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Social Networking Sites' Gag Order: Commercial Content Moderation's Adverse Implications for Fundamental Sexual Rights and Wellbeing

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Abstract

This article critically investigates the reasoning behind social media content policies and opaque data politics operations regarding sexual visual social media practices and sexual talk, asking what is at stake when social media giants govern sexual sociability on an international scale. Focusing on Facebook, in particular, this article proposes an alternative perspective for handling various expressions of sexuality in social media platforms by exploring the wide-ranging ramifications of community standards and commercial content moderation policies based on them. Given that sexuality is an integral part of human life and as such protected by fundamental human rights, we endorse the freedom of expression as an essential legal and ethical tool for supporting wellbeing, visibility, and non-discrimination. We suggest that social media content policies should be guided by the interpretive lens of fundamental human rights. Furthermore, we propose that social media content policies inclusive of the option to express consent to access sexual content are more ethical and just than those structurally erasing nudity and sexual display.

Keywords

social media, content policies, community standards, human rights, sexual rights

Social media content policies broadly regulate and mostly ban nudity and sexual display. The market leader Facebook, for example, restricts the “display of nudity and sexual activity” and “content (that) facilitates, encourages or coordinates sexual encounters” as objectionable (Facebook, 2021). Similar principles extend to the Facebook-owned Instagram, as well as to exchanges on TikTok, Tumblr, and beyond, so that a multiplicity of sexual exchanges on and with social media are banned, even as forms of acceptable “sexiness” remain key to their visual landscapes and the making of social media influencer careers (Paasonen & Sundén, Forthcoming; Tiidenberg & van der Nagel, 2020). Analyzing the reasoning behind social media content policies and opaque data politics and focusing on the market leader Facebook in particular, this article asks what is at stake when platforms govern mundane sexual sociability.

Facebook’s vague wording of “display of nudity or sexual activity” extends beyond pornographic representation. Since the 2018 passing of FOSTA-SESTA bills in the United States, a range of sexual content had been zoned out, from images of classic artworks to nude public statues, historical and documentary photographs, and from content

posted by sex activists to that of non-governmental organizations (NGOs), sex workers, therapists, abuse survivors, artists, and sex educators. According to Facebook (2021), their “nudity policies” have become more nuanced over time, yet this has not rendered them any more subtle or context-sensitive. It is relatively easy for the algorithmic content moderation tools to spot nudity, yet, it is virtually impossible for them to make sense of the contexts within which nudity is featured. Focused on pictorial properties, content moderation guidelines frame nudity as sexual and, therefore, objectionable, flattening and hollowing out the social, political, cultural, and social aspects involved. The broad classification of “display of nudity or sexual activity”

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as objectionable entails normative and regulative power impacting networked social lives in concrete ways.

In what follows, we explore the ramifications of community standards and content moderation policies, which, while posed as issues of the common good, are crafted to advance the platforms' commercial interests (Tiidenberg & van der Nagel, 2020, pp. 54-58). As these increasingly restrict the visibility of sexual content, we ask what happens to sexual rights in connection with the freedom of expression, the communicating of consent, and the ethics of sexual messaging, all of which hold crucial importance in mediatized sexual lives (e.g., De Ridder, 2017). The issue is particularly pressing during the current pandemic times of social distancing, during which social lives have become platformed to an unprecedented degree, yet the deplatforming of sex has expansive ramifications for the forms that sociability can take on advertising platforms such as Facebook, ones that disproportionately impact sexually marginalized people (Molldrem, 2019).

This article questions the underlying logic where sexual displays and exchanges are increasingly erased from social media in the name of safety and the common good and argues for the value of sexual communities and sexual rights. As an integral part of human life, sexuality is protected by fundamental human rights even as the zoning out of sex on social media contributes to sexual discrimination and, consequently, increases social inequality. We argue for the freedom of expression as an essential legal and ethical tool for supporting wellbeing through visibility and non-discrimination—also on social media. This does not imply a blanket defense of all sexual content and its accessibility. Instead, we argue for contextual moderation approaches and the centrality of user consent. There should be no room for illegal content (e.g., child sexual abuse and exploitation material and nonconsensually shared sexual images) on any platforms, and pornography should not be automatically displayed to infringe social media feeds of those who do not wish to view it (c.f. McNair, 2014, p. 169). Parents and carers have legitimate expectations that underaged children will not be exposed to adult content, which must be respected. We propose the option to express consent to accessing sexual content as standard for adult social media users. This involves broadening considerations of rights connected to sexuality in social media to include not merely the negative freedom *from* (sexual harassment and violence) but equally the positive freedom *to* (sexual expression, exploration, and pleasure) so that the quest for one does not trump or exclude the other. In other words, potential risks cannot cancel out rights.

