication technologies, while States have deregulated the processes of production, circulation, reception and reproduction of discourses, subjecting them to the logic of the free-market. According to various theorists[7], this process is anchored in the context of globalization, which has caused a revolution in information and communication technologies. These technologies are the key factor in cultural globalization, which has the capacity to allow us to belong, both in real and virtual ways, to the territorialised and deterritorialised worlds which we experience simultaneously[8]. Nonetheless, the internet, as a virtual and artificially constructed space,

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[5] The websites of the following organisations were consulted: the Association for Progressive Communications (http://www.apc.org), GenderIT (http://www.genderit.org), CyberRegulation Consulting Group (http://www.cyberegulation.com), Mujeres en Red (http://www.mujeresenred.net), Privacy International (http://www.privacyinternational.org), Alfa-Redi (http://www.alfa-redi.org), OpenNet Initiative (http://opennet.net), Global Partners - Freedom of Expression Project (http://www.freedomofexpression.org.uk), Cyber Crime Law (http://www.cybercrimelaw.org), Delitos Informáticos (http://www.delitosinformaticos.com), The Free Expression Policy Project (www.fepprojEUt.org), Monitor de políticas TIC de APC en América Latina y el Caribe (http://lac.derechos.apc.org)

[6] Interview guide and answers are attached. See Annex 1.

[7] Zygmunt Bauman, Anthony Giddens, Julio Godio and Jean-François Lyotard, among others.

[8] La *desterritorialización es* falta de vínculo entre territorio y cultura, relacionada fundamentalmente a dos procesos: la pérdida de la centralidad del Estado con respecto a las relaciones sociales y la producción simbólica; y la velocidad de las comunicaciones que dan idea de volatilidad, el no-lugar, el tránsito. Virilio, Deleuze y Guattari, son los autores representativos de este desarrollo conceptual.

should not be considered in opposition to real spaces. Such an opposition is "simple and mistaken"[9], due to the fact that it conflates virtuality with the pure absence of existence and of reality, while, paradoxically, it actually has a visible and material presence.

The breakthrough of the Internet revolutionised that which came before it, by opening new spaces and allowing for increased transcultural interactions, and at the same time, has created a significant space for the expression of both hegemonic and marginalised discourses. In this context, different actors intervene in the debate about the different ways to regulate information and content related to sexuality that circulate on the internet, often contributing to the construction of "vulnerable groups" in need of special protection. This is a debate located at the intersection of the freedom of expression, the right to privacy and the guarantee of full respect for sexual and reproductive rights.

As with all research, this review is approached from a subjective standpoint, which is supported theoretically and therefore is not neutral. From a gender and human rights perspective, the concepts of autonomy, power relations, sexual and reproductive rights constitute privileged analytical categories, provided that we work on the principal that sexuality are socio-historical, political, cultural and subjective constructions. As Foucault argues, power not only represses and prohibits, but is also a productive force that is incorporated into social/individual bodies through discursive mechanisms which create forms of knowledge and model and construct social subjects. With regards to sexuality, and specifically women's sexuality, the challenge is to locate women's marks and voices within contexts where different levels and orders of power exist, particularly within patriarchal frameworks. Nonetheless, a considerable part of the conceptual development of the research will be constructed around the different definitions used by the main actors that intervene in the debate and which are shaped by the interests they represent.

By **censorship** we understand the use of power by the State or other entity, to control the freedom of expression. In its modern definition, censorship consists of any intent to prohibit access to information, viewpoints or diverse forms of expression[10], directly defying **freedom of expression**, a fundamental right guaranteed by Article 19 in the Universal Declaration of Human Rights from 1948[11], and which is included in the Constitutions of most democratic systems. The author Craig Depken considers censorship to be "the moral or legislative process by which society "agrees to limit what an individual can do, say, think or see".[12]

The right to freedom of expression is the conceptual basis for the **right to information.** A key aspect of modern democracies is that the purported capacity of citizens to participate in circulating and exchanging information and to communicate in society. This allows for society to access diverse opinions and cultural stances. However, the ways in which media is currently concentrated in the hands of few limits citizens'

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[9] Levy, Pierre, *¿Qué es lo virtual?* P. 17. Paidos, Barcelona, 1999.

[10] Borón, Atilio, "Tras el búho de Minerva", 2000.

[11] "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, rEUeive and impart information and ideas through any media and regardless of frontiers."

[12] Depken, Craig, "Who supports Internet censorship?", 2006. Available at: http://www.firstmonday.org/issues/issue11_9/depken/index.html

access to information[13]. Although national constitutions often guarantee freedom of expression, regulations imposed on media and the internet do not always allow everyone the same degree of freedom.

The International Covenant on Civil and Political Rights recognises and limits the right to information, maintaining that upon exercising this right one takes on "special duties and responsibilities", restrictions that must not be arbitrary, but rather are determined by law: "a) For respect of the rights or reputations of others; and b) For the protection of national security or of public order or of public health or morals"[14].

Another right that comes into play is the **right to privacy**, which according to article 12 of the Universal Declaration of Human Rights, grants all persons the right to privacy in their lives, families and homes without interferences, particularly from governments, private enterprises or other entities. The internet, due to its essential characteristics, poses great difficulties in respecting privacy but also allows people to avoid government restrictions. This right constitutes a legal asset with social protections, affirms the exercise of human freedom and, likewise, sets a limit on social interaction. Nonetheless, a consensus on this meaning has not been reached in all countries. Some have opted to use it in a generic sense without differentiating between intimacy and private life (i.e. Brazil, Argentina), notions which, for some legal systems (i.e. United States), constitute conceptually distinct aspects.

Private space has been an important arena for demanding sexual rights. Arguments against State or government interference have been put forth on the basis of the individual's right to privacy, in tension with arguments on the protection of social morality. At the same time, this has raised questions around abuses by individuals and private entities in 'private spaces', where claims of protection can go against the argument of non-State interference.

Since the late 1980s and during the 1990s, various world conferences organised by the United Nations have developed action programs that, among their recommendations, include the need for governments to safeguard women's and men's reproductive health and rights. Among such programs, the following stand out: the Convention on the Elimination of All Forms of Discrimination against Women from 1979, the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995).

At the International Conference on Population and Development held in Cairo in 1994, the different governments and civil society - represented through their organisations - agreed on a number of aspects promoting women's and men's sexual and reproductive health and rights, and created platforms for action to guarantee compliance with these proposals. In the Action Plan, **reproductive rights** are defined as "embrac[ing] certain human rights that are already recognised in national laws, international human rights documents and other consensus documents. These rights are based on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest

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[13] Mastrini, G. y Becerra, C, Presente y tendencias de la concentración de medios en América Latina, Revista de estudios de la comunicación, Nro 22, Mayo 2007.

[14] ICCPR, Article 19, paragraph 3.

standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents" (ICPD, 7.3).

The following year in 1995, the Platform for Action that came out of the Fourth World Women's Conference reaffirmed the definition of reproductive rights provided by ICPD and also included **sexual rights**: "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences" (Paragraph 96).

Sexual rights are a fundamental element of Human Rights. They include the right to liberty and autonomy in the responsible exercise of sexuality. In a set of Action Sheets about Women's Sexual and Reproductive Rights and Health[15], the international women's group HERA – Health, Empowerment, Rights and Accountability – defined sexual rights as:

- the right to happiness, dreams and fantasies;
- the right to explore one's sexuality free from fear, shame, guilt, false beliefs and other impediments to the free expression of one's desires;
- the right to live one's sexuality free from violence, discrimination and coercion, within a framework of relationships based on equality, respect and justice;
- the right to choose one's sexual partners without discrimination; the right to full respect for the physical integrity of the body;
- the right to choose to be sexually active or not, including the right to have sex that is consensual and to enter into marriage with the full and free consent of both people;
- the right to be free and autonomous in expressing one's sexual orientation;
- the right to express sexuality independent of reproduction;
- the right to insist on and practice safe sex for the prevention of unwanted pregnancy and sexually transmitted diseases, including HIV/AIDS;
- the right to sexual health, which requires access to the full range of sexuality and sexual health information, education and confidential services of the highest possible quality.

From our perspective, the concept of sexual rights should be built around a positive rather than negative definition, embracing personal freedom and autonomy over one's body, sexuality and reproduction, sexual relations based on mutual consent and without any form of coercion, full respect for bodily integrity, respect for and the guarantee of freedom in expressing one's sexual options, the recognition of the right to experience a pleasurable sexuality, and the existence of the necessary guarantees for the exercise of these rights, including the right to information and user-friendly health services.

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[15]HERA, "Women's Sexual and Reproductive Rights and Health", 1996.

This report is organised in seven chapters. The first chapter addresses international and regional policies and regulations, their history and the main tendencies. The second chapter analyses the relationship between the policies and regulations described in the previous chapters as they are related to certain key concepts in this research: pornography, eroticism, sexual and reproductive rights, women, sexuality and censorship, an analysis of the implicit or explicit concepts of harm found in the policies and regulations, how it is represented in different contexts, as well as the sexual practices it takes into account and the construction of the concept of security and vulnerable groups.

The third chapter analyses the terms of use and community standards of the social networks and websites that are used for sharing a certain type of content (audio, video and text).

The fourth chapter addresses how these laws are put into practice, the ways in which they operate as censorship or filtering mechanisms, their discourse, and whether or not they include a gender perspective.

The fifth chapter analyses the mains actors involved in the debates about internet content and content regulation, focusing primarily on the role of women and feminist groups. The following chapter describes some country cases.

The closing chapter contains a summary of the review as well as the main conclusions and recommendations that came out of this research.

The report includes a collection of appendice that contains the transcription of the interviews that were held concerning the main issues in this report, including the names, relevant professional experience and contact information of the interviewees.

2. International and regional policy and regulations. A brief history

The initial stages of internet development were not accompanied by many policies or regulations. This was largely due to the internet's rapid development, its virtual existence and that fact that it is not associated to any specific country, organisation or company. Regulations were developed primarily as part of private enterprise and guided in large part by business interests. Today, most countries have adopted legislation in these regards.

There is no one universal/unique legislation to homogenize the measures taken by different countries in their regulation of the use of the internet, such as measures for classifying crimes, for establishing the responsibilities of the different actors involved or the kind of information that circulates on the internet.

The unrestrictive history of the internet, its international presence and its technical complexities have tended to make governments wary of involvement. Governments with a libertarian stance may opine "if

you don't like it, don't look at it", while authoritarian governments have taken on a wide variety of responses to the challenges posed by the internet[16].

In general, there are three fundamental issues that governments and other agencies and associations face when considering how to develop their regulating role and policies: how to define jurisdiction, how to deal with the technical complexities and whom to hold responsible for the content[17]. Due to the borderless nature of the internet, attempts to limit what is posted online within national jurisdictions of any given country may be challenging since such limits can be avoided by transferring one's content, online space or activities to different countries with different laws. As Depken affirms, it is now seen as more practical to use filtering technologies as a way of limiting what can be viewed on the internet.[18] The usage of filtering technologies are not simply to respond to a practical need, but is also a political move due to the trans-scalar nature of current policies.

The internet represents an important medium for information sharing, personal expression, innovation, creation of new and rapid forms of communication among people and economic development. To preserve these benefits, it is vital that policies and regulations not affect online contact, ensure broad access to the internet and respect freedom of expression as well as the right to communication for all[19].

For governments, the internet provides a dilemma. Effective national and international regulations are clearly complicated from a technical standpoint. The forms of expression that suffer discrimination worldwide must call to our attention the dangers of restrictive regimes, considering the multiplicity of ways the term "indecent" is interpreted by national laws. In many countries, such as Algeria for example, content considered "material that undermines public and moral order", and includes "denigration of the President through insults or defamation" are regulated. Australia regulates discourse considered "inappropriate for minors, as well as child pornography, bestiality, excessive violence, sexual acts and information about delinquency, violence and drug use", while Egypt warns against discourse on "taboo issues, human rights violations, critiques of the President, his family and the army, sex and modern versions of Islam", which are considered material that intends to corrupt public morals. Spain reserves the right to shut down websites considered to "undermine" a whole list of social values.[20] As mentioned by Evre Kaynak, National Program Coordinator of Women for Women's Human Rights-New Ways in Turkey, censorship is a common practice there and is based on discourse about "indecency", "morality", and "social and family values", and, in several laws and regulations, references are made to sexuality as a "threat to public order".

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[16]Kid Shield: ProtEUting children on the internet. "International Internet Politics". At: http://www.kidshield.com/politics/politics_international.htm

[17] Ibid.

[18]   Depken,   Craig,   "Who   supports   Internet   censorship?",   2006.   Available   at: http://www.firstmonday.org/issues/issue11_9/depken/index.html

[19]Microsoft Corporation. "Microsoft on the Topic: Online Freedom of Expression", 2008. At: http://download.microsoft.com/download/C/6/9/C69D0366-C3EB-4376-B42B-7820EFE844BB/Microsoft_on_the_Topic_Freedom_of_Expression.doc.

[20]Privacy International, Censorship in the context of the Internet. Available at: http://www.privacyinternational.org/article.shtml?cmd%5B347%5D=x-347-82893

National policies and regulations are in the realm of national governments who choose whether or not to consult with other stakeholders, such as civil society, the private sector and others. However, a need for some coordination exists and the need to create forums for discussion, debate and exchange of information and experiences has begun to be perceived as a way of guiding national, regional and international policy and regulatory decision-making and maximising countries' abilities to interact using ICTs and the internet across borders. Governments recognised the need to develop ways of avoiding uncontrolled access to external or "foreign" ideas, concepts, beliefs and the influence that these ideas may have on their citizens in ways that are difficult to predict or control. As a result, forms of censorship and restrictions such as regulations and policies began to be introduced. While some countries were guided primarily by political motives, others were guided by religious principles, some by both, some by specific population groups as minors, and some simply by prejudices. Among those politically motivated, China is a paradigmatic case due to its stringent censorship policies and practices[21]. Meanwhile, in some Eastern European countries such as Poland, as stated by Wanda Nowicka, the political control is implemented by the now "democratic government".

Concerns about access to content on the internet vary markedly around the world and regulatory policies reflect this. What is illegal in one country is legal in others, and what is deemed unsuitable for minors in one country is not in others. This heterogeneity as well as the problems in defining jurisdiction makes it very difficult to apply such regulations. People have many ways of avoiding the restrictions and regulations imposed by the governments, which is not the case for those imposed by the internet service providers since these are easier for users to get around.

