

COMBATING PORNOGRAPHY

*Volume 1: Regulating access
to pornography*





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ECLJ's Report
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SUMMARY

The entrance in the Internet era put pornography to the click of a button, for the adults as for the young public, turning the society into a true “pornographic consumer society.” The figures evidence it: pornography is now massively consumed and the Covid 19 pandemic increased such phenomenon.

This report points out, in first instance, the harmfulness of the consumption of pornography, specifically for the children who are confronted to it, but also due to the perversity of its effects on the whole society: it would be naive to believe that pornography suddenly becomes harmless upon reaching the age of 18 years. Based upon such statement, this report recommends the implementation of various measures aimed to better regulate the access to pornography, so as to protect its (potential) consumers.

Pornography, a harmful consumer product

Towards children, pornography is part of their sexualisation and appears as an extreme form of it. In 2022, the Parliamentary Assembly of the Council of Europe (PACE) indicated being “*alarmed by the unprecedented exposure of children to pornographic imagery, which is detrimental to their psychological and physical development.*” Studies evidence that children are massively exposed to it: ever more numerous, ever younger, and highly frequently. Pornography became an information source about sexuality. As their brain is still in construction, the effects are devastating: it includes the shaping of unrealistic expectations regarding sexuality, hazardous sexual behaviours (early sexual activity, multiple partners, sexting etc.), addiction to pornography, lower level of social integration, decrease of the academic results, complexes, appearance of depressive symptoms, sexual violence amongst minors, etc.

Consuming pornography harms physical and mental health. Some studies evidence that it would increase sexual behaviours carrying risks to get STIs and that it would be linked to an increase of sexual dysfunctions. Regarding the addiction risk, pornography acts on the reward system and neurosciences evidence that the brain’s reaction to pornography is alike to the one induced by hard drug. Contrary to some other addictions, this one is hard to arrest as the free contents’ quantity is illimited.

While in its vast majority pornography goes hand in hands with brutality, its consumption creates an increased risk of violent behaviour: some studies evidence that it is significantly linked to an increase of verbal and physical assaults.

Pornography also represents a threat for women’s rights; without consideration for the notions of consent or mutual respect, it reduces women to objects. Such reification impacts the respect granted to women in the intimate, public, familial, and

professional spheres. By perpetuating harmful sexual stereotypes, it appears as an obstacle to the eradication of discrimination towards women.

Relationships, couples, families and ultimately the society are endangered by pornography. Indeed, several studies show that its use goes often together with a lesser sexual and relational satisfaction with the “real” partner and the implementation of relationships of submission, inequity and violence inside the couples, the increase of the probability of infidelity and divorce. As the family is the fundamental unit of society, the society in its whole is actually impacted by pornography.

Acting to protect (potential) consumers: better regulate the access to pornography

Prevention measures are essential and consist mainly in considering pornography as a public health issue and in ensuring young people’s education and population’s sensitisation on this key issue. On the other hand, better regulate access to online pornography is absolutely necessary, mainly in preventing children to such access.

Several supranational documents recognise the harmfulness of pornography and call upon the States to act, including in favour of the children’s protection. Indeed, minors are not authorised to access pornography in the real world, it is then logical to have the same prohibition on the Internet, according to the principle that what is illegal offline shall be illegal online. Nevertheless, in practice, this brings a conflict between several rights:

- on one side, the international recognised child’s rights, arising from the International Convention of the right of the child dated 1989 and from the international texts on specific matters related to the issue of pornography;
- on the other side, there are the rules related to the personal data protection or the right to respect for private life or freedom of expression, that are yet not absolute, including regarding access to pornography, as regularly reminded by the Council of Europe.

Thus, several mechanisms, more or less efficient, have been implemented by some States in order to better regulate access to pornography. Even if no system appears to be perfect, as it remains possible to bypass them, such measures could be combined together to allow at least the reduction of the non-intentional access to pornography. According to the review of various documents from the European institutions, such institutions support the implementation of most of them.

To render the consumers reluctant to access to online pornography, it is possible to **impose the affixation of a warning on the harmful effects of pornography** in the form of a message on digital pornographic material and on the home page of pornographic websites, of a label on printed material or of an instant message during research. For such purpose, Utah (United States) passed the *Porn Warning Label Law*.

Another measure is to **implement a rating system for audiovisual contents**, so as to filter online violence and pornography.

Several mechanisms may help prevent access to online pornography more specifically for minors. **The creation of a national body in charge of the issue** of children's protection in such matter may allow the coordination of the national effort, and may even act as the point of contact within the frame of an international cooperation. In 2015, Australia created *eSafety*, governmental agency in charge of online safety for adults and children. France implemented a monitoring Committee for the "Protection of the minors against online pornography."

It is further necessary to **repress the accessibility of a pornographic content to minors** by prohibiting and punishing the provision or dissemination of pornographic content to minors, but also the mere fact that a pornographic content may be available to a minor. It is the case for instance for the penal code in France (art. 227-24) or in Poland (art. 200).

Requiring pornographic websites to check their users' age is a measure widely promoted at the European level. In 2022, the European Commission emphasized its support to "*the development of an EU-wide recognised digital proof of age.*" The same year, the PACE called once more on the States to "*support the use of age verification tools*" and detailed the conditions of their implementation. Several States (Germany, United Kingdom, France, etc.) attempt such implementation, with varying degrees of success: such a mechanism poses, indeed, technical, economical, and legal difficulties (mistrust of the public, including as regards the personal data safety, mistrust of the service providers offering pornographic contents, state or European regulation scale, bypass possibility, issue of the consequences of the breaches of law, etc.) Such difficulties arise primarily from the choice of the online age verification method, that shall pursue the dual objective of safety and efficiency. In 2023, the French government indicated that it wished to test a verification solution "in double-blind" through an independent trustworthy third party.

It seems necessary to **intensify the use of parental control or filtering software** in the fight against children's exposure to pornography. Unfortunately, too few parents install and activate such type of software on the devices to which their children access. Their efficiency is discussed, nevertheless they seem to be useful with the youngest, under the age of 15 years. The default activation would be mandatory on connected devices, from leaving the factory, with deactivation being possible on request from the holder of the Internet access provision agreement. In any event, this should be installed and activated by default, in a general manner, in schools, libraries and public areas. Several States in the United States, the United Kingdom and Italy experiment such measures.

Lastly, better regulate the access to pornography may necessitate to **block the pornographic websites**, i.e., to prevent access to such websites from a specific country, regardless the place where they are hosted. Such a measure may constitute a sanction following the breach of the regulation (Germany, France),

including when the blockage is temporary, pending fulfillment of the regulation, or a more drastic and general solution for access to pornography corresponding to its prohibition or the prohibition of certain types of contents (China). This may also appear as a complementary measure from the on-source deletion of illegal contents, which is the most efficient but proves to be often impossible. Blockage is more difficult to implement on a legal than a technical point of view, but it is controversial and easy to bypass. Nevertheless, it avoids non-intentional access to blocked websites or contents.

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INTRODUCTION

While the definition of what is pornography is open to debate,¹ it can be said that, broadly speaking, it consists of the explicit representation of sexuality as a physiological mechanism for the sole purpose of sexual arousal. On the other hand, there is no doubt that violence is omnipresent: according to an analysis of the 50 most popular pornographic videos, 88% of the scenes contain physical violence and 49% contain at least one verbal attack.²

So, in 2011, the Parliamentary Assembly of the Council of Europe, "*Acknowledging that the number of consumers of pornography in Europe has increased, [warned] against the desensitisation resulting from continued exposure or addiction to pornography, and against a process of normalisation in which moral coercion and physical violence may be considered as acceptable*".³ Facing pornography's harmfulness for its consumers, their acquaintances, and the whole society (Part 1), it is necessary to better regulate access to it, including online (Part 2) as the entrance in the digital era put pornography at the click of a mouse for adults and children alike. In particular, the protection of the young generations is crucial: "*The better the child is protected, the more the grown-up person may dispense with protection*".⁴

PART 1: Pornography, a harmful consumer product

"It is easier to enslave nations with pornography than with mirrors."

Alexander Soljenitsyne

Pornography may not anymore be considered as neutral and harmless. People watching pornography are individually affected, and furthermore there are harmful consequences at the public and social scale. Indeed:

¹ See for example Adrien Lauba, « La qualification juridique de la pornographie en matière cinématographique » [The legal definition of pornography in the film industry], in Réseau européen de recherches en droits de l'homme (dir.), *Pornographie et droit*, Mare et Martin, 2020, p. 57-79.

² Ana J. Bridges, Robert Wosnitzer, Erica Scharrer, Chyng Sun, Rachael Liberman, "Aggression and Sexual Behavior in Best-Selling Pornography Videos: A Content Analysis Update", *Violence against Women* 16, no. 10 (2010): 1065-1085.

³ Parliamentary Assembly of the Council of Europe (PACE), *Violent and extreme pornography*, Resolution 1835 (2011), § 6.

⁴ Tommy Fallot, Communication sur l'organisation de la lutte contre la pornographie faite au congrès de l'Association protestante pour l'étude pratique des questions sociales [Communication on the organisation of fight against pornography, Protestant Association congress for practical study of social issues], Marseille, October 28 and 29, 1891, p. 40: <https://gallica.bnf.fr/ark:/12148/bpt6k758313/f6.item.zoom#>

"Pornography is a social toxin that destroys relationships, steals innocence, erodes compassion, breeds violence, and kills love. The issue of pornography is ground zero for all those concerned for the sexual health of our loved ones, communities, and society as a whole. [...] the breadth and depth of pornography's influence on popular culture has created an intolerable situation that impinges on the freedoms and wellbeing of countless individuals."⁵

Thus, after having established the existence of a "pornographic consumer society" (1), we shall evidence that pornography endangers specifically the consumers' health (2), children (3), women's rights (5), together with the relationships, couples, families, and the whole society (6). It also fosters violence (4).

1. A "pornographic consumer society"

We currently live in a "pornographic consumer society". Indeed, pornography is THE prime example of consumer product, as it can be freely, anonymously and unrestrictedly got, anywhere and at any time: the society is truly "pornified"⁶, as evidenced by the figures.

"Every second, 372 people seek so-called "adults" contents on search engines, 28 258 internauts watch them and 3 075 dollars are thus paid."⁷ According to the filmmaker Ovidie, "In ten years, mankind watched the equivalent of 1.2 million of years of porn."⁸ In 2017, the sole website Pornhub recorded an average 81 million daily visitors, i.e., 28,5 billion for the year.⁹ Such figures keep growing as the daily visits number amounts to 130 million in 2021.¹⁰ Such site's attendance tripled between 2013 and 2021.¹¹ It is also unanimously acknowledged that the covid-19

⁵ National Centre on Sexual Exploitation, *Pornography & Public Health – Research summary*, January 14, 2019: https://endsexualexploitation.org/wp-content/uploads/NCOSE_Jan-2019_Research-Summary_Pornography-PublicHealth_FINAL.pdf

⁶ See Juristes pour l'enfance, « Association Déclic / La consommation de porno par les adultes, reflet d'une société pornifiée » [Association Déclic / Porno consumption by adults, reflection of a pornified society] with Maria Hernandez-Mora and Anne Sixtine Pérardel, *Youtube*, February 15, 2022: <https://www.youtube.com/watch?v=ec8NJ-2wWqY> See also Auguste Meyrat, "The Pornification of Society", *Crisis magazine*, March 30, 2021 : <https://crisismagazine.com/opinion/the-pornification-of-society>

⁷ Rémy Verlyck, « Mettre fin à la pornographie est un impératif de société » [Put an end to pornography is a social necessity], *Le Figaro*, February 10, 2022.

⁸ Ovidie, « Pornocratie. Les nouvelles multinationales du sexe » [Pornocracy. The new sex multinationals], France, 2016, 85 min.

⁹ PACE, *Gender aspects and human rights implications of pornography*, Report, Doc. 15406, November 18th, 2021, § 8.

¹⁰ The Pornhub Tech Review, April 8th, 2021: <https://www.pornhub.com/insights/tech-review>

¹¹ François Lévêque, « Pornographie en ligne : une consommation massive, un risque pour les jeunes et une urgence à réguler » [Online Pornography: a massive consumption, a risk for young people and an urgent need for regulation], *The Conversation*, July 6, 2021: <https://theconversation.com/pornographie-en-ligne-une-consommation-massive-un-risque-pour-les-jeunes-et-une-urgence-a-reguler-163735>

pandemic has exacerbated the phenomenon, due to successive lockdowns.¹² Pornhub's traffic jumped by 22% between March and April 2020.¹³ The same observation may be done for the volume of offered contents: in 2017, Pornhub's users put online more than four million videos, i.e., 595 492 hours.¹⁴ In 2019, Pornhub proudly claimed having "*offered more than one million hours of new contents*" and "*that anyone would need 169 years to view them without stopping*"¹⁵ Access to pornography has become extremely simple and quick, due to the Internet, as 50% of its traffic is linked to sex.¹⁶ A significant part of the population is concerned as about 66% of men and 41% of women watch this type of contents every month, according to the studies.¹⁷ And such phenomenon literally exploded in two decades: a study revealed that in 2012, 82% of French women declared having seen a pornographic movie, against 23% in 1992.¹⁸ It also starts younger and younger: "*Up to 93% of boys and 62% of girls of 18 have been exposed to online pornography during adolescence.*"¹⁹ It is thus a mass phenomenon.

2. Endangered health

It is evidenced that consumption of pornography is detrimental to physical and mental health.²⁰

¹² OSCE and UN Women, *Guidance. Addressing emerging human trafficking trends and consequences of the COVID-19 pandemic*, July 2020, p. 30: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Guidance-Addressing-emerging-human-trafficking-trends-and-consequences-of-the-COVID-19-pandemic-en.pdf>

¹³ Pornography is booming during the covid-19 lockdowns, *The Economist*, May 10, 2020 : <https://www.economist.com/international/2020/05/10/pornography-is-booming-during-the-covid-19-lockdowns>

¹⁴ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 8.

¹⁵ François Lévêque, « Pornographie en ligne : une consommation massive, un risque pour les jeunes et une urgence à réguler » [Online Pornography: a massive consumption, a risk for young people and an urgent need for regulation], *The Conversation*, July 6, 2021.

¹⁶ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 12-13.

¹⁷ *Ibid.*, § 11. See also Ofcom, *Online Nation - 2021 report*, June 9, 2021, p. 100: "*Half (49%) of the UK adult population visited an adult content site and/or app in September 2020, which equates to 26 million unique adult visitors*": https://www.ofcom.org.uk/data/assets/pdf_file/0013/220414/online-nation-2021-report.pdf

¹⁸ « *Les Français, les femmes et les films X* », [French people, women and X movies], IFOP survey for Marc Dorcel performed online between September 7 and 11, 2012 with a sample of 1 101 people, representative of the French people who are at least 18 years old. November 23, 2012, p. 5: https://www.ifop.com/wp-content/uploads/2018/03/2057-1-study_file.pdf

¹⁹ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 15.

²⁰ Manuel Mennig, Sophia Tennie, Antonia Barke, Self-Perceived Problematic Use of Online Pornography Is Linked to Clinically Relevant Levels of Psychological Distress and Psychopathological Symptoms, *Archives of Sexual Behavior* (2022) 51:1313–1321.

a. Pornography, sexually transmitted infections (STI) and sexual dysfunctions

Some studies show that consumption of pornography increases sexual behaviours carrying risks of contracting STI, including sexual relationships with several partners, paid sexual relationships, extramarital sexual relationships etc.²¹

As mentioned by a recent report presented to the Parliamentary Assembly of the Council of Europe (PACE²²), “*There could be a connection between the increase of porn use and the growing number of cases of erectile dysfunction amongst men under the age of 30.*”²³ Thus, a Swiss study, published in 2012, revealed that 30% of 18-25 years old suffer from such troubles.²⁴ Another study from 2016 explicitly links the latter to the consumption of pornography on the Internet.²⁵ Regarding women, a gynaecologist reports that a significant number of young women confide not to live a “thriven” sexuality.²⁶ As pornography carries some esthetical standards, the increase in viewing induces also an increase of “*the demand for non-medical aesthetic genital surgery, especially the growing number of labiaplasty amongst women and even girls of a very young age.*”²⁷

b. Pornography and addiction

A German study²⁸ performed in 2014 on the brain scans of 64 porn users “*showed that the intense consumption of pornography could negatively affect the brain and that excessive consumption of pornography presents similarities with behavioural*

²¹ Paul J. Wright and Ashley K. Randall, “Internet Pornography Exposure and Risky Sexual Behavior among Adult Males in the United States,” *Computers in Human Behavior* 28 (2012): 1410–1416, in National Center on Sexual Exploitation, *Pornography & Public Health – Research summary, op. cit.*

²² PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 30.

²³ John D. Foubert, “The public health harms of pornography: the brain, erectile dysfunction, and sexual violence”, *Dignity: A Journal of Analysis of Exploitation and Violence*, 2017, Vol. 2: Iss. 3, Article 6.

²⁴ Mialon, A., A. Berchtold, P. A. Michaud, G. Gmel et J. C. Suris, “Sexual Dysfunction Among Young Men: Prevalence and Associated Factors”, *Journal of Adolescent Health* 51, no. 1 (2012): 25-31.

²⁵ Park B. Y., Wilson G., Berger J., Christman M., Reina B., Bishop F., Klam W. P., Doan A. P., “Is Internet Pornography Causing Sexual Dysfunctions? A Review with Clinical Reports”, *Behav Sci (Basel)*, 2016 Aug 5;6(3):17. See also Belinda Luscombe, “Porn and the Threat to Virility”, *Time*, 31 March 2016.

²⁶ See also the warning of Pia de Reilhac, a gynaecologist: Elsa Mari, Sexualité des jeunes adultes : « La pornographie fait des dégâts graves » [Sexuality of young adults: “pornography causes heavy damages”], *Le Parisien*, July 27, 2019: <https://www.leparisien.fr/societe/sexualite-des-jeunes-adultes-la-pornographie-fait-des-degats-graves-27-07-2019-8124555.php>

²⁷ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 30. See “Rising rates of genital cosmetic surgery subject of new research”, Newsroom, University of Melbourne, June 29, 2018; Liao L M, Creighton S M., “Requests for cosmetic genitoplasty: how should healthcare providers respond?”, *BMJ* 2007, 334:1090; Elsa Mari, Sexualité des jeunes adultes : « La pornographie fait des dégâts graves » [Sexuality of young adults: “pornography causes heavy damages”], *Le Parisien*, July 27, 2019.

