GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online

Association for Progressive Communications (APC)
and Humanist Institute for Cooperation with Developing Countries (Hivos)

This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.

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Sida

UNITED STATES

DIGITAL YOUTH: SEXUAL DEVELOPMENT AND EXPRESSION, AND THE COMPLICATIONS OF MODERN TECHNOLOGIES

Sex Work Awareness
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Introduction

As the internet became rapidly available in parts of the United States (US) in the mid- to late-1990s, parents and conservative groups began to voice their concerns about the freedom of information flow in cyberspace and how children could possibly access information that is considered harmful and/or inappropriate. The real concern was children's exposure to sexually explicit material, in addition to how the unrestricted availability of sexually explicit material could possibly affect persons and interpersonal relationships.

In the US, school and public library computers are required to restrict access to content that is harmful to minors. "Harmful" is vague: it means obscene content, and obscenity is not clearly defined and has been the subject of litigation. Though this harm is not clearly defined or located, what is typically restricted is information about sexuality. In some places this includes sex education materials. There are a range of concerns about the dangers of sexuality and technology. According to Attwood, "The developing focus on children in the way pornography consumption is figured is consistent with a shift in the way moral panics are constructed."[1]

The issues of access to information, particularly sexual information, and how information is restricted pre-date the internet. Information about sexual matters has a history of restriction in the US, including Victorian-era censorship of information about birth control sent through the mail, 20th-century decisions about who could use the birth control pill, and now, discussions about exposure and access to sexual material for school-age children and adolescents via the internet and mobile phones.

Attwood further notes that companies that produce internet filtering software "draw on this figure of the young person in their marketing"[2] and that parents are enticed to protect their children from the luring porn producers. Recent moral panics about the availability of pornography on the internet project the figure of the child victim and cyber porn addict to symbolise the "dangerous" overwhelming wealth of sexual material online coming into the homes of families.[3]

Policy and legislative context

The Children's Internet Protection Act (CIPA) was passed by the US Congress in 2000, and survived several legal challenges, being finally upheld by the Supreme Court in 2003. The law states that schools and libraries receiving federal funding to purchase computers used to access the internet and for related costs for accessing the internet must have:

> ...in place a policy of internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with internet access that protects access through such computers to visual depictions that are (A)(i)(I) obscene; (II) child pornography, or (III) harmful to minors; (ii) and is enforcing the operation of such technology protection measure during any use of such computers by minors.[4]

CIPA defines the term "minor" as "an individual who has not attained the age of 17."[5] A provision in the CIPA legislation allows for the disabling of filters by adult users under the conditions of "enabling access to bona fide research or other lawful purposes."[6]

While judged to be constitutional, the law is not without its problems. In particular, the definition of "harmful to minors" is similar to obscenity laws, which are subjective in nature and depend on context. CIPA provides this definition:

> **(2) HARMFUL TO MINORS.**—The term ''harmful to minors" means any picture, image, graphic image file, or other visual depiction that—

1 Attwood, F. (2007) "Other" or "one of us"?: The porn user in public and academic discourse, *Participations: Journal of Audience and Reception Studies*, 4 (1), p. 5. www.participations.org/Volume%204/Issue%201/4_01_attwood.htm

2 Ibid., p. 5.

3 Ibid.

4 Children's Internet Protection Act, p. 3. ifea.net/cipa.pdf

5 Ibid., p. 5.

6 Ibid., p. 7.

(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.[7]

The notion of "harmful to minors" is itself problematic. Judith Levine makes the case that restricting access to information, particularly about sex (the most commonly restricted topic) is what is actually harmful to minors because a lack of information renders them ill-prepared to face sexual experiences.[8]

The negative implications of legislation and surveillance for young people

The rise of the public's use of the internet in the US over the past fifteen years coincides with the erosion of sex education in the US in the past decade.[9] It is not coincidental that laws such as CIPA, which require that minors' access to information be restricted, arose at the same time as efforts to limit sexuality education to abstinence-only programmes, because these restrictions on content in education and in access to information were promoted by similar blocs of social conservatives in the US.