Currently, there are two different censorship mechanisms specific to the internet: first, using technology to limit what information is transmitted, and second, using procedures that limit the availability and intended impact of information[22]. The first mechanism - technological barriers - include restrictions either on the origin or the destination of information. Those that restrict the origin of information block access to certain websites. The most common form of these restrictions is filtering systems, which can be controlled by users, companies or institutions. Users never find out about the sites they are not able to access. One particular problem is that filtering systems used on computers with internet access for the public do not typically warn users what kinds of restrictions are in place. This type of filtering operates in three different ways: through web browsers, through special software or through antivirus or spyware programs. Technological limitations that restrict the destination of the information block access to websites from other countries by using the server to identify the website's IP address. The main mechanism for limiting access is through search engines, which operate using an indexing system that saves a copy of every website (cache). A website or any specific content can only be found if it is has been indexed and if the cache has been recently updated.

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[21]Mathiason, J. & Kuhlman, C. "International Public Regulation of the Internet: Who Will Give You Your Domain Name?", 1998. At: http://www.ntia.doc.gov/ntiahome/domainname/130dftmail/mathiason.htm

[22] This distinction was made by Carlos Gregorio in "Censura, mecanismos de control y derechos ciudadanos", a paper he presented at the seminar "Gobernanza de Internet y Políticas Públicas de TIC". Quito, Ecuador, 27-28 June, 2006.

In terms of legislation, laws do not clearly establish the right to freely access information on the internet. As Gregorio points out, "laws that call for certain websites to be blocked indicate that the right to freedom of expression has yet to be fully developed. No one in their right mind would intend for freedom of expression to promote child pornography or other crimes. We therefore come upon the problem of how to guarantee all rights without blocking websites or content"[23]. It is more common for countries with authoritarian governments to apply content censorship norms in order to censor information that promotes political parties or ideas that go against the government. Non-secular governments strongly based on religious principles also tend to establish norms that use censorship as a way of upholding and perpetuating their ideology.

Some governments have gone much further than just blocking access to a particular website, for example Playboy wed in China, and they also block sites containing politically sensitive material such as Voice of America, and the websites of Human Rights organisations such as Amnesty International, among others.

At the international level, UN agencies have developed activities focusing on this topic, especially since 2000, which marked a beginning for global plans of action and has encouraged States to create laws or regulations in accordance with these plans.

During the year 2000, the importance of ICTs was considered within the highest levels of the international community. In the "United Nations Millennium Declaration"[24] and the Economic and Social Council's Ministerial Declaration, "Development and international cooperation in the twenty-first century: the role of information technology in the context of a knowledge-based global economy"[25] was developed to address the issue of accessibility to new and emerging ICTs from the perspective of disabilities or in the context of a broad human rights framework.

A High-Level Summit Organizing Committee (HLSOC) was established under the patronage of Kofi Annan, UN Secretary-General. Its purpose was to coordinate the efforts of the international United Nations family in the preparation, organisation and holding of the World Summit Information Society (WSIS)[26].

In 2003, the first meeting of the World Summit Information Society was held in Geneva. This meeting witnessed the participation of many stakeholders, such as governments, the private sector, NGOs and UN agencies. In the preparatory process, governments partook in large and intense negotiations to draft the Declaration of Principles that would form the bedrock for the Information Society and formulate a Plan

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[23] Op cit, pag 10.

[24] In the United Nations "Millennium Declaration" (General Assembly resolution 55/2), Heads of State and Governments resolved "to ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the EUOSOC 2000 Ministerial Declaration, are available to all".

[25] The EUOSOC states in paragraph 5: "We are deeply concerned that, at present ICT's huge potential of advancing development has not been fully captured … urgent and concerted actions at the national, regional, and international levels are imperative for bridging the digital divide and building digital opportunities."

[26] WSIS. At: http://www.itu.int/wsis/basic/about.html

of Action focusing on concrete targets, setting up an implicit and general foundation of the responsibility of States in regards to the internet and what aspects should be regulated. It is noteworthy that their actions have been centred on the principles of the UDHR, addressing users in terms of citizens rather than consumers. After the meeting, three Preparatory Committee Sessions and four Regional Conferences and thematic workshops took place[27].

Despite all governments having been involved in the WSIS meetings and having signed the Declaration and Plan of Action, few of them promote humans rights or a gender perspective or take minors or vulnerable groups into account in their public policies or regulations. A number of countries either prohibit general public access to the internet, or require internet users to be registered or licensed by a government authority before permitting them restricted access[28].

During the second WSIS meeting, held in Tunis in 2005, most of the agreements from the first phase were ratified but no progress was achieved in defining what information and content is considered obscene or illicit. In preparation for the WSIS meeting, Human Rights and media organisations increased their criticism of Tunisia's widespread censorship practices and internet controls. One of the top issues in the WSIS was that the international management of the internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society, international organisations and UN agencies. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the internet, taking into account multilingualism.

One of the most important results of this meeting was the creation of the internet Governance Forum (IGF). This forum developed three meetings: the first in Athens in 2006, the second in Rio de Janeiro in 2007 and the third in Hyderabad in December 2008. In both meetings stakeholders, governments, the private sector, NGOs, the media and UN agencies participated. As was established in Paragraph 72 of the Tunis Agenda for the Information Society, the objectives of the IGF are: "Discuss public policy issues related to key elements of internet governance in order to foster the sustainability, robustness, security, stability and development of the internet; Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the internet and discuss issues that do not fall within the scope of any existing body; Interface with appropriate inter-governmental organisations and other institutions on matters under their purview; Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities; Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the internet in the developing world; and strengthen and enhance the engagement of stakeholders in existing and/or future internet governance mechanisms".[29]

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[27] Africa – Mali, May 2002; Europe – Romania, November 2002; Asia Pacific – Japan, January 2003; Latin America and the Caribbean – Dominican Republic, January 2003; Western Asia – Lebanon, February 2003.

[28] Information on countries in this category is available in the Reporters without Borders/Reporters Sans Frontières report "Enemies of the Internet" of February 2001.

[29] WSIS, "Tunis Agenda for the Information Society", 2005. Available at: http://www.itu.int/wsis/docs2/tunis/off/6rev1.html.

None of the documents from the three meetings explicitly mention censorship. However, they do state the need for communications to be free from restrictions. The premise for the documents from the three forums was the elimination of restrictions on web browsing, based on the freedom of expression, the free circulation of information, the belief that ideas and knowledge are valuable assets, and that the open or unrestricted nature of the internet are what make it such a unique and important resource for fomenting human development.

In 2005 the Forum on Gender and ICTs for WSIS was held in Seoul, South Korea. Representatives of international agencies, governments, NGOs and companies from 36 countries signed the document "Seoul-Gyeonggi Declaration on the equal participation of women in the information society" reaffirming the need to take the Beijing Platform for Action and the Convention on the Elimination of Discrimination Against Women (CEDAW) into account, which recognised the increased presence of cyber pornography, trafficking, sexual exploitation and violence against women on the internet, as well as the double role that the information society can play: as a threat or as facilitating opportunities for women. This document also highlights the importance of considering the specific needs of different women: indigenous, rural, marginalised and young women, women living in developing countries, etc. The document however, does not mention women's diverse sexualities or identities.

In 2005 the Internet Corporation for Assigned Names and Numbers (ICANN) approved the designation of .xxx as a worldwide domain for sexually explicit content. This provoked protest from various governments, led by Brazil and the United States, who submitted letters in protest. After three months of debate, and under heavy pressure from the United States, ICANN made the decision not to put the .xxx domain into effect. Apart from the debates that this process caused on many websites, the participation of users was scarce[30].

Prior to the appearance of the International initiatives, many regional ones were developed. On a regional level, only one consolidated regulation was found in the EU. From 1999 to 2010, the Safer Internet Action Plan (SIAP) is being developed and among its main objectives is "creating a safer environment through promotion of hotlines, encouragement of self-regulation and codes of conduct". These, along with setting up a filtering system, are the main measures of control promoted by the EC.[31].

In 2003, the Summit on Internet Content was held in Munich, which was organised by the Bertlsmann Foundation and Internet Content Rating for Europe (INCORE). In the Summit's final document, they set out a series of practices and recommendations for governments, businesses and users following SIAP guidelines and having mainly to do with the privacy of messages, e-business norms and how to deal with spam.

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[30]http://www.icann.org/en/announcements/announcement-30mar07.htm. A copy of the resolution from the Board meeting and transcript of the meeting are available at: http://www.icann.org/minutes/minutes/resolutions-30mar07.htm.

[31] http://europa.eu/scadplus/leg/es/s21012.htm

In Latin America during 2002 the Conference of the Latin American and Caribbean Internet Address Registry (LACNIC) aimed at administrating the resources available on the internet[32]. The result of the Conference was a call for greater internationalisation of internet governance, which differed from the IGF in that it considered that internet governance does not exist due to the very nature of the internet being ungovernable as one entity, which implies that there is no organisation or actor that can set standards or determine content.

3. Pornography and sexuality on the internet in relation to policies and regulations

Respect for individual freedoms and human rights, such as communication, privacy and freedom of expression, and the difficulty in agreeing on an international regulatory framework that can overcome socio-cultural differences, are mentioned in the regulations and policies as limits to establishing a framework for international action and as the reason for which no progress is made on the definition of content or categories related to sexuality.

In both phases of the WSIS, one of the main goals mentioned is the "commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilise and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights"[33]. Based on this main objective, certain measures are defined and adopted as a plan of action to move forward with the realization and achievement of the agreed goals. In the first phase of WSIS, Geneva 2003, in the section on ethical dimensions it is agreed upon that all players in the information society must take measures and actions to prevent "abusive uses of ICTs, such as illegal and other acts motivated by racism, racial discrimination, xenophobia, and related intolerance, hatred, violence, all forms of child abuse, including paedophilia and child pornography, and trafficking in, and exploitation of, human beings"[34].

This is the only reference made to pornography in the entire document, and when it is mentioned, it is only to penalize it, and no definition of the activities and content that are considered pornographic are specified. Pornography is only problematised insofar as children are involved, while other types of pornographic material have not been incorporated as problematic in the working agendas of the pre-conferences at country level, nor have minimum criteria been established in order to identify pornographic content that could incite or support violence against women. Women are only mentioned in terms of the need to guarantee equal access to ICTs and to strengthen their role and participation in the debate and decision-making on the issue as a way of ensuring a more democratic process, but no special measures

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[32] LACNIC III - 11/12 de Noviembre de 2002 - Ciudad de México, México. Available at http://www.lacnic.net/sp/eventos/lacniciii/

[33] WSIS Executive Secretariat, Final Report on the Geneva Phase of the World Summit on the Information Society, Pg. 2.

[34] Op. Cit, pg. 10.

have been created so far. However, in the democratization of the ICTs, other populations are not mentioned, such as GLTTBI, who - as will be seen below - are subject to content filtering and censorship.

In the second phase, Tunis 2005, there is a shift in the document and pornography and paedophilia are no longer mentioned; neither are trafficking or exploitation of human beings. No reference is made to pornographic, illegal or harmful content in this document. Only in relation to children and young people is the commitment to incorporate "regulatory, self-regulatory, and other effective policies and frameworks to protect children and young people from abuse and exploitation through ICTs"[35] reaffirmed.

Analysing the debates and news about both stages, there weren't many important actions taken by civil society or governments with regards to this change or the omission of child pornography. One of the few groups to raise their voices regarding this change were the thirteen organisations that make up the ECPACT International who, in the framework of the WSIS Child Rights Caucus, made a statement affirming and calling to continue working along the issues of the commitments made in Geneva in terms of protection of minors, expressing that: "The agreement to recommend multi-stakeholder partnerships as defined in the Agenda for Action is an important step forward and is welcomed by civil society groups. However, this structure of inclusiveness is not reflected in the narrow range of action lines that have been defined for follow up. In this context the Child Rights Caucus would urge the Summit to consider a follow up mechanism that would allow an E-Child Action Line category with a defined moderator/facilitator. This would provide an appropriate forum to address policy and research development and promote systems of multi-stakeholder cooperation that benefit all children".[36]

The importance of mainstreaming gender analysis and planning strategies and actions in relation to ICTs is mentioned in both phases of the WSIS, however with certain limitations. While recognising the existence of a gender gap within the digital divide, and due to which a commitment to promoting women's issues and gender equality, this perspective is mentioned only in reference to equal opportunities, access, training and participatory processes, in which ICTs are seen as an instrument in achieving these goals. However, no reference is made to women or gender in regards to contents that circulate online or by pointing out gender differentials in cases of abuse. In no other policies or regulations is a gender perspective incorporated, not even implicitly.

Except for articles produced by women's or gender organisations, proposals or specific actions have not been made toward broadening the presence of women and making sure they are not included only as a way of democratising ICT access. The reports by Special Envoys at WSIS, from groups like APC, GenderIT and Radio Feminista is notable. Nonetheless, they are mainly centred on denouncing the scarce presence of women in decision-making arenas without further developing the need for them to be included in other aspects of the agenda.

Although the women's rights advocates present have made several notable contributions to the WSIS and the IGF debates (for example when it persuaded the governments to remove the brackets from

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[35] WSIS Executive Secretariat, Final Report on the Tunis Phase of the World Summit on the Information Society, Pg. 23.

[36] EUPAT International, Statement, November 2005. At: http://www.itu.int/wsis/tunis/statements/docs/pe-EUpat/1.html

paragraph 24 in which they discussed the digital gender gaps on the eve of the Tunis WSIS), they have not been able to successfully advance the debates about content, nor about the difficulties in opening up the discussions so that they include more women participants and more participants from the feminist movement. Much of the focus was placed on issues of access and equality, with little debate on content issues, filtering systems or censorship at the internet level[37].

Nonetheless, it is important to point out that even if the demands of the women's movement haven't been comprehensively incorporated in the WSIS and IGF platforms, they haveen been exceedingly effective in the women's movement's fight to increase its visibility in the Beijing Platform of Action and, relatively speaking, in the media.

In terms of the European Community's multi-year plans, only child pornography is mentioned, but within a more general context of "illegal or harmful content". As is the case with the WSIS, as the years go by, human trafficking is no longer considered to be defined as "illegal or harmful content", reducing this category to crimes against minors, child pornography and racist and xenophobic ideas.