In what follows, we move from a discussion of Facebook's community standards regarding adult nudity and sexual activity and the overall rationale of sexual content moderation to considering sexual rights as fundamental human rights (Giami, 2015) and the ethics of regulating sexual content in social media. We suggest that social media content policies should be guided through the interpretive lens of

fundamental human rights that make it possible to understand and assess situations linked to sexuality from the perspective of health and wellbeing. We argue that, as human rights, sexual rights should be respected, protected, and fulfilled as legal entitlements. Furthermore, by combining perspectives from media inquiry, sexual ethics, sexual health, and human rights law, we propose that social media content policies *inclusive of the option to express consent* are more ethical and just than those categorically erasing nudity and sexual exchange.

Governing Sex in Social Media

The “Allow States and Victims to Fight Online Sex Trafficking Act” (FOSTA) and “Stop Enabling Sex Traffickers Act” (SESTA), exceptions to Section 230 of the United States Communication Decency Act that has kept online services immune from civil liability for the content their users post, passed in 2018. While targeting trafficking, the laws have factually curbed nudity and sexual communication on social media platforms as these have tightened their respective community standards and terms of use (Paasonen et al., 2019, pp. 62, 133). To prevent liability, social media companies have mostly adopted expansive preventive approaches to sexual content moderation that are largely blind toward context. Consequently, posts complying with community standards—for example, ones with educational, humorous, or satirical purposes—can well end up removed.

This is not to argue that a company such as Facebook previously welcomed sexual content with open arms. Commercial content moderation has long been preoccupied with nudity and depictions of sex since social media platforms craft their community standards in accordance with the interests of advertisers who generally do not wish for their commercial messages to appear next to potentially controversial content clashing with their brand image (Gillespie, 2018, p. 35; Roberts, 2018). Like all commercial media, social media sells audiences to advertisers. As these ads are placed next to content posted and shared by users, there is obvious interest in controlling the qualities of said content. Despite garnering user engagement, sexual content does not attract targeted advertising and, hence, does not hold much direct economic value for the platforms to start with (Pilipets & Paasonen, 2020).

Critics have pointed out how the power of data giants such as Facebook to track, store, sell, and analyze user data undermines democratic principles and forms of governance (Zuboff, 2019). Our interconnected concern has to do with their power to govern social exchanges internationally through in-platform laws developed in a US context, of which FOSTA-SESTA forms a part. The notion of community standards itself has been central in determining the criteria for obscenity and obscene content unprotected by the First Amendment principles of freedom of expression in the country. The 1957 Supreme Court ruling *Roth versus the United States* introduced

community standards as a test making it possible to judge “whether to the average person, applying contemporary community standards, the dominant theme taken as a whole appeals to the prurient interest” (Hudson, 2018).

The First Amendment as such does not serve as a check on private actors, but Facebook community standards apply similar logic when classifying nudity, sexual activity, and exchange as objectionable, alongside hate speech, bullying, and self-harm: “We restrict the display of adult nudity or sexual activity because *some people* in our community may be sensitive to this type of content”; “We also restrict sexually explicit language [. . .] because *some audiences* within our global community may be sensitive to this type of content and it may impede the ability for people to connect with their friends and the broader community” (Facebook, 2021, emphases added). Just as obscenity identified through “the prurient interest” in the Roth versus the United States made cultural objects exempt from the protection of freedom of expression, the deemed offensiveness of nudity and sexual activity on Facebook simply makes it subject to removal. This is in contrast with the central role that the freedom of expression plays in how antagonistic and vitriolic political debate is regulated in social media. Facebook moderates such posts and removes them if they are deemed as going against community standards, yet this removal is not horizontal as individual messages are also considered with contextual care and as the moderation systems may, in fact, be unable to identify racist or sexist hate speech (e.g., Gorwa, Binns & Katzanbach, 2020; Nurik, 2019; Siapera & Viejo-Otero, 2021). With nudity, sexual activity, and content encouraging sexual encounters, the case is somewhat the reverse as it is all seen as objectionable and hence comparable to hate speech to start with.

While the notion of community in Roth versus the United States was loosely contextual so as to speak of attitudes and norms in a specific region and country, the labeling of Facebook as a global community detaches its community standards from any specific cultural and social context. Despite users commonly restricting their posts’ visibility to friends and followers, Facebook is seen to comprise something of a borderless community. On one hand, offensiveness becomes defined through the smallest common denominator, it being likely that drastically different cultural understandings pertaining to sex and sexuality coexist among the services’ 2.8 billion global users. On the other hand, Facebook’s US origins continue to matter both in terms of legal frameworks and cultural contexts concerning sex (Paasonen & Sundén, Forthcoming). Meanwhile, US-specific restrictions on the freedom of expression come to concern all users globally.