²⁸ Simone Kühn and Jürgen Gallinat, “Brain Structure and Functional Connectivity Associated with Pornography Consumption: The Brain on Porn”, *JAMA Psychiatry* 71, no. 7 (2014): 827-834.

*addiction to substances or gambling.*²⁹ Neurosciences evidence now that the brain's reaction to pornography is alike to the one caused by hard drugs as cocaine.³⁰

Indeed, when the brain is exposed to some rewarding thing, it reacts by increasing the release of dopamine, also called "pleasure hormone". Pornography activates both centres of the brain's reward system: pleasure system and desire system. Thus, the user may be caught into a circle of pleasure and release of dopamine in response to new images, then of desire and longing to have some more.³¹ Over time, the dopamine's receptors of the reward centre reduce due to a chronic overstimulation.³² With a blunted reward centre, the user does not sense as well the dopamine's effects. Pornography ceases to produce the same excitation as before. As a consequence, many people seek a more violent and bold content, to obtain a higher release of dopamine.³³

The above German study reveals also that an important use of pornography induces a decrease in the brain material in the brain's zones associated to motivation and decision making. Such lack contributes to an alteration of the impulses' control and a desensitization of the sexual reward.

Pornography is thus very addictive³⁴ and, contrary to other addictions, this one is difficult to arrest as it is accessible, affordable and anonymous (the three "A³⁵"): contrary to the "*bottom of the alcohol bottle or the last cigarette of the pack*", there is an unlimited possibility to find a content free to watch.³⁶

²⁹ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 41.

³⁰ Juristes pour l'enfance, « Association Déclit : entretien autour de la consommation de pornographie par les adultes » [Association Déclit: conversation about pornographic consumption by adults], February 15, 2022: <https://www.youtube.com/watch?v=fXbEkWqY1eg>; Elisabeth Pierson, « Le porno, c'est comme la coke » : trois jeunes racontent leur addiction ["porno is like coke": three young people tell about their addiction], *Le Figaro*, September 30, 2022.

³¹ Norman Doidge, *The Brain That Changes Itself* (2007).

³² P. Kenny, G. Voren et P. Johnson. "Dopamine D2 Receptors and Striatopallidal Transmission in Addiction and Obesity", *Current Opinion in Neurobiology* 23, no. 4 (2013): 535-538.

³³ D. H. Angres, K. Bettinardi-Angres, "The Disease of Addiction: Origins, Treatment, and Recovery". *Disease-a-Month* 54 (2008): 696-721. Mateusz Gola, et al., "Can Pornography be Addictive? An fMRI Study of Men Seeking Treatment for Problematic Pornography Use", *Neuropsychopharmacology* 42, no. 10 (2017): 2021-2031.

³⁴ For a description of the addiction process, see Cline, Victor B. and Wilcox, Brad (2002) "The Pornography Trap", *Marriage and Families*: Vol. 9, Article 3, p. 11-13: <https://scholarsarchive.byu.edu/marriageandfamilies/vol9/iss1/3>

³⁵ *Ibid.*, p. 13.

³⁶ François Lévêque, « Pornographie en ligne : une consommation massive, un risque pour les jeunes et une urgence à réguler » [Online Pornography: a massive consumption, a risk for young people and an urgent need for regulation], *The Conversation*, July 6, 2021.

3. Endangered children³⁷

Insidiously, *“the codes of pornography have invaded our daily lives.”*³⁸ The phenomenon of children’s sexualisation may be easily detected in advertisements, music, filmmaking, videogames, toys, clothes, magazines, radio shows etc. Pornography appears as an *“extreme form of sexualisation.”*³⁹ Thus, would a child be authorised to watch what happens in a brothel? Yet this is what means online pornography available to young people, not counting metaverse and its multisensorial potentialities.⁴⁰ In 2013, the European Parliament stated that the use of pornography becomes common amongst young people and permeates their construction:

*“young women and men are most affected by pornography’s new cultural status; [...] the ‘mainstreaming of pornography’, i.e. the current cultural process whereby pornography is slipping into our everyday lives as an evermore universally accepted, often idealised, cultural element, manifests itself particularly clearly within youth culture: from teenage television and lifestyle magazines to music videos and commercials targeted at the young.”*⁴¹

As for the PACE, it indicated being *“alarmed by the unprecedented exposure of children to pornographic imagery, which is detrimental to their psychological and physical development.”*⁴²

a. A more and more massive exposure to pornography

Standardly, pornographic contents are restricted to grown up, nevertheless some studies show that minors are more and more exposed to them.⁴³ indeed, according to a study of IFOP dated 2017, *“during their lives, 63% of boys and 37% of girls*

³⁷ "Child" means "every human being below the age of eighteen years" under the meaning of the International Convention on the Rights of the Child (1989).

³⁸ *Contre l’hypersexualisation – Un nouveau combat pour l’égalité [Against hypersexualisation - A new fight for equality]*, Parliamentary report by Chantal Jouanno, Senator for Paris, March 5, 2012, p. 9.

³⁹ Adam Szafranski, "Freedom from Unwanted Sexualisation – Access to Pornography", in *Marriage, Children and Family – Modern Challenges and Comparative Law Perspective*, Instytut Wymiaru Sprawiedliwości, Warszawa, 2019, p. 313. See in particular Ksenia Bakina, "Publication of Pornography and Protection of Children from Sexualisation in the UK Law", in *Marriage, Children and Family – Modern Challenges and Comparative Law Perspective*, op. cit., p. 184-198 (2. Sexualisation of children).

⁴⁰ "Some metaverse applications even allow children to enter virtual strip clubs with 3D avatars simulating sex, with no or little moderation": PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic content*, Committee Opinion, Doc. 15505, April 21, 2022.

⁴¹ European Parliament resolution of March 12, 2013 on eliminating gender stereotypes in the EU (2012/2116(INI)), cons. N.

⁴² PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Resolution 2429 (2022), April 21, 2022, § 2; See also accompanying Report (Doc. 15494, April 7, 2022), § 11-19 (Impact of exposure to pornographic content on the well-being of children).

⁴³ The following study should also be read: ARCOM, *La fréquentation des sites « adultes » par les mineurs [The visitation of "adult" websites by minors]*, May 2023: <https://www.arcom.fr/nos-ressources/etudes-et-donnees/mediatheque/frequentation-des-sites-adultes-par-les-mineurs>

between 15 and 17 years have at least once visited a website to watch pornographic films.⁴⁴ The trend of such proportion is increasing as, in 2013, the same figure was of 53% of the boys (i.e., +10 points in four years⁴⁵). It is the same in the United States, where a recent poll evidenced that 73% of young people aged between 13 to 17 have been exposed to online pornography.⁴⁶ In France, the Audiovisual and Digital Communication Regulation Authority (ARCOM - former *Conseil supérieur de l'audiovisuel/CSA*⁴⁷) indicated that, in 2022, 2.3 million minors are visiting each month "adults" websites, i.e., an increase of +36% in 5 years; this represents more than 51% of the boys from 12 to 17 years old.⁴⁸

The worry comes also from the decrease in the age of the first pornographic view: in 2016 for example, almost 49% of male American students indicated having discovered pornography before the age of 13 years⁴⁹ and such phenomenon is now reaching children in primary school.⁵⁰ In Poland, a report dated 2022 reveals that, nowadays, the first pornographic view occurs just before 11 years.⁵¹ Such same figure is of 12 years in the United States.⁵² A study performed in France in 2023 reveals that more than a quarter (27%) of the questioned 18-24 years viewed pornography for the first time between 8 and 12 years, such figure more than

⁴⁴ « Les adolescents et le porno : vers une «Génération Youporn» ? » [Teenagers and porn: towards a "Youporn Generation"?], IFOP study for *Observatoire de la Parentalité et de l'Éducation Numérique* [Monitoring Center for Parenthood and Digital Education], performed from February 21st to 27th, 2017 with 1005 people representing the French population aged from 15 to 17, p. 9: https://www.ifop.com/wp-content/uploads/2018/03/3698-1-study_file.pdf

⁴⁵ *Ibid.*, p. 10.

⁴⁶ Robb, M.B., & Mann, S. (2023). *Teens and pornography*. San Francisco, CA: Common Sense, p. 8: <https://www.commonsemmedia.org/sites/default/files/research/report/2022-teens-and-pornography-final-web.pdf>

⁴⁷ The *Conseil supérieur de l'audiovisuel* (CSA) [French Audiovisual High Council] was the "audiovisual policeman". Since January 1, 2022, the CSA and the *Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet* (HADOPI) [High Authority for works publication and protection of the rights on the Internet] merged to form the *Autorité de régulation de la communication audiovisuelle et numérique* (ARCOM) [Audiovisual and Digital Communication Regulation Authority].

⁴⁸ ARCOM, *La fréquentation des sites « adultes » par les mineurs* [The visitation of "adult" websites by minors], May 2023, p. 26.

⁴⁹ Chyng Sun, Ana Bridges, Jennifer Johnson et Matt Ezzell, "Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations", *Archives of Sexual Behavior* 45, no. 4, May 2016, 983-94.

⁵⁰ See Agnès Leclair, « Les enfants désormais exposés au porno dès l'école primaire » [Children nowadays exposed to porn since primary school], *Le Figaro*, February 10, 2020.

⁵¹ Dr Rafał Lange (red.), Mariola Błazej, Filip Konopczyński, dr Agnieszka Ładna, *Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania* [Teenagers towards digital pornography - Trajectories of use], Thinkstat NASK - Ogólnopolska Sieć Edukacyjna, Warsaw 2022, p. 5.

⁵² Robb, M.B., & Mann, S. (2023). *Teens and pornography, op. cit.*, p. 8.

doubled in 10 years (11% in 2013); in particular, such proportion tripled amongst boys, from 12 to 35%.⁵³

The frequency of the pornographic viewing by young people is also worrying. In 2016, 64% of American people aged from 13 to 24 actively viewed pornography weekly or more often;⁵⁴ in 2022, 59% of young people from 13 to 17 years watching pornography willingly do so each week or more often.⁵⁵ In France in 2017, 36% of male teenagers who have already visited an X website state that they do so once a month or more and 4% every day or almost.⁵⁶ In Poland, almost a quarter of the 16 years old teenagers who watch pornography admit doing so daily (23,9%); amongst the 12-14 years, such figure is of a bit more than one over five (21,5%⁵⁷).

Such massive phenomenon may be explained by various reasons. First, the entrance in the digital era put pornography at the click of a button. It reaches even schools⁵⁸ through smartphones, more and more frequent amongst minors. Thus, in Poland, the questioned young people have mostly declared that they saw pornography for the first time on a phone/smartphone with access to the Internet (35,1%) and that they mostly use this type of device to access such contents, for 76,2% of interrogated young people who are 16 years old and for 66,9% of the 12-14 years.⁵⁹ In France also, "*The mobile phone is the most used device, regardless to the age. For 75% of minors, the mobile phone is even the sole device*"⁶⁰ to access "adult" websites. Another reason is the "*fierce marketing of the porn industry*" and the "*various technics used by [it] to attracts unwilling internauts*" (advertisement click-through, home page diversion, clandestine websites, hidden key words, illegal download, streaming and live streaming sites).⁶¹ It must be indicated that the

⁵³ 01net, « Exclusif (IFOP) – 8 Français sur 10 doutent de l'efficacité du blocage des sites X » [Exclusive (IFOP) – 8 French people over 10 doubt of the efficiency of the X sites blocking] (IFOP study for 01net performed by online auto-managed questionnaire from April 13th to 17th, 2023 with a sample of 2 006 people, representative of the French population aged of 18 years and more), July 2023 : <https://www.01net.com/vpn/etude-francais-sites-adultes/>

⁵⁴ Groupe Barna, "The porn Phenomenon: The Impact of Pornography in the Digital Age" (2016).

⁵⁵ Robb, M.B., & Mann, S. (2023). *Teens and pornography, op. cit.*, p. 8.

⁵⁶ « Les adolescents et le porno : vers une «Génération Youporn» ? » [Teenagers and porn: towards a "Youporn Generation"?], IFOP study for *Observatoire de la Parentalité et de l'Éducation Numérique* [Monitoring Center for Parenthood and Digital Education], performed from February 21st to 27th, 2017 with 1005 people representing the French population aged from 15 to 17 p. 17.

⁵⁷ R. Lange, M. Błażej, F. Konopczyński, A. Ładna, *Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania* [Teenagers towards digital pornography - Trajectories of use], Thinkstat NASK, *op. cit.*, p. 5.

⁵⁸ Robb, M.B., & Mann, S. (2023). *Teens and pornography, op. cit.*, p. 15.

⁵⁹ R. Lange, M. Błażej, F. Konopczyński, A. Ładna, *Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania* [Teenagers towards digital pornography – Trajectories of use], Thinkstat NASK, *op. cit.*, p. 5.

⁶⁰ ARCOM, *La fréquentation des sites « adultes » par les mineurs [The visitation of "adult" websites by minors]*, May 2023, p. 14.

⁶¹ Ennocence, Réseaux sociaux, streaming, live streaming et téléchargement illégal : nouvelles portes d'entrée des enfants vers le monde de la pornographie, premier pas vers une sensibilisation de notre société sur ces sujets [*Social networks, streaming, live streaming and illegal downloading: new*

minors' exposure to online pornography is very profitable to such industry: about 789 million dollars per year, including about 147 million dollars generated by accidental exposure, and to be added, those minors are the clients of tomorrow.⁶² According to the ARCOM, "*minors represent 12% of the "adults" websites audience, 17% of Pornhub's one.*"⁶³

b. Pornography's harmfulness for children

Pornography has a very important impact on young people, due to their sensitivity to dopamine.⁶⁴ A characteristic of a teenager's brain is its capacity to change according to the environment, by modifying the communication networks between the brain's zones. Such brain's plasticity allows huge progress in learning and thinking, but it also renders the brain more vulnerable to the development of mental disorders and dangerous behaviours.⁶⁵ Pornography is therefore detrimental to the normal process of the child's frontal cortex and its maturation when he or she is exposed to pornography.⁶⁶

Early viewing of pornography is thus not harmless, as admitted by the PACE:

*This exposure brings increased risks of harmful gender stereotyping, addiction to pornography, early and unhealthy sexual relationships, as well as difficulties with developing balanced, respectful relationships in future life", it results in the blurring of the boundaries of normal curiosity towards sexuality and those of socially acceptable behaviour, and it undermines respect for human dignity, privacy and physical integrity."*⁶⁷ Indeed, "*Recent studies have analysed the impact of pornography on young people's behaviour and attitudes, highlighting mostly its negative effects regarding gender equality. As teenage years are a time for young people to develop an image of themselves and to discover their sexuality, this impact can be deep and lifelong.*"⁶⁸

Young people's exposure to pornography induces the development of unrealistic and distorted expectation from sexuality and deceptive attitudes with relationships,

gateways for children to the world of pornography, first steps towards sensitization of our society on these issues], 2016, p. 21-25 : <https://ennocence.org/wp-content/uploads/2016/11/rapport-ennocence-VF.pdf>

⁶² *Ibid.*, p. 13.

⁶³ ARCOM, *La fréquentation des sites « adultes » par les mineurs [The visitation of "adult" websites by minors]*, May 2023, p. 23.

⁶⁴ Pittsburgh University, "Teen Brains Over-Process Rewards, Suggesting Root of Risky Behavior, Mental Ills", *Phys.org*, January 2011.

⁶⁵ Jay N. Giedd, "The Amazing Teen Brain", *Scientific American*, June 2015, p. 32-37.

⁶⁶ E. Le Roux, "Pornography: Human Right or Human Rights Violation?", *Open Journals Publishing* (2009): https://www.researchgate.net/publication/262545053_Pornography_Human_right_or_human_rights_violation

⁶⁷ PACE, *For an assessment of the means and provisions to combat children's exposure to pornographic contents*, Resolution 2429 (2022), § 2-3.

⁶⁸ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), op. cit., § 18.

especially since it is known that “*pornography has increasingly become one of the main sources of information on sex and sexuality for young people.*”⁶⁹ An IFOP survey reveals thus that “*73% of secondary school boys thinks that X movies participated to the learning of their sexuality.*”⁷⁰ Pornography is yet only a representation of sexuality, but teenagers do not make any distinction between film and reality, all the more as the sexual intercourse they see is real. Exposure to sexually obscene content increases then the probability that teenagers accept and adopt harmful and risky sexual behaviours, for themselves and others: younger sexual activity,⁷¹ sexting,⁷² multiple sexual partners, deviant sexual practices, use of psychoactive substances and vulnerability to venereal diseases.⁷³

The use of pornography causes also heavy psychological damages to children. The studies evidence that

*“the perturbations induced by the viewing of such type of program by young children [may] lead to psychic perturbations and disordered behaviour such as the one of a sexual abuse.”*⁷⁴ Generally, “*the studies indicate that children who consume pornography [...] have lower levels of social integration and higher levels of unwanted behaviours. One can also see with them a higher incidence of depressive syndromes and a reduction in their loving bonds with their parents.*”⁷⁵

⁶⁹ *Ibid.*, § 17.

⁷⁰ « Les adolescents et le porno : vers une «Génération Youporn» ? » [Teenagers and porn: towards a "Youporn Generation"?], IFOP study for *Observatoire de la Parentalité et de l'Éducation Numérique* [Monitoring Center for Parenthood and Digital Education], performed from February 21st to 27th, 2017 with 1005 people representing the French population aged from 15 to 17, p. 30.

⁷¹ *Ibid.*, p. 11: “71% of teenagers who have already had sexual intercourse “have already visited a pornographic website during their life.” As a reminder, the average for all adolescents is 51%”.

⁷² In Poland, about a quarter of the questioned young people of 16 years (23,5%) have sent other people sexually explicit photos or videos of themselves: R. Lange, M. Błażej, F. Konopczyński, A. Ładna, *Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania [Teenagers towards digital pornography – Trajectories of use]*, Thinkstat NASK, *op. cit.*, p. 29-35.

⁷³ Elizabeth M. Morgan, “Associations between Young Adults’ Use of Sexually Explicit Materials and Their Sexual Preference, Behaviors, and Satisfaction”, *The Journal of Sex Research* 48, no. 6 (2011): 520-530.