The absence of a definition of pornography, even an implicit definition, makes it impossible to establish a paradigm or identify the groups that uphold such a paradigm, and also impedes the identification of where the line is drawn between pornographic and erotic content. There are no descriptions or details that allow us to establish the meaning given to this word or to formulate a hypothesis on the matter. A definition of what is considered erotic, be it to establish a limit with pornography, is not even mentioned. Explicit content is not distinguished from implicit content.

Undesirable content on the internet is classified either as "illegal", "illicit" or "harmful", which are used as synonyms, without establishing a clear definition of each term. This ambiguity produced several complaints from the private sector in those countries where regulatory responsibility is in large part delegated to ISPs[38], who demand greater specifications in the instructions for setting up filtering systems.

Regionally, the European Community is where most advances on this subject matter have taken place. Action Plans with clear commitments for all the governments have been established, and, since 2001, they signed the Convention on Cybercrime which includes a special section on infringements related to child pornography for any person that produces, disseminates, gives to others or possesses child pornography by way of an information system or data storage. The most important advance made in this document, and which we have not found in any other declaration or regulation, is that it establishes a clear definition of what materials are considered child pornography: "pornographic material that visually depicts: a. a minor engaged in sexually explicit conduct; b. a person appearing to be a minor engaged in sexually explicit conduct; c. realistic images representing a minor engaged in sexually explicit conduct"[39], where a "minor" is anyone under 18 years of age.

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[38] "Software protection that impedes access to specific sites", *La nación*, January 12, 2003.

[39] Council of Europe, Convention on Cybercrime, pg. 7. At: http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm

These plans do not include a gender perspective in any way, and women are not mentioned, even in terms of ensuring equal access to ICTs.

In other regions, in the framework of this Convention, the Council of Europe has carried out regional meetings (West Africa, the Caribbean, the Arab region) and international meetings to promote that these issues be handled and that such conventions be sanctioned in other regions. 400 representatives of the public and private sectors from the Arab region and other countries and international agencies participated in the Cairo meeting, where they signed the document "Cairo Declaration against Cybercrime 2007", which establishes that: "child pornography and the sexual abuse of children on the internet are of major concern. The participants noted with appreciation the fact that the Child Act in Egypt and other countries of the region is being modified to include criminalizing child pornography in line with article 9 of the Convention on Cybercrime"[40]. It also establishes that countries should implement legal procedures to investigate the presence of child pornography and the ways it operates on the internet, and, as indicated in Europe's Action Plan, it encourages that hotlines for reporting illegal or harmful content be created.

At the regional level, no legislation or declarations defining, establishing actions or considering measures to be adopted in the face of harmful and pornographic content were identified. An introduction to the position of each region on the matter can be found in the final documents from the WSIS regional pre-conferences. However, the subject of pornography or of harmful contents is not clarified in any of the regions. As for Africa, special emphasis is made on "assistance with content creation and democratisation of access with particular emphasis to women and the youth"[41]. In the 2005 document for the region progress was made in terms of a greater inclusion of the category of gender, which cross-cuts several parts of the document: "a collective action of all African stakeholders is mandatory for the integration of a gender perspective in the information and shared society in general and ICTs in particular"[42]. The Asia Pacific document from 2003 mentions protecting "vulnerable groups" but does not establish any specifications in this regard. That same year the Western Asia document is the only regional document that takes up the Millennium Objectives again as a conceptual framework and guide for establishing a democratic information society, for which it proposes "formulat[ing] an agenda for action aimed at achieving specific objectives leading to the transition into an information society, emphasizing the needs of youth, women and underprivileged groups by selecting appropriate and affordable technologies for implementation"[43].

One aspect common in all of these regional documents is the need to respect cultural differences and language as a way of preserving national identities and cultures in the face of an advancing means of communication that imposes its own logic. All of the documents include paragraphs on this subject.

In all the regulations and policies reviewed, children are the exclusive subjects to be protected from abuse. In 1996 the European Council requested that the European Commission write a report addressing

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[40] Cairo Declaration against Cybercrime, November 2007, p. 2.

[41] WSIS Executive Secretariat, Report of the African Regional Conference for WSIS, May 2002, p. 4.

[42] ACCRA Commitments for WSIS Tunis 2005, p. 2.

[43] Note by the WSIS Executive Secretariat, Report of the Western Asia Regional Conference, February 2003, p. 3.

the "problems posed by the rapid development of the internet". The commission produced the document "Illegal and Harmful Content on the Internet" and a Green paper on "The Protection of Minors and Human Dignity in Audiovisual Services". Using these documents, a common framework for self-regulation and monitoring of the internet was written at the European-wide level, which culminated in the aforementioned Action Plans. In all reviewed documents, internet content is classified as either illegal or harmful, at times using both terms interchangeably, without providing a clear definition or indicating what types of content correspond to either of these terms. Although the definitions of these terms vary between countries, there is a consensus on certain issues, such as child pornography[44]; however, except for the abovementioned EC Convention on Cybercrime and the legislation in some countries (i.e. Brazil, Argentina, Egypt, China), no international or regional declarations advance the definition of or what contents are considered to be child pornography.

In December of 2006 the European Parliament issued a set of special recommendations for the protection of minors with regard to online content, due to the fact that existing regulations were considered by members of Parliament to be incapable of resolving the problems that had come up around ICT use by minors and given the large number of reports of online child pornography registered by the up and running hotlines. These recommendations establish and promote risk-prevention and security measures for the use of the internet and information and communication technologies by minors, and call on both the public and the private sectors to work to ensure its implementation. In all the standards set by the European community in relation to minors and the use of the ICTs, teachers and parents are assigned a fundamental role in training, providing information on and detecting potential abuses.

In Latin America the protection of children is widely accepted and it is the major reason mentioned for introducing filtering and self-regulation systems. This tradition was adopted on an international scale (WSIS, open letters about the .XXX domain, among others), and, in many cases, led the debates on the issue. It is interesting to point out that one of the arguments calling for Latin America to unite against child pornography on the internet is based on the interpretation that countries in the region represent the supply, while developed countries are considered to create the demand[45]. Meanwhile, as Carlos Gregorio mentioned in our interview with him: "There is consensus on the reproach for sexual exploitation of children (even when considering minors under the age of 12 or 14). When dealing with adolescents, peoples' opinions are not as strong. Such is the case, that some legislation even differentiates this group as "adolescents" (or "púber"), without establishing the specific ages this encompasses (…) The definition of child pornography in existing legislation in Latin America is not clear or complete: live shows, photoshopped pictures and audio are not classified adequately, and possession is only punished in some countries".

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[44] Other issues on which consensuses have been reached are: racist material, material promoting terrorism and all forms of internet fraud.

[45]Rivas, E. et al , Os menhores e ao protecciao, Universidad de Camphinas, 2007, p. 20.

As we can see, with regards to pornography, the consensus is a "non-definition", leaving it up to the different actors to establish their own regulations, implement their own content control and monitoring systems, and build their own definitions and meanings for this term.

The only distinction or specification is made in regards to child pornography or the abuse of minors, since children are the only subjects who are considered to be in need of protection. Violence against women on the internet is not mentioned in any of the reviewed regulations and declarations. Women and other population groups are not mentioned either. The fact that the GLTTB is not mentioned in the policies is cause for concern, since, as we will see below, contents related to this population or topic are often subjected to censorship and filtering even when they have not sexual or pornographic aspects to them.

Sexual health and education is only mentioned in the WSIS, and in the WSIS it only appears in the section on the application of ICTs in relation to cyberhealth, which expresses a commitment to "facilitate access to the world's medical knowledge and locally-relevant content resources for strengthening public health research and prevention programmes and promoting women's and men's health, such as content on sexual and reproductive health and sexually transmitted infections, and for diseases that attract full attention of the world including HIV/AIDS, malaria and tuberculosis"[46]. This is the only reference to this topic that appears in both final reports- Geneva and Tunis. In this sense, the internet is considered to be a tool for disseminating information related to sexuality, but the perspective of this form of sexual rights is not established.

In terms of regulations and declarations, a special regulation for this type of content, which distinguishes between licit and illicit content, is not considered, nor is the inclusion of a gender or human rights perspective. None of the policies of the European Community, the WSIS or the APEC mention sexual and reproductive rights as a linked to other fundamental rights, such as the right to information and freedom of expression. Mechanisms for ensuring that sexual rights content is not subject to censorship or denunciation mechanisms, which exist for illicit, obscene and other content which are considered harmful, are not guaranteed either.

The following table compares the similarities and differences among regions with respect to their legislation or documents and their content:

	Latin America and the Caribbean	Africa	Asia	Europe
Legislation or regulation				- Action plans, - Convention of cybercrime, 2001
Documents	- Latin America and the Caribbean	- African Regional Conference:	- Asia-Pacific Regional	- Pan European Regional

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[46] WSIS Executive Secetariat, Final Report on the Geneva Phase of the World Summit on the Information Society, Pg. 21.

	Regional Conference: Bávaro (Dominican Republic), 29-31 January 2003 - Regional Preparatory Ministerial Conference of Latin America and the Caribbean Rio de Janeiro, during 8-10 June 2005.	Bamako (Mali), 25-30 May 2002 - Conferencia regional de África: 2-4 febrero 2005, Accra (Ghana) - The Pan Arab Conference on WSIS- Phase II; An Arab Regional Dialogue: 8-10 mayo 2005, Cairo (Egipto) - African Regional Conference: Ghana, 2-4 Feb 2005	Conference: Tokyo (Japan), 13-15 January 2003 - Western Asia Preparatory Conference: Beirut (Lebanon), 4-6 February 2003 - Western Asia: 22-23 November 2004, Damascus (Syria) - High Level Asia-Pacific Conference for the WSIS Tehran, Iran 31 May-2 June 2005 - Regional Action Plan Towards the Information Society in Asia and the Pacific, 2005.	Conference: Bucharest (Romania), 7-9 November 2002 - Second Bishkek-Moscow Regional Conference on the Information Society: 16-18 noviembre 2004, Bishkek (Kirguistán)
Vulnerable groups	Children	--	--	Children
Women´s rights	Law against abusive uses of ICTs, such as illegal and other acts motivated by any form of racism or discrimination, hatred, violence, especially against women and girls	Provide increased attention and support to human resource development and education for the information society with emphasis on the youth and women.	Aims to promoting the use of ICT for empowerment of women, young and senior people	to prevent an fight against violence on children, youth and women and protecting victims and risk groups.
Relations with other UN declarations	Use the potential of ICTs to achieve the Millennium Development Goals	Millennium Development Goals	Millennium Development Goals	--
Gender content	Incentive governments to integration of	Incentive governments to integration of	Not include a gender perspective	Not include a gender perspective. It is important to

	gender perspective in the information and shared knowledge society in general and ICTs in particular.	gender perspective in the information and shared knowledge society in general and ICTs in particular.		highlight that the foundations of the 2006 Plan of Action indicate that "the image of two sexes that is present in the media and in advertisement raises important questions about the protection of men and women's dignity, but finally concluded that, considering other fundamental rights, particularly those of liberty and pluralism in the media, it would not be appropriate to tackle these questions in the proposal, but that they are noted".
Pornography. definition	No definition	No definition	No definition	Not general, just in regards to child pornography "pornographic material that visually depicts: a. a minor engaged in sexually explicit conduct; b. a person appearing to be a minor engaged in sexually explicit conduct; c. realistic images representing a minor engaged in sexually explicit

					conduct, where a "minor" is anyone under 18 years of age"

4. Terms of use and community standards

The "Terms of Use" or community standards are the norms that every website provides to regulate the behaviour of users and the ways in which they relate to each other. These norms regulate administrative issues (general conditions for operation and use of the services, passwords and security, property rights, licenses, termination of use and responsibilities) as well as technical issues, referring mainly to the content of the services, the behaviour of users and when and where monitoring and sanctions are used.

Based on the parameters mentioned in the methodological framework with regards to the most popular social networks by region and also including photo websites and search engines, the following platforms will be included in the research: Bebo, Blogger, Cyworld, Facebook, Flickr, Friendster, Google, Hi5, MSN Windows Live, Myspace, Netlog, Orkut, Pornotube, Reunion, Tagged, Yahoo and Youtube.

The following chart indicates the traffic of the most popular online social networks by region, according to the total number of hours spent on them (in millions)[47]:

Region / Social network	Asia Pacific	Europe	Latin America	North America	Middle East / Africa	People
Friendster	89.9					80
CyWorld	73.8					23
Bebo		65.3				40
Myspace		42.5		223		246
Facebook				173	15	124

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[47] Source: ComScore.

Orkut	65.3		156			67
Hi5			44.6		4.8	80

In order to carry out an analysis of these platforms, the following categories have been established:

a) **Policies on sexuality and the body:** The ways in which sexual content or activities were mentioned and their context were analysed, i.e. whether or not they are associated with violence or illegal content matter. An analysis of the mention of, the motives and the specifications due to which the publication of photographs or drawings of naked bodies and other materials, such as videos, are prohibited was also carried out.

b) **Policies on rights:** The explicit mention of users' rights was analysed, focusing on human rights, as established in the conceptual framework of this review, and going beyond the merely contractual or commercial rights related to intellectual property and privacy.

c) **Policies on minors:** The mention of, the motives and the specifications made about this population group were analysed.

d) **Policies on gender discrimination:** The punishment for or prohibition of discriminatory messages or content was analysed, identifying the different types of discrimination that are mentioned, insofar as they relate to women and sexual diversity, and the context in which they appear.

e) **Monitoring policies and mechanisms for content posted by users:** The existence of and the ways in which monitoring systems operate, the role of companies and the role of users was analysed, distinguishing between responsibilities, obligations and rights.

a) Policies on sexuality and the body

Upon analysing the policies and regulations according to their content limitations, four types of websites can be discerned:

1. Those which vaguely refer to prohibited content through the use of terms such as: illegal, dangerous, abusive, harassing, defamatory, libellous, vulgar, slanderous, obscene, invasive of the privacy of a third party. These sites, among which you will find Bebo, Yahoo, Google, Orkut, Reunion and Pornotube, do not explicitly mention pornography or sexually explicit content. The vagueness of these definitions makes them incapable of differentiating between websites destined for social networking (i.e. Bebo or Orkut) and those destined exclusively for the dissemination and publication of pornographic content (i.e. Pornotube).

