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The Danger of Protecting Our Children: Government Porn Regulation Threatens Alternative Representations and Doesn't Save Kids

Tristan Taormino[†]

In 1999, I wanted to make a video based on my book, *The Ultimate Guide to Anal Sex for Women*.¹ I liked the idea of making a how-to video, but while most of the instructional videos I'd seen were informative, they were, well, pretty boring. I wanted to make an educational anal sex video that not only taught viewers how to have safe and pleasurable anal sex, but also inspired them to do it because what they were watching was sexy and hot. Instead of discussing and demonstrating tips and techniques in a clinical way, I wanted to show heat and excitement, but I knew that as soon as I included explicit, hardcore sex, I was in the land of pornography. That was okay, though. My first exposure to porn was seeing feminist porn like *On Our Backs*, Debi Sundahl's *How to Female Ejaculate*, and videos from Fatale Video. I knew pornography had the potential to be feminist.

Like any aspiring filmmaker, I had two options: go independent or pitch my idea to a mainstream company. My idea of going independent would involve begging, borrowing, running up my credit cards, asking my friends and their friends to work for little or nothing, and somehow getting the film made. Then, I would try to personally distribute it to my readers, fans, and workshop participants. I could get it in sex-positive stores like Toys in Babeland and Good Vibrations, but that would be like preaching to the converted. If I went the independent route, I could keep my feminist credibility—what's more feminist than struggling and going broke to make something revolutionary? But I wanted to reach as many people as possible, and to do that I needed a mainstream company.

Taking the leap from writer to pornographer was big. I'd studied the debates, and I love cultural criticism as much as the next Wesleyan graduate, but what would it be like to actually create pornography? I loved the challenge of making porn that countered negative stereotypes. I wanted to engage what

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1. See TRISTAN TAORMINO, *THE ULTIMATE GUIDE TO ANAL SEX FOR WOMEN* (1997).

anti-porn feminists consider an “enemy of women.” I wanted to add my voice and my vision to the mix, to create something different, to see if I could change the way that things were done. And for that, I had to get down and dirty. For that, I had to engage the beast.

I am a feminist pornographer. For me, this means that my process of making porn is ethical, consensual, and respectful. The work environment is safe, and everyone wants to be there. Women and men are given choices: they choose who they will have sex with, the positions they want to be in, and the toys they play with—and it is all based on what feels good to them and based on their actual sexuality, not a fabricated script. The movie is a collaboration between director and performer, with the actors’ input and ideas about how they want to be represented. I think it is possible to create sexual images without stripping away the performer’s identity.

Feminist porn is porn that empowers women and men: it gives them information and ideas about sex. It primarily teaches. It inspires fantasy and adventure. It validates viewers when they see themselves or a part of their sexuality represented. It presents sex as joyful, fun, safe, and satisfying. It counteracts porn that is misogynist, stereotypical, and degrading. It also counteracts the other messages about sex we get from society: that sex is shameful, naughty, dirty, scary, or dangerous; or that it’s the domain of men, where only their desires and fantasies are fulfilled. And yes, it arouses, but even if that’s all it does, that is a good thing. Our sexuality is part of who we are, and pleasure has value.

There are more feminists making porn independently than there are feminists working in the mainstream industry. Both strategies are important and they are not separate. Most of the porn that influenced me was independently produced and distributed. Independent porn needs to continue to be made both for its value to viewers and its inspiration to the next generation of feminist pornographers.

I want porn to be more sex-positive, and I want more sex-positive porn. There is one great force which could stop me and others from making a different kind of porn: the government. Right now, its greatest weapon is title 18, section 2257 of the United States Code (which I’ll call “2257” for short).²

WHAT IS 2257?

I would love to tell you that my days are spent meeting with smart young performers who really love their jobs, negotiating their rate for anal sex with

2. 18 U.S.C. § 2257 (2000).

sex toys versus with a cock, and watching their sexuality unfold before the camera. But the days of a pornographer are full of something much more mundane: paperwork. And it only promises to get worse.

Background: In 1988, a version of 2257 was enacted based on recommendations made by Attorney General Edwin Meese's Commission on Pornography in 1986. It was part of the Child Protection and Obscenity Enforcement Act of 1988, and the courts struck this provision down. In 1990, 2257 returned as part of the Child Protection Restoration and Penalties Enhancement Act of 1990.³ Throughout its history, 2257 has been part of child protection laws and has been framed as a tool for protecting children from being coerced and exploited by child pornography. However, people working legitimately in the adult industry have no interest in making child porn; they want to make porn with adults for adults.