⁷⁴ « L’environnement médiatique des jeunes de 0 à 18 ans : Que transmettons-nous à nos enfants ? » [The media environment of young people from 0 to 18 years: what do we pass on to our children?], Report in response to the mission entrusted by Ségolène Royal, delegate Minister for the Family, childhood and disabled persons to the *Collectif Interassociatif Enfance Médias (CIEM)*, May 2002, p. 39: <https://enfants-medias.cemea.asso.fr/IMG/rapportCIEM.pdf>

⁷⁵ R. Lange, M. Błażej, F. Konopczyński, A. Ładna, *Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania [Teenagers towards digital pornography – Trajectories of use]*, Thinkstat NASK, *op. cit.*, p. 4 (free translation).

The “perfect” bodies exposed in such contents are likely to generate complexes.⁷⁶ Early exposure to pornography has detrimental effects “*on their self-esteem, well-being, relationships, equal opportunities and achievements in school. In some cases, it can lead to sexual violence and be severely detrimental to their physical and mental health.*”⁷⁷ Such link between pornography and sexual violence between young people is evidenced:⁷⁸

“*The patients we meet frequently mention repeated contact or even massive use of pornography, as in the case of [X], 15 years old [...], indicted for sexual assaults on some girls of his school and for the rape of two of his neighbours, younger than 10 years.*”⁷⁹

It is disturbing to note, as did the French Justice Minister, that with a “*significant increase between 1996 and 2018, almost one over two cases of rapes and sexual assaults on minors dealt with by the judges in 2020, involved a minor perpetrator (at the time of the offence).*”⁸⁰ The PACE notes also that the “*Law-enforcement authorities have reported a massive spike in cases of harmful sexual behaviour by children,*”⁸¹

⁷⁶ 01net, « Exclusif (IFOP) – 8 Français sur 10 doutent de l’efficacité du blocage des sites X » [Exclusive (IFOP) – 8 French people over 10 doubt of the efficiency of the X sites blocking] (IFOP study for 01net performed by online auto-managed questionnaire from April 13th to 17th, 2023 with a sample of 2 006 people, representative of the French population aged of 18 years and more): note the increase of 17 points amongst young men compared with 2013.

⁷⁷ PACE, *Fighting the over-sexualisation of children*, Resolution 2119 (2016), June 21st, 2016, § 2.

⁷⁸ See Olivia Sarton and Claire de Gatellier (dir.), *Violences sexuelles entre mineurs. Agir, Prévenir, Guérir... Les spécialistes répondent [Sexual violence between minors. Act, Prevent, Heal... Specialists respond]*, Artège, 2023.

⁷⁹ Barbara Smaniotta, « Réflexions autour de l’impact de la pornographie... sur la sexualité adolescente » [Reflexions on the impact of pornography... on adolescent sexuality], *Revue de l’enfance et de l’adolescence*, 2017/1 (n° 95), p. 47-56. See also Juristes pour l’enfance & Famille et Liberté, *Violences sexuelles entre mineurs – Agir, Prévenir, Guérir [Sexual violence between minors – Act, Prevent, Heal]*, Colloquium, November 28, 2022: <https://www.juristespourlenfance.com/wp-content/uploads/2023/01/DOSSIER-DE-PRESSE.pdf> and Center for Family and Human Rights, *Dismantling the Pornography Industry and Making the Internet Safe for Children*, February 23, 2022, <https://c-fam.org/event/dismantling-the-pornography-industry-and-making-the-internet-safe-for-children/>: in Kansas City, it was found that half of the authors of sexual violence against girls under the age of 10 were boys aged 11 to 15, and one can believe that the cause is the exposure to pornography.

⁸⁰ Marie Romero, *La prise en charge des mineurs auteurs d’infractions à caractère sexuel à la protection judiciaire de la jeunesse [The care of minors authors of sexual crimes within the judicial youth protection]*, Research report, Justice Ministry, October 2022: http://www.justice.gouv.fr/art_pix/rapport_recherche_maics.pdf

⁸¹ PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic content*, Resolution 2429 (2022), § 3.

4. A higher risk of violent behaviour

A report to the PACE indicates that “*The connection between sexual violence and porn is controversial in society and media, but is well documented in science from different perspectives*.”⁸² Several studies⁸³ are quoted, one “*indicates that the frequent use of pornographic materials is associated with sexually coercive behaviour in Swedish and Italian young men*.”⁸⁴ A meta-analysis performed in 2015 over 22 studies from seven countries revealed that pornography consumption was associated with a significant increase of verbal and physical assaults.⁸⁵

The brain secretes a higher quantity of dopamine when perceiving new, shocking or surprising things. When the brain’s pleasure receptors catch fire, it becomes more difficult for the brain’s pain or aversion centres to catch fire at the same time, which means that the things that would normally be sparsely attractive or even disgusting cease suddenly to disturb, even become attracting when associated with pleasure.⁸⁶

According to the report to the PACE, “*Users of violent and, according to some studies also non-violent, pornography are more likely to support rape myths and feel less empathic with victims of sexual violence*.”⁸⁷ Indeed, assaulted persons in a pornographic movie have to simulate an assented pleasure: violence is then normalised and even desirable as synonymous of pleasure. This is the testimony of Jane Doe, a victim in the “Girls do Porn” case:

“I didn’t know if they were going to kill me. Watching the video now, I can see it in my eyes. The quivering of my lips and my voice, I know exactly how I

⁸² PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 23.

⁸³ Whitney L. Rostad, Daniel Gittins-Stone, Charlie Huntington, Christie J. Rizzo, Deborah Pearlman and Lindsay Orchowski, “The Association Between Exposure to Violent Pornography and Teen Dating Violence in Grade 10 High School Students”, *Archives of sexual behaviour*, 2019. See also Zillmann, Dolf (2004): “Pornografie”, in Roland Mangold, Peter Vorderer, Gary Bente (Hrsg.): *Lehrbuch der Medienpsychologie*. Göttingen: Hogrefe, S. 565-585; Silvia Bonino, Silvia Clairano, Emanuela Rabagliette, and Elena Cattelino, “Use of Pornography and SelfReported Engagement in Sexual Violence among Adolescents”, *European Journal of Developmental Psychology* 3, no. 3 (2006): 265-288.

⁸⁴ Eran Shor, Age, “Aggression, and Pleasure in Popular Online Pornographic Videos”, *Violence Against Women* 1-19, 2018.

⁸⁵ Paul J. Wright, Robert S. Tokunaga, and Ashley Kraus, “A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies”, *Journal of Communication* 66, no. 1 (February 2016): 183-205.

⁸⁶ Mary Anne Layden, “Pornography and Violence: A New look at the Research”, *The Social Costs of Pornography: A Collection of Papers*, 2010, 67.

⁸⁷ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 24. See Vanessa Vega, Neil M. Malamuth, “Predicting sexual aggression: the role of pornography in the context of general and specific risk factors”, *Aggressive Behaviour*, Vol. 33, Issue 2, March/April 2007, p. 104-117; Gert Martin Hald, Neil M. Malamuth, Carlin Yuen, “Pornography and attitudes supporting violence against women: revisiting the relationship in nonexperimental studies”, *Aggressive Behaviour*, Vol. 36, Issue 1, January/February 2010, p. 14-20.

was feeling in that moment. But to anyone else who sees it, they see what they want and they think I was complicit.”⁸⁸

Assaults and sexual abuses are frequent in pornography: it is almost impossible to know if the actor or actress is agreeing as pleasure is simulated. A person watching pornography is potentially accomplice to a rape.

*“Pornography disseminates the idea that sexuality may not be separated from brutality,”⁸⁹ as the vast majority of pornographic materials contains violence.⁹⁰ It is deceptive to consider that pornography, as it is watched in a private context, would not impact the social behaviours of its consumers. By participating to the trivialization of rape and violence, viewing pornographic videos is then a risk factor for sexual offences.⁹¹ At PACE, it was further underlined that *“Watching porn frequently [...] can be traced back in the lives of convicted perpetrators. Amongst high rate consumers of porn, sexual aggression is much more likely to occur”⁹². Lastly, “adolescent porn use increases the development of intrapsychic sexual scripts, which contain ambiguous communication or sexual aggression.”⁹³**

5. Women’s rights in danger

The danger of pornography for women’s rights has been widely highlighted, including by the United Nations (UN).⁹⁴ In turn, on the occasion of the International Day for

⁸⁸ “How Porn Performers Can be Sex Trafficked Without Realizing It”, *Fight the New Drug*, January 6, 2022: <https://fightthenewdrug.org/how-porn-trafficking-and-exploitation-are-tied-together/>.

⁸⁹ Collective, « Les méthodes de l’industrie pornographique sont identiques à celles des réseaux de traite des êtres humains » [The pornographic industry methods are the same as those of the human trafficking networks], Tribune, *Le Monde*, December 21, 2020.

⁹⁰ As a reminder, in the 50 most popular pornographic videos, 88% of the scenes contain physical violence, 49% at least a verbal abuse (Ana J. Bridges, Robert Wosnitzer, Erica Scharrer, Chyng Sun and Rachael Liberman, “Aggression and Sexual Behavior in Best-Selling Pornography Videos: A Content Analysis Update”, *Violence against Women* 16, no. 10 (2010): 1065-1085).

⁹¹ See the examples, extreme yet significant, of Theodore Robert Bundy and Arthur Gary Bishop, serial killers and consumers of pornography and child pornography: in Victor B. Cline, “Pornography’s Effects on Adults and Children”, *Morality in Media*, 2001: <https://fr.scribd.com/doc/20282510/Dr-Victor-Cline-Pornography-s-Effects-on-Adults-and-Children#scribd>

⁹² PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 24. See Vanessa Vega, Neil M. Malamuth, “Predicting sexual aggression: the role of pornography in the context of general and specific risk factors”, *Aggressive Behaviour*, Vol. 33, Issue 2, March/April 2007, pp 104-117.

⁹³ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 25. See Isabell Schuster, Paulina Tomaszewska, Barbara Krahé, “Changing Cognitive Risk Factors for Sexual Aggression: Risky Sexual Scripts, Low Sexual Self-Esteem, Perception of Pornography, and Acceptance of Sexual Coercion”, *Journal of Interpersonal Violence*, 2020 ; Kara Anne E. Rodenhizer, Katie M. Edwards, “The Impacts of Sexual Media Exposure on Adolescent and Emerging Adults’ Dating and Sexual Violence Attitudes and Behaviors: A Critical Review of the Literature”, *Trauma, Violence & Abuse*, 2019.

⁹⁴ See in particular: Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995: *“Images in the media of violence against women, in particular those that depict [...] the use of women*

the Elimination of Violence against Women dated November 25, 2017, Emmanuel Macron declared that pornography “*turns woman into an object of humiliation.*”⁹⁵

Indeed, pornography misrepresents women, in a “*sexist and hostile to women*”⁹⁶ way. As an example, it is interesting to note that in 2014, over 63 categories of the “hetero” tab of one of the most popular pornographic websites, only one is “*female friendly.*”⁹⁷ In pornography, there is no mention of consent nor mutual respect. Women are always available for sex, have an insatiable sexual appetite and are sexually satisfied by what men do.⁹⁸ In such context, exposure to pornography is highly linked to the belief that male domination and female submission are the expected gender roles and that women are sexual objects,⁹⁹ “*18% of young men and 37% of young women strongly agreeing that pornography encourages society to view women as sex objects.*”¹⁰⁰ Such vision of the woman as an object solely aimed to satisfy the male’s sexual desire influences the requirement for sexual behaviour more subjugating and often humiliating for women. Indeed pornography mainly consists in a physical constraint to have sexual intercourse: by such eroticization of violence against women, it inculcates its consumers with the idea that women enjoy sexual violence and degradation. An analysis of the 50 most popular pornographic

and girls as sex objects, including pornography, are factors contributing to the continued prevalence of such violence, adversely influencing the community at large, in particular children and young people” (§ 118), “violent and degrading or pornographic media products are also negatively affecting women and their participation in society” (§ 236) ; UN Committee on the elimination of discrimination against women, General Recommendation n° 19, Violence against women (eleventh session, 1992), art. 11 and 12 : “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, [...] These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”

⁹⁵ Olivier Philippe-Viela, « Violences faites aux femmes : Pourquoi Macron veut mieux réguler l’accès des jeunes à la pornographie » [Violence against women: why does Macron want to better regulate access of young people to pornography], *20 minutes*, November 25th, 2017.

⁹⁶ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 22 and see Eran Shor, Age, “Aggression, and Pleasure in Popular Online Pornographic Videos,” *Violence Against Women* 1-19, 2018.

⁹⁷ As noted by Julia Hörnle in “Protecting children from hardcore adult content online”, OUPblog Oxford University Press’s Academic Insights for the Thinking World, January 27, 2014: <https://blog.oup.com/2014/01/protecting-children-from-hardcore-adult-content-online/>

⁹⁸ R. Jensen et G. Dines, “The Content of Mass-Marketed Pornography”, *Pornography: The Production and Consumption of Inequality*, (1998): 65-100.

⁹⁹ Jochen Peter and Patti M. Valkenburg, “Adolescents’ exposure to a sexualized media environment and their notions of women as sex objects”, *Sex Roles* 56 (2007): 381-395.

¹⁰⁰ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 37.

videos revealed that 87% of assaults are perpetrated against women and in 95% of cases their response is neutral or some expressions of pleasure.¹⁰¹

Such reification has a direct impact on the respect towards women, not only in the intimate sphere, but also in the professional,¹⁰² familial and public spheres: "*Where sexuality should be a continuum of experience and learning, pornography carries out a dehumanisation of the women that may be traced in any level of the society. Under the pretence of freedom, "porn" is in fact the assertion of male sexual privileges and the possibility for some to profit from women's vulnerability to make a fortune.*"¹⁰³ It also harms female body image, with the creation of hypersexualized and unrealistic standards, which creates problems of self-esteem. Thus, pornography thus perpetuates detrimental sexual stereotypes and appears as an obstacle to the elimination of discrimination towards women, that it is urgent to fight as it is contrary to every international text aiming to end violence against women.¹⁰⁴

6. Relationships, couples, families and society at risk

In pornography, sexuality is disconnected from intimacy and affection to be reduced to a mere mechanical action whose aim is performance. As a consequence, the link between the use of pornography and a lesser sexual and relational satisfaction¹⁰⁵ and

¹⁰¹ Ana J. Bridges, Robert Wosnitzer, Erica Scharrer, Chyng Sun and Rachael Liberman, "Aggression and Sexual Behavior in Best-Selling Pornography Videos: A Content Analysis Update", *Violence against Women* 16, no. 10 (2010): 1065-1085.

¹⁰² Mathilde Cornette, lawyer in the *Association européenne contre les violences faites aux femmes au travail* (European Association against violence on women at work), recalls that "some bosses wish to recreate pornographic movies scenarios with female employees. Pornography as it is known today endangers all women, either on the shoot location or not": Mouvement du Nid, « CP : 40 associations appellent aux actes contre l'industrie pornocriminelle » [Press release: 40 associations call for actions against the porno-criminal industry], October 4th, 2022: <https://mouvementdunid.org/blog/actus-mdn/communiqués-presse/cp-40-associations-appellent-aux-actes-contre-lindustrie-pornocriminelle/>

¹⁰³ Collective, « Les méthodes de l'industrie pornographique sont identiques à celles des réseaux de traite des êtres humains » [The methods of the pornographic industry are similar to those of the human trafficking networks], Tribune, *Le Monde*, December 21, 2020.

¹⁰⁴ Convention on the Elimination of All Forms of Discrimination against Women (1979), article 5 (a): States parties "shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"; The Council of Europe Convention on preventing and combating violence against women and domestic violence (2011). See also PACE, *Violent and extreme pornography*, Resolution 1835 (2011), § 7.

¹⁰⁵ Dolf Zillmann, Jennings Bryant, "Pornography's Impact on Sexual Satisfaction", *Journal of Applied Social Psychology*, April 1988, Volume 18, Issue 5, p. 438-453 ; Dan J. Miller, Kerry A. McBain, Wendy W. Li, Peter T. F. Raggatt, "Pornography, preference for porn-like sex, masturbation, and men's sexual and relationship satisfaction", *Personal Relationships*, 2019, 26, no. 1, p. 93-113 ; Aleksandra Diana Dwulit and Piotr Rzymiski, "The Potential Associations of Pornography Use with Sexual Dysfunctions: An Integrative Literature Review of Observational Studies", *Journal of Clinical Medicine*, 2019, June 26, 8(7), 914 ; Paul J. Wright, Ana J. Bridges, Chyng Sun, Matthew B. Ezzell and Jennifer A. Johnson,

with a change in the sexual preferences is widely admitted.¹⁰⁶ Consumers of pornography are often disappointed with the intimate relationships with their partner, which induces a decrease in trust between partners, a decrease in pleasure in sexual intimacy, a higher risk to develop a negative body image, the belief that marriage is sexually restrictive and the decrease in the prospect to raise children.¹⁰⁷

Thus, an American study over married couples revealed that those using pornography more often declare being less satisfied in their sexual life and decision making in their couple.¹⁰⁸ Pornography also carries a relationship of submission, inequity and violence in the couples: in a study on women victims of domestic violence, 73% of those having been raped declared that their partner consumed pornography.¹⁰⁹ Consumption of pornography also increases the chances of marital infidelity by 300%.¹¹⁰ As for the divorce chance, it doubles for men and women watching pornography.¹¹¹ A survey dated 2002 with American lawyers revealed that 56% of their divorce cases of the prior year had as significant factor “*an obsessive interest in pornography on the Internet.*”¹¹² Through its consequences on children and couples, pornography then puts families at risk.

The family is the fundamental group unit of society,¹¹³ thus, this latter in its whole is impacted by pornography.¹¹⁴ As was recently asserted to the PACE: “*pornography contributes to shaping people’s views on sexuality and on women, which in turn has an impact on perceptions of the role of women and men in families, in personal*

“Personal Pornography Viewing and Sexual Satisfaction: A Quadratic Analysis”, *Journal of Sex and Marital Therapy*, 2018, 44:3, p. 308-315.

¹⁰⁶ E. M. Morgan, “Associations Between Young Adults’ Use of Sexually Explicit Materials and Their Sexual Preferences, Behaviors, and Satisfaction”, *Journal of Sex Research* 48, no. 6 (2011): 520-30.

