

SAFE SEX IN THE AGE OF BIG TECH FEMINISM

Brenda Dvoskin & Thomas E. Kadri***

ABSTRACT

Lawmakers and technology companies are regulating online sexuality in the name of feminism. Whereas libertarian ideals dominated early debates about internet governance, “safety” has become the rallying cry to regulate online activity in the age of Big Tech. Legislators across the political spectrum and companies around the world are devising interventions meant to keep people — and especially women — safe from the risks of online sexuality. Through law and technology, they target everything from privacy invasions to unwanted messages to sexual deepfakes. We call this regulatory and ideological trend Big Tech feminism.

This Article interrogates the feminist strands animating Big Tech feminism. Overall, regulators favor prudish and punitive measures to promote sexual safety, repurposing concerns about sex harms to control and penalize harmless activity. Big Tech feminism is hardly novel in this regard. Rather, it is a contemporary example of how some feminists align with powerful elites to develop systems of sex regulation at the expense of sexual autonomy.

This Article offers an alternative regulatory agenda grounded in queer and critical feminist theory. It shifts focus from punishing wrongdoers to addressing the social determinants of safety. Safety, we argue, is best served by structuring sexual life more fairly and empowering people to shape the norms and terms of online sexuality. The

* Associate Professor of Law, Washington University in St. Louis.

** Associate Professor of Law, University of Georgia School of Law; Affiliate Faculty, University of Georgia Institute for Women’s & Gender Studies; Legislative & Policy Director, Clinic to End Tech Abuse at Cornell University.

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interventions proposed here would enable individuals to navigate sexual risks and pleasures with greater autonomy — and thus greater safety. In this tumultuous moment for internet governance, we reimagine safety to renew the emancipatory potential of a feminist agenda.

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I. INTRODUCTION

Safety has become the dominant paradigm for governing online sexuality. When lawmakers and tech companies regulate online sexual activity, they claim to be keeping people, and especially women, safe — not always, not entirely, but increasingly and pervasively.¹ In this strict sense, the safety paradigm is a feminist endeavor: it invokes

1. See, e.g., *Women’s Safety*, META, <https://about.meta.com/actions/safety/audiences/women> [<https://perma.cc/M2MG-ZK53>]; Anabel Pasarow, *Sending Unsolicited Nude Photos Isn’t Illegal. Bumble’s CEO Wants to Change That*, REFINERY29 (Aug. 27, 2019, at 17:10 ET), <https://www.refinery29.com/en-us/2019/08/241624/bumble-ceo-sexual-harassment-law> [<https://perma.cc/Q76B-767W>]; *Governor Newsom Signs Bills to Crack Down on Sexually Explicit Deepfakes & Require AI Watermarking*, GOVERNOR GAVIN NEWSOM (Sep. 19, 2024), <https://www.gov.ca.gov/2024/09/19/governor-newsom-signs-bills-to-crack-down-on-sexually-explicit-deepfakes-require-ai-watermarking> [<https://perma.cc/2KQN-MLXF>].

a concern for harms suffered primarily by women, and its goal is to make women better off.²

Today, Big Tech companies occupy a central role in regulating sexuality.³ Social media platforms protect women’s sexual privacy; dating apps confront sexist relationship norms; and payment processors reform the pornography industry, to name just a few examples.⁴ Not only are Big Tech’s policies and features integral to contemporary sex regulation, but company executives are working alongside federal and state lawmakers and law enforcement to align and intertwine corporate and state action.⁵ Indeed, lawmakers from both U.S. political parties and around the world have been following the industry’s directions.⁶ As platforms like Meta and TikTok create tools to remove sexual images posted without a person’s permission, so too has almost every state criminalized the act of sharing nonconsensual intimate imagery (“NCII”).⁷ Likewise, after Apple and dating apps like Bumble used technology to deter people from sending unsolicited nude images, lawmakers began enacting criminal and civil penalties for such acts of “cyberflashing.”⁸ And after some companies sought to prevent their platforms from being used for sexual exploitation and sex work, Congress passed an anti-trafficking statute that makes it legally risky for all platforms to host sexual content.⁹ These attempts to promote sexual

2. See Ian Halley, *Queer Theory by Men*, 11 DUKE J. GENDER L. & POL’Y 7, 8 (2004) (adopting this minimal definition of feminism).

3. See generally Evelyn Douek, *Governing Online Speech: From “Posts-As-Trumps” to Proportionality and Probability*, 121 COLUM. L. REV. 759, 763 (2021) (exploring how “[o]nline speech governance” involves a mix of laws and “self-regulatory innovations and reforms”); Thomas E. Kadri, *Digital Gatekeepers*, 99 TEX. L. REV. 951, 970–87 (2021); Hannah Bloch-Wehba, *Global Platform Governance: Private Power in the Shadow of the State*, 72 SMU L. REV. 27, 66 (2019); Melissa Murray, *Consequential Sex: #MeToo, Masterpiece Cakeshop, and Private Sexual Regulation*, 113 NW. U. L. REV. 825, 841–45 (2019) (surfacing the importance of private actors in sexuality regulation).

4. See, e.g., Kendra Albert, *Imagine a Community: Obscenity’s History and Moderating Speech Online*, 25 YALE J.L. & TECH. (SPECIAL ISSUE) 59, 73–74 (2023); Zahra Stardust, Danielle Blunt, Gabriella Garcia, Lorelei Lee, Kate D’Adamo & Rachel Kuo, *High Risk Hustling: Payment Processors, Sexual Proxies, and Discrimination by Design*, 26 CUNY L. REV. 57, 90–99 (2023); *infra* Part II.

5. See *infra* Section II.B; cf. Thomas E. Kadri, *Platforms as Blackacres*, 68 UCLA L. REV. 1184, 1218–22 (2022) (exploring how tech companies use laws like the Computer Fraud and Abuse Act to enforce their private policies).

6. See *infra* Section II.B; JAMES SKOUFIS, *NC 051622 Cyberflashing Press Conference 2022* (YouTube, May 19, 2022), <https://www.youtube.com/watch?v=BOXLYgKh1Vk> [<https://perma.cc/QE4L-YPXT>]; *Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act*, Pub. L. No. 119-12, 139 Stat. 55 (2025) [hereinafter TAKE IT DOWN Act].

7. Andrew Gilden, *The Queer Limits of Revenge Porn Laws*, 64 B.C. L. REV. 801, 803 (2023); *infra* Section II.B.

8. CLARE MCGLYNN & KELLY JOHNSON, *CYBERFLASHING* 96–101 (2021); *infra* Section II.B.

9. Kendra Albert, Emily Armbuster, Elizabeth Brundige, Elizabeth Denning, Kimberly Kim, Lorelei Lee et al., *FOSTA in Legal Context*, 52 COLUM. HUM. RTS. L. REV. 1084 (2021)

safety are commonly framed in feminist terms, with women centered as a population in need of protection.¹⁰

Recent proposals to regulate online sexuality have come from both red and blue states, with the support of various tech companies and ideologically diverse organizations.¹¹ Notably, conservative politicians — who have otherwise expressed anxieties about online platforms censoring too much speech — have been invested in regulating online sexuality and, in many cases, suppress sexual activity on behalf of women’s safety.¹² Even now, when some Big Tech players seem to be swapping online regulation for libertarianism, the safety paradigm has remained stable for online sexuality. Since Elon Musk acquired Twitter (since rebranded as X) in 2022, he has routinely denounced content moderation as overly censorious, yet the platform’s expansive policies surrounding sexuality have endured under a safety framework.¹³ Similarly, Meta’s recent promises to impose fewer restraints on its platforms have left untouched the company’s restrictive treatment of sexual activity.¹⁴ Indeed, the fact that sexual content seems immune to this libertarian turn reinforces a key point surfaced by this Article: there is widespread and bipartisan support for regulating sexuality in the name of women’s safety.

We call this regulatory movement Big Tech feminism (“BTF”).¹⁵ BTF is shaped and exercised not only by tech companies, but also by lawmakers and law enforcement and even academics and civil society.¹⁶ Like many feminisms of the past, BTF cannot be reduced to a

(reflecting on the structural incentives that FOSTA creates for platforms not to host sexual content).

10. See *infra* Section II.C.

11. The TAKE IT DOWN Act, for example, is co-sponsored by senators of both political parties and has been endorsed by Meta, TikTok, Google, Microsoft, and dozens of civil society groups. The TAKE IT DOWN Act: List of Supporting Organizations, Sen. Comm. Com., Sci. & Trans., <https://www.commerce.senate.gov/services/files/53C5E77B-B58C-4BB7-8B56-C4034875D13E> [<https://perma.cc/WY5T-V5Q8>]; Cosponsors: S.4569 — 118th Congress (2023-2024), CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/4569/cosponsors> [<https://perma.cc/35QR-HRQH>]; see also *infra* Section III.D.

12. See Evelyn Douek & Genevieve Lakier, *Lochner.com?*, 138 HARV. L. REV. 100, 103 (2024) (discussing the conservative turn toward law to regulate online activity).

13. See *infra* Section II.A; *The X Rules*, X, <https://help.x.com/en/rules-and-policies/x-rules> [<https://perma.cc/4UWA-6C6U>].