Facebook presents the sensitivity of “some people” and “some audiences” as neutral standards for all users globally to ensure non-offensive exchanges on the platform. Given its current user volume, these abstract figures hold much power in the boundary-building around acceptable sociability. The normative abstraction of “some people” offended by sexual content may have notably little in common with factual

social media users, their diverse sexual interests and attachments. Similarly, just as empirical research finds “actual” young sexual subjects clearly distinguishable from the cultural figure of an innocent child at risk (Buckingham & Bragg, 2004; Mulholland, 2013; Spišák, 2019, pp. 47–49; Spišák & Paasonen, 2017; Tsaliki, 2015), social media users can engage in a range of mediated sexualities, so that community standard goes against their interests (see Tiidenberg & van der Nagel, 2020).

On Facebook, discussions on sexuality are welcomed if focused on “sexual violence and exploitation. We recognise the importance of and want to allow for this discussion. We draw the line, however, when content facilitates, encourages or coordinates sexual encounters or commercial sexual services between adults” (Facebook, 2021). This leaves little room, if any, for exchanges revolving around sexual desire and pleasure as these are seen to entail the risk of solicitation. Our point here is not to deny or ignore the practical challenges involved in analyzing, classifying, and moderating massive volumes of user-generated data and the contexts in which it is published. We argue that these challenges should not automatically lead to a horizontal effacement of sexual content as such data policies can work against fundamental human rights that should be respected, protected, and fulfilled.

Freedom of Expression as a Vital Part of Sexual Wellbeing

The official recognition of the importance of sexual health and wellbeing for the overall wellbeing of individuals and communities has its roots in the international human rights discourse of the 1970s, with the World Health Organization (WHO) providing the first comprehensive definition of sexual health in 1975 (Stettini, 2013; WHO & Meeting on Education and Treatment in Human Sexuality, 1975). According to the current working definition by the WHO (2006) sexual health refers to

a state of physical, emotional, mental and social wellbeing in relation to sexuality [that] requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. (p. 5)

Sexual wellbeing is not merely about the absence of adversities, such as “disease, dysfunction or infirmity” (WHO, 2006, p. 4), but equally about the possibilities of creating and having meaningful and fulfilling sexual experiences, encounters, and relations. Digital communication, social media, and dating apps are in many ways a crucial part of the landscape for erotic exploration and self-expression, for sexual encounters as well as for creating and maintaining intimate relationships.

Sexual rights, expressed in several documents by NGOs such as the World Association for Sexual Health (WAS) or the International Planned Parenthood Federation (IPPF) and

international organizations such as the WHO and the United Nations (UN), are “intrinsic components of sexual health” (Miami, 2015, p. e49). Articulated in response to feminist and LGBTQ+ activism since the 1990s, sexual rights focus on the right to bodily autonomy, as in the right not to be abused or exploited, as well as on affirmative freedoms of expression (see Albury, 2017, p. 715). This position, taking into account both the right to protection from harm and freedom of expression, is reflected in the international developments of innovative projects to understand, recognize, and prioritize human rights in the digital world (5Rights Foundation, 2021). These projects have argued for the creation of a *more diverse digital ecosystem*, diverse sexualities in public spaces included, as an important factor of individual wellbeing, not only for sexual minorities but all people (Craig et al., 2015, 2021; Verduyn et al., 2017).

Sexual rights include the right to express one’s sexuality, sexual lifestyle, gender, and relationships as the key to leading a full and meaningful life (IPPF, 2009; WAS, 2014; Yogyakarta Principles, 2007). Discrimination often manifests by pushing sexual identities and cultures into social margins or rendering them invisible, making the freedom of expression an important legal and ethical tool to support wellbeing by visibility and non-discrimination (Council of Europe, 2011; Pachankis & Bränström, 2019). Online sexual expression, from text-based messaging to self-generated, image-based content, includes the full spectrum of human expression, such as “speech, deportment, dress, bodily characteristics, choice of name or any other means” (Yogyakarta Principles, 2007, p. 24).

WAS stated in 2019 that sexual pleasure is a crucial element in achieving sexual wellbeing and includes sexual pleasure within the scope of protected freedom of expression. According to the WAS (2019) Declaration of Sexual Pleasure, “access to sources of sexual pleasure is part of human experience and subjective wellbeing [and] sexual pleasure shall be integrated into education, health promotion and service delivery, research and advocacy in all parts of the world.” In the declaration, the freedom to express sexual diversity and the right to aim for fulfilling and pleasurable sexual experiences are recognized as substantial elements of sexual health (WAS, 2014, 2019). The freedom to express one’s sexuality, sexual orientation, preferences, and lifestyle is crucial to building actual capabilities to seek pleasurable sexual experiences and meaningful, fulfilling relationships. This highlights the significance and urgency of protecting the freedom of expression accordingly. Discrimination in the form of limiting expression and denying access to sustainable information contribute to many threats to sexual health, ranging from sexually transmitted infections to sexual violence on the individual, community, and cultural levels (Kismodi et al., 2017).