¹⁰⁷ Dolf Zillmann, “Influence of Unrestrained Access to Erotica on Adolescents’ and Young Adults’ Dispositions Toward Sexuality”, *Journal of Adolescent Health* 27, no. 2 (2000): 41-44.

¹⁰⁸ Samuel L. Perry, “Does Viewing Pornography Reduce Marital Quality Over Time? Evidence from Longitudinal Data”, *Archives of Sexual Behavior*, 2017, Feb, 46(2), p. 549-559.

¹⁰⁹ Mary Anne Layden, “Pornography and Violence: A New look at the Research”, *The Social Costs of Pornography: A Collection of Papers*, 2010, 57–68.

¹¹⁰ Steven Stack, Ira Wasserman, and Roger Kern, “Adult Social Bonds and Use of Internet Pornography”, *Social Science Quarterly* 85 (2004): 75-88.

¹¹¹ Samuel L. Perry, “Does Viewing Pornography Reduce Marital Quality Over Time? Evidence from Longitudinal Data”, *Archives of Sexual Behavior*, 2017, Feb, 46(2), 549-559. See also Samuel L. Perry and Cyrus Schleifer, “Till Porn Do Us Part? A Longitudinal Examination of Pornography Use and Divorce,” *The Journal of Sex Research*, 2017, 1-13.

¹¹² “National Review: Getting Serious On Pornography”, *npr*, March 31, 2010: <https://www.npr.org/templates/story/story.php?storyId=125382361?storyId=125382361&t=1584545017349&t=1644390899300>

¹¹³ Universal Declaration of Human Rights (1948), Art. 16.3: *The family is the naturel and fundamental group unit of society and is entitled to protection by society and the State.*

¹¹⁴ See Auguste Meyrat, The Pornification of Society, *Crisis Magazine*, March 30, 2021.

relationships and in society."¹¹⁵ Such detrimental transformations are encouraged by the trivialisation of pornography under its interactive and recreational form by "live shows" and as videogames content. Thus, "pornography seems to transform our neuronal wiring and then by a domino effect, our social wiring. [...] Pornography exists since the beginning of mankind, nevertheless, its availability has never had so many effects on our humanity, our capability to live together and to love. It touches the most intimate to create reifying addictions, and then it renders the society more violent, pathological and it is an origin of social disintegration."¹¹⁶

In front of those various observations showing the harmfulness of pornography and the perversity of its effects on the whole society, it is urgent for the States to take steps to protect consumers or potential consumers. The second part of this report shall thus concentrate on regulating access to pornography, in particular in its online dimension, including on the means aimed to prevent access to minors.

It should nevertheless be kept in mind that prevention is an absolute necessity, all the more so as the decrease in pornographic demand could lead to a decrease in supply.¹¹⁷ It is inescapable to present in a synthetic manner some of such preventive measures. On the one hand, it is necessary to apprehend pornography as a public health issue, on the same manner as alcoholism, addiction, or smoking. This implies to appreciate it in itself and to recognize its harmfulness, for example by passing resolutions in such respect.¹¹⁸ It would also be appropriate to integrate pornography in the health national programs.¹¹⁹ In a perspective more curative than preventive but health related, addiction to pornography should be registered as disease in the international classifications¹²⁰ and some therapies aimed to cure such addiction to pornography should be developed and made available. On the other hand, public's information and sensitisation are essential regarding the issue of pornography. Further to the widest information to the parents,¹²¹ it is necessary to offer to the young generations a solid education in such respect, including emotional, relational

¹¹⁵ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 2; see also § 26.

¹¹⁶ Rémy Verlyck, « Mettre fin à la pornographie est un impératif de société » [Put an end to pornography is a social necessity], *Le Figaro*, February 10, 2022.

¹¹⁷ Such goal is, for instance, the angle of attack of "Fight the new drug": <https://fightthenewdrug.org/why-we-are-not-trying-to-ban-porn/>

¹¹⁸ "These 16 U.S. States Passed Resolutions Recognizing Porn As A Public Health Issue", *Fight the new drug*, November 20, 2020: <https://fightthenewdrug.org/here-are-the-states-that-have-passed-resolutions/>

¹¹⁹ See for instance in Poland, the national health program for 2016-2020 (*Narodowy Program Zdrowia na lata 2016-2020*), VII, 2.8-2.11: Dziennik Ustaw Rzeczypospolitej Polskiej, Poz. 1492, 16 września (September) 2016 r.: <https://dziennikustaw.gov.pl/D2016000149201.pdf>

¹²⁰ See: International Classification of Diseases-11 for Mortality and Morbidity Statistics, 6C72 Compulsive sexual behaviour disorder, Version: 02/2022: <https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2fcd%2fent%2f1630268048>

¹²¹ See for ex. PACE, *Fighting the over-sexualisation of children*, Resolution 2119 (2016), June 21, 2016, 4.3.

and sexual education, sound and of good quality,¹²² together with an education to the right usage of information and communication technologies.¹²³ It is also necessary to organise public information and sensitisation campaigns.¹²⁴

¹²² See for ex. PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), November 26, 2021, 10.2.1 ; Tribune of a collective, Pornographie : « L'urgence d'une éducation à l'amour », [Pornography: "The urgency of an education to love"], *La Croix*, January 22, 2022: <https://www.la-croix.com/Debats/Pornographie-Lurgence-dune-education-lamour-2022-01-20-1201195894>

¹²³ See for. ex. Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, May 11th, 2011), art. 17.

¹²⁴ See for ex. in France: Ministry of Solidarities and Health, #JeProtègeMonEnfant – Campaign against minors' exposure to pornography (2021): <https://www.youtube.com/watch?v=AzeJdWpXbwc>

PART 2: Acting to protect the (potential) consumers: better regulating access to pornography

Access to pornography can be regulated through various mechanisms. They should preferably be combined to reach the highest possible efficiency level. Indeed, as indicated in the explanatory memorandum of the PACE resolution “Gender aspects and human rights implications of pornography”:

“several reasons arise for suggesting that the access to pornography, and in particular the access of minors, be limited, even though this may be viewed by some as a challenge to the neutrality of the web and of the right to freedom of expression and information. The balance between a State’s obligation to protect citizens from harmful activities and criminal acts on one hand, and the obligation to ensure freedom of expression and access to information on the other, has, until now, generally tilted in favour of freedom. The current situation, however, should be challenged for the sake of transgenerational ethics and gender equality.”¹²⁵

Freedom of expression and adults’ and children’s right to private life are sometimes invoked to justify the impossibility to efficiently protect the vulnerable persons against online harmful content, including pornography. Yet, none of them is absolute, as it is regularly asserted at the European level. Regarding freedom of expression, the PACE underlined in the context of pornography “*that it is possible to set limits to this right when they are prescribed by law and are necessary in the interests of, amongst others, the prevention of crime, the protection of morals and the protection of the rights of others.*”¹²⁶ The European Court of Human Rights (ECHR) has often emphasised “*the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection.*”¹²⁷ In 2001, The Committee of Ministers of the Council of Europe stressed “*that the freedom to use new communications and information services should not prejudice the human dignity, human rights and fundamental freedoms of others, especially of minors.*”¹²⁸ In any event, children’s protection against detrimental activities and contents and criminal actions should be the priority, in

¹²⁵ PACE, *Gender aspects and human rights implications of pornography*, Report (15406), *op. cit.*, § 61.

¹²⁶ PACE, *Violent and extreme pornography*, Resolution 1835 (2011), § 3; PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), § 5.

¹²⁷ ECHR, *Wetjen and others v. Germany*, March 22nd, 2018, n° 68125/14 and 72204/14, § 74; ECHR, *Tlapak and others v. Germany*, March 22nd, 2018, n° 11308/16 and 11344/16, § 87; ECHR, *A and B v. Croatia*, June 20th, 2019, n° 7144/15, §§ 106-113.

¹²⁸ Committee of Ministers of the Council of Europe, Recommendation Rec(2001)8 on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services), September 5th, 2001.

accordance with the international principle of the best interests of the child.¹²⁹ It is then justified to implement measures aimed to regulate access to pornography, especially for children.

1. Obligation to affix a warning message

An obligation to affix a warning on pornographic materials should be imposed on the Internet websites and the editors of such materials. According to the European directive 2018/1808 dated November 14, 2018, amending Directive 2010/13/UE "Audiovisual Media Services":

"In order to empower viewers, including parents and minors, to make informed decisions about the content to be watched, it is necessary that media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. That could be done, for example, through a system of content descriptors, an acoustic warning, a visual symbol or any other means, describing the nature of the content" (§ 19).

According to article 1.10, a new article 6a is so drafted:

"3. Member States shall ensure that media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service."

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For its part, the PACE recently invited the States members of the Council of Europe to

*"ensure that tagging of online content as "restricted to adults" is mandatory for adult websites" and "support pornography harm awareness measures, such as the use of embedded health and legal warnings within pornography websites."*¹³⁰

Thus, a warning to the public on the detrimental effects of pornography should be affixed as a message on digital materials and as label on printed materials, the same way as for tobacco products. On research engines, it could be decided to have instant messages to appear during research, in order to render consumers reluctant

¹²⁹ Convention on the Rights of the Child, article 3.1: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*; Charter of fundamental rights of the European Union, article 24: *1. Children shall have the right to such protection and care as is necessary for their well-being. [...] 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*

¹³⁰ PACE, *For an assessment of the means and provisions to combat children's exposure to pornographic contents*, Resolution 2429 (2022), § 6.3 et 6.9.

to access to online pornography. The home page of pornographic websites should also show such a warning message. The PACE has thus recently invited the States to:

“introduce warning label systems requiring pornographic websites to display a notice warning about the potential harm from pornography use, similar to the warning labels used for alcohol, smoking or online gambling.”¹³¹

In France, even though the initiative was not successful, a member of parliament addressed in 2020 a parliamentary question to the Health Ministry, asking *“if it would even be possible to imagine a mere mandatory information message before consumption of pornographic products, on the risks of an over-consumption for adults.”¹³²* In the United States, Utah passed the *Porn Warning Label Law*, in force since April 1, 2020, that requires, under threat of a penalty, the presence of a warning message for at least five seconds before the display of any pornographic content or the affixation of a warning message before accessing to a pornographic website, and that such a website shall make reasonable efforts to verify the age of all users.¹³³

As for the definition of content descriptors, the Committee of Ministers of the Council of Europe claimed in 2001 that the Member States should encourage it to

“provide for neutral labelling of content which enables users to make their own value judgments over such content. Such content descriptors should indicate, for example, violent and pornographic content as well as content promoting the use of tobacco or alcohol, gambling services, and content which allows for unsupervised and anonymous contacts between minors and adults. Content providers should be encouraged to apply these content descriptors, in order to enable users to recognise and filter such content regardless of its origin.”¹³⁴

2. Adoption of a classification system

In 1989, the Committee of Ministers of the Council of Europe, aiming to *“assist member states in strengthening their action against videograms having a violent, brutal or pornographic content - as well as those which encourage drug abuse - in particular for the purpose of protecting minors,”* recommended to *“encourage the*

¹³¹ PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), § 10.2.4.

¹³² « Risques de dépendance à la pornographie » [Risks of addiction to pornography], Question N° 26365 from Mrs. Agnès Thill, February 4, 2020.

¹³³ See for ex. Craig R. Chlarson, “Utah Passes Porn Warning Label Law”: <https://wasatchdefenselawyers.com/utah-passes-porn-warning-label-law/#:~:text=Utah%27s%20porn%20warning%20label%20bill,warning%20labels%20on%20internet%20porn>

¹³⁴ Committee of Ministers of the Council of Europe, Recommendation Rec(2001)8 on self-regulation concerning cyber content, *op. cit.*, § 6-8.

creation of systems of classification and control of videograms by the professional sectors concerned in the framework of self-regulatory systems, or through the public authorities.”¹³⁵ In 2011, the PACE called on the Member States to “establish an obligation for companies to submit all audiovisual works for classification prior to commercial distribution.”¹³⁶ The next year, the European Commission argued for a:

“Wider use of age rating and content classification”, in order to “have a generally applicable, transparent, and consistent approach to age rating and content classification EU-wide, for a variety of content/services (including online games, apps and educational and other cultural content) and to explore innovative solutions (e.g. rating by users or automated rating). The system should provide parents with understandable age categories, while recognising that the same content may be rated as appropriate for different age categories in different countries. This approach should be used consistently across sectors, thus addressing the discrepancies in the implementation of current systems for the different media in order to benefit market competition.”¹³⁷

Rating systems used to filter violence of pornography on the Internet are the most common coregulation technics.

A rating system “works by embedding electronic labels in the text or image documents to vet their content before the computer displays them or passes them on to another computer. The vetting system can be applied to political, religious, advertising or commercial topics. [These] tags can be added by the publisher of the material, by the company providing access to the Internet, or by an independent vetting body.”¹³⁸

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The question then arises of the limit over which an online content should be considered as prohibited pornographic content: excessive censorship or laxity could be feared, one rating authority could potentially rate one website as pornographic, contrary to one other.

3. Preventing access to online pornography for children and teenagers

It would be naive to believe that pornography would suddenly become harmless past 18 years (see Part 1). Nevertheless, preventing young people from accessing

¹³⁵ Committee of Ministers of the Council of Europe, Recommendation n° R (89) 7, concerning principles on the distribution of videograms having a violent, brutal or pornographic content, April 27th, 1989, § 3.1-3.9.

¹³⁶ PACE, *Violent and extreme pornography*, Resolution 1835 (2011), 9.1.3.

¹³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *European Strategy for a Better Internet for Children*, COM/2012/0196 final, § 2.3.3.

¹³⁸ Akdeniz, Yaman “Governance of Pornography and Child Pornography on the Global Internet: A Multi-Layered Approach”, *Law and the Internet: Regulating Cyberspace*, Hart Publishing (1997): 223-241.

pornography is an absolute necessity, due to the heavy harm that it causes to them.¹³⁹ As proclaimed by Emmanuel Macron:

“Nowadays, pornography walked through the door of the school as alcohol and drug a short while ago. We may not on one hand deplore the violence against women and on the other hand close our eyes on the influence on young minds of a genre that turns sexuality into a theatre of humiliations and violence against women who could be regarded as agreeing.”¹⁴⁰

The internationally recognized rights of the child leave no place for doubt in such respect. The Geneva Declaration (September 26, 1924) states indeed that *“men and women of all nations, recognizing that mankind owes to the Child the best that it has to give”* (Preamble) and that *“The child must be given the means requisite for its normal development, both materially and spiritually”* (art. 1). Likewise, the International Convention on the rights of the child (1989), in the same words as the Declaration on the rights of the child (November 20, 1959), states that *“the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”* (Preamble); regarding the access to the media, article 17.e. stipulates that *“States Parties shall Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being”*. Pornography is obviously incompatible with such provisions, with which the States Parties have the obligation to comply. The **Council of Europe** argued several times to prevent access to pornography for the children, including in 2022 through the resolution *“For an assessment of the means and provisions to combat children’s exposure to pornographic contents.”¹⁴¹ Since 2011, the PACE underlined “the need to ensure that children are protected against exposure to violent and extreme pornographic material which might harm their balanced development.”¹⁴² Under **European Union** law, article 24 of the Charter of fundamental rights of the European Union stating that *“1. Children shall have the right to such protection and care as is necessary for their well-being. [...] 2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration,”* justifies preventing minors from accessing pornography. Directive 2010/13/UE dated March 10, 2010, (Audiovisual Media Services) dealt with pornography in the frame of the minors’ protection in television broadcasting (article 27), including by requesting that *“Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not**

¹³⁹ See for ex. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *on a comprehensive approach to mental health*, COM(2023) 298 final, June 7, 2023, p. 10.

¹⁴⁰ Emmanuel Macron’s speech to the UNESCO for the 30 years of the Convention on the Rights of the Child, November 20, 2019.

¹⁴¹ PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Resolution 2429 (2022); and the accompanying report: Doc. 15494, April 7, 2022.

¹⁴² PACE, *Violent and extreme pornography*, Resolution 1835 (2011), § 8.

include any programmes which might seriously impair the physical, mental or moral development of minors”.

In 2018, amendment of such text by Directive (UE) 2018/1808¹⁴³ led to the insertion of a new 28 b stating that:

“Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect: minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1)”, such article stating that “Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them.”

It shall be underlined that the online field is not an outlaw zone to the detriment of the children, among others. Thus, acting to prevent access of minors to pornography is simply *“implementing the following principle: what is unlawful offline is unlawful online,”*¹⁴⁴ principle that leads nowadays the European legislative effort.¹⁴⁵ this is the case, for example, with the Digital Services Act adopted in October 2022,¹⁴⁶ whose potential impact on protecting young people from pornography will be interesting to observe. In this respect, it is to be hoped that the European Commission, which is responsible for designating the “very large online platforms”, will do so with regard to pornographic platforms.¹⁴⁷ Very large online platforms have additional obligations, particularly in terms of annual assessment of the systemic risks stemming from their services and concerning *“the dissemination of illegal content”, “any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights [...] to respect for the rights of the child enshrined in Article 24 of the Charter”, “any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental well-being”* (art. 34), which is particularly important when it comes to pornography.

¹⁴³ Member States had to transpose such Directive before September 19, 2020.

¹⁴⁴ « DSA : le règlement sur les services numériques vise une responsabilisation des plateformes » [DSA: the regulation on the digital services aims to make platforms more accountable], *Vie publique*, July 5, 2022: [https://www.vie-publique.fr/eclairage/285115-dsa-le-reglement-sur-les-services-numeriques-ou-digital-services-act#:~:text=Le%20futur%20r%C3%A8glement%20DSA%20\(pour,europ%C3%A9en%20le%205%20juillet%202022](https://www.vie-publique.fr/eclairage/285115-dsa-le-reglement-sur-les-services-numeriques-ou-digital-services-act#:~:text=Le%20futur%20r%C3%A8glement%20DSA%20(pour,europ%C3%A9en%20le%205%20juillet%202022)

¹⁴⁵ See also the current review of the European Directive on trafficking in human beings.