14. See Justin Hendrix, *Transcript: Mark Zuckerberg Announces Major Changes to Meta’s Content Moderation Policies and Operations*, TECH POLICY (Jan. 7, 2025), <https://www.techpolicy.press/transcript-mark-zuckerberg-announces-major-changes-to-metas-content-moderation-policies-and-operations> [<https://perma.cc/D95Y-D72Q>]. Some changes to Meta’s hate speech policies would affect what people can say *about* women and transgender people, but not how the company moderates sexual content or communications. *Id.*

15. Brenda Dvoskin, *Speaking Back to Sexual Privacy Invasions*, 99 WASH. L. REV. 59, 63–69 (2024).

16. As we strive to emphasize throughout — sometimes explicitly and sometimes implicitly — the role played by any of these actors in influencing a particular project does not render

single ideology or theory, nor are those who advance it always doing so coherently, consciously, or for the same reasons. Rather, BTF is a regulatory and ideological trend ostensibly animated by a set of commitments about how best to govern online sexuality — and, more specifically, how to create conditions for women to participate *safely* in digital spaces. While this aspiration is laudable, it is time to take stock of BTF. What type of feminist projects are being pursued? Which earlier strands of feminism have had more uptake in this new movement? How do tech companies, state actors, and feminist activists partner in governance? What shared ideologies bring them together? And does BTF effectively promote sexual safety?

To answer the last question right away: Yes, *some* BTF interventions have been beneficial, including several technologies designed to address gendered harassment and invasions of sexual privacy.¹⁷ But these exceptions should not blind us to the rule. BTF’s image of sexual safety requires extensive surveillance of online sexuality. These systems of social control — coproduced by companies and state actors — promote safety by sanitizing public discourse and private communications, excluding those deemed to be wrongdoers and deviants while hindering opportunities for pleasurable and emancipatory experiences. In the age of BTF, valid concerns about sex harms are often repurposed to justify regulating harmless sexual activity. Queer and commercial sexuality is particularly vulnerable, though safety regulations often creep to cover even normative sexuality.¹⁸

Overall, BTF is prudish, personal, punitive, and profitable — the “Four P’s” of BTF. *Prudish* because BTF often frames sexuality as an exceptional threat to safety.¹⁹ BTF thinks of sexuality mainly through a heterosexual matrix that situates women as always needing protection from men. This tendency renders sex precarious across digital spheres: representations of sex are banned from social media,²⁰ dating apps

them responsible for everything that others do in this arena, nor do our references to feminist advocates suggest that these individuals or their organizations endorse every tendency of BTF. For example, while we raise concerns about certain punitive measures to respond to NCII endorsed by some scholars and organizations, *see infra* Section III.C, those same scholars and organizations have spoken out against other regulatory measures that we also criticize. *See, e.g.,* Danielle Keats Citron & Quinta Jurecic, *FOSTA’s Mess*, 26 VA. J. L. & TECH. 1 (2023); *CCRI Statement on the Passage of the TAKE IT DOWN Act (S. 146)*, CYBER CIVIL RIGHTS INITIATIVE (Apr. 28, 2025), <https://cybercivilrights.org/ccri-statement-on-the-passage-of-the-take-it-down-act-s-146> [<https://perma.cc/W8ZL-RW7K>].

17. *See, e.g., infra* notes 105, 290 and accompanying text (describing StopNCII’s tool to remove nonconsensual intimate imagery and Google’s tools to mitigate online harassment).

18. *See* Ari Ezra Waldman, *Policing Queer Sexuality*, 121 MICH. L. REV. 985, 1002 (2023).

19. *See* JILLIAN YORK, SILICON VALUES 124–44 (2020).

20. *See, e.g., Adult Nudity and Sexual Activity*, META (Sep. 2025), <https://transparency.fb.com/policies/community-standards/adult-nudity-sexual-activity> [<https://perma.cc/XM88-H4XH>] [hereinafter *Meta Sexual Activity Policy*].

discourage sexting and nudity,²¹ and “safe” online spaces are generally spaces with no sex.²² *Personal* because BTF tends to conceptualize sex harms narrowly, focusing on individual wrongdoers and injured victims. By ignoring the social determinants of sexual safety, BTF overlooks how norms around sex, gender, and sexuality can cause (but also alleviate) sex harms. *Punitive* because, in BTF’s imagination, sex harms are best addressed through individual sanctions meant to deter and discipline.²³ This impulse first led Big Tech to design policies that catch and ban “bad actors,”²⁴ but it now extends to partnerships with advocates and lawmakers to advance carceral projects and other punitive legal interventions.²⁵ *Profitable* because, when all is said and done, BTF “‘make[s] sense’ to power”:²⁶ companies’ efforts to confront sex harms are largely compatible with their own financial and reputational interests.²⁷

In the age of BTF, lawmakers and companies justify regulating all kinds of sexual activity by promising people safety from sex harms,²⁸ but their broad bans unnecessarily curb opportunities for pleasure, displace narrower interventions, and endorse stigmatizing narratives surrounding sexuality. Consider, for example, how Bumble tightly regulates unsolicited nudes on its app while advertising its efforts through billboards that read “NO MORE 🍆 PICS” and teaming up with lawmakers to criminalize cyberflashing.²⁹ Not only do these interventions punish pleasurable (yet unrequested) experiences, but the surrounding publicity validates the risk that nude images *might* — but *need not* — pose. This combination denies that pictures of male genitalia could ever be arousing and instead fixates the idea that they are necessarily dangerous or disgusting. There is little room for narrative contestation when the company and its allies frame all unsolicited

21. See *infra* Section II.B.1 (detailing how Bumble regulates sexual communications and images on its platform); Clarice Silber, *Texas Teams with Bumble to Crack Down on ‘Cyber Flashing’*, AP NEWS (Aug. 30, 2019, at 7:23 ET), <https://apnews.com/article/7e6192f8c06a4b36acdcc705a76b2fdb> [<https://perma.cc/W7G8-2AW4>].

22. Rosalie Gillett, Zahra Stardust & Jean Burgess, *Safety for Whom? Investigating How Platforms Frame and Perform Safety and Harm Interventions*, 8 SOC. MEDIA + SOC’Y 1, 7 (2022).

23. See Duncan Kennedy, *Sexual Abuse, Sexy Dressing and the Eroticization of Domination*, 26 NEW ENG. L. REV. 1309, 1321 (1992).

24. Sarah C. Haan, *Bad Actors*, 22 U. PA. J. CONST. L. 619, 630–31, 644–45 (2020).

25. See Amanda Levendowski, *Defragging Feminist Cyberlaw*, 38 BERKELEY TECH. L.J. 797, 805–07 (2023).

26. See Janet Halley, *Introducing Governance Feminism*, in JANET HALLEY, PRABHA KOTISWARAN, RACHEL REBOUCHÉ & HILA SHAMIR, *GOVERNANCE FEMINISM: AN INTRODUCTION* ix, ix (2018).

27. See Ari Ezra Waldman, *Disorderly Content*, 97 WASH. L. REV. 907, 953 (2022).

28. See *infra* Section II.B.

29. Amanda Silberling, *Bumble Open Sourced its AI that Detects Unsolicited Nudes*, TECHCRUNCH (Oct. 24, 2022, at 13:28 ET), <https://techcrunch.com/2022/10/24/bumble-open-sourced-its-ai-that-detects-unsolicited-nudes> [<https://perma.cc/BQM9-GY9J>].

nudity as indecent exposure, sexual harassment, stalking, sexual assault, violence against women, and a violation of sexual privacy.³⁰

BTF represents a new iteration in a long history of some feminists' conservative turn toward censorial and carceral thinking. As other scholars have shown, different strands of feminism have long formed uneasy but effective alliances to create expansive systems of sex regulation and social control.³¹ Building on that literature, this Article identifies BTF as a contemporary illustration of how dominance and liberal feminist ideas have advanced conservative efforts to regulate sexual safety at the expense of sexual autonomy.³²

In response, this Article offers an alternative agenda grounded in queer and critical feminist theory. At a turbulent time in debates about platform regulation and online sexuality, this Article disrupts contemporary assumptions by centering the social determinants of sexual safety. Far from rejecting the importance of safety, we seek to reimagine safety to renew the emancipatory potential of a feminist agenda.³³ Our central claim is that regulations empowering people to shape the norms and terms of online sexuality offer greater promise than prudishness and punishment.³⁴ BTF's preferred interventions — restricting sexuality, policing communications, and penalizing wrongdoers — are unlikely to help people participate safely in sexual life or avoid sexual harm, much like how teaching abstinence in high schools fails to

30. See, e.g., *infra* note 129; Christian F. Nunes, *NOW President Christian F. Nunes Urges DC City Council to Stop 'Cyberflashing'*, NAT'L ORG. FOR WOMEN (May 19, 2023), <https://now.org/media-center/press-release/now-president-christian-f-nunes-urges-dc-city-council-to-stop-cyberflashing> [<https://perma.cc/4LL3-RRDC>].

31. Janet Halley, *Which Forms of Feminism Have Gained Inclusion?*, in JANET HALLEY, PRABHA KOTISWARAN, RACHEL REBOUCHÉ & HILA SHAMIR, *GOVERNANCE FEMINISM: AN INTRODUCTION* 23, 43–44 (2018). For work exploring the alliances between dominance and liberal feminists in producing carceral responses, see generally AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* (2020); Aya Gruber, Amy J. Cohen & Kate Mogulescu, *Penal Welfare and the New Human Trafficking Intervention Courts*, 68 FLA. L. REV. 1333 (2016).

32. For reference, Aya Gruber describes liberal feminism as a movement for women's formal equality that embraces "all the basic tenets of liberalism, such as the priority of liberty, the assumption that humans are autonomous moral agents, . . . the commitment to rights, and the protection of a private realm." Aya Gruber, *Neofeminism*, 50 HOU. L. REV. 1325, 1332 (2013) (internal citations omitted). On the other hand, the central premise of the dominance (or radical) feminism espoused by Catharine MacKinnon is that sexuality is the central process producing male domination and female subordination. As described by Gruber, in MacKinnon's theory, "Women are in an inherently subordinate position because sexual oppression is constitutive of the very gender category, woman." *Id.* at 1343. For further discussion of these feminist strands, see *infra* Part III.

33. Scott Skinner-Thompson, *Sexuality's Promise for Sexual Privacy*, JOTWELL (Aug. 30, 2023), <https://cyber.jotwell.com/sexuality-promise-for-sexual-privacy> [<https://perma.cc/2SFL-SSML>].