Martha Nussbaum argues that sexual expression and freely living a sexual lifestyle are significant for the quality of life on both individual and communal levels. Positioning sexual freedom as comparable to freedom of thought, worldview, and religion, Nussbaum (2010, pp. 118-123) argues

that limiting such fundamental freedoms is detrimental to human wellbeing, dignity, and meaningfulness:

Sexual orientation [–] seems to lie deep in the structure of people’s personalities, in ways that are crucial to their pursuit of happiness. Therefore, to ask people to change in that respect, or not to express their orientation, is to impose a very crippling burden. (p. 121)

Seeing sexual freedom in this vein as a human right and foundational to human dignity forms a solid basis for critiques against arbitrary and unfounded limitations of expression of sexuality that we argue to be at play in Facebook’s community standards. Furthermore, sexual rights documents uniformly state that governments should remove all limitations to sexual rights that are not strongly justified. The freedom of expression is protected by international and regional human rights treaties and instruments (e.g., the Charter of Fundamental Rights of the European Union, 2012; Convention on the Rights of the Child, 1990; Convention on the Rights of Persons with Disabilities, 2008; European Convention on Human Rights, 1953; International Covenant on Civil and Political Rights, 1976; International Convention on the Elimination of All Forms of Racial Discrimination, 1969) and sexual rights documents apply the same protection to sexuality. Sexuality, gender, and relationships are parts of the essential human experience. It is, therefore, reasonable to argue that protecting their expression should be extended to all public spaces—and even to commercial social media platforms used as such.

Opaque Data Practices Threaten Fundamental Human Rights

Given all this, the ongoing deplatforming of sex in social media is controversial. As our lives have become “digitally saturated, Internet-mediated, and globally networked” (Markham, 2018, p. 513), mediated sexualities, nude exchanges included, are part of our everyday life social relations (Tiidenberg & van der Nagel, 2020). As the pandemic has drastically cut short available forms of socializing and physical options for sexual exchange, online platforms allow for safe means of connecting and exploring sexual likes. At the same time, social media platforms ban such exchanges as both objectionable and unsafe (see Paasonen et al., 2019) so that the denial of sexual rights, which Kath Albury (2017) has previously discussed in the context of governing young people’s online exchanges, extends to all users. Following Albury’s (2017) work, we further suggest that as the sexual rights of social media users are denied, they are excluded from essential ethical conversations on consent and ethical conduct online.

Facebook allows wiggle room for graphic and violent content by adding a warning label “so that people are aware of the graphic or violent nature before they click to see it” (Facebook, 2021). Content labeled with a warning sign is not available to users under the age of 18. However, such wiggle room does not extend to content that Facebook interprets as

the display of nudity or sexual activity. We can consent to view “[r]eal world art that depicts sexual activity” or “[i]mplied sexual activity *in advertisements*” (Facebook, 2021, emphasis added) but not to engage with sexual content created and shared by fellow users. Furthermore, “[n]o distinction is made between consensual and non-consensual image sharing in community standards classifying sexual content as broadly objectionable” (Paasonen & Sundén, Forthcoming).

According to Facebook (2021), their “policies are based on feedback from our community and the advice of experts in fields such as technology, public safety and human rights.” Community standards result from consultation with various stakeholders, and the company states looking “to international human rights standards to make these judgments” when defining objectionable content. We suggest that if the international human rights standards were fully consulted and acknowledged in these processes, the display of nudity or sexual activity would not be simply classified as “objectionable” or “content (that) facilitates, encourages or coordinates sexual encounters” interpreted as sexual solicitation. Blanket approaches to banning sexual content in social media are, in fact, *working against* the set of fundamental human rights developed during the course of the last 55 years.

Current content moderation policies do not acknowledge crucial elements of sexual rights such as rights for sexual autonomy, sexual self-determination, and sexual expression. Instead, their community standards contribute to the stigmatization of especially sexual cultures and practices falling outside heteronormative and mononormative ideals (Tiidenberg & van der Nagel, 2020, pp. 2-3). It is not surprising for advertising platforms such as Facebook or Instagram to protect their commercial interests. Nevertheless, when such platforms are used on a massive scale so that they partly become understood as public spaces or public goods, crucial frictions emerge between their content policies, the interests, and wellbeing of individual users and sexual communities, and the advancement of social equality. This is where the interests of data capitalism do not conflict only with democratic forms of governance (c.f. Zuboff, 2019) but with basic human rights (5Rights Foundation, 2021).