¹⁴⁶ See <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32022R2065>

¹⁴⁷ On April 25, 2023, the European Commission designated an initial series of 17 very large online platforms and very large online search engines within the meaning of the Digital Services Act, but none of them is yet pornographic in nature.

a. Creating a national body in charge of the protection of minors against pornography

A special body in charge of dealing with the issue of the protection of minors against pornography may allow the coordination of the national effort in such respect, and even to act as the interlocutor in the frame of an international cooperation.

In February 2020, **France** created a monitoring Committee for the "Protection of the minors against online pornography,"¹⁴⁸ under the auspices of the Regulation Authority for electronic communications, posts and press distribution (ARCEP)¹⁴⁹ and of the ARCOM. Such Committee, that meets at least once every quarter, is composed of the 32 signatories of the *Commitments protocol for the prevention of the exposure of minors to online pornographic contents*,¹⁵⁰ i.e., some governmental bodies, Internet service providers, mobile operators, research engines, contents editors, terminal and exploitation system manufacturers and association in charge of the childhood's protection. Such commitments protocol seems to be mostly focused on parental control promotion.

In **Australia**, *eSafety* was created in 2015 and is the governmental body in charge of online safety for adults and children.¹⁵¹ It has been granted with vast powers in such respect, reinforced in 2021 in the *Online Safety Act*.¹⁵² The *eSafety* Agency may, for instance, require content services providers to remove an unlawful content if it is hosted in Australia, or notify the same to filter providers for them to block it, if it is hosted abroad.¹⁵³ Since June 2021, it carries on a study on the implementation of an age checking obligation, in order to fight against the exposure of minors to online pornography.¹⁵⁴

b. Punishing the accessibility of a pornographic content for minors

In order to reduce the accessibility of pornographic contents for the young generations, it is necessary to prohibit and repress the provision or dissemination of

¹⁴⁸ ARCEP, Protection des mineurs – L'ARCEP et le CSA réunissent pour la première fois le Comité de suivi sur la « Protection des mineurs contre la pornographie en ligne » [Protection of the minors – the ARCEP and the CSA convene the monitoring Committee on the "Protection of the minors against online pornography" for the first time February 7, 2020: <https://www.arcep.fr/actualites/les-communiqués-de-presse/detail/n/protection-des-mineurs.html>]

¹⁴⁹ The ARCEP is the "police of telecommunication".

¹⁵⁰ See Marc Rees, « Protection des mineurs : télécharger la charte anti-porno » [Protection of minors: download the anti-porn charter], *Next Impact*, January 17, 2020: <https://www.nextinpact.com/article/29970/108604-protection-mineurs-telecharger-charte-anti-porno>

¹⁵¹ See <https://www.esafety.gov.au/about-us/who-we-are> See also Digital Ansvar & Dreyers Fond, *Online child protection initiatives - Mapping of selected initiatives in eight geographical area*, May 2022, p. 53-54: <https://digitaltansvar.dk/wp-content/uploads/2022/08/Digitalt-Ansvar-2022-Green-Book-Mapping-of-Online-Child-Protection-Initiatives.pdf>

¹⁵² See <https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>

¹⁵³ *Protecting the age of innocence*, Commonwealth of Australia, February 2020, 3.51-3.53 : https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Onlineageverification/Report

¹⁵⁴ See the related file: <https://www.esafety.gov.au/about-us/consultation-cooperation/age-verification>

such contents to minors, and also to repress the mere fact that a pornographic content may be available to minors.

The PACE called thus upon the States Member of the **Council of Europe** to “*introduce and enforce adequate sanctions for the sale of pornographic material to minors.*”¹⁵⁵ In such context, it is necessary to mention the European Convention on Transfrontier Television (May 5th, 1989), ratified by States Member of the Council of Europe, among which France: it contains minimal rules upon diffusion of transfrontier television programs in Europe. According to its article 7, related to the responsibilities of the broadcaster:

“All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not: a be indecent and in particular contain pornography; b give undue prominence to violence or be likely to incite to racial hatred”. (al. 1) and further “All items of programme services which are likely to impair the physical, mental or moral development of children and adolescents shall not be scheduled when, because of the time of transmission and reception, they are likely to watch them” (al. 2).

Under the **European Union** law, the review of the “Audiovisual Media Services” Directive (2010/13/UE) by Directive (UE) 2018/1808 led to the addition of an article 6a drafted as follows:

“Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them [...] The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.”

In France, article 227-24 of the penal Code considers the fact that a message is merely available to a minor by punishing of three years imprisonment and a fine of 75 000 euros (€ 375 000 for corporate bodies, under article 131-38 of the penal Code)

“The fact to manufacture, transport, diffuse by any means and on any material a message of a violent, [...] pornographic nature, including pornographic images with one or several animals, or that can deeply infringe human dignity or encourage minors to play games that would physically endanger them, or to trade such a message, [...] when such message may be seen or perceived by a minor.”¹⁵⁶

¹⁵⁵ PACE, *Violent and extreme pornography*, Resolution 1835 (2011), 9.2.2.

¹⁵⁶ On the whole question, see Forum des droits sur l’internet, *Les enfants du Net – L’exposition des mineurs aux contenus préjudiciables sur l’internet* [Internet Children – Minors’ exposure to harmful contents on the Internet], 2004, p. 20-23 : <https://www.vie-publique.fr/rapport/27244-les-enfants-du->

Such text creates a performance obligation but seems to pose several problems, on the first part, regarding its implementation in the Internet transnational context and, on the other part, for its interpretation regarding the level of risk for the minor to be confronted with the message or as to the appreciation of the message's content.¹⁵⁷ Jurisprudence enforced such text in various situations¹⁵⁸ and indicated that the means and the substrate are indifferent.¹⁵⁹

In Poland, article 200 of the Penal Code states, on the first part that "*Anyone who presents a pornographic content to a minor under 15 years or makes objects of such nature available to them, or distributes a pornographic content in a way allowing such minor to be aware of it, is convicted to imprisonment up to three years*"¹⁶⁰ (§ 3) and punishes of the same penalty "*Anyone who advertises or promotes an activity*

[net-lexposition-des-mineurs-aux-contenus-prejudiciable](https://www.gesetze-im-internet.de/stgb/_184.html) In Germany, § 184 of the Penal Code (StGB) provides for a maximum penalty of one year imprisonment or a fine for the dissemination of pornographic contents to minors or in a location accessible to minors: https://www.gesetze-im-internet.de/stgb/_184.html

¹⁵⁷ See for ex. Cass. crim., January 11, 2017, no 16-80557, M. Xavier X, PB (cassation Appeal Court Douai, December 17, 2015).

¹⁵⁸ Regarding the Internet, see Paris, April 2nd, 2002, E.L. v. Public prosecutor, convicting the manager of three websites to a fine of € 30 000, as "*the warnings and information on access restriction software displayed in the home pages [...] may not be considered as useful precautions as they occur when the minor is already inside the website and in no way prevent the view of the presentation texts and pictures that they, on the contrary, may render attractive*"; Caen, September 8, 1999, S. v. Public prosecutor: "*Even if the access proceeding to the forum Sex Incest is a bit long, it does not contain any access barrier rendering it totally inaccessible to minor teenagers passionate of multimedia [...] the criminal intention is evidenced since when disseminating on the Internet, a pornographic message with offer and request of pictures [the accused] may not ignore that digitally experienced teenagers were likely to see it.*" See also Crim. February 23rd, 2000, no 99-83.928 P: "*The appeal court's decision is justified when it [...] states that the accused magazine whose sale to minors is not prohibited, offered its readers the acquisition of compact disks (CD-Rom) containing pornographic images, and adds that, even if those disks are encrypted, children may obtain them together with the key allowing their view, simply by pretending being grown up, without any control, by the intermediation of a digital server, and indicates lastly that such a disk has been delivered as a supplement to any buyer of the December 1997 edition of the magazine and that a child could see the images as easily*"; Paris, May 13, 1998: Gaz. Pal. 1999. 2. Somm. 440, note Bréban: "*the diffuser of pornographic and zoophile images must be convicted since the messages may be read by minors and the implemented systems may not guarantee the substantive impossibility to become aware of them; He may not hide behind his quality of technical agent nor invoke the implementation of filtering systems nor the contractual obligations of his contractors*"; Aix-en-Provence, February 9th, 1996: JCP 1996. IV. 2369: "*Shall be convicted for "crime against decency", the authors of a crude and of bad taste publication, non-exclusively sold in places where a minimum control may be made upon the magazines available to minors, such practice being insufficient to prevent the acquisition or the view of such magazines by minors.*"

¹⁵⁹ Pornographic message in a newspaper (Paris, December 14th, 1994: Dr. pénal 1995. 90 (1st case), obs. Véron) and on a blog (Toulouse, January 12th, 2010: Dr. pénal 2010. Chron. 10, obs. Lepage).

¹⁶⁰ Some authors regret that "the criminal law protection guaranteed by this provision is not enforced. In fact, the access of minors to pornographic content is either unsecured or merely accompanied by the message that it is adult content": Adam Szafrński, "Freedom from Unwanted Sexualisation – Access to Pornography", in *Marriage, Children and Family*, op. cit., p. 317.

implying the diffusion of pornographic contents in such a way that a minor under 15 years may be exposed to it(§ 5).

The question arises as to whether such provisions may concern processes allowing accidental exposure to pornographic contents, as the pop-up windows opening untimely, for example on unlawful downloading and streaming websites, to generate advertisement incomes.¹⁶¹ This represents indeed 72% of such accidental exposures, particularly harmful for children.¹⁶² In such context, let us remind the existence of software to block pop-up windows and online advertisements.¹⁶³

c. Requiring pornographic websites to check users' age

The question of the verification of their users' age by the pornographic websites is not new but has been the object of ongoing discussions. Even if it is a good and widely promoted idea, its implementation faces various difficulties. It should be noted that such verification must also be carried out for access to social networks and other types of sites whose use is subject to age limits.

→ A measure widely promoted at the European level

From 2001, the Committee of Ministers of the **Council of Europe** recommended to the Member States to

*"encourage the use of conditional access tools by content and service providers in relation to content harmful to minors, such as age-verification systems, personal identification codes, passwords, encryption and decoding systems or access through cards with an electronic code."*¹⁶⁴

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In 2018, it became more compelling, stating that *"States should require the use of effective systems of age-verification to ensure children are protected from products, services and content in the digital environment which are legally restricted with reference to specific ages, using methods that are consistent with the principles of data minimization."*¹⁶⁵ In 2021, the PACE invited the States to *"consider introducing country-wide age verification for access to pornography, or a legal obligation for*

¹⁶¹ Application of art. 227-24 of the penal Code to advertisement and sale of pornographic materials by an individual on an Internet forum: Paris, May 13th, 1998, M.G. v. Public prosecutor. Gaz. Pal. 1999, somm. Note Y. Bréban.

¹⁶² See Ennocence, *Réseaux sociaux, streaming, live streaming et téléchargement illégal : nouvelles portes d'entrée des enfants vers le monde de la pornographie, premier pas vers une sensibilisation de notre société sur ces sujets* [Social networks, streaming, live streaming and illegal downloading: new gateways for children to the world of pornography, first steps towards sensitization of our society on these issues], 2016, *op. cit.*, p. 12, see also p. 10: *"14% of 9-16 year olds have been accidentally exposed to pornographic websites. And 36% of 15-16 year olds. More than 74% of them claim this was a bad experience."*

¹⁶³ For ex. AdBlock.

¹⁶⁴ Committee of Ministers of the Council of Europe, Recommendation Rec(2001)8 on self-regulation concerning cyber content, *op. cit.*, § 11.

¹⁶⁵ Committee of Ministers, Recommendation CM/Rec(2018)7 Guidelines to respect, protect and fulfil the rights of the child in the digital environment, July 4, 2018, § 56.

*companies distributing pornography to verify the age of users.*¹⁶⁶ In 2022, it called again to “*support the use of age verification tools*” specifying the conditions to their implementation:¹⁶⁷ including “*both dedicated websites hosting adult content and mainstream and social media, which include adult content*” should be obliged to use such tools (6.4.1), such tools should be “*simple, secure and effective*” and ensure the users’ data protection (6.4.2), be “*cost effective [...] and capable of treating large data volumes*” (6.4.8). Their providers should be certified and controlled from time to time on the basis of various criteria (6.4.3). The States should also ensure a systematic monitoring by the relevant law-enforcement bodies (6.4.6), consider the development of “*black*” lists of domains according to their compliance with the law (6.4.5), “*tackle the problem of search engines that promote non-compliant sites because users favour sites that do not ask for their personal information, which increases “bounce rate” and has an adverse commercial effect on compliant sites*” (6.4.4). The PACE invites to “*develop awareness-raising campaigns to promote public trust in age verification platforms,*” to reduce the research of non-compliant websites which are more dangerous (6.4.9).

At the **European Union** level, the Council of the European Union required in 1998 that “*the supply and distribution of content likely to harm minors should be subject, where possible, to protection measures such as [...] systems to check the age of users.*”¹⁶⁸ The “*Audiovisual Media Services Directive*” (2010/13/UE) as amended in 2018 by the directive (UE) 2018/1808 contains now an article 28b stating that:

“3. [...] *For the purposes of the protection of minors, provided for in point (a) of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures. Those measures shall consist of, as appropriate: [...] f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors.*”

In 2022, in the new European strategy for a better internet for kids, the European Commission observed the overall inefficiency of the age checking mechanisms and stated that:

“[it will] *issue a standardisation request for a European standard on online age assurance / age verification in the context of the eID proposal*” and “*support the development of an EU-wide recognised digital proof of age based on date of birth*”; thus, it “*invites Member States to [...] support effective age-*

¹⁶⁶ PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), § 10.4.9.

¹⁶⁷ PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Resolution 2429 (2022), 6.4 - 6.4.10. See also the accompanying report: Doc. 15494, April 7, 2022, § 27-39.

¹⁶⁸ 98/560/CE Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity.

verification methods, in line with the eID proposal” and the “Industry to [...] effectively implement measures on access to age-restricted content, including adult content websites and 18+ games, in line with national and European rules.”¹⁶⁹

→ Groping regulations

Some States try to implement an age checking system, to contain minors’ access to pornography, with more or less success.¹⁷⁰

In Germany, under §4 of the Länder’s treaty on youth protection in the medias (2002¹⁷¹), pornographic contents providers shall implement an age checking mechanism: the Commission for the youth protection in the media (KJM), control central body for the protection of minors in the private radio diffusion and the media, provides for a list of assessed technical solutions. Some media regulation authorities in some Länder launched judicial actions against infringing websites, that face a blockage measure.¹⁷²

The United Kingdom¹⁷³ scheduled the implementation of an age checking obligation amongst the provisions of the *Digital Economy Act* dated 2017,¹⁷⁴ but such project has been postponed several times and later abandoned in 2019. A new draft law on online safety (*Online Safety Bill*) with similar provisions is currently discussed:¹⁷⁵ the providers whose services include pornographic contents will have to prevent minors from accessing them.¹⁷⁶ The *Children’s code* or *Age Appropriate Design Code*, related to the minors’ data treatment has been issued by the *Information Commissioner’s Office* (equivalent to the CNIL in France) and entered into force on September 2, 2021, for the digital services providers: it enumerates

¹⁶⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Digital Decade for children and youth: the new European strategy for a better internet for kids*, COM(2022) 212 final.

¹⁷⁰ See for ex. AVPA, *AV around the world*: <https://avpassociation.com/map/?location=gb>

¹⁷¹ Jugendmedienschutz-Staatsvertrag der Länder (JMSTV), 2002, p. 67 s.: <https://docplayer.org/23275290-Jugendschutzgesetz-der-laender.html>

¹⁷² Safersurfing, Gerichtsurteil: Porno-Portale verstoßen gegen Jugendschutzgesetz in Deutschland [Court ruling: Porn portals violate youth protection law in Germany], December 22, 2021: <https://www.safersurfing.org/gerichtsurteil-porno-portale-verstossen-gegen-jugendschutzgesetz-in-deutschland/>

¹⁷³ On this issue as a whole, see: PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Report, Doc. 15494, April 7, 2022, § 35; *Protecting the age of innocence*, Commonwealth of Australia, February 2020, *op. cit.*, 3.56 and s.; Damien Leloup, « Comment un projet britannique de filtrage du porno a tourné à la catastrophe » [How a British project of filtration of porn turned into a catastrophe], *Le Monde*, July 13, 2019.

¹⁷⁴ Digital Economy Act: <https://www.legislation.gov.uk/ukpga/2017/30/contents>

¹⁷⁵ <https://bills.parliament.uk/bills/3137> See Dan Milmo & Jim Waterson, “Porn sites in UK will have to check ages in planned update to online safety bill”, *The Guardian*, February 8, 2022.

¹⁷⁶ See Department for Digital, Culture, Media & Sport, *Policy paper, Online Safety Bill: supporting documents*, Updated on January 18, 2023: <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents>

various means for checking the internet users' age without prescribing one particular, for the sake of flexibility, to allow the providers to adapt in accordance with the provided services and with the risks of data processing.¹⁷⁷

In Canada, Senator Mrs. Julie Miville-Dechêne, introduced in Autumn 2020 the draft law S-203 restricting online access for young people to sexually explicit material.¹⁷⁸ It has been passed by the Senate but not by the House of Commons as elections come near. A new draft law S-210 has been introduced by the same senator and is in discussion with the Senate:¹⁷⁹ it provides for the penalisation of "Any organization that, for commercial purposes, makes available sexually explicit material on the Internet to a young person" and punishes it of a fine of not more than CAD 250 000 which can amount to CAD 500 000 in case of recidivism. Such project is criticised, including as regards privacy protection.¹⁸⁰

In Poland, a draft law on the minors' protection against pornographic contents has been introduced by the Association *Twoja Sprawa* in December 2019,¹⁸¹ then endorsed by the government in the beginning of 2020. Taking as example the law related to gambling activities, it provided for a mandatory control of the users' age by the websites giving access to pornographic contents, such websites being registered on a registry for unlawful pornographic domains (similar to the one of the unlawful money gambling websites) in case of infringement of the law. The blocking of the pornographic content by the navigators in a 48h delay from registration and the termination of the provision of payment services 30 days after registration, together with a financial penalty up to twenty times the average monthly wages in the relevant companies' sector were also provided for. Such a project raised many questions¹⁸² and it seems to be stalled.¹⁸³ At the same time, a draft law aimed to

¹⁷⁷ Age Appropriate Design Code, Age appropriate application (3.): <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/3-age-appropriate-application/>; See Digital Ansvar & Dreyers Fond, *Online child protection initiatives - Mapping of selected initiatives in eight geographical area*, May 2022, *op. cit.*, p. 46-50.