While US youth have less access to information about sexuality in educational institutions, they have incorporated new technology including smartphones and the internet in normal youthful sexual experimentation. For example, these new technologies have been used by youth to make and share photographs of themselves, including images that may be considered pornographic. Freedom of expression is guaranteed by the US Constitution, but people under eighteen years of age are not assumed to be able to consent, thereby creating a situation in which freedom of expression in the form of making and sharing sexual images of oneself could render youth vulnerable to serious criminal charges for making and distributing child pornography – in the form of photographs shared with their peers. What confounds this situation is that states in the US have laws that acknowledge that the age of sexual consent for minors falls between the ages of fourteen and eighteen years.[10]

US adolescents use new technologies in sexual experimentation. This is normal behaviour but involves severe legal and personal risks. Of particular concern is the practice of "sexting": sending and receiving mobile phone messages with sexual content, including photographs taken with camera phones or digital cameras.[11] Media research company The Nielsen Group reported that 77% of US teens own a mobile phone, 83% of teen mobile users use text messaging, and 56% use picture messaging; within a two-year period texting among teens went up 566%, with the average teen sending or receiving an average of 2,899 texts per month.[12] The ease and rapidity with which information can be shared electronically means that any image, once sent, may and probably will be rebroadcast. Moreover, once the content is "out there", containment is impossible.

More seriously, however, possession or distribution of such images may cause young people to fall foul of child pornography laws. One young man in the state of Florida had received some pictures of his girlfriend without any clothes on. At the time he received the pictures he was seventeen years old. When he subsequently broke up with his girlfriend, he unwisely decided to send her pictures to his list of contacts. Just a few days after his eighteenth birthday, he was met by police authorities and arrested and charged with nearly 75 counts of child pornography.[13] In another case in Pennsylvania, three teen girls and three teen boys, fourteen to seventeen years in age, were charged with child pornography because the teen girls had texted nude photos of themselves to the boys.[14] The particular status of child pornography in US law exposes senders and recipients to draconian punishments and to lasting consequences, such as being required to register as a sex offender.[15] Laws designed to protect young

7 Ibid., p. 2

8 Levine, J. (2003) *Harmful to Minors: The Perils of Protecting Children from Sex*, Thunder's Mouth Press, New York.

9 Jones, R. K. and Biddlecom, A. E. (2011) Is the Internet Filling the Sexual Health Information Gap for Teens? An Exploratory Study, *Journal of Health Communication*, 16 (2). dx.doi.org/10.1080/10810730.2010.535112

10 AVERT (2011) Worldwide ages of consent. www.avert.org/age-of-consent.htm

11 CBS/Associated Press (2009) "Sexting" Shockingly Common Among Teens, *CBS News*, 15 January. www.cbsnews.com/stories/2009/01/15/national/main4723161.shtml

12 Nielsen Company (2009) *How Teens Use Media: A Nielsen report on the myths and realities of teen media trends*. blog.nielsen.com/nielsenwire/reports/nielsen_howteensusemedia_juneo9.pdf

13 Harkins, G. (2011) One-size-fits-all laws for sex offenders miss the mark, *Medill Reports Chicago*, 15 February. news.medill.northwestern.edu/chicago/news.aspx?id=178523

14 Associated Press (2009) Judge Puts "Sexting" Prosecution On Hold, *CBS News*, 30 March. www.cbsnews.com/stories/2009/03/30/national/main4905250.shtml?source=RSSattr=HOME_4905250

15 Feyerick, D. and Steffen, S. (2009) "Sexting" lands teen on sex offender list, *CNN*, 7 April. articles.cnn.com/2009-04-07/justice/sexting.busts_1_phillip-alpert-offender-list-offender-registry?_s=PM:CRIME

people from adult predators can and are used to punish young people for what are best described as youthful indiscretions – and to punish them very severely.

In a survey of teens (13-19 years) and young adults (20-26 years), conducted by the National Campaign to Prevent Teen and Unplanned Pregnancy, 20% of teens and 33% of young adults responded that they have sent or posted nude or semi-nude video and/or photos of themselves. Of these numbers, 22% were teen girls and 36% were young adult women. The majority of respondents who had sent/posted sexually suggestive content or images sent them to a boyfriend or girlfriend; 71% of teen girls and 83% of young adult women reported this. Nearly half of the respondents in the survey reported that it is common for sexually suggestive content and/or nude images to be viewed by people other than the person the original message is intended for.[16] Many adults worry with good reason that young people may not understand the consequences that may arise from sending sexual content and images, even if sent only to someone that they trust.