In the Orkut case, as we will see upon analysing the development of regulations in Brazil, although they did not reformulate their Terms and Conditions of Use, based on denunciations by NGOs, the company did publish several communications in which they clarified their condemnation of child pornography and their website's content control policy, encouraging users to report contents they consider illegal[48].

2. Those websites, such as Facebook, Friendster, Tagged, Netlog, Flicker, Cyworld and Hi5, which explicitly refer to the above mentioned terms as well as "pornographic" content and "obscene" or "sexually explicit" material. None of these websites provide definitions or a more general framework for interpreting these concepts. Netlog is the one site that delves slightly farther into the description of that which is considered to be sexual practices, among which paedophilia, prostitution or companionship services and the explicit or implicit invitation to engage in sexual activities are included.

   Despite the lack of a clear definition and a focus on pornography and sexually explicit content, some of these websites use filtering and censorship mechanisms for photos that show complete nudity as well as body parts that can hardly be considered explicit.

3. Blogger serves as an example of the third type of website, in that it provides more thorough details and definitions of the contents considered to be pornographic or obscene. By "pornographic" they refer to "any images or videos that include nudity, sexually graphic material or material that Google considers explicit should be kept in privacy".

   The following types of pornography are included in this category: paedophilia, incest or zoophilia, commercial pornography and infant pornography. In regards to infant pornography, they declare a zero tolerance policy and the possibility of denunciation to the corresponding authorities of any user that publishes or distributes this type of content. Their privacy policy states that the company can "access or reveal personal information, including the content of users' communications, when it is necessary for complying with legal processes or government requirements". This makes Blogger the service that provides the most specific definition of pornography and clarifies the conditions under which user information and communications can be revealed.

4. MSN Windows Live and Myspace represent a fourth category of websites which prohibit the publication of pornographic and obscene content and "nudity". In regards to nudity, MSN Windows Live prohibits the display of all types of nudity, be they partial or total, human or animated, fantasy art or *manga*. On Myspace nudity is considered homologous to "excessive violence or offensive subject matter". The regulations applied to the body raise the need to study implicit power relations and the hegemonic construction of the body found here: What types of bodies are subject to censorship? What posture are these bodies in? What are the justifications

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[48] http://www.safernet.org.br/twiki/bin/view/SaferNet/CrimesOrkut

that can indicate the ways in which technologies produce and reproduce specific categories of subjects and corporality through implicit performative processes, technologies of language, representation and communication?

b) Policies on rights

The mention of users' rights is associated with consumer rights. The right to communication and freedom of expression are not mentioned. However, intellectual property rights for published information and the right to privacy do appear. The right to privacy is mentioned in reference to the protection of information and privacy during the period of use of the services offered by a platform.

The definition and classification of users as consumers rather than citizens is not innocent. Changes in consumption patterns have altered the possibilities and forms of citizenship. Since the 1980s, consumption has become widespread in and across all social classes in countries with capitalist economies. This trend has had such profound effects that the terms "consumer" and "citizen" are now easily yet mistakenly confused: "Exercising citizenship is associated with one's ability to own assets and the ways in which one uses them, but it is assumed that these differences were lessened by equal access to abstract rights that could become concrete through voting and feeling represented by a political party or union, etc. The category of consumer applies to men and women insofar as they participate in the private consumption of goods" (Canclini, 1995). In this sense, being a citizen is not based only on consecrated rights but also on new forms of social and cultural practices that generate a sense of belonging, especially through consumerism. This is the main reason that companies have fed into the new paradigm, viewing users as consumers over citizens.

c) Policies on minors

All social networking and information exchange websites establish the prohibition of minors under the age of thirteen to register, as a form of self-regulation and, in some cases, minors between thirteen and eighteen years old are allowed to register only if they are students and/or have parental or guardian permission based on the premise they have read and accept the terms of use.

Policies for minors are provided by some sites, such as Yahoo and MSN Windows Live, which mention harm to minors without any particular specifications. Most of the sites (Friendster, Tagged, Hi5, Blogger and Myspace) prohibit all content linked to the sexual exploitation of minors. Tagged includes the additional category of "harmful" by prohibiting the publication of "materials that are harmful to minors in any way".

d) Policies on gender discrimination

Most of the platforms included in this study do not specifically mention women, nor do they include a glimpse of a gender perspective in the way the regulations are stated.

Only three sites - Blogger, MSN Windows Live and Netlog - specify the prohibition of publishing discriminatory messages or content regarding sexual orientation or identity, and only one of them, Blogger, mentions gender discrimination.

Other sites only mention the prohibition of posting content considered racially or ethnically discriminatory (Cyworld, Bebo, Facebook, Tagged, Myspace, Hi5).

e) Monitoring policies and mechanisms for content posted by users

In their terms and conditions of use, all the platforms warn users that they may be exposed to offensive or "indecent" content. Only some of the sites request the active collaboration of users in content control, providing special links designed especially for denouncing abuse (MSN Windows Live, Orkut, Netlog).

The slogan par excellence about the responsibility of companies in content regulation is "we can but are not obligated"; they all reserve the right to reject or eliminate any content, but explicitly express that they do not have the obligation to perform this task. Netlog is the only site that demonstrates its legal obligation to report offences classified as crimes to judicial services. This difference in relation to other sites is most likely due to the network offices being located in Belgium, due to which they must comply with the Action Plans of the EC which establish the commitment of all actors to report illegal content, and that they must comply with the Convention on Cybercrime.

As for Myspace, this site refers to censorship by reserving the right to "reject, refuse to post or delete any content for any or no reason, including content that in the sole judgment of Myspace violates this Agreement or may be offensive, illegal or violate the rights of any person or entity".

Stemming from the denunciations that appeared in Brazilian media about the high percentage of illegal or illicit activity on Orkut, this site released a statement on October 3rd, 2006, detailing the procedure to be followed when illegal or illicit content is detected[49]. In addition to the system for denouncing abuse via the link "Report abuse", Orkut established a system of moderators. Each user can add up to ten moderators that help administrate the community and who have the ability to "eliminate issues, messages and events deemed inappropriate for the community. They can also accept, reject, ban or eliminate members and publications". The only requirement to be chosen as a moderator is belonging to the community. Orkut, also mentions their collaboration and their "direct and constant" communication with the police/government authorities of California (where their commercial offices are located) and with the NCMEC (National Centre for Missing and Exploited Children) in the United States.

We noted several cases of censorship of nude bodies on Flickr and Myspace, which, in the case of Flickr, are clearly contradictory, given the presence of certain other photos. For example, while black and white photographs of nude bodies from a frontal view - which can clearly be classified as "artistic" given their detailed work on light and shadows - are censored[50], at the same time and on the same website, photos of women engaging in sexual relations or stimulating themselves with different sex toys are reproduced.

[49] http://www.orkut.com/About.aspx?page=keep

In June of 2007, Flickr disabled SafeSearch for users based in Singapore, Germany, Hong Kong and Korea, meaning that users in these countries cannot access any content tagged as "unsafe". This measure is related to the local norms on obscenity and censorship of information. On the basis of this new mechanism, a large number of users began to receive the following message in the accounts: "Your account has been reviewed as safe by Flickr staff"

In general, the presence of censorship stirs up action among users, who often times publish declarations or open letters on the websites, start chain-emails or post censored photos with a different link.[51]

5. Monitoring and Control of Sexuality-related Content

There is no one internet. The paradigm that the internet is democratic and that it connects us all, allowing us to access information, is a long way from the truth. Given the large sectors of the population, and mainly poor women, who have great difficulties in accessing the internet and, even more so, in expressing their opinions about internet-related policies, the internet does not represent a true democratic space, and equal rights for access and participation are not a reality worldwide. In Turkey, only 4.3% of women access the internet, similarly to South Africa, where no rural women have access. Meanwhile, the information accessible by someone in China is not the same as for someone in Brazil or the United States. Insofar as not everyone has equal use of this tool, there is not democracy.

There is continually greater agreement among countries that internet users should abstain from accessing certain content, but this consensus does not explicate what types of content. Even in the so-called "democratic countries", the kinds of content that are restricted by law as well as the corresponding regulations vary considerably, but always exist.

Censorship mechanisms for online content and penalties for the responsible party of such content vary according to the actor held responsible and the jurisdiction of the case. internet censorship takes on two predominant forms: 1) limiting what can be viewed, and 2) limiting what can be posted[52].

There are three levels through which monitoring and online content controls can be exercised: legal measures, technology and practice. Each of these can be used individually or in combination with the others.

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[50] For an example, see: http://www.noticiasdot.com/wp2/2008/10/22/flickr-censura-el-trabajo-de-un-fotografo-por-ofrecer-imagenes-de-mujeres-desnudas/

[51] For an example, see: http://www.flickr.com/groups/refuses/, The Flickr group "Against Censorship at Flickr", and http://crueltobekind.org/archive/2007-06-14/protest_around_flickr_censorsh

[52]   Depken,   Craig,   "Who   supports   Internet   censorship?",   2006.   Available   at: http://www.firstmonday.org/issues/issue11_9/depken/index.html

Legal measures are expressed in terms of national legislation and contracts signed with companies, such as Terms and Conditions of Use. Nationally, three levels of control and censorship over users and companies can be found:

- Governments, as in some jurisdictions of Australia, which pass laws criminalizing those who publish inappropriate content for minors.
- Governments of countries such as China, Saudi Arabia and Singapore, which demand that inappropriate or illicit content be blocked.
- Governments of countries such as Vietnam, which require users to be registered in a database in order to have internet access.

Based on our reading of the regulations and the discourses put forth in the different UN assemblies on the issue, governments mention one main reason for censorship or establishing filtering systems on the internet: that there is content which is harmful to the community and the common well-being, independently of any benefit that it could have at an individual level. It is recognised that internet regulations are primarily led by market forces, because the most influential actors are large commercial corporations, as stated by Judit Bayer[53].

Given that most policies and statements opt for self-regulatory systems, we can infer that these definitions and their contents are defined by users, thus, in the sphere of the internet, where the meanings of these concepts dissolve, it is no longer the law but rather the users who hegemonise the process of defining these concepts. Such a process is a power struggle in which divergent ideologies and paradigms are put into play. In several paragraphs of the European regulations, the implementation of self-regulation mechanisms for *all* content is left to the "common sense" of users, who then become responsible for reporting "content they find when using the internet and that, in their opinion and using common sense, are illegal or harmful"[54].

Bayer differentiates between self-regulation and co-regulation, considering self-regulation to be that which is developed by "voluntary associations", while co-regulation is a structure where the government acts in recognition of its rules through legislation or by enforcing its decisions. In this report she also distinguishes different types or levels of government interference.[55]

Leaving sexual matters up to "common sense", which we know is not neutral and contains underlying ideologies and prejudges, creates an open field for the interference of powerful groups that often oppose sexuality matters approach freely and the promotion of sexual and reproductive rights. Katherine MacKinnon, in 1985, defined pornography as "the graphic sexually explicit subordination of women through pictures or words that also include women dehumanized as sexual objects, things or commodities, enjoying pain or humiliation or rape, being tied up, cut up, mutilated, bruised or physically hurt, in postures of sexual submission or servility or display, reduced to boy parts, penetrated by objects

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[53] Bayer, Judit, "The legal regulation of illegal and harmful content on the Internet", 2002-03. Available at:
http://pdc.ceu.hu/archive/00001828/01/Bayer.pdf

[54] European Parliament and Council, Decision Num. 276/1999/CE, pg. 6.

[55] Bayer, Judit, "The legal regulation of illegal and harmful content on the Internet", 2002-03. Available at:
http://pdc.ceu.hu/archive/00001828/01/Bayer.pdf

or animals, or presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual"[56].

The boost given to the self-regulation model by the European Union in their Action Plans has evolved into a new model which calls for additional procedures, such as setting up emergency phone lines. In twelve European countries there are currently sixteen phone line services. These institutions are coordinated at the Europe-wide level through INHOPE, the International Association of Internet Hotlines. In general, the reports they receive are processed to determine if the content is illegal and if it any law must be applied. Under this policy, several ISP companies have their own direct lines centred mainly on the dangers of chatting.

As several reports indicate[57], over 90% of the reports filed over these phone lines are related to child pornography.

Technology is utilised in terms of restrictions on internet use for determined users, information filtering programs, and blocking specific categories of content which have been previously established. The use of ratings systems as well as filter and blocking software has been considered as an alternative to other measures in order to control the presence and accessibility on the internet of material deemed objectionable by governments or others. Countries with a limited number of ISPs are able to centralize information controls and blocking devices for services. Meanwhile, in countries with a greater number of ISPs, regulations must be adapted to a more diverse market and to greater pressure from companies. Filtering is not always transparent: it can be difficult to detect content once it has been blocked or to detect which websites are the most relevant using a search engine. Because it is easy to hide information, it is difficult to evaluate its legitimacy and its reach.

In terms of these filters' operating mechanisms, governments can reveal what material they block both formally and informally. The formal way is through a system of codes and filters or in the regulations they establish on this issue, while the informal way is through the declarations they formulate in debates on this issue or the positions they adopt at related UN conferences. For the most part, formal criteria are more transparent since they provide citizens with greater access to information and they establish clearer rules of play. In addition to the different forms of revealing filtered contents, States vary in how clearly they describe the prohibited or permitted material. The most precise definitions increase transparency.

Self-regulatory systems may work if they are accepted as a general standard. One such standard is the "Platform for Internet Content Selection" (PICS). These mechanism works by embedding electronic labels in text or image documents to vet their content before being displayed or passed onto another computer. The most common rating system combines PICS with a system used by the US "Recreational Software

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[56] MacKinnon, Catherine. "Pornography, Civil Rights and Speech", 1985. At: http://cyber.law.harvard.edu/VAW02/mod2-4.htm.

[57] http://www.iwf.org.uk/about/annual_report/ar2002.htm

Advisory Council on the Internet" (RSACi) which rates material according to the level of violence, sex, nudity and language. The ratings and definitions set by the Platform for Internet Content Selection (PICS) play a key role in this filtering system. The PICS was created by a large consortium of leaders in the internet industry and provides an infrastructure for tagging and for content. Two examples of well known rating systems were developed by the Recreational Software Advisory Council (RSAC) and SafeSurf. The most well known filtering systems that all users can install in their computers are Net Nanny, SurfWatch, CyberPatrol and CyberSitter.

