

# GLOBAL INFORMATION SOCIETY WATCH 2015

*Sexual rights and the internet*



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

## Global Information Society Watch 2015

Sexual rights and the internet

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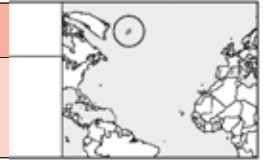


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## Kvenréttindafélag Íslands/Icelandic Women's Rights Association

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### Introduction

In 2013, the minister of the interior proposed a ban on online pornography in Iceland. His efforts sparked a furious debate online, with people from all over the world writing to the ministry both in opposition to the ban and in support. Supporters of the ban emphasised the harmful effects of pornography, especially on children, while opponents emphasised issues of free speech and the dangers of censorship.

Feminist ideas are influential on all levels of society in Iceland, but these ideas tend to be homogeneous. Feminist thinking in Iceland is heavily influenced by the women's liberation movement of the 1970s, whose influence in the country has been oversized due to its formation of a political party, the Women's List, which sat in Alþingi, the Icelandic parliament, from 1983 to 1998. The stunning success of anti-pornography feminists in the political arena in the 1980s and 1990s and the strong influence of the neoliberal school of feminist thought in the 1990s and 2000s have ensured that competing ideas of intersectionality, sexual agency and sexual freedom have been marginalised in Icelandic political discourse, and were not heard in the debate surrounding the proposed ban on online pornography in 2013.

### Pornography: Banned in Iceland since 1869

The printing and distribution of pornography have been illegal in Iceland since 1869. Article 210 in the general penal code, which deals with pornography, has only been substantively amended twice in the 150 years since it was first enacted. In 1940 a paragraph banning pornographic lectures and performances was added, and in 1996 a paragraph banning child pornography was added.<sup>1</sup>

The age of the legislation is reflected in the archaic language of the article in the penal code. For example,

the language added in 1940 prohibits individuals to produce, import, sell, publicly display, or distribute pornographic books, pornographic pictures, or other such things, as well as hosting public lectures or performances which are “immoral in such manner”. The Icelandic word used to denote “performance” is especially archaic. “Leikur” now refers to games or play, but at the time could be construed as meaning theatrical plays or performances. There is no reference to online distribution, and the only reference to pornographic videos or films is found in the section of the article added in 1996, banning child pornography.<sup>2</sup>

The production and possession of pornography for private use is not addressed in the law, and can be regarded as legal, with the exception of child pornography.

The lack of legal reform to the penal code regarding pornography is unusual when placed in the context of legal reform in neighbouring European countries, where pornography has become increasingly accepted. Iceland is now the only Nordic country to ban the production and distribution of pornography. Denmark was the first to legalise pornography, in 1967, and Norway the last, when in 2005 a ruling by the country's supreme court effectively legalised it.<sup>3</sup>

Before child pornography was added to article 210 of the penal code, the article was seldom used in Icelandic courts of law. In fact, it was only in 1973 that the first case of pornography reached the supreme court of Iceland, when two men were convicted of distributing calendars with silhouettes of heterosexual couples in sexually explicit positions.

One reason that people were rarely prosecuted for pornography is that the law does not define what constitutes pornography. It was only in 1990 that the supreme court issued a decision confirming the conviction of a local television station for violating article 210 by broadcasting pornographic films, and affirming a definition of pornography which had been used by the district court.

Pornography, since 1990, is by this legal precedent defined in Iceland as “aggressive representation of sex to make money, without love, tenderness or

1 Helgadóttir, Á. (2014). *Permitting Pornography: A Critical Review of the History of Pornography Censorship in Iceland in a European Perspective*. BA Thesis at the Faculty of History, University of Iceland. [skemman.is/stream/get/1946/18430/42706/1/Helgadottir\\_BA\\_Permitting\\_pornography.pdf](http://skemman.is/stream/get/1946/18430/42706/1/Helgadottir_BA_Permitting_pornography.pdf)

2 Althingi. (2015). *Almenn hegningarlög (1940 nr. 19 12. febrúar)*. [www.althingi.is/lagas/nuna/1940019.html](http://www.althingi.is/lagas/nuna/1940019.html)

3 Helgadóttir, Á. (2014). Op. cit.

responsibility". This was defined in contrast to erotica, or the "sexual art of literary or artistic expression of love".<sup>4</sup> This definition has been used by the district courts in several cases in the last quarter century, and confirmed by the supreme court in at least three cases.