34. Scott Skinner-Thompson, *Identity by Committee*, 57 HARV. C.R.-C.L. L. REV. 657, 694–96 (2022) (discussing the "emancipatory potential" of giving more space for "exploration and play" by emphasizing the "expressive and performative dimensions of gender"); see generally CATHERINE D'IGNAZIO & LAUREN F. KLEIN, *DATA FEMINISM* (2020).

promote sexual safety. Instead, sex regulation should focus on the social conventions that can both cause and alleviate sexual risk and harm. In making this claim, our principal audience is not technology companies — we have some doubts that they do or even should care about promoting a fairer sexual culture. Rather, our main hope is to show those lawmakers and feminist advocates who are pushing law and corporate behavior in BTF’s direction that an alternative regulatory agenda is possible and promising.

The goal should not be to disentangle sexuality from danger completely. Risk can be arousing, at least for some people.³⁵ For example, an anonymous sexual encounter arranged on a dating app might be sexy *because* it is riskier than meeting a familiar lover. But the interventions we propose enable people to navigate risk more autonomously through four mechanisms. First, we highlight technical tools that can prevent sexual harm or at least enable people to choose their preferred level of risk (like using disappearing messages or disabling screenshotting), as well as features that can mitigate sexual harms exacerbated by technology (like preventing NCH from being persistently reshared across multiple platforms). Second, we examine how to disrupt existing social narratives about how people of different genders should behave. Third, law might also encourage the emergence of new conventions around gender and sexual life. Taken together, these last two types of interventions can modify the gendered expectations that constrain people in shaping the terms of their own sexual lives. Finally, we call for changes to legal rules that make online sexuality unnecessarily risky, as when employers are legally entitled to fire workers or courts deny parental custody because of people’s lawful sexual activities. Overall, even if sexuality entails risk, legal and technical interventions can promote more autonomous and, thus, safer experiences with sexuality without resorting to carceral or censorial responses.

This Article proceeds in three parts. Part II surfaces the emerging safety paradigm for regulating online sexuality by detailing the laws, policies, and technologies launched in the name of sexual safety. Part III then examines the ideological foundations of this regulatory movement, critiquing BTF while situating it within broader feminist trends. Finally, Part IV advances a competing feminist agenda for online sexual safety and proposes a slate of interventions to implement it.

35. Carol S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 1, 1 (Carole Vance ed., 1984).

II. THE SAFETY PARADIGM FOR REGULATING ONLINE SEXUALITY

Online spaces have become a new battleground for sexuality regulation. As people increasingly socialize online, lawmakers across the political spectrum and tech companies of various kinds are confronting a new wave of sex harms. This Part details how safety has become the dominant paradigm to regulate the risks of online sexuality, with both governments and companies often pitching their projects as efforts to keep women safe.

Before diving in, three clarifications will be useful. First, our conception of “regulation” captures a broad set of efforts to enable and constrain online sexuality, including legal statutes, company policies, and technological affordances.³⁶ Second, we use terms like “online sexuality” and “online sexual activity” to cover a range of harmful and benign experiences enabled by internet-based platforms, from exchanging sexual messages to being portrayed in a sexual deepfake to coordinating in-person sex acts. Finally, though the term “Big Tech” has many connotations, we use it when discussing tendencies among companies that currently operate large online platforms. Though newer or smaller platforms might follow similar trends, we focus on regulation “of and by” Big Tech because these firms exert power over many users, face significant attention from lawmakers, and often influence other actors within both industry and government.³⁷ This vision of Big Tech extends beyond social media to widely used dating apps, messaging platforms, app stores, payment processors, videoconferencing services, pornography sites, and web browsers.³⁸

A. From Speech to Safety (At Least for Sexuality)

In the internet’s earlier days, feminist advocates often struggled to persuade people that online behavior could pose serious risks. John Perry Barlow’s influential 1996 *Declaration of the Independence of Cyberspace*, which called on governments around the world to “leave us

36. In adopting this more spacious conception of regulation, we follow a path taken by other scholars of law and technology. *See, e.g.*, LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* 87–88 (1999); DANIELLE K. CITRON, *HATE CRIMES IN CYBERSPACE* 226–29 (2014); Joel Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 *TEX. L. REV.* 553, 554–55 (1998); Thomas E. Kadri, *Juridical Discourse for Platforms*, 136 *HARV. L. REV. F.* 163, 198 (2022) (defining regulation broadly “not to suggest equivalence between public lawmaking and private ordering but to capture how behavior can be enabled and constrained by multiple regulatory forces, only one of which is law”).

37. *See* Tarleton Gillespie, *Regulation of and by Platforms*, in *THE SAGE HANDBOOK OF SOCIAL MEDIA* 254, 254 (Jean Burgess, Alice Marwick & Thomas Poell eds., 2017).

38. *See* Amy M. Adler, *Arousal by Algorithm*, 109 *CORNELL L. REV.* 787, 791 (2024) (framing popular pornography platforms as an example of Big Tech).

alone” online, captured the libertarian ethos of that era: the internet was imagined as a realm that the evils of the analog world could not reach because our online lives were immaterial and, as such, immune from harm.³⁹ Barlow’s utopian vision now seems naïve at best.⁴⁰ Through powerful storytelling, scholars and activists have shown that online conduct can produce harms that go beyond the digital sphere: threats on the internet can translate into physical violence, cyberstalking can endanger lives, and deepfakes can deceive and defame.⁴¹

In the age of Big Tech, companies emphasize their commitment to keeping people safe.⁴² Snapchat touts a “24/7 Trust and Safety team” to handle its day-to-day operations and a “Safety Advisory Board” to advise them.⁴³ Meta has gone further, declaring that “safety is [its] most important responsibility” and stressing its centrality throughout the company’s operations:

We make our rules regarding content on the site on the basis of keeping you *safe* and we develop tools and resources specifically to ensure you feel *safe* using Facebook. There are people dedicated to the *safety* mission in every single part of the company and all over the world. Our security team, our communications team, our policy team — they all have people dedicated just to *safety*. We also have teams of engineers

39. John Perry Barlow, *A Declaration of the Independence of Cyberspace*, ELEC. FRONTIER FOUND. (Feb. 8, 1996), <https://www.eff.org/cyberspace-independence> [<https://perma.cc/ZSF9-LD8B>]; see also Elettra Bietti, *A Genealogy of Digital Platform Regulation*, 7 GEO. L. TECH. REV. 1, 12 (2023).

40. Douek & Lakier, *supra* note 12, at 102.

41. See, e.g., Citron, *supra* note 36, at 227, 243–44; Thomas E. Kadri, *Brokered Abuse*, 3 J. FREE SPEECH L. 137, 138, 141 (2023); Mary Anne Franks & Ari Ezra Waldman, *Sex, Lies, and Videotape: Deep Fakes and Free Speech Delusions*, 78 MD. L. REV. 892, 893–95 (2019); Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224, 227 (2011); Danielle K. Citron, *Law’s Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 378–80 (2009); Thomas E. Kadri, *Networks of Empathy*, 2020 UTAH L. REV. 1075, 1075 (2020).

42. See, e.g., TRUST & SAFETY PRO. ASS’N, <https://www.tspa.org> [<https://perma.cc/8T6V-FCVU>]; *Grow with TikTok: A Career in Trust and Safety*, TIKTOK (Jan. 12, 2023), <https://careers.tiktok.com/blog/detail/7187516805735631161> [<https://perma.cc/6G7C-RKX8>]; Kristie Canegallo, *Meet the Teams Keeping Our Corner of the Internet Safer*, GOOGLE (Feb. 5, 2019), <https://blog.google/around-the-globe/google-europe/meet-teams-keeping-our-corner-internet-safer> [<https://perma.cc/4GDG-AK63>].

43. *How We Keep Our Snapchat Community Safe & Informed*, SNAP INC., <https://help.snapchat.com/hc/en-us/articles/7012398850836-How-We-Keep-Our-Snapchat-Community-Safe-Informed> [<https://perma.cc/GPQ6-ZEFY>]; *Snap Safety Advisory Board*, SNAP INC., <https://values.snap.com/safety/safety-advisory-board> [<https://perma.cc/M9LK-NHZC>].

who work solely on *safety* and we employ a *safety* by design approach in our product development.⁴⁴

This safety paradigm has taken hold well beyond industry. Governments champion the principle of “Safety by Design” to embed safety considerations into technological innovation,⁴⁵ and laws regulating online harms routinely foreground safety as their goal.⁴⁶

Notably, even actors that distance themselves from platform-regulation trends rely on the rhetoric of safety. When Elon Musk acquired Twitter in 2022, he promised to push back against corporate “censorship,”⁴⁷ yet his rebranded X platform continues to frame its extensive content rules under the safety umbrella.⁴⁸ Likewise, social networking app Parler distinguishes itself by pledging to allow users to “freely express themselves without interference from oppressive censorship” but nonetheless bans pornography in order to “maintain a safe and constructive platform.”⁴⁹ And on the legislative front, Republican lawmakers like Ted Cruz have decried Big Tech’s supposed censorship of conservative content while still pushing for laws like the TAKE IT DOWN Act.⁵⁰

44. *Women @ Facebook*, META, <https://about.meta.com/actions/safety/resource/f/1195063637182739> [<https://perma.cc/D7C7-9V4N>] (emphasis added).

45. FED. TRADE COMM’N, *COMBATTING ONLINE HARMS THROUGH INNOVATION: REPORT TO CONGRESS 58* (June 16, 2022); U.K. Dep’t for Digital, Culture, Media, & Sport, Home Office, *Online Harms White Paper: Full Government Response to the Consultation*, 8.11–8.17 (Dec. 15, 2020), <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper> [<https://perma.cc/6CQZ-93SH>]; *Readout of White House Listening Session on Tech Platform Accountability*, WHITE HOUSE (Sep. 8, 2022), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/09/08/readout-of-white-house-listening-session-on-tech-platform-accountability> [<https://perma.cc/KE6X-ND28>]; see also Ari Ezra Waldman, *Safe Social Spaces*, 96 WASH. U. L. REV. 1537, 1570–72 (2019).