Despite the fact that some of these systems allow users to add or remove certain sites from a list of blocked websites, it has been shown that these systems block access to a wide variety of information, such as safe sex and general information of interest for gays and lesbians. The filtering mechanism utilised operates using key words. By means of a list of undesirable words or phrases, it either eliminates the word(s) from the webpage or completely blocks the site. Some of the categories they use are: suitable age range, heterosexual themes, nudity and consensual sexual acts, violent themes, accusations or attacks against racial or religious groups, and adults. There are also countless absurd examples of keywords that are blocked. For example, "www.middlesex.gov"[58] can be blocked for containing the words "sex" or "xxx". CyberSitter has been a repeat offender according to Peacefire.org[59], blocking sites such as "The National Organization for Women" and newsgroups committed to gay politics. Third-party rating had to rely largely on mechanical blocking by key words or phrases such as "over 18", "breast", "sex" or "pussy". Melissa Hope Ditmore from the Network of Sex Work Projects notes that in the United States it is hard to get information about breast cancer and condom use from library computers. The results were not difficult to predict: large quantities of valuable information and literature, particularly about sexuality, feminism, gay and lesbian issues, civil rights, and other politically important subjects, were blocked"[60].

As reported by GLAAD, many filtering systems have the terms homosexual, transvestites and lesbians among their key words. For example, Cyber Patrol blocked content in the gay and lesbian directory in Geocities in 1997, and, in 1999, another filtering system - Jayde - included "lesbian" in their blocking device: "Of course, words like "transsexual" and "transvestite" get caught now and then. Back in the first part of this decade, you could not use either word on AOL without it being considered "vulgar" by their Terms of Service department. Currently, FindLink.com, a search engine that promises its users to "search the Internet safe and clean", disallows links in its directory that include the word "transvestite"—again, they see it as "graphic" and "vulgar"".[61]

This reveals how filtering systems are useful for a certain conservative logic, thus converting them into that which they were attempting to combat: censorship. "To understand how filtering undermines equal access for all, ignore the format and concentrate on the actions and outcomes. We would be up in arms if a community group, concerned about "offensive material", offered, as a "compromise", to remove some

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[58] http://www.cjfe.org/spEUials/internet/conc.html

[59] http://www.peacefire.org/info/blocking-software-faq.html#blocked_sites

[60] "Cyber Patrol and Deja News," Censorware ProjEUt, Feb. 17, 1998, available at: www.censorware.net/reports/dejanews/index.html

[61] GLAAD, "Access Denied: The Impact of Internet Filtering Software on the Lesbian and Gay Community", Version 2.0, p. 24.

but not all gay-related books from the library. Yet this is exactly how filters work and what they do"[62]. Additionally, the operation of filters in large part attempts to achieve equal access to information, which means that only those who know how to bypass them and who know what kind of information is being filtered will have access to that information.

In most cases the decisions about what contents should be filtered are based on criteria established by companies and according to a broad concept of that which is offensive and inappropriate, "pornography, linked with morality, is often used by government as a justifying rhetoric to control and restrict freedom of expression and information without deeper engagement with the issue. This means that the policing and control of women´s sexuality once again, become another method to control civil society in general through the assumption of patriarchal protectionism"[63] . A study carried out by the National Coalition against Censorship from the EEUU, points out a few examples of over-blocking, for example: "CyberSitter blocked virtually all gay and lesbian sites and, after detecting the phrase "least 21", […] I-Gear blocked an essay on "Indecency on the Internet: Lessons from the Art World", the United Nations report "HIV/AIDS: The Global Epidemic", […] X-Stop blocked the National Journal of Sexual Orientation Law and "The Owl and the Pussy Cat""".[64]

Although filtering was initially promoted as an alternative to censorship and government attempts to control internet content, it has now been adopted by both federal and local governments. Based on several reports and an ad hoc search that was done for this research, it becomes clear that many norms are vague, biased and subjective.

Last of all, practices of control are based on the fact that most people cannot access the necessary technology, due to the high cost of internet access: "Market structure contributes to this problem in some regimes, where government near-monopolies in countries like Bahrain, Burma, Belarus, Tunisia and Liberia serve the dual-purpose of limiting market access and ensuring government control"[65].

This taxonomy of the different types of monitoring and filtering mechanisms takes some attention away from governments, which are generally seen as the only responsible actor in this process. Companies can also be and often are a powerful source of censorship, as we mentioned before, and their power increases especially when aligned with the State.

Among users, there is extensive dissemination of self-regulation policies and constant encouragement of such policies in the Terms of Use and on certain websites that provide mechanisms for reporting illicit

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[62] GLAAD, Op Cit, p. 11.

[63] Kee, Jac sm "Women's human rights: violence against women, pornography and ICTs", 2005, p. 2.

[64] National Coalition Against Censorship, "Internet Filters: A Public Policy Report", available at http://www.ncac.org/internet/filters.cfm

[65] Privacy international, "Silenced", p. 4.

content. Such interventions are often made by individuals in an anonymous and confidential way, which makes it impossible to identify them and therefore impossible to register the kinds of arguments used in soliciting the censorship of certain materials. Nevertheless, there are associations such as the PPC that use their websites to promote that users report specific sites containing illicit content, and they include a link so that users can have quick access to this reporting mechanism. But, the power of users and their associations compared to that of commercial companies is very unequal.

At the level of companies, censorship mechanisms operate via emails they send out to the responsible party informing them that the content will be removed due to its in compliance with the website rules and include a warning that their account or subscription will be cancelled if it occurs again. The differences are in terms of what kinds of content censorship is applied to. While on some sites, such as Youtube, this kind of mechanism is found only sporadically, on other sites such as Blogger and Flickr, this is a habitual practice which has led to different forms of protest, movements and strategies organised by users to deal with the prohibitions[66].

From our standpoint, the main problem with the self-regulation system is that is ultimately an instance of individual decisions made in front of the computer screen, which are influenced by moral values and prejudices. It is based on the premise of confidence in others and the existence of common ethical and moral criteria: "the development of self-regulation is a much more complex empirical question. Self-regulation is a game depending on collaboration (but not too much) with industry, the control of free-riders and consumer awareness and choices that are often unpredictable. The likelihood that voluntary codes of practice offer a sustainable, effective and comprehensive alternative to statutory regulation depends on a range of factors from market structure, consumer awareness, public policy objectives and a host of other variables"[67].

In terms of censorship and content filtering mechanisms, sexuality is one of the main issues that such mechanisms touch upon[68]. Although these categories do not exist in the legislation and regulations studied, several authors call the filters established in these regards "social" filters. In terms of pornography, it is primarily visual material or that related to gays, lesbians and sexual diversity, which are pointed out as being those most subject to censorship and filtering.

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[66] For examples, the following websites can be consulted: http://www.flickr.com/groups/refuses/, http://www.flickr.com/groups/364768@N24/, http://www.flickr.com/groups/againstcensorship/pool/ http://www.petitiononline.com/Brstfeed/petition.html, http://steki-steki.blogspot.com/2009/02/unete-contra-la-censura.html, http://groups.myspace.com:80/index.cfm?fuseaction=groups.groupProfile&groupID=102180977&categoryID=0&lang=es&Mytoken=6B65657C-A278-4893-9016961612ED7AB36997418, http://groups.myspace.com:80/index.cfm?fuseaction=groups.groupProfile&groupID=102830905&categoryID=0&lang=es&Mytoken=71CFE30A-F7A5-4FD7-8E9BD4633B2833257324156.

[67] Programme in Comparative Media Law and Policy at Oxford University Internet Self-Regulation: An Overview: The Project available at http://pcmlp.socleg.ox.ac.uk/selfregulation/iapcoda/030329-selfreg-global-report.htm

[68] Other topics are political content and content linked to security issues.

6. The Mains Actors Involved

Internet content regulations are agreed upon and created by several actors, primarily governments and ISPs, who have different interests. These regulations are not just a technical or legal issue, but rather they involve implicit ideas about how societies define themselves, such as different notions of or criteria for that which is acceptable versus punishable and what is or isn't considered harmful for their members. As mentioned above, there are three fundamental issues when considering how to regulate and develop policies and regulations: how to define jurisdiction, how to deal with the technical complexity and who's responsible for content regulation.

In terms of the first issue, internet regulations require a complete legislative coherence and consensus among governments. Often what is permitted in one country is banned in others. Since the internet crosses over borders, the question of how to keep people from accessing certain messages available in the global "virtual" reality becomes a central challenge from a country approach.

Regarding who is responsible for the content that circulates online, most legislation points to users, the ISPs and less so to States with the following practices: pass laws that regulate access and content, create frameworks and rules for the ISPs to implement, or those which only take action when criminal activity is reported. Likewise, these actions are conditioned by how developed the democratic system is in any given country, as noted below, based on how to define "jurisdiction".

Currently, the international debate is showing a tendency toward self-regulation on the internet, which implies that power is being shifted toward users in this area. This was an approach proposed primarily by the EU in their Action Plans and later accepted and promoted by WSIS because it is the most effective method in avoiding that the measures taken by specific countries restrict the rights to freedom of expression and communication of people in other countries[69]. Besides legal sanctions, in the countries where they exist, social sanctions also carry their weight in this and even have concrete consequences, given that they result in the exclusion of a man or woman who breaks the agreement that was shared by all.

However, based on the narrative reports from UN Conferences, the EU proceedings on regulations and the information provided by key informants in the interviews, we can infer that NGOs and user movements –particularly feminist groups– still do not carry much weight in the international debate. Many

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[69] An Open Net Initiative international research in-country testing for Internet filtering reveals that of over sixteen countries in the North Africa and Middle East region, eight of these countries broadly filter online content. Most of the sites targeted for blocking are selected because of political, cultural and religious concerns about morality. In Asia, from over 11 countries researched, Afghanistan, Malaysia, and Nepal do not use technical filtering to implement their policies on information control, but China, Myanmar and Vietnam rely heavily on pervasive filtering as a central platform for shaping public knowledge, participation, and expression. The filtering practices of Thailand and Pakistan are more targeted, as they block a substantial number of sites across categories of content considered sensitive or illicit. In Europe, filtering by Internet service providers (ISPs), search engines, and content providers is often termed "voluntary," but is carried out with the implicit understanding that cooperation with state authorities will prevent further legislation on the matter. Text extracted from http://opennet.net/research

of the feminists interviewed agree on the importance of the internet for them and their organisations, but they recognised their lack of interest in participating in the discussions and debate about regulations and policies and in key arenas such WSIS and IGF. They play a role primarily in developing actions to denounce regulatory practices that infringe rights that have been developed by States, businesses, or both. For example, in the face of cases where there is abusive control by the State, as is the case in China, or censorship, as is the case on Flickr when nudity is shown, users often create spontaneous movements in reaction and denunciation. As for NGOs, their role is mainly technical, systematic and sustained[70].

As proposed in a panel organised by APC Women's Networking Support Program in the IGF meeting in Rio de Janeiro, they recommend "an exploration co-regulation practices where states may provide a public framework and consumers/end-users decide the values that will guide their practices and what sanctions will apply where common values are transgressed"[71].

As one can begin to see from the regulations, States are the main decision makers regarding what types of internet regulations are implemented, be they through formal legislation or by leaving it up to other actors. Nonetheless, the process is led by market forces and, provided the level of economic interests involved, we infer that there is a power struggle between States and the private sector, which carries out lobbies to advocate for maintaining self-regulation.

Based on reports from UN Conferences, documents from regional Pre-Conferences, CE regulations and the APEC conferences, we can establish that the ultimate priority is always the right to freedom of expression and the right to communication and information. None of these documents explicitly reflect the tension between these rights and the display of content that infringes other rights, such as sexual and reproductive rights, which are not mentioned in any of these documents.

There are several organisations with international reach that actively participate in the debates and are responsible for various roles: The Internet Content Rating Association (ICRA) is an international, non-profit organisation of internet leaders working to develop a safer internet. ICRA has long believed that self-regulation leads to the best balance between the free flow of digital content and protecting children from potentially harmful material. A key point is that the Internet Content Rating Association does not rate internet content - the content providers do that, using the ICRA labelling system. The ICRA makes no value judgment about sites. The descriptive vocabulary was drawn up by an international panel and designed to be as neutral and objective as possible. It was revised in 2005 to enable easier application to a wide range of digital content, not just websites. ICRA has a small permanent staff based in Great Britain and the USA. In addition they have "Points of Presence" in Spain and Germany[72]. Meanwhile, the Internet Society (ISOC) is an organisation conformed of professionals who develop opinions on and evaluate policies and practices that will be adopted and they supervise other organisations. It is made up of over

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[70] Human Rights Watch. http://www.hrw.org/reports/2005/mena1105/

[71] "Content regulation and the duty of States to protect fundamental rights", 2007. Available at: http://intgovforum.org/Rio_event_report.php?mem=19

[72]Ibid.

175 organisations and 8,600 members who belong to 170 countries around the world. Their work is base on four pillars: norms, public policy, education and training, and membership. But, their actions are generally centred on issues of e-business or copyrights, without intervening in debates about harmful content.

With regard to the regulatory component of the policies, relevant actors can be found in both the global and national scenarios. In the global scenario, the lack of consensus on the need or desire for a regulating agency is noteworthy. There are not clear tendencies, for example, people and organisations considered to represent the dominant or alternative viewpoints may see doing advocacy work with the ICANN - a regulating body for internet domains and protocol - as either strategic or irrelevant, regardless of their position.

The actors that participate in the debates basically consist of governments, companies and NGOs. We initially found different levels of formalisation among the relevant organisations. Likewise, it is also necessary to distinguish between organisations specialised in telecommunications or new information and communication technologies, and very powerful organisations that are not specialized in these matters, such as the Group of Eight (G8).

Each of these actors has their own local, national, regional and global forms of expression. In the local scenario it is mainly through the grassroots work of the SCOs, which aims to promote internet access for people in isolated communities or communities with limited resources, and, more recently, through public programs that promote the participation of local governments in digital actions or projects. Their expression in the national scenario, is in large part through the definition of at least three types of programs: actions directed especially at promoting internet access, actions linked to content monitoring, and actions that ensure safe online operations (mainly in the area of e-business). In the regional scenario, through initiatives that have already been going on for several years, such as the Action Plans of the EC; and in the international scenario via the presence of organisations such as the Internet Society, created in 1991 as a forum for reflecting on different aspects of the internet, the Internet Corporation for Assigned Names and Numbers (ICANN), created in 1998, and different initiatives of the United Nations to promote and set up plans for internet access and use (such as WSIS and IGF). There were also initiatives by the organisation of America States (OAS) which helped finance countries to establish connection to the web, and the Group of Eight which has recently taken an interest in promoting that people be connected to the web, as reflected in the Okinawa Declaration.