Previous research has shown that a global inclusion of sexual rights in the fields of human rights and sexual health represents “a situation in which social and political factors are very much taken into account as determinant factors for health” (Giami, 2015, p. e50; also Corrêa et al., 2008; Petchesky, 2000). The association between the notions of sexual health and sexual rights as human rights “has become the ‘regime of truth’ of sexuality” (Giami, 2015, p. e50), at least in much of the so-called Global North. Discussions within the framework of human rights and sexual health have shifted toward a more general approach connecting human rights with the violation of liberties, the fight against violence and discrimination and the promotion of civil liberties. And, as Giami (2015, pp. e50-e51) shows, the benefits of sexual pleasure on health have generally been recognized during the early-21st century.

When considering sexual rights as human rights, it can be argued that social media content moderation and community management policies comprise a form of gender identity and sexual orientation-based discrimination by contributing to the marginalization and stigmatization of alternative gender identifications, sexual orientations, and intimate relationships (Byron, 2019; Mollrem, 2019). We, therefore, call for applying fundamental human rights to all social media community standards by recognizing full sexual rights as integral components of holistic wellbeing. This also entails a redefinition of corporate responsibility from protecting social media users from content that some may find objectionable to protecting their possibilities for sexual agency in networked settings.

Toward Corporate Social Responsibility

As argued earlier, sexual rights are human rights, and as legal entitlements, they should be respected, protected and fulfilled (Miller et al., 2015). In this section, we develop an argument according to which states and social media companies have an obligation to protect these rights actively. Access to information on sexuality, sexual and reproductive rights, and health services is protected, and limitations to this right must comply with strict criteria (World Health Organization, 2015, pp. 32-34). First, restrictions shall be provided by law, which is clear and accessible to everyone. Second, restrictions must pursue a legitimate purpose. This includes respect, for example, of others’ rights or reputations or the protection of public health or morals. Third, a restriction must be a necessary and the least restrictive means to achieve the purported aim. Fourth, any legislation that restricts the right must be applied by a body independent of any commercial, political, or other undue influences in a non-discriminatory manner. Finally, there must also be genuine prospects to challenge the decision made by such a body (Human Rights Committee, General Comment No. 34, paras. 21-36).

When these principles are applied to Facebook’s community standards, particularly the necessity and proportionality of the restrictions can be questioned. Facebook motivates restriction on sexual content with three main arguments: it aims to prevent the sharing of non-consensual and underage content; it limits sex, the display of nudity or sexual activity due to its potential offensiveness; and policies exchanges aiming at sexual contact among users. Whereas it is clear from a human rights law perspective that non-consensual and underage content may be limited, the blanket approach to banning sexual visual content and communication from the platform is problematic.

States have a legally binding obligation to provide adequate information on sexuality, sexual and reproductive rights, and health services, but one can obviously ask to what extent this obligation is relevant concerning social media sites. International and regional human rights treaties are not binding for them as such, as these legal obligations target the state parties to the relevant conventions. Consequently, it is

primarily the states' responsibility "to protect individuals from violations of human rights perpetrated by corporate actors" (Report of the Special Rapporteur La Rue, 2013, para. 76). Seen from a human rights law perspective, it is however possible that restrictive private policies at some point trigger State obligations. In a European context, it is already established that the European Court of Human Rights (ECHR) can create positive State obligations to take action in order to protect freedom of expression. The ECHR has so far been hesitant to make free-speech based interventions in private relationships. The ECHR is, however, a living instrument, and it is not unthinkable that an arbitrary ban or removal of content from a social network service could induce State positive obligation to protect freedom of expression, particularly in a situation where viable options for communication are scarce (Leerssen, 2015, pp. 101-105).

The states' duty to protect individuals from violations of human rights by private actors is complemented by the corporations' responsibility to respect these rights (Report of the Special Representative of the Secretary-General John Ruggie, 2008, paras. 1-9). These corporate responsibility mechanisms are not legally binding. They do, however, have growing importance, and of particular relevance are the UN Guiding Principles on Business and Human Rights, which constitute the most influential framework for enhancing human rights standards within the realm of business (Laidlaw, 2015, pp. 89-92). According to the UN (2011), business enterprises "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved" (p. 13). Enterprises should, at a minimum, respect those rights that are expressed in the most important universal conventions, such as the International Covenant on Civil and Political Rights (ICCPR). Business enterprises should also consider additional standards, such as conventions addressing particular groups' rights, such as women, persons with disabilities, and children (Benesch, 2020; UN, 2011, pp. 13-14).