46. See, e.g., Online Safety Modernization Act of 2017, H.R. 3067, 115th Cong., 1st Sess. (2017); Casey Newton, *The Senate Blasts Tech CEOs over Child Safety*, PLATFORMER (Feb. 1, 2024), <https://www.platformer.news/thursday-newsletter/> [<https://perma.cc/GK3L-7GKZ>].

47. Marianna Spring, *Elon Musk’s ‘Social Experiment on Humanity’: How X Evolved in 2024*, BBC (Dec. 26, 2024), <https://www.bbc.com/news/articles/c1e1ddq34p7o> [<https://perma.cc/XQ7B-9JDZ>].

48. See *The X Rules*, *supra* note 13.

49. *Community Guidelines*, PARLER, <https://www.parler.com/community-guidelines> [<https://perma.cc/EC7E-LQDK>].

50. Rebecca Kern, *Cruz Launches Probe into Big Tech’s Alleged Censorship*, POLITICOPRO (Feb. 13, 2023), <https://subscriber.politicopro.com/article/2023/02/cruz-launches-probe-into-big-techs-alleged-censorship-00082653> [<https://perma.cc/EX3F-NQ6H>]; *Cruz-Klobuchar Bill to Protect Teenagers from Deepfake ‘Revenge Porn’ Unanimously Passes the Senate*, TED CRUZ, U.S. SENATOR FOR TEXAS (Feb. 13, 2025), <https://www.cruz.senate.gov/newsroom/press-releases/cruz-klobuchar-bill-to-protect-teenagers-from-deepfake-revenge-porn-unanimously-passes-the-senate> [<https://perma.cc/YP5Y-XLR8>]; see also SEN. TED CRUZ, *Cruz Fights for Bipartisan Kids Online Safety Act and the Children’s Online Privacy Protection Act* (YouTube, July 25, 2024), <https://www.youtube.com/watch?v=PViYUQtDXq4> [<https://perma.cc/DSB3-SB3V>].

Safety is presented as the answer to many online dangers, but appeals to safety are especially fervent when it comes to sexuality. The British government, for instance, has highlighted its “commitment to ensure new and existing technologies are *safely* developed and help keep people *safer* online” by classifying the distribution of NCII as “the most serious class of online crime under the Online *Safety* Act.”⁵¹ On the corporate side, TikTok similarly bans “nudity and sexually explicit content” to “create a platform that feels welcoming and *safe*,”⁵² Google brands its tool to conceal sexual images from search results as “*SafeSearch*,”⁵³ and the dating app Bumble regulates “lewd photo[s]” because user “*safety* is a top priority” of the company.⁵⁴ In short, when questions arise about regulating sexuality, the answer is often framed in terms of safety. But what does sexual safety mean for lawmakers and companies? And *who* is being kept safe from *what*?

B. Safety from What?

Lawmakers and Big Tech deploy a blend of laws, policies, and technologies that govern sexual activity online. This Section begins by discussing efforts to regulate online communications that are framed as either sexual harassment or sexual exposures. It then outlines a second group of interventions targeting nonconsensual sexual portrayals, such as when sexual images of a person are created or shared without their consent. The Section concludes by canvassing efforts to regulate sexual acts that are planned or performed online.

1. Sexual Communications: Sexual Harassment and Exposure

One batch of corporate regulations targets unwanted sexual communications, which many tech companies refer to as sexual harassment.⁵⁵ LinkedIn, for example, bans “unwanted expressions of

51. Department for Science, Innovation and Technology, Home Office, Ministry of Justice, The Rt Hon Peter Kyle MP, Jess Phillips MP & Alex Davies-Jones MP, *Crackdown on Intimate Image Abuse as Government Strengthens Online Safety Laws*, GOV.UK (Sep. 13, 2024), <https://www.gov.uk/government/news/crackdown-on-intimate-image-abuse-as-government-strengthens-online-safety-laws> [https://perma.cc/4TUH-FTZZ] [hereinafter *Crackdown on Intimate Image Abuse*] (emphasis added).

52. *Community Guidelines Enforcement Report: January 1, 2021–March 31, 2021*, TIKTOK (June 30, 2021), <https://www.tiktok.com/transparency/en-us/community-guidelines-enforcement-2021-1> [https://perma.cc/SNS9-545N] (emphasis added).

53. *Make Google Search Safer with SafeSearch*, GOOGLE, <https://support.google.com/websearch/answer/510> [https://perma.cc/W6EM-F5EL] (emphasis added).

54. *What to Know about Bumble’s Safety Moderation*, BUMBLE, <https://bumble.com/en-us/the-buzz/bumble-safety-moderation> [https://perma.cc/HM2V-CJVK] (emphasis added).

55. See, e.g., *Here’s What Sexual Harassment Looks Like on Bumble*, BUMBLE, <https://bumble.com/en/the-buzz/bumble-sexual-harassment-policy> [https://perma.cc/M4XL-CB72] [hereinafter *Bumble Sexual Harassment Policy*] (defining sexual harassment as “any unwanted or unwelcome sexual behaviors between members”).

attraction” or “sexual commentary on someone’s appearance or perceived attractiveness.”⁵⁶ Snapchat prohibits “unwanted advances” and “obscene requests.”⁵⁷ Tumblr forbids “unwanted sexualization.”⁵⁸ OkCupid cautions that its platform is not “a magical place where people want to hear about your sexual fantasies out of the blue,” specifically labeling messages mentioning “sexual acts/ kinks/ fetishes” as sexual harassment.⁵⁹ And Bumble’s elaborate rules dictate that introductory chats may not include “sexual jokes, sexual innuendos (including emojis), sexual advances, lewd GIFs, or sexual comments” — including a statement like “you look yummy.”⁶⁰

A related set of rules addresses exposure to sexuality. Most commonly, companies prohibit users from sharing nude photos, but some policies extend to other kinds of content.⁶¹ Meta prohibits sexualized nudity as well as imagery and audio of sexual activity.⁶² YouTube forbids “[e]xplicit content meant to be sexually gratifying.”⁶³ Snapchat bans “pornographic content,” including “highly realistic animation, drawings, or other renderings of explicit sex acts.”⁶⁴ Bumble has special rules for profile photos: not only are users forbidden from featuring nudity, but photos of people in underwear are also banned, as are images of people sporting bikinis and swimwear indoors since the company worries this will look “too much like underwear.”⁶⁵ Apple, meanwhile, restrains all external platforms in its App Store from

56. *Professional Community Policies*, LINKEDIN, <https://www.linkedin.com/legal/professional-community-policies> [<https://perma.cc/2HFX-XJNH>].

57. *Sexual Content*, SNAP INC., <https://values.snap.com/policy/policy-community-guidelines/sexual-content> [<https://perma.cc/WL3H-54XQ>] (Feb. 2025) [hereinafter *Snapchat Sexual Content Policy*].

58. *User Guidelines*, TUMBLR, <https://www.tumblr.com/policy/en/user-guidelines> [<https://perma.cc/Q93X-QHXT>] (Mar. 13, 2025) [hereinafter *Tumblr User Guidelines*].

59. *Community Guidelines*, OKCUPID, <https://okcupid-app.zendesk.com/hc/en-us/articles/22771537322011-Community-Guidelines> [<https://perma.cc/9S4N-GASS>].

60. *Bumble Sexual Harassment Policy*, *supra* note 55.

61. *See, e.g., Nudity and Adult Content*, LINKEDIN, <https://www.linkedin.com/help/linkedin/answer/a1338800> [<https://perma.cc/3J5J-G6F7>] (prohibiting not only “material depicting nudity or sexual activity” but also other “content that depicts, describes, or facilitates access to sexually gratifying material”).

62. *Meta Sexual Activity Policy*, *supra* note 20.

63. *Nudity & Sexual Content Policy*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2802002> [<https://perma.cc/6C5Q-JESX>].

64. *Snapchat Sexual Content Policy*, *supra* note 57.

65. *Photo Rules: What You Can and Can’t Post on Your Bumble Profile*, BUMBLE, <https://bumble.com/the-buzz/no-more-mirror-selfies-youre-welcome-folks> [<https://perma.cc/F2NG-KEZN>] [hereinafter *Bumble Photo Rules*].

hosting “[o]vertly sexual or pornographic material,”⁶⁶ while Google imposes a parallel ban through its own Android marketplace.⁶⁷

Companies usually pair these policies with technical tools. Dating apps like Tinder and Bumble adopt an approach common within the industry, using AI to help thousands of employees detect and delete prohibited sexual content.⁶⁸ Sometimes these enforcement efforts conscript users, such as when recipients of nude images are prompted to flag material for review.⁶⁹ Companies supplement these reactive measures with proactive technology to thwart impermissible sexual behavior on the front end.⁷⁰ Thanks to Bumble’s Private Detector feature, for example, the company claims that “[t]he scourge of the unsolicited nude photo is over.”⁷¹ This AI-powered tool, which apparently detects nudity with 98% accuracy,⁷² alerts users when they might have received a nude image in a chat.⁷³ If the user declines to view the image, it disappears, and a pop-up prompts the user to block the sender.⁷⁴ Bumble recently open-sourced Private Detector so it could spread to other platforms,⁷⁵ and a host of other companies boast that their technologies can conceal or erase all sorts of sex-related content — from naked selfies to sexual propositions to cartoon pornography — before

66. *App Review Guidelines*, APPLE, <https://developer.apple.com/app-store/review/guidelines> [<https://perma.cc/LW63-G7XY>] [hereinafter *Apple App Review Guidelines*] (defining such material as “explicit descriptions or displays of sexual organs or activities intended to stimulate erotic rather than aesthetic or emotional feelings”).