In the context of international (WSIS and IGF) and regional debates (Pre-conferences, eLAC), although the presence of the women's movement is considerable in terms of the number of participants, it has not been able to establish a presence in decision-making arenas or on discussion panels. In Athens in 2006, only two of the fourteen panelists were women, and in Rio de Janeiro in 2007, not one single woman was included among the seven main panelists in the main session on "Openness", and only one woman was given the lesser role of "discussant" during this session. In this forum, the presence of women reached

one third of the participants, with approximately 610 women in attendance. However, this proportion in not equally divided between speakers and panelists, among whom the male voices held a monopoly, with only few exceptions. This makes for the absence of women's voices and of a gender perspective in these spaces. Even within the UN some sectors are unfamiliar with the advances made in women's rights, which have been achieved only in specific areas like the Conference on the Elimination of All Forms of Violence against Women or the Beijing Platform for Action.

Some questions that can be raised are: Can we conceive of a right to the internet? How can an enabling ecology for users as decision makers in content regulation be created, in a way that women can participate in equal conditions? In such a framework, we also need to consider what the role of public finance and policy is.

7. National Legislation

States have made several intents at regulating internet content and access. In this section we analyse four countries which are paradigmatic cases due to their legislative advances on this topic or their position on internet regulation.

At the national level, the perspectives on regulatory matters largely depend on the legal framework that has been sanctioned during transformations in the telecommunications sector. In the countries that have opened their markets completely, the vision of the State is one of a minimal and residual State, where it is the market that establishes the dominant views of the internet. In these cases, the State has begun to develop actions destined to promote internet connection for groups that are unable to get connected by way of private service providers.

Brazil

Current laws on Internet regulation in Brazil refer to e-commerce and spam e-mail messages, by stating that "[a] number of bills relating to the information society have been proposed but none have been adopted. Where legislation has not been updated to deal with computer crime, traditional legislation is often used to prosecute crimes committed with the aid of ICTs in Brazil"[73]. Nevertheless, the government plays an important role in the debate about internet governance. They actively participate in Forums and Assemblies organised by the United Nations and in online content regulation.

With regard to WSIS, in 2002 Brazil was the host country and promoter of the International Forum "Latin America and the Caribbean in the Information Society", where 159 representatives of Governments, NGOs and national and international associations from 21 countries from across the Americas participated. Brazil's Minister of Science and Technology, Ronalda Mota Sardenberg, was in charge of the closing ceremony at the Forum, where he highlighted that the objective of the information society "is not only empowering individuals but also building communities of citizens who are capable of effectively

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[73] http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-103572

controlling technologies". The role of the government, he added, is to create opportunities for developing this "citizen base" of TIC users[74]. Brazil was also the host country of the second IGF in 2007, as leader of the majority position in Latin America on this issue.

In 2007 Brazil pioneered the installation of the "Child Exploitation Tracking System (CETS)" in Latin America, a program designed by the Canadian government and Microsoft Corporation that allows nicks, email addresses and messages related to sex with minors to be tracked.

That same year, the Brazilian Senate debated a bill proposing to criminalise users who use false identities. The bill was set aside after intense debates with NGOs who defended the right to privacy on the Internet. However, in Parliament it was clear that all the political parties were in favour of creating harsher sentences for crimes linked to child pornography.

With regard to content regulation, Brazil's Parliament has a Paedophilia Investigation Commission and a Group to Combat Cybercrime, which are part of the Federal Public Ministry of Sao Paulo. Both of these offices played an active role in the debate and actions taken in the Orkut case, which was spurred by the publication of the report "Nazism, Racism, Xenophobia, Paedophilia: Meet the Other Side of Orkut" by the Agency Reporter Social in September of 2004[75]. This report generated conflict between the Brazilian Government and Google, which centred on the following topics:

- What legislation should be applied in this case?: The Google group, who has their base in the United States, claims that they will not comply with Brazilian laws on internet regulation, which are more severe on child pornography than those of the United States. Nonetheless, the case was moved to the Federal Justice Department in Sao Paulo, which sentenced Google Brazil, at risk of being charged millions of dollars in fines, to follow up on the reports of child pornography that had been submitted and to provide information on the users that were involved in these activities.

- User privacy: Since the beginning of the conflict the Brazilian government demanded that Google provide them with the contact information of the users that published, disseminated or consumed child pornography. After numerous consecutive statements, Google reserved their right to deny this information to the Brazilian government even via a public statement where they reject the decision of the Federal Court of Sao Paulo in this regard[76].

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[74] Source: http://forumalcysi.socinfo.org.br/index.htm.

[75] To closely follow the stages of this conflict, consult here: http://www.safernet.org.br/twiki/bin/view/SaferNet/CrimesOrkutEn

[76] Ibid

At last, in July of 2008, Google Brazil and the Federal Public Ministry of Sao Paulo signed an agreement to combat the practice of paedophilia on the internet, where Google promised to report information on users suspected of paedophilia to authorities.

In early November of 2008, the Brazilian Congress approved a bill criminalising and sentencing to four to eight years in jail those who store or collect, produce, disseminate or use pornographic or sexually explicit images involving children or adolescents on the internet[77]. The bill underwent a modification due to demands made by ISPs that an official notification of the websites containing this type of material be published, so that they can remove them from circulation. Currently, the bill is awaiting approval by the President and it looks as if it will be passed.

Although Brazil is the leader in debates about content regulation in Latin America, is a key actor in international conferences on this issue (WSIS, IGF) and is the Latin American country with the greatest number of bills aiming to regulate internet use and content, the position adopted by the Brazilian State contradicts international norms and consensuses.

In the face of the rapid growth and spread and the strong presence of paedophilia or child prostitution networks on Brazilian websites[78] and the denunciation of numerous sexual abuse cases stemming from online encounters, the General Prosecutor's Office for Combating Cybercrime was created, which channels the reports and carries out investigations focusing primarily on paedophilia and child pornography. Despite what represents a step forward for certain individual rights in other countries and in international regulation, this Office obligates ISPs to reveal the identity of these websites' responsible parties, in order to process and incarcerate them. In November of 2008, Brazil was home to the "III World Congress against Sexual Exploitation of Children and Adolescents", which provided an environment for special debates about paedophilia and the Internet.

Self-regulation by users and ISPs, as encouraged at the UN Conferences and international consensus, has not been the primary solution used in confronting this issue in Brazil. It is the State who takes the lead in content monitoring and an active role in handling denunciations by users.

U.S.A.

U.S.A. has some of the world's strongest protections for civil rights. It has progressive constitutional protections and laws that promote freedom of speech and freedom of information and privacy. The U.S. is home to the largest concentration of enterprises and companies developing and managing the main

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[77] The text of this bill calls for tour to eight years of prison for anyone who "produces, reproduces (or for) directing, photographing, filming or recording in any way, explicit or pornographic sex scenes that include children or adolescents". The same punishment will be applied to those who sell or purchase such material. This texto also includes three to six year prison sentences for anyone who offers to exchange or circulate this type of material, and one to four years for anyone who collects or possesses it in any medium.

[78] According to a report from the General ProsEUutor's Office for Combating Cybercrime in Brazil, during the first trimester of 2007, 2500 new websites were created every month.

internet sites. Those enterprises are leaders in cyberspace and they prioritize the rights of consumers over the rights of citizens. As a result, the laws and agenda are formulated in terms of the market and not in terms of rights.

The First Amendment of the Constitution provides for the greatest degree of protection for the freedom of expression of any Constitution in the world[79].

Even with these protections, the U.S Congress and individual states have enacted a series of laws calling for internet censorship, most of which have been rejected by the courts.

There are laws and regulations related to issues such as privacy, information protection, domain names, spam and e-commerce, both at a national level and in each state.

In 1996, the U.S. Congress passed the Communications Decency Act (CDA), criminalising the transmission of "any comment, request, suggestion, proposal, image or any other transmission which is obscene or indecent", or of "clearly offensive messages" sent to anyone under 18 years of age.

In 1997, the U.S. Supreme Court declared the CDA unconstitutional due to its violation of the first amendment and considering that "without defining key terms, the statute was unconstitutionally vague. Moreover, the Court noted that the breadth of the CDA was "wholly unprecedented" in that, for example, it was "not limited to commercial speech or commercial entities, [but rather] [i]ts open-ended prohibitions embrace all non-profit entities and individuals posting indecent messages or displaying them on their own computers"."[80]

In 1998, the U.S. Congress approved the Child Online Protection Act (COPA) which classified the publication or dissemination of available information that would be "harmful to minors" as a crime. This was widely debated and was taken to Court because it was considered a threat to freedom of expression for adults. In March of 2003 the Court of Appeals established that the law was unconstitutional, and in July of 2003 the Bush Administration requested that the Supreme Court review the decision.

In April of 2001, the U.S. Congress passed the Children's Internet Protection Act (CIPA), a federal law addressing concerns about online access to offensive content in schools and libraries. CIPA establishes certain requirements for all schools or libraries that receive funding for internet access or internal connections through E-program –a program which makes some communication technology more accessible for schools and libraries. CIPA is directed toward children because it blocks access to certain materials, such as pornography.

In the 2004, in the court ruling on COPA, it was recognised that "the internet is not limited by national borders and therefore attempts to limit what is posted on the internet may be impractical; limits on what

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[79] "Access Denied: The Practice and Policy of Global Internet Filtering", p. 78.
[80] http://www.efa.org.au/Issues/Censor/cens3.html

can be posted within the borders of the United States (or any other country) could be easily avoided. However, it is becoming more practical to limit what can be viewed on the Internet through so-called filtering technology"[81]. Returning to the question raised by the author: who supports internet censorship? The groups that do support censorship change over time, however, they are usually associated with more traditional and religious sectors and are based on an idea of pornography as the principal enemy as a means of justifying all measures necessary to control it.

Although the federal government of the United States does not put general information filters in place, there were several intents to implement techniques for restricting and regulating specific content in contexts such as libraries and schools. Pressure for regulating specific online content is related to four types of concerns: child and moral protection, national security, intellectual property rights and information security[82]. In hopes to "protect children", the interest in regulating child pornography has intensified, however this interest has been appropriated by conservative sectors who push to create legislation controlling online sexual content, substituting "child pornography" with "harmful content" as a way of increasing the number of activities and kinds of content considered illegal. Under recent republican administrations (George H.W. Bush, 1989 -1993; George W. Bush, 2001 - 2009) there were several attempts to regulate content, but these were blocked by the First Amendment.

Nevertheless, most of the time controls are brought about by the participation of private parties and are supported by the State. In contrast with regimes where the State monitors the ISPs through court measures or techniques for controlling internet access and use, most of the regulations come about through private actions.

South Africa

In South Africa, as in many African countries, the internet is not very widespread yet, and this is especially the case in rural areas. As mentioned by Natasha Primo of AWID, cell phone use is much more widespread and we need to look at regulations and policies in that area more than the internet. Meanwhile, the surveillance of international and national regulations and policies is necessary, specifically to detect violations of women's rights, particularly their sexual and reproductive rights.

There are few laws specifically aimed at internet regulation. One law that prohibits pornography, including child pornography, was modified in 1999 to include internet content

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[81]   Depken,   Craig,   "Who   supports   Internet   censorship?",   2006.   Available   at:
http://www.firstmonday.org/issues/issue11_9/depken/index.html
[82] http://opennet.net/research/regions/namerica

In 2002, laws related to electronic transactions and messages were passed, making reference to a variety of issues, from the definition of information crimes to digital signatures and internet access and responsibility, as well as measures for consumer protections and anti-spam.

One of these laws created the figure of "Cyber-Inspectors", technicians working for the State who have the power to monitor online content and inspect and confiscate equipment.

In 2003, a law was passed obligating ISPs to conserve personal information that they have collected from their clients for a period of time yet to be defined, and make them available upon request in enforcing the law. The law also gives the Minister of Communications the power to specify security techniques and requirements, installations and devices, as well as the form of communication related to the information that is stored there

India

In India, the internet has experienced rapid growth in recent years and legislation is currently being developed to expedite the levels of access in the country and to develop stricter surveillance and supervision of the controls over online activities, especially after the September 11th attack in the U.S. and the December 13th attack on the Indian Parliament. Although the Indian Constitution guarantees freedom of speech, it establishes some restrictions in the "interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".[83]

The Information Technology Act in 2000 established norms regarding piracy, pornography and digital signatures. Article 67 of the Act states that all persons that publish "lecherous" material may be incarcerated for up to five years. Cybercafés and the homes of internet users suspicious of cyber-delinquency can be raided at any time and without a court order. Cybercafés are to follow certain indications for spatial distribution, in which they are not to authorize the use of computers by minors in cubicles or places where a third party cannot see the content of the pages they are navigating.

In July of 2003, a national law created the Computer Emergency Response Team, or CERT-IN, as a means to monitor all incoming and outgoing Internet traffic from India. This law enables the State, the courts, the police and other government agencies to submit reports to CERT-IN to censor or block materials "promoting hate content, slander or defamation of others, promoting gambling, promoting racism, violence and terrorism and other such material, in addition to promoting pornography, including child pornography and violent sex"".[84]

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[83] Constitution of India, p. 8.

[84] Department of Information Technology, at: http://www.mit.gov.in/

Neither the website's responsible party nor the other party in the ruling may intervene or have any voice in this process.

The first documented incident of Internet censorship in India was the Yahoo group's "Hynniewtrep National Liberation Council" in September of 2003, linked to a minor separatist group from the North-Eastern state of Meghalaya[85]. Most of the censorship cases that have occurred since then are due to political or national security motives. For many years the Indian State has applied censorship measures to materials considered inappropriate, however, in the case of the internet such measures are taken even further: "Books and films are banned as a result of protests when someone claims to be offended, but websites are blocked unilaterally, clandestinely by the government in its benign attempt to save you from propaganda of both the extreme left and the extreme right"[86].