Section 2257 supposedly protects children by requiring pornographers to keep detailed records. Producers of sexually-explicit images have to document each and every performer: the consent to appear in whatever it is he or she is making, the performer's age and proper proof of that age, any aliases the performer may have, along with basic information like address, social security number, etc.⁴ It is producers who must organize and index these records and make them available to government inspectors.⁵ A disclaimer must appear in a specific place within the pornography (whether in print, on video, or on the Web) that certifies that the producer has complied with the statute, that the records exist, and that all performers were eighteen or over on the day of production; it must also include the date of the production, the name of the custodian of the records, and the address where the records are located.⁶ Compliance with 2257 has been required since 1995.⁷

The regulations were revised beginning in 2003 as part of the Record-Keeping and Record Inspection Provisions of the Child Protection Restoration and Penalties Enforcement Act of 1990 and the PROTECT Act.⁸ The revised regulations were published in the Federal Register on May 24, 2005, and were set to take effect on June 23, 2005.

The revised regulations, essentially, called for more regulations. For example, under the new regulations, the required documents must be kept at the primary place of business (even if that is a residence), and made available Monday to Friday from nine to five. If a producer doesn't maintain these

3. Child Protection Restoration and Penalties Enhancement Act of 1990, Pub. L. No. 101-647, 104 Stat. 4816 (codified as amended at 18 U.S.C. § 2257 (2000)).

4. 18 U.S.C. § 2257(a)-(b) (2000).

5. 18 U.S.C.A. § 2257(c)-(e) (2006).

6. 18 U.S.C. § 2257(a)-(b) (2000).

7. Prosecutorial Remedies and Tools Against the Exploitation of Children (PROTECT) Act of 2003, Pub. L. No. 108-21, Tit. V, Sub. A § 511(a), 117 Stat 650, 684 (to be codified at 18 U.S.C. § 2257); Pub. L. No. 101-647, Tit. III, § 301(b), Sub. A, § 311, 104 Stat. 4816 (Sept. 13, 1994).

8. *Id.*

hours, he or she has to provide a notice of hours, and the producer's regular availability cannot fall short of twenty hours a week. Businesses that are homegrown or have just one employee don't always maintain regular business hours, and there are no stipulations in the statute for illness or vacation. And the government can inspect documents unannounced and unprovoked, so producers have no idea when inspectors may show up on their doorsteps.

Another addition is that the address associated with the compliance statement has to be the primary place of business and cannot be a post office box.⁹ For many small, home-based companies, this means that a person's home address must be made public. Female performers who run their own websites expose themselves to serious risks by revealing their home addresses. Yet while the revised regulations would cause these security risks and other production problems, no supporter of the revision has been able to articulate how the new regulations to 2257 will better help children from being exploited by pornography.

Days before the June effective date, the Free Speech Coalition filed a complaint and motion for a preliminary injunction against the enforcement of the statute by the Attorney General. That case is *Gonzales v. Free Speech Coalition*.¹⁰

WHY IS 2257 BAD FOR FEMINISTS AND OTHER ALTERNATIVE PORNOGRAPHERS?

When I first told you about my journey into porn, I talked about the do-it-yourself approach versus the mainstream approach. When it comes to the law, it doesn't matter whether you are a misogynist pornographer or a feminist pornographer. What matters more is whether you are a big pornographer or a little pornographer.

One of the benefits of going big is that the large companies have legal teams and resources. They can pay someone to be the Custodian of Records and do nothing else but "be available for possible inspection" all day long. (When you think about it, someone being available for inspection all day long could turn into its own cheesy porn movie.) But the little pornographers can't do the same; they simply don't have the staff or resources.

Some of the most important alternative voices in porn—websites like BurningAngel.com, Pinkgasm.com, ThatBirdsNest.com, Transexual-Man.com; companies like Bleu Productions, Fatale Media, SIR Video; and anyone who makes "homemade porn"—will be seriously impacted, and possibly crippled,

9. *Id.*

10. *Gonzales v. Free Speech Coal.*, 408 F.3d 613 (9th Cir. 2005).

by the new 2257 regulations. This will also impact female performers who often make most of their money (and have more control over their careers) when they own and run their own “fan” sites. These sites and businesses are, for the most part, one and two person operations, not mega-corporations. They are not exploiting children; they are adding to the dialogue of porn, a dialogue that desperately needs alternative voices. They are creating sex-positive images that people need to see. I don’t want to see those sites go away because they don’t have the resources to legally protect themselves or the staff to maintain records.

If the new 2257 regulations are upheld, one of the most troubling results will be its effect on do-it-yourself, underground, alternative porn that is made on the fringes of the mainstream adult industry. And, for the most part, that’s where many feminist pornographers reside. If those get shut down, then all that’s left are the “big guys”—studios like Vivid Video, Hustler Video, Red Light District, Zero Tolerance, Devil’s Film, and others—to represent sexuality and pleasure. It means porn will be more monopolized, more homogenized, and more male-dominated. It will be their images of sexuality, gender, class, and race that will dominate the market even more than they already do. We will see fewer representations by feminists, by minorities, by “mom and pop” porn companies and websites. We’ll see less of the kind of porn we need to see.