Accordingly, many adults perceive a growing need to control not merely what information young people may access, but also what information they may transmit. Existing internet filtering software may contain some features related to this. At least one private company offers software applications that enable supervision of mobile phone use.[17] The homepage of the site declares that the software was "developed by parents for parents." A variety of types of supervision are offered, including sexting. The filter for mobile phone sexting claims to be able to detect nudity in images, presumably using techniques similar to those employed by image filtering software. Such techniques may be error prone: for example, most people's genital area is darker than the rest of their skin, and dark skin tone has been marked as nudity by some filters. With such a filter, people with darker skin tone may *always* be tagged as nude and filtered.

The software can also be used to forward questionable messages automatically to a supervisor, intended to be a parent or guardian. This feature is itself subject to potential abuse. Spouses or partners may also make use of the surveillance features of the software, sometimes without benign intent or effects.

In general, any surveillance feature raises the potential for abuse. In one current case, it is alleged that a supervisor working for a Philadelphia school district used software installed on school-mandated laptop computers to spy on children. The software was intended to control use of the computers by children and provide a security mechanism in case of theft. Instead, complainants allege that employees of the school district used the software to surreptitiously take photographs of children in their own bedrooms, a very serious violation of their privacy[18] that could include the surreptitious creation of child pornography.

Conclusion

Policies in the US continue to be developed based on moral panics and fear, including fear of the ways new technology will be used for sexual purposes. Child pornography laws and laws restricting the digital transmission of any sexual images of children can criminalise normal youth behaviour. They live in a digital age where communication does not require face-to-face meeting and the possibilities to experiment sexually are arguably very different to the ways people experienced sexual development and experimentation in the past. Educating rather than criminalising youth may have a far more positive effect on their future. Sexual behaviour documented digitally, including sexting, is inherently vulnerable to exposure. It is simply very easy to share. Minors who experiment sexually with digital media risk being classified as sex offenders if a zealous person who pursues prosecution discovers them. More research in collaboration with parents, educators, librarians, sexologists, and psychologists is necessary – those who can provide insight and experience working with youth and understand their mental capabilities as well as vulnerabilities when using the internet. This will offer more practical considerations for children's internet and mobile phone use and contribute to their growth and development by helping parents work with their children to exercise discernment and critical thinking when faced with controversial or inappropriate sexual materials.

Youth in the US have sexual rights and freedoms which are acknowledged in state laws defining the age of sexual consent and marriage, access to sexual health care such as birth control information and services without a parent, as well as youth sexuality organisations which advocate comprehensive sexuality education for youth through peer education

16 National Campaign to Prevent Teen and Unplanned Pregnancy and Cosmogirl.com (2009) *Sex and Tech: Results from a Survey of Teens and Young Adults*. www.thenationalcampaign.org/sextech/pdf/sextech_summary.pdf

17 www.mykidissafe.com/homepage.php

18 Robbins vs. Lower Merion School District (2010) Court filing, United States District Court for the District of Eastern Pennsylvania.

(many of which are mostly accessible online). As youth become curious about their bodies and sexuality, they may sexually experiment and develop relationships with their peers. However, it is key to understand that youth will express their sexuality using the means of the current time, in this case the internet. The countermeasure of over-restricting access risks limiting the rights of association and expression of young people, and inappropriate supervision of their day-to-day communications.

Action steps

- Share this article with youth and people who work with youth!
- Support efforts to educate youth about sexting and the possible consequences they face, including sharing information directly.
- Provide the space for youth to be learners and teachers about sexting issues. Sexuality websites run by youth provide insights into their issues and concerns, as do sex education programmes run by youth peer educators.
- Include the stories of teens who became registered sex offenders for sexting and explain the possible consequences of forwarding pictures not intended to be shared.
- Advocate on behalf of youth who have been unjustly affected by extreme enforcement of child pornography laws. This can be as simple as emailing legislators and encouraging them and others to limit the use of sex offender registries to people who directly harm others, rather than for youth making and sharing images of themselves.
- Support youth who have been unjustly affected. Support can mean simple kindness in the face of the isolation they have experienced, but also can be more material such as assistance with job searches or placement.
- Join APC's Don't Forward Violence campaign.[19]

19 www.takebackthetech.net/pledge/i-dont-forward-violence

GLOBAL INFORMATION SOCIETY WATCH 2011

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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GISWATCH is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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