8. Recommendations and Future Directions

The main difficulty in this policy and regulation review was the limited timeframe. The large volume of information and the difficulties in locating certain information, especially regarding Africa and Asia due to a lack of systematized data, slowed down the process of searching and gathering materials. One tool which strengthened this process was the consultations with key references on the subject matter who guided the search for information and advised us about possible information sources.

The principal methodological limitations and difficulties were:

Both in the international documents and declarations (WSIS, IGF) and the regional regulations and declarations (EC, APEC, Regional WSIS Forums), as well as the online platforms' Terms of Use and Community Standards, in general the definition for content considered harmful or pornographic is vague or not established –the consensus is to not define it. Except for the Convention on Cybercrime of the EC which establishes criminal sentences, there is no interpretation of what definitions, actions and categories are considered harmful, indecent and pornographic.

In all the regulations we found, when the term "pornography" is mentioned, it is as if there were a universal consensus on what does and does not mean, and on what is and is not considered harmful content. Yet, in a global arena like the Internet, given the cultural, moral and legal variations that exist around the world, it is hard to define "pornographic content". These difficulties have meant that such content has not been given a clear definition when referred to, despite the fact that there could be different definitions for the different types of content considered "pornographic".

This lack of a definition, even an implicit definition, of that which is considered pornographic, has hindered one of this review's proposals from being fulfilled: inquiring about the differentiation between pornographic

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[85] Shivam Vij, "The Discreet Charms of the Nanny State: Clandestine Nature of Internet Censorship in India".
[86] Op cit, p. 1

and erotic content, where the line is drawn between these categories, if they are subject to the same censorship, and if the censorship differs or not according to the concept of pornography considered.

The same situation occurs with the definition of "harmful content": no definition is provided and it is commonly used as synonymous with illicit, illegal or indecent content. The declarations that have made progress on describing these contents (WSIS, EC Action Plans) only include child pornography and paedophilia.

Considering gender specifically, women are named primarily in an effort to democratise the use of and their participation in ICTs, but no special mention of sexuality, sexual stereotypes or violence against women on the internet, or in regards to pornography, are made. When it comes to pornography, minors are the exclusive subject that the involved parties agree to protect in all the regulations and policies. An important point to consider is the difference between pornographic content and illicit content, such as child pornography. This difference is not always clearly drawn out in legislation.

The tension that exists between the rights to communication and privacy and sexual and reproductive rights is often resolved in favour of the right to privacy. In several of the examples collected here (the conflict with Orkut Brazil being the paradigmatic case), reveal that the what is valued and safeguarded most is the user's privacy in detriment of sexual and reproductive rights. In this process, the ISPs and some of the user's movements play a leadership role, which is opposed by governments and other user's movements that defend women's, GLTTBI and, to a lesser degree, children's rights.

The tendency in content regulation revealed in the regulations and policies has to do with self-regulation. The EC sets and leads the implementation process of this system. State regulation of the internet is strongly resisted by user groups and Human Rights supporters, who see attempts at regulation as an infringement of the freedom of expression and of the right to communication. As has been noted, letters and other expressions of denunciation are posted on many blogs as a way of confronting the measures and actions carried out by certain States.

Along with self-regulation, filtering systems constitute another of the most commonly implemented modalities of control. Nonetheless, due to their own operating systems, the filtering systems have presented serious flaws, given that they restrict access to websites containing informational or educational material about sexuality, or websites linked to the GLTTBI population.

ISPs and other companies that intervene play an active role in terms of participation in Conferences and lobbying governments. More than once ISPs have expressed the need to establish clear criteria and definitions for setting up a filtering system.

Feminist and women's organisations are not present in the debates and when they do appear their discourse is centred on women's participation in equal conditions as men, but they do not focus their actions on the content debate or on the need for achieving a greater consensus and definition with regard to certain subjects.

Future Research

According to our review and commentary, a future line of research that we recommend is to inquire into different feminist and women's groups –specifically those working on sexual rights- about their needs and the amount of their actions and strategies dedicated to improving women's access to and the treatment of women in ICTs. Another important issue for future research is how to foment interest among feminist and women's groups in order to increase their participation.

Methodological issues: It is important to do further research toward implementing a discourse analysis, focusing on vague or prejudiced texts. Facing the lack of definitions for "indecent", "harmful" or "pornographic" content, it is important to agree on the framework in which these terms are immersed and the actors that intervene.

This review has demonstrated that the presence of a gender perspective and the women's and feminist movement is very scarce in the debate about internet regulations, despite the fact that the individuals from the movement value the internet as a space for communication and disseminating information. It is necessary to investigate the motives and causes for their absence in the debate and, raise the following questions with regard to the perspective that feminists have of the internet: Is there a consensus? Do their positions become either more liberal or more orthodox when it comes to the field of the internet? What content do they consider harmful? What sectors could be potential partners for building alliances in this field of action?

The right to privacy is an important issue for debate, especially among communication rights activists and sexual and reproductive rights defenders. The issue of privacy is key for both internet users' movements and the women's movement, but with different nuances. On the one hand, users' movements see the right to privacy as a fundamental right, which is why they tend to oppose any control policies. On the other hand, for the feminist movement the private sphere has constituted a space where women's rights have been violated.

Another area for further research is the role of companies with regard to the Internet, from ISPs to software companies, since we observed that they also participate in the debates, yet in the review of the type of documents analysed here, it is very difficult to track the true impact of their opinions and the pressure they put on governments.

We have pointed out the inexistence of regional regulations on most continents. The review, analysis and systematization of national legislation could help identify the general position on each continent.

In 2009 and 2010, ICPD (Cairo) +15 and the Fourth International Women's Conference (Beijing) +15 will be organised to evaluate advances, difficulties and future actions, especially associated to the Millennium Development Goals. An important way to ensure that sexual rights be approached from a broad feminist perspective is to incorporate this discussion into the conference agendas, generating interest and

promoting the inclusion of the matters explored in this policy review. It is in this sense that we believe that these two events could be strategic opportunities for feminist and women's groups interested in and working on sexual and reproductive rights to become involved.

It may also be necessary, through the future research, to develop some specific examples of the risks that the internet poses for women's sexual rights, not only related to violence against women but also sexual harassment, abuse and other issues, in order to invite feminist and women's groups to become involved in the discussion of effective ways to avoid such risks.

Country selection:

In all the countries chosen for study, feminist and women's groups have an important presence. Taking the presence of these groups into account, as well as the regulation/policies and the involvement of government in the issue, we offer some suggestions regarding country selection for future research.

Latin America

Brazil: Brazil is the country that leads the Latin American regional position and presence in these debates and has a strong presence in the international agenda, driving protections for minors and content monitoring for child pornography. Important struggles have also been developed in this country, as witnessed in the Orkut case. The feminist and women's groups are strong and the feminist groups are largely involved in the communications field.

Argentina: In recent years, Argentina has sanctioned legislation to set up a filtering system in public places to protect minors from accessing illicit content. There are strong feminist and women's groups and there are some experts within feminist organisations and within legal organisations and other NGOs.

Colombia: Despite Colombia being the Latin American country most closely connected to the EU, and having hosted several regional conferences and actions, it may not be a the best case to study because it has very few regulations and policies and, due to the "guerrilla" or rebel armed forces and the government's opposition to them, it already implements censorship practices on most ICTs, but as a way of maintaining the political legitimacy of the government's opposition to the guerrilla.

Europe

Spain: Spain is the most advanced European country in terms of legislation on content monitoring, and it is home to the feminist and women's groups that are most concerned about violence against women, which could mean that they would be interested in this issue. They also have important feminist and women's groups in both government and civil society.

United Kingdom: The UK has the best and most efficient hotlines. They also have strong feminist and women's groups and communications experts.

Turkey: Turkey is a country with abundant legislation on these issues and where the political and religious aspects used by the government for censorship and internet access regulation are interesting. It is also home to groups with ample experience in sexual and reproductive rights as well as feminist experts. It could be a very interesting country to bring the project closer to the Middle East.

Asia

Thailand: Thailand is the country with the highest level of censorship. In early 2008, a Thai tribunal shut down 400 and blocked 1,200 websites for containing purported offences to the monarchy or for endangering national security and social order. The question of social order is fundamental because it is linked to sexuality and pornography, and produces heavy censorship and filtering of websites by/for gays and lesbians. On the other hand, this is a country with strong activism by sexual rights groups as well as feminist experts working on this issue.

Australia: Strikingly, Australia has a high level of censorship but one also finds there a broad users' movement and NGOs against censorship and filtering systems. It could be an interesting country for further study because it has some feminist and women's groups, such as sexual rights defenders as well as experts.

Africa

South Africa: The government of South Africa is beginning to sanction laws for controlling internet service provision through the monopoly over telecommunication services. On the other hand, as suggested by several articles mentioned in this review, women's groups are more and more able to establish contact by e-mail and websites to create networks and information exchange on questions ranging from sexuality and health, to women in the academic world, politics and development. But, in the case of South Africa, it is important to study cellular telephone communications as well, which is more widespread and which also poses great challenges.

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APPENDICES

Appendix 1: Interview Guide

Module I. Policy and regulations
- What are the regulations that have the most significance in your country and your region?
- Who are the primary *decision makers* in this subject matter?
- What impact do these regulations have on the exercise of sexual and reproductive rights of the users?
- Do these regulations incorporate a gender perspective? Do they incorporate sexual diversity?
- In the framework of these regulations or legislation, is there tension between censorship and the freedom of expression?
- What impact do these regulations have on women? / In what ways do they affect women? Is this different from how they affect men?
- Do you feel that, in your country or region, there is consensus on the definition of pornography, "harm" and protection of minors?
- From your perspective, and in relation to sexuality in the sphere of the internet, on what issues has the greatest consensus been reached in your country, region or internationally?

Module II. Issues for debate and critical points
- In relation to sexuality, what are, from your perspective, the critical points in the current debate about policies and regulations in your country, regionally and internationally?
- What changes have occurred in the last 15 years?
- What is the concept of pornography used in these regulations?
- What implications does this definition have for the freedom of expression and the right to information?
- What population groups are vulnerable to these regulations?
- Are you familiar with any cases of censhorship on websites containing sex education or sexual and reproductive rights content?

Module III. Main actors
- Who are the main actors, within government and non-governmental organisations, that intervene in the debate over these policies?
- What level of participation do women's offices and organisations have in your country, regionally and internationally? Could you cite some examples?
- *(If feminists or women's movements have not been mentioned)* Do you feel that feminism or women's movements should be among the main actors in this debate?
- Has the discourse of these actors changed in your country in recent years? Regionally? Internationally?

Appendix 2: Interview with Chantal, Lebanon.

Interview with Chantal, Coordinator and Founder of a group of lesbian women in Lebanon and other Arab countries. 16 November, 2008, Cape Town.

I. For them, the internet is excellent. It is what has allowed them to get situated, communicate, get organised and keep going. Anonymity is key in this sense. How is it used? They never circulate photos or images of themselves; everything is by means of "drawings or animations". She and some of her friends and fellow members were previously in a GLBT organisation, but (just over) a year ago they separated and created this organisation which is only LBTT. They gradually came to identify each other through "chats", they usually communicate over their own laptops and computers or in cybercafés or from other places. First they made email lists and there were 200 of them that communicated without knowing each other. The first meeting was held months after becoming connected online and approximately 40 of the women met there.
Membership: In general they are young women between 17 and 40 years old, but those who are most active are between 20 and 26 years old. The women over 40 generally do not want to become involved and come out of their anonymity. They have more reduced forms of connecting with each other, but they prefer to keep it that way in order to maintain a certain degree of isolation.

II. **What is the context of Lebanon like?** It is very against homosexuality, and even more so feminine homosexuality. Gay men are more accepted and active gay men –that is, those who penetrate their partners- are not considered gay. Women are less accepted. Even though there isn't political censorship, there are controls and persecution of male and female homosexuals. Since lesbians are less accepted, and not even in their families can they speak of the organisation or with their partners or friends, one of the requirements of the organisation is that members have to sign saying they will not mention the meeting place or the other women to anyone. If you are arrested they try to get information out of you about other women in Lebanon, and if the police arrest any homosexual person, they try to obtain the names of other similar people. She clarified that in recent years no one has been taken prisoner for being gay or lesbian, but there is a strong psychological pressure. She says that there isn't political censorship in Lebanon or at least that they don't perceive any.

III. **Activities at the organisation's home:** The center is located in downtown near the University, is open 12 hours a day, and from the outside looks like a family home. There they hold workshops on self-esteem, HIV/AIDS, technology use and psychological support. It is also a place to spend time for those who are running errands or doing other business nearby and for those who go to the University. Women from outside Lebanon's capital city who tend not to have computers or internet can go to the center and there is a box with money in it there, and everyone puts in and takes out what they need for transportation or other needs. They don't have to say how much they spent or ask for money, it is based on mutual confidence among members. The funds in this box are used freely without any controls. Sometimes the members visit other women who are not from the city,

they gather together a group of women and the visitor goes, talks with them and shares face-to-face encounters.

Iς. **The use of the internet:** most of them know how to use it and they teach those who don't. Those who don't have computers go to cybercafés, which are very affordable places to use the internet. There isn't censorship, but as a form of protection they never use their last names or show pictures of themselves so that their faces cannot be seen. They use all the different platforms possible as a way of reaching more people: Mozilla, Google, MySpace, Facebook. They communicate in English and in Arabic. If they visit another Arabic country they organise visits or meetings, they set dates for going to a restaurant and several women gather there together. This is the only way to see and locate each other personally. In the organisation they train women through courses on using blogs and making films to post on them, among other techniques.

ς. **Other means of communication**: the cellular phone is heavily used by this group. It is a way to communicate directly with the members without going through the families, employers or others. It is a way to maintain one's privacy. Both calls and text messages are affordable. There isn't censorship; cell phones are not controlled at all.

ςI. **What are you familiar with in terms of policies and regulations?** Quite little, in general. They are not very interested in this, and since there isn't censorship, or at least whatever censorship there is, it does not affect them, they are not concerned about this. However, if internet use were limited or there were restrictions, they would feel affected because the internet is vital to them as a way of keeping up their network of contacts, support and articulation. They reject any form of eliminating privacy. They are not worried about censorship as long as it does not affect them. They believe that the right to freedom of expression and communication is key to guaranteeing them their sexual rights.

Appendix 3: Interview with Melissa Hope Ditmore, U.S.A.