67. *Inappropriate Content*, GOOGLE, <https://support.google.com/googleplay/android-developer/answer/9878810> [<https://perma.cc/97WS-5KB9>] (prohibiting apps “that contain or promote sexual content or profanity, including pornography, or any content or services intended to be sexually gratifying”).

68. See, e.g., Cara Curtis, *Bumble’s Louise Troen on Censoring Dick Pics Using AI*, TNW (May 9, 2019, at 9:53 ET), <https://thenextweb.com/news/bumbles-louise-troen-on-censoring-dick-pics-using-ai> [<https://perma.cc/S6AA-XLVW>]; Harin, *Bumble Will Deploy AI For Unwanted Nudes Detection*, MOBYGEEK (Apr. 25, 2019), <https://mobygeek.com/features/bumble-will-deploy-ai-for-unwanted-nudes-detection-4429> [<https://perma.cc/Q4CT-8TY6>].

69. *I’ve Received an Unsolicited Lewd Photo, What Should I Do?*, BUMBLE (Mar. 2022), <https://bumble.com/en/help/unaufgeforderte-fotos-nicht-texas> [<https://perma.cc/9AUU-Y7EH>].

70. See, e.g., Charles Duan & James Grimmelman, *Content Moderation on End-to-End Encrypted Systems: A Legal Analysis*, 8 GEO. L. TECH. REV. 1, 6 (2024) (explaining how companies use homomorphic encryption to scan messages for problematic content).

71. Audra Heinrichs, *Bumble Is Doing More to Criminalize Dick Pics than You Realize*, JEZEBEL (Apr. 19, 2022), <https://jezebel.com/bumble-is-doing-more-to-criminalize-dick-pics-than-you-1848795381> [<https://perma.cc/54GD-EN3J>].

72. Dami Lee, *Bumble’s ‘Private Detector’ AI Will Automatically Detect and Blur Lewd Images*, THE VERGE (Apr. 24, 2019), <https://www.theverge.com/2019/4/24/18514247/bumble-private-detector-ai-filter-lewd-images> [<https://perma.cc/L7EU-MQSL>].

73. *With Bumble’s Private Detector, You Have Control Over Unsolicited Nudes*, BUMBLE, <https://bumble.com/en-us/the-buzz/privatedetector> [<https://perma.cc/C4WP-HUP3>].

74. *Id.*

75. Rachel Thompson, *Bumble Makes Cyberflashing Detection Tool Available as Open-Source Code*, MASHABLE (Oct. 21, 2022), <https://mashable.com/article/bumble-cyberflash-ing-private-detector-open-source> [<https://perma.cc/C2TB-TUU9>].

their users see it.⁷⁶ Even the fetish-friendly, BDSM app KinkD brags about how its technology automatically deletes up to 2,500 “explicit” images every day.⁷⁷

Following Big Tech’s lead, lawmakers have started proposing laws to regulate online sexual exposure. These laws could even be styled as corporate interventions given one company’s influence in their adoption. Bumble has teamed up with activists and academics in an extensive campaign to outlaw cyberflashing, pushing for federal legislation while also going state by state to lobby lawmakers in the United States.⁷⁸ And lawmakers have listened, introduced legislation, and parroted Bumble’s discourse with remarkable consistency.⁷⁹ Texas became the first state to pass a Bumble-backed bill to criminalize cyberflashing in 2019.⁸⁰ Virginia and California lawmakers then worked with Bumble to pass civil legislation in 2022, with California’s law offering statutory damages of up to \$30,000 for a single nude photo.⁸¹ Bumble has even ventured abroad, working with the United Nations to criminalize cyberflashing in the United Kingdom and potentially across all countries in the European Union.⁸² These efforts show little sign of slowing, with a mass of cyberflashing laws being proposed

76. See, e.g., Taylor Hatmaker, *Match Group Debuts Archer, a New Face-First Gay Dating App for Men*, TECHCRUNCH (June 1, 2023), <https://techcrunch.com/2023/06/01/match-group-debuts-archer-a-new-face-first-gay-dating-app-for-men> [<https://perma.cc/J8JB-DQKZ>]; Luke Smith, *Fluttr Launches Online Safety Focused Dating Platform*, GLOB. DATING INSIGHTS (Feb. 15, 2022), <https://www.globaldatinginsights.com/news/fluttr-launches-online-safety-focused-dating-platform> [<https://perma.cc/4KNZ-MXBW>]; Luke Smith, *muzmatch Releases Nude Image Detection Filter*, GLOB. DATING INSIGHTS (Aug. 18, 2020), <https://www.globaldatinginsights.com/news/muzmatch-releases-nude-image-detection-filter> [<https://perma.cc/BCR5-GNXH>].

77. Amy Hetherington, *Bumble’s Unsolicited Nudes Law Inspires New Technology on BDSM App*, GLOB. DATING INSIGHTS (Feb. 28, 2020), <https://www.globaldatinginsights.com/news/bumbles-unsolicited-nudes-law-inspires-new-technology-on-bdsm-app> [<https://perma.cc/WN4C-WD6X>].

78. *Bumble US State Bills Overview* (on file with author); Whitney Wolfe Herd, *Why I’m Trying to Make Sending Unsolicited Dick Pics Illegal*, COSMOPOLITAN (Apr. 29, 2019), <https://www.cosmopolitan.com/sex-love/a27239142/dick-pics-illegal-unwanted-nudes-texas-legislation> [<https://perma.cc/LZB5-CTWN>]; see also Daphne Beal, *Whitney Wolfe Herd Has Big Plans for Bumble in 2019*, MARIE CLAIRE (Sep. 20, 2018), <https://www.marieclaire.com/career-advice/a23335721/whitney-wolfe-herd-bumble-beauty-line> [<https://perma.cc/J3CY-GJZ3>] (reporting that Bumble’s founder’s “personal goal” is not only to “eradicate misogyny” but “to make it illegal”).

79. See, e.g., Skoufis, *supra* note 6 (featuring several lawmakers and a Bumble executive holding Bumble-themed signs to announce a new cyberflashing bill in New York).

80. TEX. PEN. CODE § 21.19 (2019).

81. VA. CODE § 8.01-46.2 (2022); CAL. CIV. CODE § 1708.88 (2022).

82. See *U.K. Government Accepts Bumble’s Call to Make Cyberflashing a Crime*, BUMBLE, <https://bumble.com/en-us/the-buzz/bumble-uk-government-cyberflashing-law-crime> [<https://perma.cc/W29F-E23H>]; Report on the Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence, COM (2022) 105 (June 7, 2023), https://www.europarl.europa.eu/doceo/document/A-9-2023-0234_EN.html [<https://perma.cc/WSG4-LFVU>]; *Bumble Backs Law to Ban Cyberflashing in 27 Countries*, BUMBLE, <https://bumble.com/en/the-buzz/bumble-backs-law-to-ban-cyberflashing-27-countries-eu-europe> [<https://perma.cc/T6GA-FKNT>].

elsewhere at Bumble’s urging.⁸³ In New York, for example, the state legislature has considered at least thirteen bills in just a few years.⁸⁴ Even federal lawmakers in the United States are jumping aboard, with Bumble working closely with legislators in both chambers to propose remedies for cyberflashing in the CONSENT Act of 2024.⁸⁵

2. Sexual Portrayals: NCII, Deepfakes, and Sextortion

In recent years, lawmakers have also advanced a slew of statutes to regulate NCII. To date, forty-nine states have laws criminalizing the act of sharing someone’s nude image without their permission.⁸⁶ Federal lawmakers created civil liability for sharing NCII when reauthorizing the Violence Against Women Act in 2022,⁸⁷ and multiple bills have proposed nationwide criminalization.⁸⁸ In addition, at least twenty states have passed criminal statutes regulating AI-generated NCII (often called “deepfakes”),⁸⁹ with some jurisdictions simply expanding their existing NCII laws to apply when a nude image was created using AI.⁹⁰ Recent federal bills have also targeted these sexual deepfakes.⁹¹

Various other legal interventions focus on how nonconsensual sexual images are obtained as well as the consequences of people’s images being disseminated online. The Online Safety Modernization Act, for example, outlined steep criminal penalties for acts of “sextortion,” including the possibility of life imprisonment for causing someone to produce a sexual image through coercion, fraud, or a threat.⁹² Some state laws regulate another source of NCII, sometimes dubbed “upskirting” or “creepshotting,” when a person’s intimate areas are surreptitiously photographed without their consent, often in public spaces like trains or buses.⁹³ And a range of federal and state regulations have targeted doxing — the disclosure of someone’s personal information with intent

83. Anna Iovine, *Federal Cyberflashing Bill Introduced with Bumble Endorsement*, MASHABLE (Mar. 21, 2024), <https://mashable.com/article/bumble-consent-act-cyberflashing-federal-bill> [<https://perma.cc/DR8P-M9J4>].

84. Thomas Kadri, *New York Cyberflashing Bills* (on file with author).

85. Iovine, *supra* note 83; *Email from Legislative Correspondent to Thomas Kadri* (June 8, 2023) (on file with author).

86. Gildea, *supra* note 7, at 803; MASS. GEN. LAWS ch. 265 § 43A(b)(2) (2024).

87. 15 U.S.C. § 6851.

88. *See, e.g.*, SHIELD Act, S. 412, 118th Cong. (2023); TAKE IT DOWN Act, S. 4569, 118th Cong. (2024).

89. Benjamin Sobel, *A Real Account of Deep Fakes*, 124 MICH. L. REV. (forthcoming 2026) (manuscript at 8) (available at https://www.bensobel.org/files/articles/Sobel_A%20Real%20Account%20of%20Deep%20Fakes_2025-09-09_WEB.pdf) [<https://perma.cc/A7EH-SJDL>].