¹⁷⁸ Bill S-203 - act to restrict young persons' online access to sexually explicit material: <https://parl.ca/DocumentViewer/en/43-2/bill/S-203/third-reading>

¹⁷⁹ Bill S-210 - act to restrict young persons' online access to sexually explicit material: <https://www.parl.ca/legisinfo/fr/projet-de-loi/44-1/s-210>

¹⁸⁰ Dale Smith, Unduly restrictive?, *The Canadian Bar Association*, March 15th, 2022: <https://nationalmagazine.ca/en-ca/articles/law/in-depth/2022/unduly-restrictive>

¹⁸¹ Draft law and explanatory statement available on the web site of Stowarzyszenie Twoja Sprawa: <https://twojasprawa.org.pl/article/sts-prezentuje-projekt-przepisow-chroniacych-dzieci-przed-pornografia>. On the issue as a whole, see Rogala Krystyna, "Projekt ustawy o ochronie małoletnich przed treściami pornograficznymi – analiza proponowanych rozwiązań" [Draft law on the protection of minors from pornographic content – analysis of the proposed solutions], *Prawo Mediów Elektronicznych*, 2020, n° 2, p. 4-11; Sylwia Czubkowska, Rząd szuka haka na porno. KRRiT będzie prowadzić rejestr nielegalnych domen z pornografią [The government is looking for a porn hack. KRRiT will keep a register of illegal porn domains], *Wyborcza.pl*, 16.01.2020.

¹⁸² Adam Polanowski, Weryfikacja wieku przy dostępie do treści pornograficznych [Age verification for access to pornographic content], *Co do zasady*, 20.01.2020: <https://codozasady.pl/p/weryfikacja-wieku-przy-dostepie-do-tresci-pornograficznych>; Jak rząd chce zablokować Polakom dostęp do stron

require from the Internet access providers the provision and promotion of a parental control on the connected devices¹⁸⁴ (cf. *infra*) has been introduced in October 2022.

In France, law 2020-936 dated July 30, 2020 (called law Couillard) aiming to protect victims of marital violence amended article 227-24 of the penal Code by adding a last paragraph stating that “*The criminal offenses determined in this article are committed, including if the access of a minor to the messages indicated in the first paragraph results from a mere declaration by the minor indicating that he/she is older than 18 years*”. A pornographic website infringes the law if it is accessible to minors and even if the access is under the condition of a disclaimer requesting from the internaut to tick a box “I’m 18 years old” or to enter a birth date. The official publication of the enforcement decree took time and happened only on October 8, 2021. After the referral to the CSA by some associations,¹⁸⁵ five pornographic websites (Pornhub, Tukif, Xnxx, Xhamster et Xvideos) received a formal request by the CSA at the end of 2021.¹⁸⁶ Facing their inertia after 15 days, the chairman of the ARCOM seized the court of Paris in March 2022 to obtain their blockage by the Internet service providers (ISP). Unfortunately, the judge did not require the blockage of the websites and proposed a mere mediation between the websites editors, ISPs and the ARCOM.¹⁸⁷ Furthermore, a prior question of constitutionality has been raised by the editor company of Pornhub and notified to the Court of Cassation on October 4, 2022: the principle of the legality of criminal offences and penalties and the freedom of speech were purportedly violated as such law dated July 30, 2020, and article 227-24 of the French penal Code would not “*determine in*

porno? I czy to ma sens? [How does the government want to block Poles from accessing porn sites? And does this make sense?], *Niebezpiecznik o bezpieczeństwie i nie...*, 17.12.2019 : <https://niebezpiecznik.pl/post/blokada-tresci-pornograficznych-w-polsce/>

¹⁸³ Michał Miśko, Wraca temat weryfikacji wieku użytkowników na stronach pornograficznych [The subject of age verification of users on pornographic sites is back on the table], *Geekweb*, 10.02.2022 : <https://www.geekweb.pl/internet/item/2623-weryfikacja-wieku-uzytownikow-stron-pornograficznych>

¹⁸⁴ Kancelaria Prezesa Rady Ministrów, Projekt ustawy o ochronie małoletnich przed dostępem do treści nieodpowiednich w internecie [Draft law on the protection of minors from access to inappropriate content on the internet], UD451: <https://www.gov.pl/web/premier/projekt-ustawy-o-ochronie-maloletnich-przed-dostepem-do-tresci-nieodpowiednich-w-internecie>

¹⁸⁵ Marc Rees, « Contrôle d’âge ou blocage : la lettre de saisine du CSA contre plusieurs sites pornographiques » [Age control or blockage: seisin letter of the CSA against several pornographic websites], *Next in pact*, November 27, 2020: <https://www.nextinpact.com/article/44810/controle-dage-ou-blocage-lettre-saisine-csa-contre-plusieurs-sites-pornographiques>

¹⁸⁶ CSA, Décision du 13 décembre 2021 mettant en demeure la société MG Freesites Ltd en ce qui concerne le service de communication au public en ligne « Pornhub » [Decision dated December 13, 2021 formally requiring the company MG Freesites Ltd in relation with the online public communication service “Pornhub”]: <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-decisions-du-CSA/Decision-du-13-decembre-2021-mettant-en-demeure-la-societe-MG-Freesites-Ltd-en-ce-qui-concerne-le-service-de-communication-au-public-en-ligne-Pornhub>

¹⁸⁷ Alexandre Boero, « Pornhub, xHamster et consorts: de la médiation au blocage, les sites pour adultes en sursis ? » [Pornhub, xHamster and consorts: from mediation to blockage, the adults websites on borrowed time?], *Clubic*, September 7, 2022: <https://www.clubic.com/porno-industrie-sexe/actualite-436710-pornhub-xhamster-et-consorts-de-la-mediation-au-blocage-les-sites-pour-adultes-en-sursis.html>

sufficiently clear and precise terms the offense and behaviour that could lead to a penalty having the characteristics of a punishment and that they are not necessary, adapted and proportional to the lawmaker's goal of prevention of the access by minors to the pornographic contents on the Internet." The Court of Cassation, by a decision dated January 5, 2023, refused to transfer such prior question of constitutionality to the constitutional court as it has no serious character, as the attacked texts did not include any risk of arbitrariness and as the limitation of freedom of speech was "*necessary, adapted and proportional to the goal of protection of minors.*"¹⁸⁸

The current cumbersome procedure jeopardizes its efficiency:¹⁸⁹ obligation for the ARCOM to establish the offense through a bailiff, formal request mandatory before any court action intended to block the website even though the offense is obvious, respect of the e-Commerce European Directive requiring notifying the process to the European Commission and the State member of the website editor, absence of instructions regarding the technical solution to implement for age checking etc. For some people, "*the measure is sinking.*"¹⁹⁰ Meanwhile the Senate passed on July 5, 2023, at first reading a draft law aiming to secure and regulate the digital space, of which one goal is to protect children from online pornography through the reinforcement of the ARCOM powers, including by allowing it to decide, without judicial intervention, the blockage of the websites in breach of the users' age checking obligation, to "*require the dereferencing of the search engines and to impose heavy fines.*"¹⁹¹ Furthermore, the government indicated at the beginning of February 2023 that it wanted to test, as soon as in March, and enforce in Autumn 2023, a technical solution for age certification to prevent the access of minors to

¹⁸⁸ Cassation court, first civil chamber, January 5, 2023, appeal n° 22-40.017. Lionel Costes, « Blocage des sites pornographiques : rejet d'une QPC par la Cour de cassation » [Blockage of the pornographic websites: rejection of a preliminary question about constitutionality by the cassation Court], *Lamyline*, January 6, 2023: <https://www.actualitesdudroit.fr/browse/affaires/immateriel/39561/blocage-des-sites-pornographiques-rejet-d-une-qpc-par-la-cour-de-cassation>

¹⁸⁹ See Gordon Choisel, « Les limites procédurales à la protection des mineurs contre la pornographie en ligne » [Procedural limits to the protection of minors against online pornography], *Recueil Dalloz* 2021 n° 35, p. 1821-1822; A. Billon, A. Borchio Fontimp, L. Cohen, L. Rossignol, « Porno : L'enfer du décor » [Porn: Hell behind the scenes], information report n° 900 (2021-2022), Senate, Delegation to women's rights, September 27, 2022, p. 123 : <https://www.senat.fr/rap/r21-900-1/r21-900-11.pdf>

¹⁹⁰ Tom Kerkour, « Deux millions de mineurs exposés à de la pornographie : pourquoi l'État peine tant à protéger les enfants » [Two million of minors exposed to pornography: why is the State so slow to protect children], *Le Figaro*, June 29, 2022. See also the speech of Senator Marie Mercier on March 1st 2023: http://www.senat.fr/seances/s202303/s20230301/s20230301009.html#Niv3_titS2_Vote_sur_l_ensemble

¹⁹¹ République française, Vie publique, « Projet de loi visant à sécuriser et réguler l'espace numérique » [draft law aiming to secure and regulate the digital space] July 6, 2023: <https://www.vie-publique.fr/loi/289345-securer-et-reguler-lespace-numerique-projet-de-loi-sren>

pornographic websites.¹⁹² It would be the checking solution in “double-blind,” in which:

“The provider of the majority certificate does not know for what it will be used. It may be an operator telecom, a digital identity provider or any other body likely to certify a person’s majority. And the website on which the certificate is used is not aware of the person’s identity.”¹⁹³

Dictate to the relevant websites the method or methods to be used seems necessary to avoid any dispute on the principle of the legality of criminal offences and penalties.

Thus, *“as of today, no democratic country managed to implement a fully satisfying and efficient regulation to prohibit the access of minors to pornographic contents.”¹⁹⁴* However, while seven US states have passed laws requiring age verification for users of pornographic sites,¹⁹⁵ such legislation would explain a fall in the number of visits to these sites and, above all, Pornhub's decision to stop providing its services in Mississippi, Utah and Virginia.¹⁹⁶ Could this measure prove effective on a larger scale?

→ A measure that poses technical, economical and legal difficulties

In practice, implementing such an age checking would pose technical, economical, and legal difficulties¹⁹⁷ and the main question is necessarily the choice of the checking method.

Facing some reluctances from the public, it is necessary to sensitize the society to the necessity of measures aiming to regulate access to pornography, including through the internaut’s age verification, and to the safety of such measure regarding privacy and personal data protection, in accordance with the General Data Protection Regulation dated April 27, 2016, related to the processing of personal data in the European Union. Attention should be paid to ensure the ease of use of such verification, that should not excessively encumber the navigation. In such a context, a certification system seems necessary, to assess the age checking technological solutions under various criteria and to certify and control their providers. Among

¹⁹² « La France va bloquer l’accès aux sites pornographiques pour les mineurs » [France shall block the access to pornographic sites to the minors], *Le Figaro*, February 5, 2023.

¹⁹³ « Sites pornographiques : un système de vérification d’âge en “double anonymat” va être testé dès le mois de mars » [Pornographic websites: an age verification system in “double-blind” shall be tested as soon as March], *France Info*, February 15, 2023.

¹⁹⁴ A. Billon, A. Borchio Fontimp, L. Cohen, L. Rossignol, « Porno : L’enfer du décor », [Porn: Hell behind the scenes], information report n° 900 (2021-2022), Senate, *op. cit.*, p. 126.

¹⁹⁵ Arkansas, Louisiana, Montana, Mississippi, Utah, Virginia, Texas.

¹⁹⁶ Marc Novicoff, “A Simple Law Is Doing the Impossible. It’s Making the Online Porn Industry Retreat”, *Politico*, August 8, 2023: <https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148>

¹⁹⁷ On the lessons to be learned from the failure of the British regulation, see: *Protecting the age of innocence*, Commonwealth of Australia, February 2020, *op. cit.*, 3.78 et s.

others, there are associations of age verification providers, as the Age Verification Providers Association (AVPA) whose code of conduct shall be fulfilled by all and any members.¹⁹⁸

It seems also necessary to solve the question of the regulation scale: should it be left to each State to determine its own regulations or should them be common in the European Union for example? Some people call for the second option:

“The [European Market’s] size is sufficient so that the websites do not wish to lose it. Furthermore, a political willingness seems to emerge. [...] The locking of the pornographic websites is then conditioned to a standardisation and compromise work between the countries. We should find a system that displeases to the less possible people”, asserts Olivier Blazy, a cryptograph and teacher to the Polytechnic School.¹⁹⁹

Thus, at the European Union level, euConsent²⁰⁰ is a consortium funded by the Commission and composed of *“academic experts in child rights and privacy, and technology providers, which aims to operationalise extensions to the eIDAS²⁰¹ infrastructure required to deliver its vision for pan-European, open-system, secure and certified interoperable age verification and parental consent to access information society services.”*²⁰²

In practice, it appears that no system is perfect, that there will certainly always exist ways to bypass it (VPN²⁰³, darkweb, non-compliant sites...)²⁰⁴ Nevertheless, it seems better, *“not [to] let the perfect be the enemy of the good”*²⁰⁵: non-intentional access to pornography would yet be reduced. On the other hand, such a measure would not constitute a miracle solution but should be analysed as a measure amongst others in the minor’s protection against pornography system.

¹⁹⁸ <https://avpassociation.com/membership/avpa-code-of-conduct/>

¹⁹⁹ Emmanuelle Lucas, « La bonne échelle de régulation de la pornographie est sans doute l’Europe » [The right pornography regulation scale is probably Europe], *La Croix*, December 21, 2021 : <https://www.la-croix.com/France/bonne-echelle-regulation-pornographie-sans-doute-lEurope-2021-12-29-1201192283>

²⁰⁰ <https://euconsent.eu/>

²⁰¹ Regulation (EU) n° 910/2014 on electronic identification and trust services for electronic transactions in the internal market (regulation eIDAS).

²⁰² PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Report (15494), *op. cit.*, § 47.

²⁰³ A VPN (*Virtual Private Network*) allows to hide one IP address so that to go through servers in a chosen country.

²⁰⁴ See CNIL, *Vérification de l’âge en ligne : trouver l’équilibre entre protection des mineurs et respect de la vie privée* [Online age verification: find the balance between protecting minors and respecting privacy], July 26, 2022: <https://www.cnil.fr/fr/verification-de-lage-en-ligne-trouver-lequilibre-entre-protection-des-mineurs-et-respect-de-la-vie>: In the United Kingdom, *“23% of minors declare that they may bypass the blockage measures and some editors of pornographic contents already offer VPN services.”*

²⁰⁵ *Protecting the age of innocence*, Commonwealth of Australia, February 2020, *op. cit.*, 3.177.

What should be done then in case of infringement of the regulation? Research engines should not reference the defaulting websites. The blocking of such websites would be a solution but would cause other problems,²⁰⁶ including as the adults who would like to access to them would not be able to do so.

Facing the mistrust from the service providers offering pornographic contents, it is important to make sure that all of them are under a strict but equal regulation regarding competition, so as to favour their cooperation. On the other hand, for purpose of limitation of the pornographic contents on the Internet, a drastic regulation to the access to such websites could affect their economic model based on advertisement. Besides, some people believe that:

“the introduction of mandatory age verification systems will be an expensive process, affordable only by the main actors of the online pornographic market. This could lead to the disappearance of the small websites with pornographic contents and to the monopolisation of the market of such contents providers.”²⁰⁷

→ The touchy question of the choice of the mechanism for online age verification

Regarding age verification, it is fundamental to take care of the privacy and personal data protection: there are risks of capture, hacking and data leakage, frauds (for example through banking data).²⁰⁸ It is then necessary to implement technical solutions with the double goal to be safe on such respect and efficient, the mere disclaimer is not an appropriate solution.

Many age verification tools have been conceived. This is a non-exhaustive list of some of them:

- the presentation of a credit card or a micro-payment by bank card.²⁰⁹ It being indicated that bank cards may be available from 16 years in some countries and that it is not impossible that a minor get hold on an adult's references.

²⁰⁶ See Christophe Tardieu and Philippe Schil, *Prévention de l'exposition des mineurs aux contenus pornographiques sur internet [Prevention of the minors' exposure to pornographic contents on the Internet]*, Inspection Générale des Finances et Conseil Général de l'Economie, de l'Energie et des Technologies, December 2019, p. 32: https://www.economie.gouv.fr/files/files/directions_services/cge/Rapports/2019_12_Prevention_mineurs.pdf

²⁰⁷ Kamila Groszkowska, "Prawne możliwości ograniczenia dostępu do pornografii w internecie w Unii Europejskiej" [Legal possibilities of restricting access to pornography on the Internet in the European Union], *Analizy BAS, Biuro Analiz Sejmowych*, nr 1 (149), January 4, 2019, p. 9.

²⁰⁸ See Christophe Tardieu and Philippe Schil, *Prévention de l'exposition des mineurs aux contenus pornographiques sur internet [Prevention of the minors' exposure to pornographic contents on the Internet]*, 2019, *op. cit.*, p. 29-32 (Risks and disadvantages of the age verification systems).

²⁰⁹ On October 25, 2022, the French Government claimed wanting to implement such a measure to prohibit the access to pornographic websites to the minors: « Sites pornos : pour bloquer l'accès aux mineurs, le gouvernement envisage d'imposer la carte bleue » [Porn websites: to block the access to the minors, the government considers imposing the banking card], *Le Figaro*, October 25, 2022.