Efforts to reform the pornography legislation have been rare and ineffectual in the last decades. In 2001, the Left-Greens submitted a bill before parliament proposing heavier punishment for the advertising of pornography. The minister of justice Sólveig Pétursdóttir, a member of the centre-right Independence Party, ordered a report on legislation in the other Nordic countries regulating prostitution and pornography,<sup>5</sup> and formed a follow-up committee tasked with issuing recommendations to improve legislation on prostitution and pornography. The committee issued a report recommending that the ban on the distribution and publication of pornography be lifted, but with restrictions on child pornography and animal pornography.<sup>6</sup> Despite these reports and recommendations, no reform on the pornography legislation was enacted.

The latest serious effort to reform the pornography legislation took place in 2013, in the last years of a government coalition consisting of the Left-Greens and the Social Democratic Alliance, and, in contrast to neighbouring countries, this reform was meant to further restrict access to pornography rather than liberalise it.

### How to govern as a feminist...

Iceland is politically a fairly conservative society, at least when compared to other Nordic countries, and political parties right of centre have historically been very successful. The Independence Party, a centre-right political party, has been a member of the ruling government for 54 of the 71 years since Iceland gained its independence from Denmark in 1944.

The financial collapse of 2008, when all the major banks of Iceland collapsed and the Icelandic state came close to bankruptcy, shocked the electorate to temporarily abandon the policies of the neoliberal wing of politics. The Independence Party, for the first time since it was founded in 1929, did not receive the largest share of the electoral vote in an emergency election held in 2009.

The emergency election held in 2009 also saw a huge rise in the number of women elected to Alþingi, the Icelandic parliament. In 2007, women won 31.7% of the seats in parliament. In 2009, the number of women in parliament jumped from 20 to 27, constituting 42.9% of elected members of parliament.<sup>7</sup>

Two left-wing parties were voted into power in 2009, the Left-Green Movement of Iceland (or Left-Greens) and the Social Democratic Alliance. The latter had been formed 11 years earlier with the merger of several political parties, one of which was the last women's-only political party in Iceland, the Women's List. This government, which served from 2009 to 2013, was the first explicitly feminist government in Iceland.

Several key feminist legislative reforms were enacted during the coalition's time in government. In 2009, the parliament passed new legislation, based on a Swedish model, criminalising the purchase but not the selling of prostitution.

In 2010, the parliament passed legislation requiring a gender quota for boards of all companies with more than 50 employees. The same year, the parliament effectively banned commercialised stripping by passing a law which prohibited employers from profiting from the nudity of their employees. Overall, 54.1% of the general public agreed with this ban. However, while 76% of women approved, the approval rate among men was only 33%.<sup>8</sup> Feminist groups in Iceland were unanimous in their approval, since the law did not restrict women's agency, only prohibiting external parties from profiting from women's bodies and sexualised labour.

In 2011, the so-called Austrian model was passed, through legislation allowing authorities to remove domestic abusers from the home at their own discretion, and, that same year, the government began implementing gender budgeting in the domestic budget.

The government was voted out of power in the elections of 2013, but during its last days in office, its members attempted to push through a reform of the pornography legislation.

### Banning online pornography?

In October 2012, Gail Dines, an academic and anti-porn activist from the United States, visited Iceland and participated in a high-level conference on pornography. The conference, entitled "Legislation, Sexuality, (Un)Culture, Self-Image and Intimacy",

4 Ibid.

5 Alþingi. (2000-2001). *Skýrsla dómsmálaráðherra um samanburð á lagaumhverfi á Íslandi og annars staðar á Norðurlöndum varðandi löggjöf og eftirlit með klámi, vændi o.fl., samkvæmt beiðni*. www.althingi.is/altext/126/s/0625.html

6 Ingvarsdóttir, S., et al. (2002). *Skýrsla nefndar sem falið var að gera tillögur um úrbætur vegna kláms og vændis*. Reykjavík: Dóms- og kirkjumálaráðuneytið. www.innanrikisraduneyti.is/media/Skyrslur/vaendioegklam.pdf

7 www.althingi.is/thingmenn/althingismannatal/konur-a-althingi/tolfraedi

8 www.mmr.is/frettir/birtar-neurstoeur/137-rumur-helmingurfylgjandi-loegum-um-bann-vie-nektardansi

was hosted by the Icelandic Ministry of Interior, the Ministry of Welfare, the Ministry of Education and Culture, and the faculty of law at the University of Iceland.<sup>9</sup>

The conference was the culmination of work done within the Ministry of the Interior since the autumn of 2010 to reform pornography legislation in Iceland, as well as the first salvo in an effort to ban internet pornography. Before the conference took place, several meetings were held where governmental and non-governmental institutions discussed ways to streamline cases of sexual violence in the justice system. Issues which were repeatedly raised during those meetings were the increased availability of pornography online, the “pornification” of Icelandic society, and its potential effects on the rates of sexual violence.<sup>10</sup>