To meet their responsibility, business enterprises should establish a policy commitment concerning human rights. Also, they should have in place human rights due diligence process to identify and prevent their impact on human rights and to mitigate and account for how they address their impact on human rights. Furthermore, they should establish processes for remedying any adverse impact on human rights (Benesch, 2020; UN, 2011, pp. 15-16). When these principles are applied to Facebook, the role of content moderation and community management policies becomes crucial. Instead of loosely referring to human rights as a motivation for restricting the display of nudity or sexual activity, Facebook should anchor its content-restriction policies to the criteria established by human rights treaty bodies and other authoritative sources of information regarding human rights content. In the light of these criteria, restrictions should be limited in scope, and they should be carried out in a transparent and non-discriminatory

manner. Furthermore, Facebook should ensure that their actions do not have discriminatory effects on those who have special needs or face structural inequalities in their access to human rights (Council of Europe, 2018, pp. 7-9).

The recent recommendation issued by the EU Commission on measures to effectively tackle illegal content online (Commission Recommendation, 2018) points to the same direction. It urges online platforms to (1) set out easy and transparent rules for notifying illegal content and (2) offer content providers notification about such decisions and allow for the opportunity to contest them in order to avoid unintended removal of legal content. In addition to these, the Commission recommends stronger safeguards to ensure fundamental rights, freedom of expression, and data protection rules. It is thus safe to argue that, at least within the EU, content moderation is increasingly seen as an important human rights issue.

The operationalization of these general human rights-based principles is not particularly difficult. Instead of de-contextualized, comprehensive bans on sexual displays and exchanges, social media platforms could provide their users with a possibility to opt-in and consent to accessing that type of content—a practice that has long been in place on Twitter. This lesser restriction would be more in line with internationally recognized human rights. It would also strengthen the position of sexual minorities that sexual rights were partly designed to protect.

Conclusion: Toward a More Ethical and Just Social Media Practice

This article has argued that de-contextualized, opaque social media content policies and moderation practices connected to nudity, sexual displays, and sexual exchanges work against fundamental human rights that have become a well-established framework for knowledge on sexuality. In the current political environment where sexual rights are being threatened by the new waves of anti-sexual and reproductive health and rights strategies in various parts of the world (Vida, 2019), the need to promote civil liberties collectively is crucial.

We do not ignore the drastic developments in legal and ethical challenges that networked media has brought forth, nor the resources necessary for successfully moderating social media exchanges and protecting the safety of their individual and collective users. It nevertheless remains crucial to critically examine the consequences that horizontal content governance has in terms of sexual rights and to seek alternative approaches to safety, privacy, and dignity in social media. Social media content policies, of which we have used Facebook as an example, fail to recognize the intrinsic components of sexual health (WHO, 2021), such as sexual autonomy, sexual self-determination, and sexual expression. The least that social media platforms could do to protect these would be to offer users the possibility to express consent to accessing sexual content. This, we argue, is a

more ethical and just social media practice than structurally governing users' mediated sexual lives by erasing "real life" nudity and sexual displays altogether.

A rights-based social media content policy, including the opportunity to express consent, would acknowledge diverse social contexts and situational conditions that underpin intimate mediated encounters on a global scale. We, therefore, encourage scholars, activists, and technology professionals to consider further and develop rights-based approaches to social media as inclusive of sexual expression and diverse sexual cultures. We also encourage social media service providers to take active steps toward cultivating more egalitarian, affirmative consent practices (Hasinoff, 2015; Setty, 2020). This would ensure that social media giants would use the power that they hold over social connectivity responsibly, sustainably, and in ways respectful of fundamental human rights.

