

**Critically examine actual and suggested ways of regulating internet pornography and race hate speech, and the merits and de-merits of these approaches. Does the internet 'deserve the highest protection from government intrusion', as Judge Dalzell argued in ACLU v Reno?**

There have been many suggested ways to regulate pornography and racial hate on the internet. However, there are many problems associated with each of these ways; because there is no one way that everyone would agree to, of regulating pornographic and racial hate websites on the internet. Although there is existing legislation to try and combat this growing problem, is it effective, and would suggested ways would be better or worse in trying to combat the problem.

The internet is,  
"A network connecting many computer networks and based on a common addressing system and communications protocol TCP/IP (Transmission Control Protocol/Internet Protocol). From its creation in 1983 it grew rapidly beyond its largely academic origin into an increasingly commercial and popular medium." ('Internet' – Britannica CD multimedia, 1999.)

The growth of the internet has been very rapid within recent years.  
"In 1981, fewer than 300 computers were linked to the internet ... Today, over 9,400,000 host computers worldwide...are estimated to be linked to the internet." ('Information Technology Law' – Rowland and Macdonald page 480.)

With so many computers connected to the internet now, and the fact they can be accessed from all over the world, it is very difficult to regulate the content of it. Two of the biggest areas, which can be considered offensive, include pornographic and racial hate websites. The internet was a new way of sending information, and has a huge potential audience, "extremists have used the internet to comment favourably on violence." (Hatemongers made their voices heard, The Guardian 1999)

Where, previously it was more difficult to access this type of information. There have been many arguments as to whether these websites should be censored, and if so, how they should be censored. Censorship is argued as being,

"Regulation is censorship – one grown up telling another what they can and cannot do or see." ('Web inventor denounces net censorship – John Arlidge). In spite of this, it is considered by others as a way of protecting society from obscene material.

One of the main arguments for censorship is to censor material considered 'obscene'. However, this is a major problem because there is no one definition of what is 'obscene', as different people consider different things as being obscene and offensive. Pornographic websites and racial hate is not seen as offensive to everyone. This is problematic in law because it cannot be effectively regulated if no-one can agree what it is.

One of the main arguments for censorship of these websites is that it would be a way of protecting the vulnerable from them, which includes children, and the elderly, who are not necessarily able to make the best decision for themselves. It would also be a way of protecting society from the spread of pornographic and racial hate propaganda. If these websites were regulated, it would mean that all 'offensive' websites would be censored so no-one would be able to view any of these websites, and so everybody would be protected from it. It would also be very difficult to spread the message of racial hate and pornographic material, as the internet, is a fast, effective and cheap method of viewing this material. However, this creates new problems, as people who did want to access these websites would find an alternative method to do so. If this was enforced, the problem would still exist, and cause a bigger problem, because it would force it to go 'underground', where it could not be monitored.

If these websites were censored, who would enforce it? This is a major problem, because no-one would be able to agree what to censor and who should do it. If the government had to censor these websites, it would be very expensive to enforce, as a lot of money would have to be spent to regulate these websites. It would also be virtually impossible to regulate everything, as the internet is world wide, and things not covered by UK legislation, but can be viewed in the UK would be very complex to censor these websites. In the case of *ACLU v. Reno*, it was argued that the internet needs 'the highest protection from government intrusion'. This is because it interferes with free speech, and people should be given the choice as to what they want to view on the internet, and no-one else should make this choice for people.

As there are problems associated with government regulation, it is also argued that parents and carers should regulate what their children view on the internet.

"Instead of regulation it is up to parents to 'catch up' with the new e-generation and teach youngsters how to use the web safely." ('Web inventor denounces net censorship – John Arlidge'). Nevertheless, there are also problems with self-regulation. Children often know more about computers than the parents, so it is difficult for the

parent to monitor what their children see, if the child knows more about computers. It is also very difficult to a parent to monitor what there child see twenty-four hours a day, as they cannot be with them all day, and the children can access material at other places, like round a friends house.

If all of these 'offensive' websites were censored it would go against article 9, freedom of thought, and article 10 freedom of expression of the Human Rights Act 1998. The Human Rights Act 1998 gives everyone the right to think and say and to view anything that they want to. However, this is not an absolute right, as there are very strict rules in the UK relating to racist behaviour. People are not allowed to say things that are offensive to other people. This is very controversial because it entitles people to think and say whatever they want, as long as it is not offensive to other people. This has to be balanced between harm to people and their right to free speech. However, this can create other problems if all sexually explicit websites were censored, as some websites contain important information on sexually transmitted diseases would not be available people who wanted to find out the facts about them.