The minister of the interior, Ögmundur Jónasson, opened the conference, and closing remarks were given by the minister of education and culture, Katrín Jakobsdóttir. In his opening remarks, Jónasson placed the conference in an explicitly political context. He did not claim a correlation between pornography and instances of sexual violence, but stated that it would be difficult to claim “that people – or as the case may be, young boys – watch pornography without being affected by it.”<sup>11</sup> Jónasson expressed hope that this conference would address issues such as the effect that pornography has on its consumers, what pornography says about human beings and relations between the sexes, and, finally, what role the state should play, with particular regard to legislation.<sup>12</sup>

In January 2013, Jónasson presented a memo at a government meeting, commissioning a committee to review the penal law code and draft a proposal for new pornography legislation. Counter to the reforms enacted in neighbouring countries, this legislation would not liberalise the distribution of pornography, but rather find ways to restrict its distribution.

The memo itself has not been released to the public, but a description of the role of the committee is still available online at the website of the Ministry of the Interior.<sup>13</sup> The committee was tasked with mapping the available resources of the police in combating the distribution of pornography online, and issuing recommendations for improvement. The

committee was also tasked with researching the technical possibilities of restricting online pornography, especially focusing on how to prevent children’s access to online pornography. Finally, the committee was tasked with writing a legal definition of pornography, using the Norwegian definition as a template.

The Icelandic media reported on the memo and the formation of the committee, but public discussion was muted until February 2013, when the international media picked up on the story after the British newspaper *Daily Mail* published an interview with Jónasson and his assistant, Halla Gunnarsdóttir.<sup>14</sup>

On 28 February 2013, 42 security, privacy and human rights advocates and organisations around the world sent an open letter to Jónasson, expressing deep concern with his attempt to restrict internet access to pornographic content in Iceland, stating that this effort was an “affront to basic principles of the society”. Signatories included Jillian York, the director for international freedom of expression at the Electronic Frontier Foundation, Sjón, the president of Icelandic PEN, and Richard Stallman, the president of the Free Software Foundation.<sup>15</sup>

Jónasson published a response to this letter, clarifying his effort to reform the pornography legislation. Most notably, his letter emphasised that while research into the detrimental effects of pornography in Iceland was limited, indications were that “watching violent pornography can have harmful effects on children,” and that policies must both “be aimed at protecting children from the damaging effects of pornography” as well as “take into account the potentially harmful effects of pornography on adult consumers and those who work in the porn industry.”<sup>16</sup>

A month later, another open letter was sent to Jónasson, this time in support of his efforts to ban internet pornography, especially commending “[his] government’s commitment to protect children from the harms of pornography.” Among 110 signatories were feminist writer Gloria Steinem, actress Rosanne Barr, anti-sexist activist and author Jackson Katz, and feminist activist and academic Gail Dines.<sup>17</sup>

The effort to reform the pornography legislation died with a whimper, not with a bang. Following the

9 [www.menntamalaraduneyti.is/utgefid-efni/vefrit/20121510/nr/7145](http://www.menntamalaraduneyti.is/utgefid-efni/vefrit/20121510/nr/7145)

10 Helgadóttir, Á. (2014). Op. cit.

11 Jónasson, Ö. (2012, 16 October). *Klámvæðing – Ávarp Ögmundar Jónassonar innanríkisráðherra á ráðstefnu um samfélagsleg áhrif kláms í Háskóla Íslands* 16. október. [www.innanrikisraduneyti.is/radherra/raedur-og-greinar-ogmundar-jonassonar/nr/28268](http://www.innanrikisraduneyti.is/radherra/raedur-og-greinar-ogmundar-jonassonar/nr/28268)

12 Ibid.

13 [www.innanrikisraduneyti.is/raduneyti/nefndir/timabundnar/nr/28558](http://www.innanrikisraduneyti.is/raduneyti/nefndir/timabundnar/nr/28558)

14 Carey, T. (2013, 13 February). Iceland’s bid to ban web porn: Nation could become first western country to block filth over fears of effects on children. *The Daily Mail*. [www.dailymail.co.uk/news/article-2277769/Iceland-bid-ban-web-porn.html](http://www.dailymail.co.uk/news/article-2277769/Iceland-bid-ban-web-porn.html)

15 Ministry of the Interior, Iceland. (2013). Re: Open Letter to Ögmundur Jónasson, Icelandic Minister of Interior, regarding Internet censorship. [www.innanrikisraduneyti.is/media/frettir-2013/Bref-til-radherra-28-februar.pdf](http://www.innanrikisraduneyti.is/media/frettir-2013/Bref-til-radherra-28-februar.pdf)

16 Jónasson, Ö. (2013). Re: Response to open letter on measures to combat violent pornography. [www.innanrikisraduneyti.is/media/frettir-2013/Vidbrogd-vid-opnu-brefi---enska.pdf](http://www.innanrikisraduneyti.is/media/frettir-2013/Vidbrogd-vid-opnu-brefi---enska.pdf)

17 Dines, G., et al. (2013). Letter of Support for Iceland’s Anti-Pornography Initiative. [gaildines.com/2013/03/letter-iceland](http://gaildines.com/2013/03/letter-iceland)

elections of 27 April 2013, the Left-Greens and the Social Democratic Alliance were voted out of office and a new coalition government was formed by the centre-right Progressive Party and the Independence Party.