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References

- Albury, K. (2017). Just because it's public doesn't mean it's any of your business: Adults' and children's sexual rights in digitally mediated spaces. *New Media & Society*, 19(5), 713–725. <https://doi.org/10.1177/1461444816686322>
- Benesch, S. (2020). But Facebook's not a country: How to interpret human rights law for social media companies. *Yale Journal on Regulation Online Bulletin*, 3, 86–111. <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1004&context=jregonline>
- Buckingham, D., & Bragg, S. (2004). *Young people sex and the media: The facts of life?* Palgrave Macmillan.
- Byron, P. (2019). "How could you write your name below that?" The queer life and death of Tumblr. *Porn Studies*, 6(3), 336–349. <https://doi.org/10.1080/23268743.2019.1613925>
- Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391–407.
- Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online, C/2018/1177, *Official Journal of the European Union* L 63, 6.3.2018, pp. 50–61.
- Convention on the Rights of Persons with Disabilities, entered into force 3 May 2008, 2515 United Nations Treaty Series 3.
- Convention on the Rights of the Child (CRC), entered into force 2 September 1990, 1577 United Nations Treaty Series 3.
- Corrêa, S., Petchesky, R., & Parker, R. (Eds.). (2008). *Sexuality, health and human rights*. Routledge.
- Council of Europe. (2011). *Discrimination on grounds of sexual orientation and gender identity in Europe* (2nd ed.). https://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf
- Council of Europe. (2018). *Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries*. <https://rm.coe.int/1680790e14>
- Craig, S. L., Eaton, A. D., McInroy, L. B., Leung, V. W. Y., & Krishnan, S. (2021). Can social media participation enhance LGBTQ+ Youth well-being? Development of the social media benefits scale. *Social Media + Society*. <https://doi.org/10.1177/2056305121988931>
- Craig, S. L., McInroy, L. B., McCready, L. T., & Alaggia, R. (2015). Media: A catalyst for resilience in lesbian, gay, bisexual, transgender, and queer youth. *Journal of LGBT Youth*, 12(3), 254–275. <https://doi-org.ezproxy.utu.fi/10.1080/19361653.2015.1040193>
- De Ridder, S. (2017). Social media and young people's sexualities: Values, norms, and battlegrounds. *Social Media + Society*. <https://doi.org/10.1177/2056305117738992>
- European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force 3 September 1953, European Treaty Series No. 5.
- Facebook. (2021). *Community standards*. <https://www.facebook.com/communitystandards/>
- 5Rights Foundation. (2021). *Consultation response: Freedom of expression online*. [https://5rightsfoundation.com/uploads/Consultation%20Response%20\(Freedom%20of%20Expression%20Online\).pdf](https://5rightsfoundation.com/uploads/Consultation%20Response%20(Freedom%20of%20Expression%20Online).pdf)
- Giami, A. (2015). Sexuality, health and human rights: The invention of sexual rights. *Sexologies*, 24(3), e45–e53. <http://doi.org/10.1016/j.sexol.2015.07.003>
- Gillespie, T. (2018). *Custodians of the internet. Platforms, content moderation and the hidden decisions that shape social media*. Yale University Press.
- Gorwa, R., Binns, R., & Katzenbach, C. (2020). Algorithmic content moderation: Technical and political challenges in the automation of platform governance. *Big Data & Society*. Advance online publication. <https://doi.org/10.1177/2053951719897945>
- Hasinoff, A. (2015). *Sexting panic: Rethinking criminalization, privacy, and consent*. University of Illinois Press.
- Hudson, D. L., Jr. (2018). Obscenity and pornography. *The First Amendment Encyclopedia*. Originally published in July 2009. <https://mtsu.edu/first-amendment/article/1004/obscenity-and-pornography>
- Human Rights Committee, General Comment No. 34, 12 September 2011, CCPR/C/GC/34.
- International Convention on the Elimination of All Forms of Racial Discrimination, entered into force 4 January 1969, 660 UNTS 195.
- International Covenant on Civil and Political Rights, entered into force 23 March 1976, 999 United Nations Treaty Series 171.
- International Planned Parenthood Federation. (2009). *Sexual rights: An IPPG declaration*.
- Kismodi, E., Corona, E., Maticka-Tindall, E., Rubio-Aurioles, E., & Coleman, E. (2017). Sexual rights as human rights: A guide for the WAS declaration of sexual rights. *International Journal of Sexual Health*, 29(Suppl. 1), 1–92. <https://doi.org/10.1080/19317611.2017.1353865>