"Information regarding protection from AIDS, birth control or prison rape is sexually explicit and may be considered indecent or patently offensive in some communities, and this kind of speech would be affected by the provisions of the CDA which did not define the word indecent."  
(‘Censorship and the Internet’ – New Law Journal 1997)

One of the ways of regulating this material is, The Obscene Publications Act 1959. This act looks at who is likely to be affected by internet regulation, and defences. It defines when an article is considered obscene. Section 1 (1) states "an article shall be deemed to be obscene if its effect is ... if taken as a whole, such as to tend deprave and corrupt persons who are likely, regard to all relevant circumstances." For something to be considered obscene it has to be an article. Section 1 (2) of the 1959 defines an article as, "any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures." The article also has to be published for it to be obscene, 'section 2 provides that the 'publication' an obscene article is an offence.'

For an article to be considered obscene, the context of the article has to be considered. In the case of, *R. vs. Penguin Books*, it was argued that a book was considered obscene because it contained the word 'fuck' thirty times. It was held in this case that when the book was viewed as a whole, it was not considered obscene, because the word 'fuck' only appeared thirty times within the whole book.

In contrast to this is the case of, *R. vs. Associated Newspapers*. This case involved a magazine article published for children that emphasised the dangers of

taking drugs. The article contained some explicit pictures involving drugs. It was held in this case that if one article within a publication is considered obscene, the whole publication is considered to be obscene. These two cases raise questions as to when an article is considered to be obscene, which also causes problems as to what context an article is considered obscene, as it could be argued either of the above ways.

For an article to be considered obscene it has to be seen to deprave and corrupt someone, which is up to the jury to decide. The case of *DPP v. White*, concerned items seized from a bookshop which included hardcore pornography. Most of the shops customers were middle aged men, who made regular purchases. It was questioned if this material depraved and corrupted these people. It was held that many of the customers were already depraved and corrupted and the case was thrown out. However, this case appealed to the House of Lords and it was held that people already depraved and corrupted could be re-depraved and re-corrupted, because to deprave and corrupt you did not have to change your behaviour, it can be the effect it has on the mind. This case considers the kind of people who are likely to access certain types of offensive material, and if it will affect them, and the case of *DPP v. Whyte* shows that it can affect anyone, if they are already depraved and corrupted.

However, there are some defences to this kind of behaviour. The first defence is the aversion defence. This claims that material published is so horrific it is more likely to repel people from doing it, rather than endorse it, and so it is used as a shock tactic to stop people doing it. This is also shown in the *R v. Anderson* case. It was argued that the images published were so unpleasant it would discourage children from taking drugs.

There is also the public good defence. This argues that this material in the interest of the public in relation to certain topics. This is argued in the case of *DPP v. Anderson*. This concerned a book shop owner, where many of the customers were old men. It was argued that pornographic might be beneficial to society, because it might relieve certain sexual tendencies and preventing them from endorsing in anti-social behaviour. This was rejected in court because sexual behaviour was not admissible. It was also held that expert evidence cannot be used to determine whether something is obscene or not.

The other legislation is The Protection of Children Act 1978. This act makes it an offence to take any indecent photograph of a child under the age of sixteen, to distribute such a photograph or possess a photograph with a 'view to their being distributed or shown by himself or others...' Section 7 (4) of this act provides that, "a photograph includes

‘data stored on a disk or by other electronic means which is capable of conversion into a photograph.’

In the case of *R. v. P. [1997] 1 Cr. App. R. 199*, “the Court of Appeal dismissed an appeal against convictions for possessing indecent photographs of a child, having an obscene article for publication and distributing indecent photographs, the material in question being available over a computer network. The defendants had contended that such computer data did not constitute a photograph for the purposes of section 1 of the 1978 act... Evans LJ decided that: although the computer disk was not a photograph it was a copy of an indecent photograph.” (‘Information Technology Law’ – Rowland and Macdonald – page 496)

This act was put in place to protect children under the age of sixteen, who are vulnerable, who do not necessarily understand the implications of what is happening to them.

No-one is ever going to agree on the best method of regulating the internet, if it is self regulation or new or existing legislation. The internet can never be fully regulated, and if it was regulated, the problem of pornography and racial hate would still exist, but in a form that cannot be monitored, so it would not solve the problem but cause a new one.

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