The committee formed by Jónasson wrote a draft of a policy resolution on the intent and submitted it to the new minister of the interior, Hanna Birna Kristjánsdóttir, a member of the Independence Party. According to information from the ministry, the resolution included proposals to inform the public about the social responsibility to protect children from harm on the internet, and that internet providers provide by default filters for harmful materials, but that consumers could deactivate those filters at will.<sup>18</sup> However, Kristjánsdóttir refused to sign the resolution and it has never been made public. While the committee has not been officially disbanded, a formal request to the Ministry of the Interior revealed that it has not held a meeting since 2013.<sup>19</sup>

### Lack of diversity in Icelandic feminist discourse

Iceland has ranked at the top of the World Economic Forum's Global Gender Gap Report since 2008, as the country with the smallest gender gap.<sup>20</sup> For all intents and purposes, Iceland is a state where feminist theories and ideas have been mainstreamed into national and local policy making. Iceland is a feminist state, not because of its radical ideas or cutting-edge feminist thinkers (in fact, there is a glaring lack of feminist philosophers in the country), but because of legislation which ensures that gender equality be maintained and enforced in all areas of society.

The so-called third wave of feminism, with its ideas and questions about intersectionality and multiculturalism, has only recently arrived in Iceland in any meaningful way. Following the successes of the second-wave feminists in the 1970s and 1980s, which culminated in the election of the all-female Women's List to Parliament, feminists in the 1990s and 2000s were more likely to look backwards to the politically successful and popularly accepted ideologies of their predecessors rather than explore new ideas from abroad.

New ideas about the intersectionality of discrimination found infertile ground in Iceland, and women's groups formed around the turn of the 21st century were more likely to borrow new ideas from the neoliberal wing of feminist thought, with an emphasis

on women's empowerment and individual freedom, devaluing the power of social collective action which had informed the work of the women's groups which came before. It was only after the financial collapse of 2008, after the bankruptcy of neoliberalism in Iceland, that women and men began to discuss the intersectionality of all forms of discrimination, a discussion which is still very much in its infancy.

Several new groups have been founded in the new century, which offer a competing view to the established feminist groups in Iceland. The Women of Multicultural Ethnicity Network in Iceland (or W.O.M.E.N. in Iceland) was founded in 2003, Trans Iceland in 2007, Tabú (a group for women with disabilities) in 2014 and Intersex Iceland in 2014. The discussion of gender rights and women's rights between the established women's groups in Iceland and these new groups has barely begun.

This lack of diversity in feminist ideologies in Iceland has ensured that the debate on pornography sparked by the efforts to ban internet pornography in 2013 has not yielded any fruitful results. The lack of a pornography industry in Iceland has also ensured that proponents and opponents of the ban on online pornography have been able to avoid discussing moral issues of workers' rights and sexual agency.

The opponents of the online pornography ban focused on the issues of free speech and the limitations thereof, while the proponents of the ban argued from the position of the harmful effects of pornography. This discussion was not helpful, and did not evolve.

Key conversations about marginalised groups of people, marginalised sexualities and genders, and sexual rights never took place. Many questions therefore still remain not only unanswered, but unasked in this debate in Iceland.

### Action steps

The current ban on pornography dates from 1869 and has only twice been substantively amended since its enactment. This ban is rarely enforced, and, with the rise of new technologies, perhaps unenforceable. A comprehensive reform of the pornography legislation is needed in Iceland, to bring the legislation up to date with international treaties and European legal norms.

Any reform of the pornography legislation must be preceded by an open and frank debate amongst the public in Iceland, where all voices are heard. We need to incorporate the voices of marginalised people into the larger feminist debate in Iceland, to allow the viewpoints of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, people with disabilities and people of colour to influence Icelandic feminist thought and public discourse.

<sup>18</sup> Email from Vera Sveinbjörnsdóttir, senior legal adviser at the Icelandic Ministry of the Interior, 21 May 2015.

<sup>19</sup> Ibid.

<sup>20</sup> [www.weforum.org/reports/global-gender-gap-report-2014](http://www.weforum.org/reports/global-gender-gap-report-2014)

# Sexual rights and the internet

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

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

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

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

GLOBAL INFORMATION SOCIETY WATCH

2015 Report

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