- the presentation of an identity paper number causes doubts as to its reliability, on the one hand, as it may be used by several people, even minors, and, on the other hand, as for the personal data safety. Louisiana, since the enforcement of Law 440, on January 1, 2023, requires the presentation of a copy of an identity paper to access to the internet websites whose content are, for at least a third of them, “detrimental to minors.”²¹⁰

- the use of an identity paper with picture, combined with “*face check biometrics* [...]”. *The ID is scanned and authenticated, with companies working to ensure the documents provided by customers are real and that the same person is in possession of the document.*”²¹¹ A picture of the internaut taken during the check may also be compared with the picture in the document registered with the administration.²¹²

- the face analysis with facial biometrics.²¹³ Generally, in addition to the existence of a certain margin of error, such technics seem intrusive and hazardous for personal data: the French “*Commission Nationale de l’Informatique et des Libertés*” (CNIL) recalled that, regarding the “*biometric data processing, its use should be particularly framed by a specific rule, and shall, as a principle, in accordance with the GDPR, be implemented by a specific legal rule or based upon the free consent of the relevant people.*”²¹⁴ In Germany, the Commission for youth protection in the media approved in May 2022 several technics using the artificial intelligence.²¹⁵

- the purchase or free delivery in a shop of a “pass” (scratch card disclosing a code): the age checking is performed at the cash desk. Such a system guarantees online anonymity but, if a payment is required, it amounts to requiring payment for access to websites supposed to be free. A report from the French Administration seemed to favour such free solution,²¹⁶ whereas the CNIL warns on its potential “*stigmatising*” nature and on the risk of “*fraud by reselling the cards on a parallel market*”,

²¹⁰ Observatoire Juridique et Politique des États-Unis, « Pornographie en ligne. Exigence d’une vérification d’identité en Louisiane » [Online pornography. Requirement of an identity checking in Louisiana]: <http://lexpolamerica.com/web-Pornographie-controle-identite.html>

¹⁹⁹ PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Report (15494), § 30.

²¹² « Un scan du visage pour les australiens consommateurs de porno ? » [A facial scan for Australian porn consumers?], Stop au porno, October 28, 2019: <https://www.stopauporno.fr/2019/10/28/un-scan-du-visage-pour-les-australiens-consommateurs-de-porno/>

²¹³ F. ex. Yoti, that estimates the age from a picture. See PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Report (15494), § 31.

²¹⁴ See CNIL, Vérification de l’âge en ligne : trouver l’équilibre entre protection des mineurs et respect de la vie privée [Online age verification: find the balance between protecting minors and respecting privacy], July 26, 2022, *op. cit.*

²¹⁵ Laura Kabelka, « L’organisme allemand de protection de la jeunesse approuve l’IA comme outil de vérification de l’âge » [German youth protection body approves AI as age checking tool], *Euractiv*, May 31, 2022: <https://www.euractiv.fr/section/economie/news/lorganisme-allemand-de-protection-de-la-jeunesse-approuve-lia-comme-outil-de-verification-de-lage/>

²¹⁶ Christophe Tardieu and Philippe Schil, *Prévention de l’exposition des mineurs aux contenus pornographiques sur internet* [Prevention of the minors’ exposure to pornographic contents on the Internet], 2019, *op. cit.*, p. 37.

recommending then its deployment on all online activities requiring an age checking and “a specific governance, with a body issuing the cards and managing the authentication systems.”²¹⁷

- the use of an identifier provided for by a public service (for example *FranceConnect* in France) used to connect to official websites as those of the tax administration or the social welfare. Nevertheless, the CNIL explains that: “*Such method doesn’t appears as satisfying, as it would lead the State be in possession of a list of fully private connections.*”²¹⁸ Furthermore, such a solution would imply that the State endorses the viewing of pornography.

- an inference system that allows to deduce the internaut age by analysing the browsing history, which poses wide problems regarding privacy, or through a questionnaire allowing the measure of the internaut’s maturity, “*which appears to be of poor reliability and the possibility of bypass is important (sharing of the online answers), together with the fact that bias may be associated to it.*”²¹⁹

- ad hoc systems created by the operating companies of pornographic websites. Thus, MindGeek developed AgeID,²²⁰ a unique identification service: “*The user verifies their email address and then chooses an age verification option from our list of third-party providers, using options such as SMS, credit card, passport, or driving licence. [...] The user then leaves AgeID and enters the details required to prove their age into the site of the third-party age verification provider. The third party will then pass back either a pass or fail to AgeID.*”²²¹ Nevertheless, this system is contested, due to the ambiguity of its privacy policy and of an obvious conflict of interest.²²²

There are then various methods but, up to now, none has been fully satisfying, as indicated in the following chart.²²³

²¹⁷ See CNIL, Vérification de l’âge en ligne : trouver l’équilibre entre protection des mineurs et respect de la vie privée [Online age verification: find the balance between protecting minors and respecting privacy], July 26, 2022, *op. cit.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ <https://www.ageid.com/>

²²¹ Matt Burgess, “This is how age verification will work under the UK’s porn law”, *Wired*, 20 June 2019: <https://www.wired.co.uk/article/uk-porn-age-verification?page=7>

²²² See Christophe Tardieu and Philippe Schil, *Prévention de l’exposition des mineurs aux contenus pornographiques sur internet [Prevention of the minors’ exposure to pornographic contents on the Internet]*, 2019, *op. cit.*, p. 28.

²²³ French Government – Pôle d’expertise de la régulation numérique (PERen), *Détection des mineurs en ligne : peut-on concilier efficacité, commodité et anonymat ? [Online Detection of the minors: is it possible to reconcile efficiency, convenience and anonymity?]*, Éclairage sur..., n° 4, May 2022, p. 7; For an assessment of the methods, see p.6-13 and Appendix 2, p. 15-20: https://www.peren.gouv.fr/rapports/2022-05-20%20-%20Eclairage-sur-detection-mineurs_FR.pdf

Chart 1 – Summary of the analysis of the age checking solutions

	platform	users			efficiency		
	Implementation easiness	readability	convenience	Low intrusive	fraud-resistant	performance	flexibility
Banking card control	○	≈	≈	○	○	≈	≈
Control by a tobacco shop	○	≈	/	○	≈	≈	○
Use of a national data base	○	/	○	○	○	○	○
Control of an identity paper and a photo	○	/	/	/	○	○	○
Service of guarantee of the digital identity	○	○	/	○	○	○	○
Parental control	○	○	○	○	○	≈	○
Content-based social profiling	/	/	○	≈	/	/	/
Use of biometric data	○	/	/	≈	/	/	≈
Auto-declaration	○	○	○	○	/	≈	○

○ **Satisfying**, ≈ **poor**, / **unsatisfying** Source: PEReN

In France, the CNIL issued an advice in July 2022²²⁴ in which it recalled the principles stated in its advice dated June 3, 2021 (“No direct collection of the identity papers by the pornographic website editor; no age calculation from the browsing history of the internaut on the web; no biometric data treatment to identify an individual in a unique manner or to authenticate such individual”) and concluded that the “current systems may be bypassed and are intrusive. It calls upon the implementation of models that would be more respectful of privacy,” as “the recourse to an independent trusted third party to prevent the direct transmission of identifying data related to the website’s user”.

²²⁴ See CNIL, Vérification de l’âge en ligne : trouver l’équilibre entre protection des mineurs et respect de la vie privée [Online age verification: find the balance between protecting minors and respecting privacy] July 26, 2022, *op. cit.*

On such model of an independent trusted third party²²⁵ the CNIL's digital innovation Laboratory (LINC) collaborated with Olivier Blazy (École polytechnique / Cryptograph) and the French "Pôle d'Expertise de la Régulation Numérique" (PEReN) to develop a "digital lock" allowing *"on the one hand, to prevent that the trusted third party identifies the website or the application requesting the verification and, on the other hand, to reduce the capacity of the requiring website to identify the relevant individual."*²²⁶ Mr. Blazy explains that:

*"it is a quite conventional system of recourse to a trusted third party, quite close to the France Connect system for the online steps with the administrations. The main difference is that the intermediary will not be the State, in order to exclude any idea of population control, but a private body owner of identifying data: banks, notaries, insurances, etc. They know who is adult and may deliver such information to the website in a confidential manner."*²²⁷

In 2023, an IFOP survey showed that 27% of people (but 41% of women) who watched an X website during their life would consider ceasing to visit such websites should the "double-blind" identification system be implemented on all available pornographic websites.²²⁸

d. Requiring parental control or filtering software to be activated by default

It seems necessary to intensify the use of a parental control or filtering software in the fight against exposure of children to pornography. Even if their efficiency remains controversial, such devices seem to be useful amongst the youngest, according to a study dated 2009:

"Unwanted exposure to sexual material occurred in 32% of youth in homes with pop-up/spam blockers and 25% of youth in homes with filtering, blocking, or monitoring software on the home computer, compared to 43% of households without preventive software installed on the home computer."

²²⁵ See also Christophe Tardieu and Philippe Schil, *Prévention de l'exposition des mineurs aux contenus pornographiques sur internet [Prevention of the minors' exposure to pornographic contents on the Internet]*, 2019, *op. cit.*, p. 17-20.

²²⁶ See DIAGRAM 2 – Diagram of the solution's technical function, in Jérôme Gorin, Martin Biéri and Côme Brocas, « Démonstrateur du mécanisme de vérification de l'âge respectueux de la vie privée » [Demonstrator of privacy-friendly age checking mechanism], *LINC Laboratoire d'innovation numérique de la CNIL*, June 21, 2022: <https://linc.cnil.fr/demonstrateur-du-mecanisme-de-verification-de-lage-respectueux-de-la-vie-privee>

²²⁷ Emmanuelle Lucas, « La bonne échelle de régulation de la pornographie est sans doute l'Europe » [The right pornography regulation scale is probably Europe], December 29, 2021: <https://www.la-croix.com/France/bonne-echelle-regulation-pornographie-sans-doute-lEurope-2021-12-29-1201192283>

²²⁸ 01net, "Exclusive (IFOP) – 8 French people over 10 doubt of the efficiency of the X sites blocking" (IFOP study for 01net performed by online auto-managed questionnaire from April 13th to 17th, 2023 with a sample of 2 006 people, representative of the French population aged of 18 years and more), July 2023.

Among otherwise similar youth, pop-up/spam blockers installed on the home computer were significantly associated with 59% lower odds of reporting unwanted exposure to sexual material on the home computer; and filtering, blocking, or monitoring software was significantly associated with 65% lower odds. When data were [...] stratified by age, preventive software was associated with significantly reduced risk of unwanted exposure for 10–12-year olds and 13–15-year olds, but not for 16–17-year olds.”²²⁹

Thus, as “*Most parents do not install filters; and 80% of parents who install parental control software never activate it,*”²³⁰ regulation should force the installation and default activation of such software on every connected device, from leaving the factory, as such mechanism may be deactivated by the owner (grown up, thus) of the contract providing Internet access.²³¹ In any event, it shall be also installed and activated by default in schools, libraries and public places in general.

The European institutions favour such a regulation.

As for the **Council of Europe**, the PACE, in 2021, called on the member States to “*consider introducing the obligation for manufacturers and distributors of computers and portable devices to activate anti-pornography filters by default (as opposed to pre-installed but deactivated filters, which are currently the norm)*” and to “*require internet providers to apply an opt-in or opt-out clause, asking customers to choose whether pornography should be freely accessible or not through their service.*”²³² In 2022 also, it called upon them to “*ensure that easy-to-use parental controls, ad-filtering and ad-blocking tools are built in by default on all devices.*”²³³

As for the **European Union**, Directive 2018/1808 dated November 14, 2018 amending Directive 2010/13/UE “Audiovisual Media Services” states that “*The most*

²²⁹ Michele L. Ybarra, David Finkelhor, Kimberly J. Mitchell, Janis Wolak, “Associations between blocking, monitoring, and filtering software on the home computer and youth-reported unwanted exposure to sexual material online”, *Child Abuse & Neglect* 33 (2009) 857–869.

²³⁰ PACE, *For an assessment of the means and provisions to combat children's exposure to pornographic contents*, Report (15494), § 24. In France, according to an online study performed in September 2019 with 2 087 parents of children younger than 15 years for the account of the Observatoire de la Parentalité & de l'Éducation Numérique (Observatory of parenthood and Digital Education) and Union Nationale des Associations Familiales (National Union of Family Associations) (UNAF), regarding the “*use of technical solutions by the parents to control digital practices*”, only 44% of parents “*have configured the child's smartphone, console...*” and 38% “*used technical mechanisms/surf control software*”: « La parentalité à l'épreuve du numérique » [Parenthood tested by the digital], February 2020, Médiamétrie: <https://www.open-asso.org/wp-content/uploads/2020/02/Livret-Unaf-Open-version-VF.pdf>

²³¹ See for ex. Christophe Tardieu and Philippe Schil, *Prévention de l'exposition des mineurs aux contenus pornographiques sur internet* [Prevention of the minors' exposure to pornographic contents on the Internet], 2019, *op. cit.*, p. 34 et s.

²³² PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), § 10.4.6, 10.4.7.

²³³ PACE, *For an assessment of the means and provisions to combat children's exposure to pornographic contents*, Resolution 2429 (2022), § 6.2.

harmful content, which may impair the physical, mental or moral development of minors, but is not necessarily a criminal offence, should be subject to the strictest measures such as encryption and effective parental controls, without prejudice to the adoption of stricter measures by Member States” (§ 20). Amongst the provisions related to the video-sharing platforms, such text creates an article 28 b, 3 stating that: “For the purposes of the protection of minors [...], the most harmful content shall be subject to the strictest access control measures. Those measures shall consist of, as appropriate: [...] h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors.”

→ Advantages and disadvantages of such an obligation

An obligation of default activation of a parental control or filtering software presents some advantages and disadvantages.

Regarding the advantages, such a measure may turn the parental control into a tool of family dialogue between parents and children on the topic of safety on the Internet and, in particular, on the issue of pornography. To a certain extent, it may also allow the parents to answer to the issue of screen time. The measure is also useful for the adults wishing to protect themselves from exposure to pornography. In any event, the deactivation step favours awareness, on the first part for the parents, as they are supposed to take care of the psychic and physical health of their children, and on the second part, for any individual, as it is the occasion of prevention or explanation by the Internet access provider, the manufacturer, etc.

Nevertheless, the measure causes some difficulties. Indeed, it should never replace parental awareness and dialogue with the child about his or her online activity, that are essential. The filtering of the websites whose visit should be prohibited implies that their list is set on real time, which may be difficult due to the huge number of pornographic websites and contents of such nature emerging from time to time on the Internet. Some manage to escape then filtering and some harmless websites are wrongly filtered.²³⁴

→ Various types of software

Various types of software allow to regulate children online activities related to pornography:²³⁵

- The “time limiting” software allows parents to set limits on how much time or at what time a child can use the computer or Internet;

²³⁴ See Julia Hörnle, “Protecting children from hardcore adult content online”, OUPblog Oxford University Press’s Academic Insights for the Thinking World, January 27, 2014, *op. cit.*; Open Rights Group & Top10VPN, *Collateral Damage in the War Against Online Harms - How charities, schools, and social support websites are blocked by UK ISP adult content filters*, April 2019: <https://www.openrightsgroup.org/publications/collateral-damage-in-the-war-against-online-harms/>

²³⁵ See for ex. *Les filtres qui marchent vraiment contre la pornographie [Filters that really work against pornography]*, a brochure from the association “Stop au porno.”

- The “filtering and blockage” software limits access to some sites, words, and/or image;
- The “Outgoing Content Blocking” software prevents children from revealing personal information to people they do not know;
- The “Monitoring Tool” software informs adults about children’s online activity by recording the addresses of visited websites or displaying warning messages.²³⁶

Such tools may also help adult pornography users trapped into dependency and wishing to free themselves.

→ Some examples of regulations

Some States decided to fight against children’s exposure to pornography, by passing more or less protective regulations taking advantage of such software.

In the United States, some States require the default activation of such software on the Internet connected devices upon leaving the factory and allowing deactivation upon request of the contract holder: it is the case, for instance, in Alabama, South Carolina, Idaho, Tennessee, Utah²³⁷ in 2021.

In the United Kingdom, the *Ofcom (Office of Communications)* issued in 2004 the “UK code of practice for the self-regulation of new forms of content on mobiles”²³⁸ according to which Internet contents have been filtered by mobile telephone operators, the adults having the possibility to require its deactivation. In the same way, since the end of 2013 and following a speech of Prime Minister Cameron on July 22, 2013,²³⁹ Internet access providers implement by default a filtering program for pornographic contents among others, the client having the possibility to deactivate it. Such measure was inserted in the laws by the *Digital Economy Act* in 2017.²⁴⁰

In Italy, the law-decree n.28 (art. 7-bis) dated April 30, 2020, provides for the obligation for the digital communication services provision agreements to activate by default some parental control systems or filtering for contents that are inadequate for minors and of blockings for contents dedicated to people over 18 years. The holder of the contract may require its deactivation. In the event of non-compliance

²³⁶ Serkan Çankayaa and al., “Parental controls on children’s computer and Internet use”, *Procedia Social and Behavioral Sciences* 1 (2009): 1105-1109.

²³⁷ See Device Filter Amendment (HB 72): <https://trackbill.com/bill/utah-house-bill-72-device-filter-amendments/1959365/>; Protect Young Eyes, “PYE Helps Device Filtering Legislation Pass in Utah”, March 24, 2021: <https://protectyoungeyes.com/pye-helps-device-filtering-legislation-to-pass-in-utah/>

²³⁸ Ofcom, UK code of practice for the self-regulation of new forms of content on mobiles, 11 August 2008: <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/ukcode>

²³⁹ “The internet and pornography: Prime Minister calls for action”, July 22, 2013: <https://www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action>

²⁴⁰ Digital Economy Act 2017, s. 104 (Internet filters): <https://www.legislation.gov.uk/ukpga/2017/30/contents>

with such obligations, the operator shall reimburse the undue amounts invoiced to the contract holder.

Regarding **France**, President Macron declared in the UNESCO on November 20, 2019:

"I want a parental control to be implemented by default, to guarantee simply its application. Nowadays it is a voluntary approach. In most of the cases it is not sufficient. It must be a default control. [...]. We give 6 months to the Internet actors to participate to this, to propose robust solutions. [...] Should we have no solution within 6 months, we shall pass a law for the automatic parental control."

Nevertheless, the law called "Studer Law" dated March 2, 2022²⁴¹ only provides for the installation (and not the default activation) of such a system on the Internet connected devices, the activation being offered to the user on their initial operation. Yet, for the member of parliament who drafted the bill, it was meant to ensure that

"the question [would not be], should we download a parental control system or not but should I deactivate it and, if yes, why?"²⁴² The Senate²⁴³ rightly highlighted that "The proposed scheme is less constraining than previously announced, as creating an obligation of default installation of a parental control mechanism rather than an obligation of default activation" and that "the main mechanism is already implemented by the principal market actors". Nevertheless, it asserted that "even if the use of parental control should be eased, it is also essential to pass a fair and moderated text, that does not interfere excessively in the relationship between parents and their children."