90. Thomas E. Kadri & Sonja West, *Deepfake Torts: Emerging Tort Frameworks in U.S. Deepfake Regulation*, 18 J. TORT L. 515, 533 (2025).

91. DEFIANCE Act, S. 3696, 118th Cong. (2024); TAKE IT DOWN Act, S. 4569, 118th Cong. (2024).

92. H.R. 3067, 115th Cong. (2018).

93. *See, e.g.*, GA Code § 16-11-91 (2024).

to provoke harm by third parties — which can exacerbate the harms of NCII when a person’s image is shared alongside their contact information to induce mass online harassment.⁹⁴

In a notable convergence, tech companies are lobbying lawmakers to pass laws regulating NCII. Consider the groundswell of corporate support behind the recently passed TAKE IT DOWN Act, which criminalizes both real and deepfake NCII while also requiring platforms to establish procedures to remove such imagery within 48 hours of receiving notice.⁹⁵ Google, Microsoft, and Meta were among the many companies endorsing the bill as it worked its way through Congress and ultimately onto President Trump’s desk.⁹⁶ TikTok issued a public letter lauding how the Act “ensures that victims of NCII abuse can work with social media and video sharing platforms to reduce its spread,”⁹⁷ while Bumble’s statement thanked the Senate co-sponsors for helping “ensure digital spaces are safer and kinder for women.”⁹⁸

Big Tech has also advanced corporate initiatives to regulate NCII. Most companies ban users from nonconsensually sharing someone’s nude images.⁹⁹ Some policies define “intimate” imagery expansively, such as Feeld’s prohibition on disclosing “locally sensitive imagery”¹⁰⁰ and Meta’s rule against sharing “private sexual conversations.”¹⁰¹ Other policies specifically target sexual deepfakes, sextortion, doxing, or posting images captured without a person’s consent.¹⁰² Paired with these policies are mechanisms to remove sexual imagery after it has

94. See, e.g., H.R. 3067, 115th Cong. (2018); CAL. PEN. CODE § 653.2 (1872) (amended 2009).

95. TAKE IT DOWN Act, *supra* note 6, at 55–59.

96. Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, TAKE IT DOWN Act Passes the House, Heads to President Trump’s Desk (Apr. 28, 2025), <https://www.commerce.senate.gov/2025/4/take-it-down-act-passes-the-house-heads-to-president-trump-s-desk> [<https://perma.cc/UVE6-N77Z>].

97. Letter from Michael Beckerman, Vice President and Head of Public Policy, Americas, TikTok, to Ted Cruz, Ranking Member, U.S. Senate and Amy Klobuchar, Ranking Member, U.S. Senate (Jul. 30, 2024), <https://www.commerce.senate.gov/services/files/44BF7960-8A4A-4319-A7C4-C2097C273A42> [<https://perma.cc/89QM-8EAJ>].

98. Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, Broad Coalition Urges Swift Passage of Sen. Cruz’s TAKE IT DOWN Act (Aug. 1, 2024), <https://www.commerce.senate.gov/2024/8/broad-coalition-urges-swift-passage-of-sen-cruz-s-take-it-down-act> [<https://perma.cc/H97U-NRKH>].

99. See, e.g., *Non-Consensual Nudity Policy*, X, <https://help.x.com/en/rules-and-policies/intimate-media> [<https://perma.cc/Z8V4-SG4K>] [hereinafter *X NCII Policy*].

100. *Feeld Safety + Community Guidelines*, FEELD, <https://feeld.co/about/safety> [<https://perma.cc/7W7Z-7NNX>].

101. *Adult Sexual Exploitation*, META, <https://transparency.meta.com/policies/community-standards/adult-sexual-exploitation> [<https://perma.cc/U3N4-X3GU>].

102. See, e.g., *X NCII Policy*, *supra* note 99; *Community Guidelines*, SNAP INC., <https://values.snap.com/privacy/transparency/community-guidelines> [<https://perma.cc/4UZ9-EXQK>] [hereinafter *Snapchat Community Guidelines*]; *Combating Sextortion and Intimate Image Abuse*, META, <https://about.meta.com/actions/safety/topics/bullying-harassment/ncii> [<https://perma.cc/BP5N-MS92>].

been uploaded. Many companies have their own processes,¹⁰³ but some are teaming up through an initiative started by Meta, StopNCII.¹⁰⁴ Thanks to StopNCII's digital-hashing technology, people whose nude images have been posted online can submit a single request to remove them from Bumble, Facebook, Instagram, OnlyFans, Pornhub, Reddit, Snapchat, Threads, and TikTok.¹⁰⁵

3. Sexual Acts: Solicitation, Sex Work, and Sexual Exploitation

A final set of regulations focuses on how people use platforms to arrange sexual acts. A primary focus on the legal front has been sexual exploitation, especially sex trafficking, though sex work often gets swept into the regulatory mix. Various laws have sought to confront how people seek and trade sex online, including whether tech companies should be liable for facilitating sexual acts. Most notably, FOSTA — the federal law to “Fight Online Sex Trafficking” — expanded criminal and civil liability for publicizing sex work and trafficking through online platforms.¹⁰⁶ Proposed federal laws like the EARN IT Act approach sexual exploitation from another angle by effectively discouraging tech companies from using end-to-end encryption on messaging platforms, which can make it harder for law enforcement to gather evidence of trafficking.¹⁰⁷

Once again, Big Tech has joined forces with lawmakers to promote these laws. Meta was among the group of companies that vocally supported FOSTA,¹⁰⁸ and Meta CEO Mark Zuckerberg has since urged Congress to further reform Section 230 of the Communications Decency Act, the statute that currently gives tech companies legal leeway

103. *How to Report Image Abuse on Social Media*, C.A. GOLDBERG, <https://www.cagoldberglaw.com/resources/how-to-report-image-abuse-on-social-media/> [<https://perma.cc/QDZ8-G7D8>].

104. *Combating Sextortion and Intimate Image Abuse*, META, <https://www.meta.com/safety/topics/bullying-harassment/ncii/> [<https://perma.cc/6PJC-72AG>].

105. Kadri, *supra* note 36, at 200–01; *Industry Partners*, STOPNCII.ORG, <https://stopncii.org/partners/industry-partners> [<https://perma.cc/U9KC-U5NT>]; Sean Nolan, *Bumble and TikTok Partner with StopNCII Organisation*, GLOBAL DATING INSIGHTS (Dec. 2, 2022), <https://www.globaldatinginsights.com/news/bumble-and-tiktok-partner-with-stopncii-organisation/> [<https://perma.cc/ARR7-CRLB>].

106. Albert et al., *supra* note 9, at 1091–94.

107. Riana Pfefferkorn, *The EARN IT Act Is Back, and It's More Dangerous Than Ever*, CIS (Feb. 4, 2022, at 15:23 ET), <https://cyberlaw.stanford.edu/blog/2022/02/earn-it-act-back-and-its-more-dangerous-ever> [<https://perma.cc/6XY6-ECGR>].

108. Sheera Frenkel, Nicholas Confessore, Cecilia Kang, Matthew Rosenberg & Jack Nicas, *Delay, Deny and Deflect: How Facebook's Leaders Fought Through Crisis*, N.Y. TIMES (Nov. 14, 2018), <https://www.nytimes.com/2018/11/14/technology/facebook-data-russia-election-racism.html> [<https://perma.cc/EQX7-PV9E>].

when deciding what content to allow on their platforms.¹⁰⁹ Match Group, the owner of dating apps like Tinder and Hinge, has endorsed the EARN IT Act, with the company’s CEO telling employees that such a law is necessary to “balance concerns around privacy with concerns around safety.”¹¹⁰ And during a January 2024 hearing in the U.S. Senate, TikTok’s CEO assured lawmakers that his company “welcome[s] the opportunity to work with [them] on legislation” to address online sexual exploitation.¹¹¹

In addition, tech companies have their own policies and technologies designed to regulate how their services may be used to arrange sexual acts. Many take action against sexual exploitation, such as Snapchat’s zero tolerance approach that immediately bans users for “promoting or facilitating” sex trafficking on its platform.¹¹² But Snapchat’s definition of sexual exploitation also extends far beyond trafficking to include even “efforts to . . . entice users to provide nudes.”¹¹³ TikTok, meanwhile, forbids “offering or asking for sexual acts.”¹¹⁴ Similarly, Meta bans not only sex trafficking but also content that enables “commercial sexual services” among consenting adults and even noncommercial content that “facilitates sexual encounters.”¹¹⁵ Likewise, Apple’s policies ban “hookup” apps from its App Store, as well as platforms that may “be used to facilitate prostitution, or human trafficking and exploitation.”¹¹⁶ Even X, which generally has more permissive sexuality rules, forbids the “solicitation of sexual acts” through its platform.¹¹⁷

109. Adi Robertson, *Mark Zuckerberg Just Told Congress to Upend the Internet*, THE VERGE (Oct. 29, 2020, at 10:29 ET), <https://www.theverge.com/2020/10/29/21537040/facebook-mark-zuckerberg-section-230-hearing-reform-pact-act-big-tech> [https://perma.cc/A9HJ-EAR3].

110. Dan Primack & Margaret Harding McGill, *Match Group First Tech Company to Back Anti-Online Child Abuse Bill*, AXIOS (Mar. 10, 2020), <https://www.axios.com/2020/03/10/match-group-first-tech-company-to-back-anti-online-child-abuse-bill> [https://perma.cc/XW6J-C3FE].

111. Shou Chew, *TikTok CEO Shou Chew’s Opening Statement - Senate Judiciary Committee Hearing on Online Child Sexual Exploitation Crisis*, TIKTOK (Jan. 31, 2024), <https://newsroom.tiktok.com/en-us/opening-statement-senate-judiciary-committee-hearing> [https://perma.cc/D2X9-QLFH].