- Laidlaw, E. B. (2015). *Regulating speech in cyberspace: Gatekeepers, human rights and corporate responsibility*. University Press.
- Leerssen, P. (2015). Cut out by the middle man: The free speech implications of social network blocking and banning in the EU. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 6, 99–119. <https://www.jipitec.eu/issues/jipitec-6-2-2015/4271/leerssen.pdf>
- Markham, A. (2018). Troubling the concept of data in qualitative digital research. In U. Flick (Ed.), *The SAGE handbook of qualitative data collection* (pp. 511–523). SAGE. <https://doi.org/10.4135/9781526416070>
- McNair, B. (2014). Rethinking the effects paradigm in porn studies. *Porn Studies*, 1(1–2), 161–171. <https://doi.org/10.1080/23268743.2013.870306>
- Miller, A. M., Kismödi, E., Cottingham, J., & Gruskin, S. (2015). Sexual rights as human rights: A guide to authoritative sources and principles for applying human rights to sexuality and sexual health. *Reproductive Health Matters*, 23(46), 16–30. <https://doi.org/10.1016/j.rhm.2015.11.007>
- Molldrem, S. (2019, January). Big tech’s war on sex. *The Fight Magazine*. <https://thefightmag.com/2019/01/big-techs-war-on-sex/>
- Mulholland, M. (2013). *Young people and pornography: Negotiating pornification*. Palgrave Macmillan.
- Nurik, C. (2019). “Men are scum”: Self-regulation, hate speech, and gender-based censorship on Facebook. *International Journal of Communication*, 13:, 2878–2898.
- Nussbaum, M. (2010). *From disgust to humanity*. Oxford University Press.
- Paasonen, S., Jarrett, K., & Light, B. (2019). *NSFW: Sex, risk, and humor in social media*. MIT Press.
- Paasonen, S., & Sundén, J. (Forthcoming). Objectionable nipples: Puritan data politics and sexual agency in social media. In P. Keilty (Ed.), *Queer data*. Routledge.
- Pachankis, J. E., & Bränström, R. (2019). How many sexual minorities are hidden? Projecting the size of the global closet with implications for policy and public health. *PLOS ONE*, 14(6), Article e0218084. <https://doi.org/10.1371/journal.pone.0218084>
- Petchesky, R. (2000). Sexual rights: Inventing a concept, mapping an international practice. In R. Parker, R. Barbosa, & P. Aggleton (Eds.), *Framing the sexual subject: The politics of gender, sexuality, and power* (pp. 81–103). University of California Press.
- Pilipets, E., & Paasonen, S. (2020). Nipples, memes and algorithmic failure: NSFW critique of Tumblr censorship. *New Media & Society*. December 2020. <https://doi.org/10.1177/1461444820979280>
- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 17 April 2013, A/HRC/23/40.
- Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Protect, Respect and Remedy: A Framework for Business and Human Rights, 7 April 2008, A/HRC/8/5.
- Roberts, S. T. (2018). Digital detritus: “Error” and the logic of opacity in social media content moderation. *First Monday*, 23(3). <https://journals.uic.edu/ojs/index.php/fm/article/view/8283/6649>
- Setty, E. (2020). *Risk and harm in youth sexting culture: Young people’s perspectives*. Routledge.
- Siapera, E., & Viejo-Otero, P. (2021). Governing hate: Facebook and digital racism. *Television & New Media*, 22, 112–130. <https://doi.org/10.1177/1527476420982232>
- Spišák, S. (2019). *Porn and norms—Pornography and normative notions of gender, love and sex in the sexual narratives of Finns on their adolescence experiences*. <https://www.utupub.fi/bitstream/handle/10024/148450/AnnalesB498Spi%c5%a1%c3%a1k.pdf?sequence=1&isAllowed=y>
- Spišák, S., & Paasonen, S. (2017). Bad education? Childhood recollections of pornography, sexual exploration, learning and agency in Finland. *Childhood*, 24(1), 99–112. <https://doi.org/10.1177/0907568216646436>
- Stettini, P. (2013). Sexual and reproductive health promotion. In P. S. Kirana, F. Tripodi, Y. Reisman, & H. Porst (Eds.), *The EFS and ESSM syllabus of clinical sexology* (pp. 58–82). Medix.
- Tiidenberg, K., & van der Nagel, E. (2020). *Sex and social media*. Emerald Publishing.
- Tsaliki, L. (2015). Popular culture and moral panics about “children at risk”: Revisiting the sexualisation-of-young-girls debate. *Sex Education: Sexuality, Society, and Learning*, 15(5), 500–514. <https://doi.org/10.1080/14681811.2015.1022893>
- United Nations. (2011). *Guiding principles on business and human rights*. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- Verduyn, P., Ybarra, O., Résibois, M., Jonides, J., & Kross, E. (2017). Do social network sites enhance or undermine subjective well-being? A critical review. *Social Issues and Policy Review*, 11(1), 274–302. <https://doi-org.ezproxy.utu.fi/10.1111/sipr.12033>
- Vida, B. (2019). New waves of anti-sexual and reproductive health and rights strategies in the European Union: The anti-gender discourse in Hungary. *Sexual and Reproductive Health Matters*, 27(2), 13–11. <https://doi.org/10.1080/26410397.2019.1610281>
- World Association for Sexual Health. (2014). *Declaration of sexual rights*.
- World Association for Sexual Health. (2019). *Declaration on sexual pleasure*.
- World Health Organization. (2006). *Defining sexual health*. Report of a technical consultation on sexual health. World Health Association.
- World Health Organization. (2015). *Sexual health, human rights and the law*. https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf?sequence=1
- World Health Organization. (2021). *Sexual health*. https://www.who.int/health-topics/sexual-health#tab=tab_2
- World Health Organization & Meeting on Education and Treatment in Human Sexuality. (1975). *Education and treatment in human sexuality: The training of health professionals*. Report of a WHO meeting. World Health Organization. <https://apps.who.int/iris/handle/10665/38247>
- Yogyakarta Principles. (2007). *The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*. <https://www.refworld.org/pdfid/48244e602.pdf>
- Zuboff, S. (2019). *The age of surveillance capitalism: The fight for the future at the new frontier of power*. Profile Books.

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