Poland has considered a *draft law on the protection of minors against access to inappropriate contents on the Internet*²⁴⁴: it was withdrawn from parliamentary proceedings on September 11, 2023. It was intended to impose three types of obligations on Internet access providers:

²⁴¹ Law n° 2022-300 dated March 2, 2022, aiming to reinforce the parental control on the access means to the Internet. See Direction of the legal and administrative information (Prime minister) « Contrôle parental obligatoire sur les appareils connectés à internet » [mandatory parental control on the Internet connected devices], September 7, 2022: <https://www.service-public.fr/particuliers/actualites/A15553>

²⁴² Tribune, « Bruno Studer : "Le contrôle parental sur Internet doit s'exercer à 100 %" » [Bruno Studer: "Parental control on Internet shall apply at 100%"], *La Croix*, March 31, 2021: <https://www.la-croix.com/Debats/Bruno-Studer-Le-contrôle-parental-Internet-doit-s'exercer-100-2021-03-31-1201148665>

²⁴³ Senate, Commission on Economic Affairs, *L'essentiel sur... la proposition de loi visant à encourager l'usage du contrôle parental sur certains équipements et services vendus en France et permettant d'accéder à internet* [The essentials on... the draft law aiming to encourage the use of parental control on certain devices and services offered in France and allowing access to the Internet], p. 1: <http://www.senat.fr/lessentiel/ppl21-364.pdf>

²⁴⁴ See <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=3282>

“implement a free, efficient and easy to use mechanism to block the access to pornographic contents on the Internet; take promotion steps to make subscribers aware of the possibility of using a service to restrict access to pornographic contents on the Internet; issue a report on the actions taken to promote the use by subscribers of solutions to restrict access to pornographic contents on the Internet.”²⁴⁵

The minister in charge of the information technologies could have controlled the respect for the legal provisions by the Internet access providers and impose fines in case of violation of the regulation. Some difficulties created by such draft law had already been underlined: operators should have defined what is pornographic and should be blocked (*“to avoid implying that “the government would like to create censorship”²⁴⁶*), on which basis would they have done so and with how many variations? Could the risk of a significant financial sanction (up to 3% of the revenues of the previous civil year and, as the case may be, a fine for the manager of the ISP equivalent to 300% of his/her monthly salary) have led to an over-blockage?²⁴⁷

e. Making educational establishments safe

At a time when pornography is making its way into playgrounds, mainly via mobile phones, it is vital to take action to make educational establishments a safe place as regards minors’ access to pornography. Schools are places where young people learn to live together as a community, and ensuring their psychological well-being is paramount: it is the responsibility of schools to ensure that the content to which pupils have access on school premises is healthy and age-appropriate. In addition to cutting off access to the internet unless there is a specific teaching need, other measures may be adopted depending on the type of school and public concerned. In the absence of legislation on these issues, the school may define its own policy in this area in its internal rules.

→ Require filtering software to be activated

Filtering software should be installed and activated by default in educational establishments, so as to block pages with harmful content, particularly pornography. Such a measure could be accompanied by a redirection to a page explaining why

²⁴⁵ Projekt ustawy o ochronie małoletnich przed dostępem do treści nieodpowiednich w internecie [Draft law on the protection of minors from access to inappropriate content on the internet], UD451: <https://www.gov.pl/web/premier/projekt-ustawy-o-ochronie-maloletnich-przed-dostepem-do-tresci-nieodpowiednich-w-internecie>

²⁴⁶ See Grażyna Zawadka, « Ustawa ma ochronić dzieci w Polsce przed pornografią w internecie » [Act to protect children in Poland from pornography on the internet], *Rzeczpospolita*, 06.10.2022: <https://www.rp.pl/polityka/art37193301-ustawa-ma-ochronic-dzieci-w-polsce-przed-pornografia-w-internecie>

²⁴⁷ Monika Sewastianowicz, "RPO: Blokowanie stron pornograficznych nie bez definicji pornografii" [RPO: Blocking pornographic sites not without definition of pornography], *Prawo.pl*, July 12, 2023: <https://www.prawo.pl/oswiata/blokowanie-stron-internetowych-dostep-do-pornografii,517712.html>

what the pupil wishes to consult is inappropriate, or possibly containing links to educational material or concerning the dangers of the Internet. Libraries and public places in general should also be concerned.

In 2021, the PACE called on States to “*require public libraries and schools to install internet filters to block pornography.*”²⁴⁸ A year later, it again invited them to “*ensure that easy-to-use parental controls, ad-filtering and ad-blocking tools are built in by default on all devices; and are systematically activated in public spaces, such as schools, libraries, and youth clubs.*”²⁴⁹

In 2021, **New Zealand** tested a solution whereby, in the event of a search for sexual material during school hours, pupils are redirected to pages containing age-appropriate information on pornography, respectful relationships, the dangers of the internet, etc.²⁵⁰

In the United States, the *Children’s Internet Protection Act* (CIPA)²⁵¹ passed by the American Congress in 2000 requires, among others, as a condition to the granting of fundings from the *E-rate Program*, that the schools and libraries use technological protection measures allowing the blockage or filtering of the access to obscene, child pornographic and detrimental for children contents. Some States passed regulations to comply with it: according to the organisation *National Decency Coalition*, about fifteen of them benefit from an adequate regulation protecting children from accidental or intentional access to such contents.²⁵²

→ Prohibit the use of smartphones, mobile phones and other connected devices on school premises

Several European countries introduce measures to limit or ban the use of connected devices in educational establishments.

In Italy, the use of mobile phones is prohibited during school hours under Ministerial Circular no. 30 of March 15, 2007, which is based on Presidential Decree

²⁴⁸ PACE, *Gender aspects and human rights implications of pornography*, Resolution 2412 (2021), § 10.4.5.

²⁴⁹ PACE, *For an assessment of the means and provisions to combat children’s exposure to pornographic contents*, Resolution 2429 (2022), § 6.2.

²⁵⁰ Digital Ansvar & Dreyers Fond, *Online child protection initiatives - Mapping of selected initiatives in eight geographical area*, May 2022, p. 68 : <https://digitaltansvar.dk/wp-content/uploads/2022/08/Digitalt-Ansvar-2022-Green-Book-Mapping-of-Online-Child-Protection-Initiatives.pdf> See also : [https://www.dia.govt.nz/diawebsite.nsf/Files/digital-child-exploitation/\\$file/N4L-Block-Page-Trial-May-2021-Project-Closure-Report.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/digital-child-exploitation/$file/N4L-Block-Page-Trial-May-2021-Project-Closure-Report.pdf)

²⁵¹ Federal Communications Commission, *Children’s Internet Protection Act (CIPA)*: <https://www.fcc.gov/consumers/guides/childrens-internet-protection-act>

²⁵² Arizona, Arkansas, Colorado, Georgia, Idaho, Kentucky, Kansas, Minnesota, Missouri, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah and Virginia: see National Decency Coalition, *Projects - Adequate Online Filtering in Schools and Libraries Law*: <https://decencyusa.org/projects/>

no. 249 of June 24, 1998. A reminder of this was issued on December 19, 2022.²⁵³ The same will apply **in the Netherlands** from January 1, 2024.²⁵⁴ **In Spain**, some autonomous communities, such as Galicia, Castilla-La Mancha and the Community of Madrid from 2020, are banning the use of mobile phones in the classroom, while others are leaving it up to individual schools to decide. In Catalonia, a plan similar in content to French law on the subject is being debated, particularly with a view to preventing addictive behaviour, as explained by the Health Minister.²⁵⁵

France goes further: in 2010, the Education Code stated that *"In nursery schools, elementary schools and lower secondary schools, the use by a pupil of a mobile phone during any teaching activity and in the places provided for in the internal regulations is prohibited"* (art. L.511-5). This provision was revised in 2018 and now prohibits, as a matter of principle, pupils from using any type of electronic communications terminal equipment in these same places, as well as *"during any activity related to teaching that takes place outside their premises"*, except in the circumstances (*"including educational uses"*) and places expressly defined in the internal regulations. In secondary schools [lycées], however, there is no prohibition in principle but the school rules may prohibit the use of such devices by pupils. In all cases, the school rules also lay down the penalty, which may consist of confiscation of the device. This ban does not apply to devices that are essential for pupils with disabilities. These rules are justified by the risks involved in owning a telephone in a school environment (theft, harassment, consultation of harmful content, etc.) and by the desire to ensure that pupils benefit from a quality community life.²⁵⁶

4. Blocking the pornographic websites

Regulating access to pornography may be performed through the blockage of such websites. This involves preventing the access to such websites from a specific

²⁵³ See :

https://www.miur.gov.it/documents/20182/6739250/m_pi.AOOGABMI.REGISTRO+UFFICIALE%28U%29.0107190.19-12-2022.pdf/76b3160f-7626-f1df-b9de-bee88f4a7af4?t=1671527039291

²⁵⁴ Euronews and AFP, « Pays-Bas : les téléphones portables vont être bannis des salles de classe d'ici 2024 » [Netherlands: mobile phones to be banned from classrooms by 2024], July 5, 2023:

<https://fr.euronews.com/2023/07/05/pays-bas-les-telephones-portables-vont-etre-bannis-des-salles-de-classe-dici-2024#:~:text=%22Les%20%C3%A9l%C3%A8ves%20peuvent%20moins%20bien,partir%20du%201er%20janvier%202024.%22>

²⁵⁵ Joan Planes, « Cataluña quiere prohibir los móviles en colegios e institutos: la Generalitat ya tiene lista la ley » [Catalonia wants to ban mobile phones in schools and high schools : the Generalitat has the law ready], *La Razon*, September 13, 2023: https://www.larazon.es/cataluna/generalitat-cataluna-estudia-prohibir-moviles-escuelas-institutos_202309136501a5537caa7b0001c0dbf2.html « Catalunya no prohibirà el uso de los móviles en los centros escolares » [Catalonia will not ban the use of mobile phones in schools], *Catalunyapress*, September 24, 2023:

<https://www.catalunyapress.es/articulo/sociedad/2023-09-24/4447148-catalunya-no-prohibira-moviles-centros-escolares>

²⁵⁶ See Ministry of Education and Youth, « Interdiction du téléphone portable dans les écoles et les collèges » [Ban on mobile phones in schools and colleges]:

<https://www.education.gouv.fr/interdiction-du-telephone-portable-dans-les-ecoles-et-les-colleges-7334>

country, regardless of the place where they are hosted. Such a measure may act as a sanction following the non-compliance with the regulation, including when the blockage is temporary, pending compliance with the regulation, or a more drastic and overall solution for regulating access to pornography, corresponding to the implementation of the prohibition of pornography or of certain types of content.

In the **European Union**, Directive 2018/1808 dated November 14, 2018, amending Directive 2010/13/UE "Audiovisual Media Services" indicates, in the new article 3, that in the specific context of audiovisual media services, a Member State may, temporarily and under specific conditions, restrict retransmission on its territory of audiovisual media services originating from other Member States

"where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health."

Blocking also appears as a complementary measure to the suppression at source of the illegal contents, which is the most efficient measure but proved to be often impossible. It has been mostly discussed in the context of child pornography diffusion. In 2011, the PACE called thus upon the Member States of the Council of Europe to *"set up efficient mechanisms to interrupt the commercial and non-commercial online distribution of child abuse images, giving priority to the rapid removal of illegal content wherever possible, and including the blocking of websites as a complementary measure when appropriate."*²⁵⁷ The European Union in Directive 2011/93/UE dated December 13, 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, notes that:

"the removal of child pornography content at its source is often not possible when the original materials are not located within the Union [...]. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating child pornography." (§ 47)

Under article 25 of such text:

"Member States may take measures to block access to web pages containing or disseminating child pornography towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress."(§ 2)

²⁵⁷ PACE, Combating "child abuse images" through committed, transversal and internationally coordinated action, Resolution 1834 (2011), 5 October 2011, 8.2.2.

In Germany,²⁵⁸ the Commission for the youth protection in the media (KJM) may decide the blockage of pornographic websites infringing the regulation: it was the case of xHamster in 2022 and Twitter was also compelled in 2020 to prevent visit from Germany of profiles that were disseminating pornography. Philippines blocked several pornographic websites in 2017, after Pornhub revealed the record time of visit of the Filipinos.²⁵⁹ In China, where pornography is strictly forbidden,²⁶⁰ the authorities are actively blocking such sites.²⁶¹ In France, none of the websites against which the ARCOM launched a procedure due to the persistent absence of an users' age control has yet been blocked.²⁶²

Blocking is a controversial measure as it jeopardises the principle of neutrality of the net whose goal is to "ensure the equality of treatment and transit of all the information flows on the Internet, regardless of their issuer or recipient."²⁶³ Blocking is sometimes part of the censorship in authoritarian States and could be considered as a "fatal political signal."²⁶⁴ Furthermore, even if such measure is more difficult to implement from a procedural rather than a technical point of view,²⁶⁵ it presents the disadvantage to be easily bypassed, should one have some knowledge in computing, including with "the use of VPN or browsers embedded software that allow to bypass the blockage systems implemented by the ISP. A blockage by IP address rather than by DNS²⁶⁶ would render such bypasses more difficult."²⁶⁷ In France, an IFOP survey performed in 2020 evidenced that, to the question "How would you react should you want to visit a pornographic website whose access is blocked or limited by a mandatory majority checking?", 41% of frequent or occasional users of X websites (i.e. 59% of the sample) answered that they would bypass the system by using or installing a VPN, and 31% answered that they would

²⁵⁸ See A. Billon, A. Borchio Fontimp, L. Cohen, L. Rossignol, « Porno : L'enfer du décor » [Porn: Hell behind the stage], Information Report n° 900 (2021-2022), Senate, *op. cit.*, p. 124 and 165 and s.

²⁵⁹ Margi Murphy, "PORNSTUB Pornhub's biggest fans have been BLOCKED from using smut site", *The Sun*, 16 January 2017.

²⁶⁰ Criminal Law of the People's Republic of China, Chapter VI-Crimes of Obstructing the Administration of Public Order, Section 9-Crimes of Producing, Selling or Disseminating Pornographic Materials, Art. 363 et seq.: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/5375/108071/F-78796243/CHN5375%20Eng3.pdf>

²⁶¹ Chu Cheng, "Incomplete and Opaque : The Problems with China's Porn Laws", *Sixth tone*, December 9, 2016: <https://www.sixthtone.com/news/1661/incomplete-and-opaque-the-problems-with-chinas-porn-laws>

²⁶² Cf. *supra*.

²⁶³ ARCEP, « La neutralité du net » [Net neutrality]: <https://www.arcep.fr/nos-sujets/la-neutralite-du-net.html>

²⁶⁴ Julius Stiebert, "Netzbetreiber sollen Pornoportal sperren" [Network operators should block porn portal], *Posteo*, March 04, 2022: <https://posteo.de/news/netzbetreiber-sollen-pornoportal-sperren>

²⁶⁵ See for ex., but somehow in a caricatural way: FigaroLIVE, show *On ne parle que de ça*, with Charlotte Barrillon-Denneboug: Ovidie: « On a atteint un stade de violence inouïe dans le porno » [An uncanny violence level has been reached in porn], January 13, 2017, 13'25 : <https://youtu.be/1kXt-sfkuMA>

²⁶⁶ Blocking by DNS (Domain Name System) is blocking by domain name.

²⁶⁷ A. Billon, A. Borchio Fontimp, L. Cohen, L. Rossignol, « Porno : L'enfer du décor » [Porn: Hell behind the stage], Information Report n° 900 (2021-2022), Senate, *op. cit.*, p. 123.

bypass the system with a change of their DNS.²⁶⁸ Nevertheless, blocking prevents non-intentional exposure to the blocked websites or contents.²⁶⁹

* * *

²⁶⁸ « Les Français et le projet de loi restreignant l'accès aux sites pornographiques » [The French and the draft law restricting access to pornographic websites], IFOP survey for "La voix du X" performed online from June 17, to 18, 2020 with a national representing sample of 1 020 people aged 18 or more, p. 15: https://www.ifop.com/wp-content/uploads/2020/06/Rapport_Ifop_Voix_du_X_2020.04.24.pdf See also Fabien Soyez, « Blocage des sites porno en France, pourquoi c'est impossible ? » [Blockage of the porn websites in France, why is it impossible?], *Cnet*, October 15, 2021: <https://www.cnetfrance.fr/news/blocage-des-sites-porno-en-france-pourquoi-c-est-impossible-39930809.htm>

²⁶⁹ On the advantages and disadvantages of blocking, in a context of child pornography, see PACE, Combating "child abuse images" through committed, transversal and internationally co-ordinated action, Report, Doc 12720, 19 September 2011, § 30 and s.

IN THE INTERNET ERA, PORNOGRAPHY CONSUMPTION IS WIDESPREAD. HOWEVER, IT TURNS OUT TO BE VERY DETRIMENTAL, IN PARTICULAR FOR CHILDREN WHO ARE CURRENTLY MORE AND MORE MASSIVELY EXPOSED TO IT, BUT ALSO BECAUSE OF ITS LARGE-SCALE CONSEQUENCES.

THE FIRST OBJECTIVE OF THIS REPORT IS TO MAKE SOCIETY AWARE OF THIS ALARMING SITUATION.

FACING SUCH A STATEMENT, BETTER REGULATION OF ACCESS TO ONLINE PORNOGRAPHY IS ONE OF THE RESPONSES NEEDED, WITHOUT TURNING SUCH REGULATION INTO AUTHORITARIAN TREND NOR MASS SURVEILLANCE.

THE SECOND AIM OF THIS REPORT, WHICH IS INTENDED TO BE PRACTICAL, IS TO PRESENT VARIOUS MECHANISMS, ASSESS THEM ON A LEGAL AND TECHNICAL PERSPECTIVE AND DESCRIBE THEIR IMPLEMENTATION THROUGH EXAMPLES OF VARIOUS REGULATIONS. IT FOCUSES SPECIFICALLY ON THE MEANS AIMING TO PREVENT THE ACCESS OF MINORS TO ONLINE PORNOGRAPHY.

THE RESULT OF SEVERAL MONTHS OF RESEARCH INTO THE VARIOUS AREAS AFFECTED BY THE SUBJECT, THIS REPORT IS THE FIRST IN A SERIES OF THREE DEALING WITH THE FIGHT AGAINST PORNOGRAPHY FROM DIFFERENT ANGLES

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