Interview with Melissa Hope Ditmore of the Network of Sex Work Projects. 3 December, 2008.

Module I. Policy and regulations

Q: What impact do these regulations have on women? / In what ways do they affect women? Is this different from how they affect men?

It's hard to get information about breast cancer and condom use from computers in the library.

Q: Do you feel that, in your country or region, there is consensus on the definition of pornography, "harm" and protection of minors?

Harm and protection are not clearly defined.

Module II. Issues for debate and critical points

Q: In relation to sexuality, what are, from your perspective, the critical points in the current debate about policies and regulations in your country, regionally and internationally?

For sex workers in the US, it's decriminalization of prostitution. In the US, it's access to abortion.

Q: What changes have occurred in the last 15 years?

More sex workers work online. The police have followed them, so there is more surveillance of sex workers and entrapment of sex workers by law enforcement using the internet.

Q: What is the concept of pornography used in these regulations?

Any words that refer to genitals or even non-genital body parts seem to be the trigger for censorship of sites on library and school computers.

Q: What implications does this definition have for the freedom of expression and the right to information?

Library and school computers may be restricted from sites that have words like breast or condom. People can't get information about breast cancer or HIV prevention at school or in the library.

Q: What population groups are vulnerable to these regulations?

Students and people who do not own computers.

Q: Are you familiar with any cases of censorship on websites containing sex education or sexual and reproductive rights content?

The US government censors its own websites to restrict information about condoms and HIV transmission and prevention. It's not policy or law.

Module III. Main actors

Q: Who are the main actors, within government and non-governmental organisations, that intervene in the debate over these policies?

There is no debate.

Appendix 4: Interview with Carlos Gregorio, Argentina

Interview with Carlos Gregorio of the Instituto de Investigación para la Justicia in Argentina. 9 December, 2008.

Module I. Policy and regulations

Q: What impact do these regulations have on women? / In what ways do they affect women? Is this different from how they affect men?

Even when some legislation clearly protects boys and male adolescents, it can be observed that most penal legislation was written with girls and adolescents in mind, and follows a certain rationality that stems from the statistics.

Q: Do you feel that, in your country or region, there is consensus on the definition of pornography, "harm" and protection of minors?

The definition of child pornography in existing legislation in Latin America is not clear or complete: live shows, photoshopped pictures and audio are not classified adequately, and possession is only punished in some countries.

Almost all Latin American legislation about the rights of the child establishes the "presumption of minor" in order not to run any risks in the protection of the rights of the child. But, someone – for example, a judge who finds pornographic photos published or in someone's possession- upon not knowing the victim's identity, could decide to apply the presumption of minor and transform the case into a child pornography case where the right of defence could be infringed. For example, a person who downloaded a photograph from the internet, but is not given the chance to refute this presumption by proving their age. This is a technical difficulty in the persecution of child pornography, which requires a certain margin of discretion.

Q: From your perspective, and in relation to sexuality in the sphere of the internet, on what issues has the greatest consensus been reached in your country, region or internationally?

There is consensus on the reproach for sexual exploitation of children (even when minors under the age of 12 or 14 are being considered). When dealing with adolescents, peoples' opinions are not as strong. Such is the case, that some legislation even differentiates this group as "adolescents" (or "púber"), without establishing the specific ages encompassed.

Module II. Issues for debate and critical points

Q: What changes have occurred in the last 15 years?

Legislation has changed significantly since the Convention on the Rights of the Child. Sexual exploitation has become a figure which is explicitly punished, as is the use of children and adolescents in pornography. An especially notable change is that the possession of pornographic material is now punished, but not in all countries yet.

This subject is not simple. In child pornography –where all that's available is an image- it is very hard to determine the age of the victim, and even the possession can be innocent: these images often enter as SPAM, which people do not even check or goes directly into the SPAM folder, and this would in fact be considered possession (imagine this situation, where these images could be discovered in one's computer or, worse yet, in their "recycle bin"…what responsibility could be attributed?) Such is the case that, in the United States, more than three pornographic images are required to be able to begin a penal process, and in Spain, the punishment of fines are left open, since these can be interpreted in unclear cases or in a case where someone is surprised for the first time.

In the persecution of sexual exploitation on the internet, the most debated issue is the use of undercover agents that act as if they were children. If legislation does not establish the legality of this procedure, a pederast can automatically free himself by adducing that there was never a child victim and that he cannot be punished for his intention. The recent law against organised delinquency establishes that undercover agents can simulate another identity, but sexual exploitation was excluded from the text of this law.

Q: What is the concept of pornography used in these regulations?

It is difficult for legislation to inscribe a sometimes diffuse concept in the text of an article in the Penal Code. For example, the text of most Latin American legislation does not consider punishments for a person who attends a live show with child pornography. In fact, only legislation in Chile and Paraguay foresee this situation; the difficulty lies in the fact that any penal legislation must protect the rights of innocent people. In this case, when a person who goes to a public place where a live pornographic show using adolescents is being presented, it can be a difficult case to determine. It would be strange if someone were to request suspending a show in order to ask for the IDs of the show's participants, to free themselves of responsibility or report the event. A similar situation occurred in Bolivia, where a woman with a girlish appearance in a show was detained under the concept of protection and later turned out to be an adult. In Bolivia, a law prohibiting pornography (regardless of the age) was sanctioned, and later annulled by the Constitutional Tribunal, which considered adult pornography to be legal.

Appendix 5: Interview with Andrew Hunter, Thailand

Interview with Andrew Hunter of the Asia Pacific Network of Sex Workers in Thailand. 8 December, 2008.

Module I. Policy and regulations

Q: What are the regulations that have the most significance in your country and your region?

Governments in Asia have instituted specific legislation regarding censorship of the internet. In some countries, such as Cambodia- internet pornography (very widely defined) is also made illegal in anti-trafficking legislation.

Q: Who are the primary decision makers in this subject matter?

Usually sections of the Interior ministry or equivalent. In Thailand the interior ministry has 1000's of volunteers who search the net for obscene sites which are then blocked. In Myanmar the secret police and military control the internet and force internet service providers to block sites.

Q: What impact do these regulations have on the exercise of sexual and reproductive rights of the users?

They often limit access to information websites- or limit access to sites where people may see advertisements or links for these websites, such as on dating websites.

Q: Do these regulations incorporate a gender perspective? Do they incorporate sexual diversity?

In Thailand Thai gay websites are disproportionately targeted. I don't have information on other countries.

Q: What impact do these regulations have on women? / In what ways do they affect women? Is this different from how they affect men?

Sex workers have trouble advertising on the internet in many countries. The technology to get around these restrictions is often largely held by male activists and women have lesser access to it.

Q: Do you feel that, in your country or region, there is consensus on the definition of pornography, "harm" and protection of minors?

No. Definitions vary widely.

Module II. Issues for debate and critical points

Q: What is the concept of pornography used in these regulations?

Usually it is something like obscene depictions, nudity and images that go against the concept of the nation or the dignity of women. It is very broad.

Q: What implications does this definition have for the freedom of expression and the right to information?

It means that it is hard to get information on sexuality and sexual health out on the internet, and that sites that carry such information can risk being blocked or prosecuted for obscenity

Q: What population groups are vulnerable to these regulations?

The Cambodian law covering the internet is new- and enforcement of all laws is notoriously bad- so this is not clear. In Thailand gay websites are disproportionately targeted and constantly move to new internet addresses.

Q: Are you familiar with any cases of censorship on websites containing sex education or sexual and reproductive rights content?

I can try to get details of some of the sites in Thailand that were shut or forced to change.

Module III. Main actors

Q: Who are the main actors, within government and non-governmental organisations, that intervene in the debate over these policies?

Interior ministries; communications ministries, women's affairs and in NGO's it is the anti-trafficking groups by claiming pornography creates demand for sex trafficking.

Q: What level of participation do women's offices and organisations have in your country, regionally and internationally? Could you cite some examples?

Mainstream women's organisations and women's affairs departments champion censorship in most cases. Ministry of Women's affairs in Cambodia pushed the anti-trafficking bill that made all sex work illegal and has a section making all nude images on the internet illegal. "To protect the traditional dignity of Cambodian women". This has been supported by the majority of women's NGOs.

Q: Has the discourse of these actors changed in your country in recent years? Regionally? Internationally?

The discourse changes in poor countries depending on the policies of the donor countries. The USG has funded and pushed the Cambodian govt to make the anti-trafficking law and to include suppression of the internet in the law. The US and Swedish governments and a number of international women's organisations such as CATW promote the idea that pornography drives the demand for sex trafficking and thus use this as a way to promote censorship. Most of the influential women's organisations in SE Asia are run by elite and ruling class women who see controlling sexuality as a part of the defence of the "traditional dignity of Asian Women" These groups have quickly added the anti-trafficking assertions about trafficking to their list of reasons for controlling the sexuality of the mass of poor women (and gay men and transgenders).

Appendix 6: Interview with Evre Kaynak, Turkey

Interview with Evre Kaynak of Women for Women's Human Right (WWHR)–New Ways in Turkey. 3 December, 2008.

Module I. Policy and regulations

Q: What are the regulations that have the most significance in your country and your region?

The rising numbers of internet use throughout 2000s urged the state to take necessary steps for the regulation of the internet content. In 2005, the Turkish General Assembly (GA) ratified a new law (Law No. 5397) for the establishment of the Directorate of Communication under the Telecommunication Institute. In 2007, the GA ratified an additional law (Law No. 5651) "Law on the Regulation of the Content of Internet Broadcasting, and for the Suppression of Content Crimes", to be executed by the Directorate of Communication, under the supervision of the Council of Ministers. Turkish Penal Code can also be referred here, as it also regulates "indecency" (Article No 225).

Q: Who are the primary decision makers in this subject matter?

Radio and Television Supreme Council
Advertising Self-Regulatory Board
Directorate of Communication Law
General Directorate of Education Technologies

Q: What impact do these regulations have on the exercise of sexual and reproductive rights of the users?

In Turkey, "Censorship" is a common practice, with enhancing direct applications in the fields of broadcasting, advertisement, written and visual media. Beyond censorship, the discourses around "indecency", "morality", Turkish "social and family values", as references in several laws and regulations refer to sexuality as a "threat to public order".

Q: Do these regulations incorporate a gender perspective? Do they incorporate sexual diversity?

Not at all!

Q: In the framework of these regulations or legislation, is there tension between censorship and the freedom of expression?

For sure. Freedom of expression in Turkey remains to be one of most striking human rights issues. Restriction of the freedom of expression does not only apply to the issues around sexual and bodily rights, but also several other issues such as the rights of ethnic and religious minorities.

Q: What impact do these regulations have on women? / In what ways do they affect women? Is this different from how they affect men?

No concrete info. (According to the surveys, 4,33% of women in Turkey access the internet, while the ratio is 9,6% for men.)

Q: Do you feel that, in your country or region, there is consensus on the definition of pornography, "harm" and protection of minors?

I may say that there is, and the consensus is based on patriarchal norms and conservative approaches. "Indecency", which is not an objective term at all is proposed to be basis of restrictions.

Q: From your perspective, and in relation to sexuality in the sphere of the internet, on what issues has the greatest consensus been reached in your country, region or internationally?

Relevant laws and regulations refer to "indecency" as one of the crimes, and regulate several sentences from temporary closure of online sources to dissemination restrictions, or fines and even penalties of imprisonment. Some institutions, such as the Ministry of Education launched projects on the issue, while some others set up mechanisms for the involvement of the society within the "monitoring" processes. Turkish society has shown a great interest in the "monitoring" activities, particularly on monitoring the broadcasting and online content on sexuality. Within 8 months, between 23 November 2007 – 18 August 2008, the Directorate of Communication received 21.738 notifications from individuals. Excluding repeated notifications and invalid notifications, 11.494 were considered valid. Out of the valid notifications, 6411 (56per cent) were on sexuality; reported under the name of "indecency".

Module II. Issues for debate and critical points

Q: What is the concept of pornography used in these regulations?

Pornography is not referred to externally. It is being considered under the concept of "indecency"

Module III. Main actors

Q: Who are the main actors, within government and non-governmental organisations, that intervene in the debate over these policies?

Until now, the women's movement and the human rights activists haven't run any intense campaigns or actions around the issue. Several stake holders, representatives of the liberal media, human rights lawyers, and discussion platforms on online communication and exchange of information addressed the issue and wrote critical articles. However, all these efforts haven't been compiled in a network of advocates that may have a power of pressure on the issue yet.

Q: Do you feel that feminism or women's movements should be among the main actors in this debate?

Yes, for sure!

Appendix 7: Interview with Wanda Nowicka, Poland

Interview with Wanda Nowicka of the Family Planning Association ASTRA in Poland. 16 November, 2008.

Wanda clarifies that her responses are only based on Poland. As a form of communication within and outside the country, she explains that her organisation only has a website in Polish because English is very difficult and translations are costly. In the beginning, their website was bilingual, but for these reasons they have since abandoned the English part.

Feminists use the Internet a lot in Poland. She says she is not familiar with the regulations and policies on the internet in the country or the region. She says she does not think that restrictions or censorship of issues related to sex or sexuality exist, but that she is not completely sure. She says she does know of, and also knows up close, cases of censorship for political reasons. Her son is an extreme leftist and his political group had a website, but the police found it and interviewed him for being a "communist" and they shut down the website.

The organisation she coordinates in Poland has a website about sexuality and other issues for youth and adolescents to consult. Often times, when there is an issue or question about sexual or reproductive rights, right-wing groups fill up the site with messages that are the opposite of what the youth are saying and they answer the questions posted by the youth. It is very difficult or, better put, impossible to answer the messages because it would take up all the time at work of several people in the organisation. She says it is evident that ultra-religious (Catholic) conservative groups have many more economic and staff resources than her organisation.

In Poland, 40% of the population is rural and does not have or rarely has internet access. In this case, they don't have an alternative communication strategy. They tend to hold meetings in the rural areas and communicate by cellular phones, which are widespread.

Feminists do not get involved in the debates about internet regulations and/or policies. It is not a priority for them. She has a personal blog and is well known by the fundamentalist groups, who send her many messages, some of which are very aggressive. She even says they went on Wikipedia and changed the information about her, removing some and adding other information that is incorrect. They added information to her background that discredits her. Now she only uses Polish servers; she does not use Facebook any longer or other similar international platforms.