112. *Illegal or Regulated Activities*, SNAP INC., <https://values.snap.com/privacy/transparency/community-guidelines/illegal-or-regulated-activities> [https://perma.cc/D7M2-NND3].

113. *Snapchat Sexual Content Policy*, *supra* note 57.

114. *Sensitive and Mature Themes*, TIKTOK, <https://www.tiktok.com/community-guidelines/en/sensitive-mature-themes> [https://perma.cc/AB7D-FMA4].

115. *Adult Sexual Solicitation and Sexually Explicit Language*, META, <https://transparency.meta.com/policies/community-standards/sexual-solicitation> [https://perma.cc/Z8MA-9ESD].

116. *Apple App Review Guidelines*, *supra* note 66.

117. *Abuse and Harassment*, X, <https://help.x.com/en/rules-and-policies/abusive-behavior> [https://perma.cc/BG5N-RZQZ].

C. Safety for Whom?

Returning to our earlier question — *who* is being kept safe from *what?* — let’s now address the *who*. While most safety regulations in this realm formally protect all users on a platform or all citizens in a state, regulators often justify their interventions by recognizing that the dangers associated with sexuality disproportionately affect women. In framing their efforts, then, companies and lawmakers follow at least a minimal definition of feminism: a difference exists between men and women; women are faring worse; and safety projects aim to make women even.¹¹⁸

Consider how Meta talks about its efforts in this space. “We have a team of people that are focused just on making sure that we’re keeping women safe,” says Monika Bickert, the company’s Head of Global Policy Management.¹¹⁹ Her colleague Antigone Davis explains the company’s mission: “We want to be sure that women have an equal opportunity to participate in our community and to feel safe to do so.”¹²⁰ To spearhead these efforts, Meta has appointed a Head of Women’s Safety who oversees the company’s Women’s Safety Hub, which “centralize[s] all the safety resources women need when navigating our platform.”¹²¹ The company has also formed a group, dubbed the Global Women’s Safety Expert Advisors, to help develop policies and products that will “better support the women who use our apps.”¹²²

Other companies have offered similar rationales for their safety projects. Bumble’s signature cause has been to regulate cyberflashing — which it sometimes styles as “digital sexual harassment” — because the company’s founder heard stories from her “girlfriends” about receiving “unwanted sexual photos” on their phones.¹²³ She has expressed hope that Bumble will help make the internet “friendlier to women,”¹²⁴ while the company states that its “guiding mission” is to “foster a world free of misogyny, where all relationships are kind, equitable, healthy, and safe.”¹²⁵ Rival dating app Tinder adopted a similar

118. See Halley, *supra* note 2, at 8.

119. META, *Women’s Safety*, at 00:12–00:16 (Meta), <https://about.meta.com/actions/safety/audiences/women> [<https://perma.cc/Y8UU-5PW8>].

120. *Id.* at 01:35–01:42.

121. Cindy Southworth, *Partnering with Experts to Promote Women’s Safety*, FACEBOOK (June 30, 2021), <https://about.fb.com/news/2021/06/partnering-with-experts-to-promote-womens-safety> [<https://perma.cc/Z99R-ZXCX>].

122. *Id.*

123. Pasarow, *supra* note 1.

124. Christine Lagorio-Chafkin, *Dating Apps Are Rife with Unwanted Sexual Images. Bumble’s New A.I.-Enhanced ‘Private Detector’ Might Change That*, INC. (Apr. 24, 2019), <https://www.inc.com/christine-lagorio/bumble-whitney-wolfe-herd-private-detector.html> [<https://perma.cc/7JTN-PEQD>].

125. Bumble, *Bumble Joins Forces With the National Domestic Violence Hotline to Help Stop Abusive Relationships*, THE BUZZ, <https://bumble.com/en/the-buzz/bumble-love-is-respect> [<https://perma.cc/M2F7-C8T8>].

tone after providing free background checks to reveal if its users had histories of sexual violence. The company’s Head of Safety and Social Advocacy celebrated how this service would “empower[] people with critical information to help inform personal safety choices” because “[f]or far too long women . . . have faced many barriers to resources and safety.”¹²⁶

Legal regulations are pitched with comparable feminist credentials. When California recently outlawed the creation and distribution of sexual deepfakes, for example, the bill’s sponsor stressed that criminalizing this form of “digital sexual assault” would give “victims — who are predominantly women — and law enforcement the tools they need to ensure perpetrators are prosecuted to the full extent of the law.”¹²⁷ In a similar vein, British lawmakers defended categorizing NCII as a serious criminal offense in order to “tackle sexual offending” and “misogynistic material online,” with one minister stressing that this move would advance the government’s “mission to halve violence against women and girls over the next decade.”¹²⁸ Feminist discourse is also fueling efforts to outlaw cyberflashing, with Bumble’s Head of Public Policy teaming up with the president of the National Organization for Women in lobbying for these laws to “break the chain of violence against women.”¹²⁹

This Part has advanced two claims: safety has become the dominant paradigm to regulate online sexuality; and regulators often promote safety as a feminist endeavor, whether genuinely or opportunistically. But to say that these safety regulations claim to promote women’s interests tells us little about the feminists and feminist ideas that “exert a governing will” in this regulatory moment.¹³⁰ Our next Part seeks to shed light on this issue: What form of feminism is currently driving the regulation of online sexuality?

III. THE FOUR P’S OF BIG TECH FEMINISM

As Part II revealed, a network of companies and state actors from across the political spectrum and around the world are pushing a

126. *Garbo Launches Background Check Platform to Public and on Tinder*, TINDER NEWSROOM (Mar. 9, 2022), <https://www.tinderpressroom.com/2022-03-09-Garbo-Launches-Background-Check-Platform-To-Public-and-On-Tinder> [<https://perma.cc/H3JD-DQN3>].

127. *Governor Newsom Signs Bills to Crack Down on Sexually Explicit Deepfakes & Require AI Watermarking*, GOVERNOR GAVIN NEWSOM (Sep. 19, 2024), <https://www.gov.ca.gov/2024/09/19/governor-newsom-signs-bills-to-crack-down-on-sexually-explicit-deepfakes-require-ai-watermarking> [<https://perma.cc/ED9J-KJ2H>].

128. *Crackdown on Intimate Image Abuse*, *supra* note 51.

129. Payton Ithme & Christian Nunes, *Flashing Is a Crime. Sending Unsolicited Nudes Should Be, Too*, MARIE CLAIRE (Mar. 14, 2022), <https://www.marieclaire.com/politics/bumble-now-unsolicited-nudes-legislation-oped> [<https://perma.cc/E3XU-MDQ7>].

130. See Halley, *supra* note 26, at ix.

feminist agenda for safety, often with support from civil society and other outsiders. While their approaches and incentives sometimes differ, common commitments animate their avowedly feminist efforts. We refer to this regulatory trend as Big Tech feminism (“BTF”).

This Part examines BTF’s ideological foundations by exploring how its proponents conceptualize sex harms and imagine the conditions for sexual safety. Safety is a contingent concept,¹³¹ and this Part surfaces BTF’s distinctive understanding of it. In the process, we develop the claim that BTF is prudish, personal, punitive, and profitable. BTF might reflect a novel context for this blend of feminist commitments, but these “Four P’s” evoke existing liberal and dominance feminisms. While sex-negative suspicions of sexuality as a source of exceptional injury recall the dominance feminism of Catharine MacKinnon,¹³² BTF often confronts the risk of sex harms through liberal concepts that center personal preferences, especially consent and privacy. Historically, alliances between dominance and liberal feminists have prioritized carceral solutions and systems of social control.¹³³ Here, too, these antagonistic feminist strands have aligned to govern online sexuality through punitive approaches. Religious and conservative groups have joined the calls to restrict sexual activity online, too.¹³⁴ Tracing how these elements have converged to form a new common sense around online sexual safety sheds light on why it has become advantageous for companies to adopt BTF to manage public relations and legal risk — and why it is sometimes expedient for state actors to encourage or support BTF.

A. Prudish

BTF’s conception of safety is prudish. In using the term “prudish,” we do not suggest that regulators always cast sex as shameful, nor do we trivialize sexuality’s risks. Rather, we refer to BTF’s framing of sex

131. See generally Monica Bell, *Next-Generation Policing Research: Three Propositions*, 35 J. ECON. PERSPECTIVES 29 (2021) (challenging traditional understandings of safety in the police context); Maria Angel & Danah Boyd, *Techno-legal Solutionism: Regulating Children’s Online Safety in the United States*, CSLAW ’24: PROC. SYMP. ON COMPUT. SCI. & L. 86, 92 (2024) (disputing what conditions promote children’s safety); Barry Friedman, *What Is Public Safety?*, 102 B.U. L. REV. 725, 730 (2022) (arguing that “all other aspects of public safety beyond the protection function remain contested”).

132. See, e.g., Catharine MacKinnon, *Feminism, Marxism, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635, 635–36 (1983) (conceptualizing sexuality as the central process of male domination and female subordination).

133. For a discussion of liberal and dominance feminism, their tensions and successful alliances, see Halley, *supra* note 26, at 25–44.

134. See *infra* Section III.D.

as an exceptionally “dangerous, destructive, negative force.”¹³⁵ Gayle Rubin’s description of sex-negativity almost perfectly captures BTF’s prudish tendencies: “This culture always treats sex with suspicion. It construes and judges almost any sexual practice in terms of its worst possible expression. Sex is presumed guilty until proven innocent. Virtually all erotic behavior is considered bad unless a specific reason to exempt it has been established.”¹³⁶

This perspective shapes both the styling and substance of BTF interventions. Regulators emphasize sexuality’s dangers while belittling its benefits. Take, for example, Tumblr’s 2018 decision to ban “adult content,” despite the platform’s vibrant queer and sex-positive communities.¹³⁷ After Apple removed Tumblr from its App Store under its expansive “[s]afety” rules,¹³⁸ Tumblr CEO Jeff D’Onofrio defended the prohibition of sexual content as a step towards a “more positive Tumblr”:

It is our continued, humble aspiration that Tumblr be a safe place for creative expression, self-discovery, and a deep sense of community . . . We spent considerable time weighing the pros and cons of expression in the community that includes adult content. In doing so, it became clear that without this content we have the opportunity to create a place where more people feel comfortable expressing themselves.¹³⁹

To paraphrase: a safe place is a place without sex.

The Tumblr ban illustrates how BTF often conflates sexuality’s risks with its potential to cause discomfort. Companies regularly prioritize the sensibilities of those unsettled by sex and frame that choice in the language of safety.¹⁴⁰ Meta forbids nudity “because some people in our community may be *sensitive* to this type of content.”¹⁴¹ Snapchat gives users tools to report sexual content so that they “feel *safe* and

135. Gayle S. Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *CULTURE, SOC’Y AND SEXUALITY: A READER* 150, 158 (Richard Parker & Peter Aggleton eds. 1998). Rubin also highlights the conceptualization of sex as exceptionally harmful, which she refers to as “the fallacy of misplaced scale.”

136. *Id.* at 158.

137. Zahra Stardust, *Sexual Subcultures Are Collateral Damage in Tumblr’s Ban on Adult Content*, *THE CONVERSATION* (Dec. 6, 2018), <https://theconversation.com/sexual-subcultures-are-collateral-damage-in-tumblrs-ban-on-adult-content-108169> [<https://perma.cc/7GJX-3RPG>].

138. See *Apple App Review Guidelines*, *supra* note 66; Stardust, *supra* note 137.

139. Jeff D’Onofrio, *A Better, More Positive Tumblr*, *TUMBLR* (Dec. 3, 2018), <https://staff.tumblr.com/post/180758987165/a-better-more-positive-tumblr> [<https://perma.cc/AK44-WQ4Q>].

140. *Id.* (justifying the Tumblr ban because it will make “more people feel comfortable”).

141. *Meta Sexual Activity Policy*, *supra* note 20 (emphasis added).

comfortable using Snap”¹⁴² as part of the platform’s effort to provide “a *safe* and positive experience.”¹⁴³ Bumble bans even vaguely sexual profile photos so users feel “secure and *comfortable*,”¹⁴⁴ and it prohibits “sexual messages” being sent without the recipient’s permission because such messages could make people “feel *uncomfortable*, triggered, or violated.”¹⁴⁵ Plenty of Fish offers a “No Dick Pics” Badge — complete with a crossed-out eggplant icon — to signal a user’s refusal to “participate in *bad* online dating behavior” like unsolicited sexting, pitched as a way to make online dating “*safe* and fun” by “eliminating *uncomfy* moments that no one signs up for.”¹⁴⁶

As these examples show, Big Tech’s policies often construct “safety” by deferring to those who are unsettled by sex. This approach vaguely evokes MacKinnon’s political definition of rape: “I call it rape whenever a woman has sex and *feels* violated.”¹⁴⁷ That is, the woman’s reaction to the encounter is a key element in distinguishing sex from rape. Similarly, BTF empowers the viewer of online sexual content to define its meaning: the communicator’s intent and knowledge are irrelevant, as are any other contextual factors. Sexual content is presumed unsafe until the viewer confirms they are comfortable.¹⁴⁸ Even more, when companies anticipate that some will inevitably feel discomfort, they ban the content outright.¹⁴⁹

Cyberflashing laws follow an analogous logic. Lawmakers effectively ignore the possibility of split realities between the sender and recipient of a nude image and grant legal force to the recipient’s perspective. As an initial move, cyberflashing statutes empower recipients to set the boundaries of permissible exchanges by making it illegal to send a nude image absent the recipient’s “request,”¹⁵⁰ “express consent,”¹⁵¹ or “affirmative . . . authorization.”¹⁵² Cyberflashing statutes

142. *Snapchat Sexual Content Policy*, *supra* note 57 (emphasis added).

143. *Snapchat Community Guidelines*, *supra* note 102 (emphasis added).

144. *Bumble Photo Rules*, *supra* note 65 (emphasis added).

145. Gigi Engle, *How to Ask for Digital Consent*, BUMBLE, <https://bumble.com/en-us/the-buzz/digital-consent> [<https://perma.cc/8SPS-V4RD>] (emphasis added).

146. *Everything You Need to Know About the “No Dick Pics” Badge*, PLENTY OF FISH (May 8, 2023), <https://blog.pof.com/everything-you-need-to-know-about-the-no-dick-pics-badge/> [<https://perma.cc/6TPH-SQDS>] [hereinafter *POF NDP Badge*] (emphasis added).

147. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 82 (1987) (emphasis added). For a longer and updated exploration of Catharine MacKinnon’s definition of rape, see generally Catharine A. MacKinnon, *Rape Redefined*, 10 HARV. L. & POL’Y REV. 433 (2016). Here, we take this famous quote as a possible intellectual origin of the importance of the recipient’s reaction for regulatory purposes.

148. *Cf.* Janet Halley, *The Move to Affirmative Consent*, 42 SIGNS 257 (2016) (discussing the sex-negative outcomes of applying MacKinnon’s unwantedness standard to sexual-harassment laws and university sexual-harassment policies stemming from Title IX).

149. *See, e.g., Meta Sexual Activity Policy*, *supra* note 20.

150. TEX. PENAL CODE ANN. § 21.19 (West 2019).

151. *Id.*

152. 15 U.S.C. § 6851(a)(2); *see* H.R. 7736, 118th Cong. § 2(a)(1)(A) (2024); S. 3986, 118th Cong., § 2(a)(1)(A) (2024).

then reinforce this deference to a recipient's comfort with unsolicited nudity by ignoring harm, assuming it, or leaving it unconstrained: The sender's intent or awareness that a nude image might cause the recipient any harm is legally irrelevant, as is the type of harm it causes, and legally cognizable harm is often presumed so long as the image is unsolicited.¹⁵³ In effect, the recipient's perception alone defines the meaning of a nude image: if the image was unwanted, sending it was wrongful — and illegal.

When regulators target sexuality, then, they commonly cite discomfort as the harm from which people must be kept safe.¹⁵⁴ But discomfort, like safety, is contingent and ambiguous. It can suggest a severe sensitivity to sex, such as the trauma possibly felt by a victim of sexual violence, but moralistic reactions like disgust or disdain seem to justify many BTF safety interventions.¹⁵⁵ Plenty of Fish discourages “dirty” and “icky” sexual messaging as part of its quest to “clean up online dating behavior,” while unfortunate recipients “deserve better.”¹⁵⁶ Its “Are You Sure?” AI feature detects “sext” messages before they are sent, deterring users from sending “something your grandmother would gasp at.”¹⁵⁷ Apple warns developers that “if you’re looking to shock and offend people, the App Store isn’t the right place for your app,” including for “hookup” apps or “just plain creepy” content.¹⁵⁸ Adopting a similar tone, Bumble justifies restrictions on nude images in private chats by imagining the recipient's reaction as “yikes!”¹⁵⁹ And when Texas governor Greg Abbott signed his state's new criminal cyberflashing law, he praised the legislation because receiving unwanted sexual images is “disgusting.”¹⁶⁰ Yet in all these cases, discomfort is invoked without any principled account of which reactions merit censorship.

BTF's treatment of sexual representations thus bears some resemblance to American constitutional law. As David Cole observes, while

153. See, e.g., TEX. PENAL CODE ANN. § 21.19 (West 2019).

154. See, e.g., *supra* notes 139–46 and accompanying text.

155. See Danielle K. Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 85–86 (2009).

156. *Id.*

157. Carly Johansson, *This New POF Feature Will Stop You from Sending Messages You Regret the Next Morning*, PLENTY OF FISH (Jan. 30, 2022), <http://web.archive.org/web/20240911061109/https://blog.pof.com/2022/01/this-new-pof-feature-will-stop-you-sending-messages-you-regret/> [https://perma.cc/ES5C-ZYCM].

158. *Apple App Review Guidelines*, *supra* note 66.

159. Suzannah Weiss, *Bumble Just Swiped Left to Shirtless Mirror Selfies*, GLAMOUR (Oct. 10, 2016), <https://www.glamour.com/story/bumble-just-swiped-left-to-shirtless-mirror-selfies> [https://perma.cc/6RK4-QWRN].

160. Greg Abbott (@GregAbbott_TX), X (FORMERLY KNOWN AS TWITTER) (Aug. 23, 2019, at 18:43 ET), https://x.com/GregAbbott_TX/status/1165031731562471424 [https://perma.cc/9Z59-R38N]. Abbott is not the only lawmaker to use such language. See, e.g., Skoufis, *supra* note 6, at 5:30–5:45 (featuring New York State Senator James Skoufis voicing support for New York's proposed cyberflashing law to provide protections “against this kind of disgusting behavior”).

the U.S. Supreme Court generally rejects majoritarian preferences as a basis for restricting speech, it has validated “community offense” as grounds to restrain sexual expression.¹⁶¹ In both contexts, speech is suppressed to satisfy the taste of others.¹⁶² But not all reactions deserve deference. If a cohort of users is discomforted — or, perhaps more accurately, repulsed — by the scent of sex, should feminists call for their protection?

As Rubin points out, even sex-negative approaches sometimes make room to redeem sexuality.¹⁶³ In the case of BTF, nudity may be tolerated if stripped of any erotic meaning, such as in health-related contexts, artistic expression, or breastfeeding images.¹⁶⁴ For example, TikTok exempts “[r]eproductive health and sex education content” from its ban on content featuring “sexual activity.”¹⁶⁵ It also prohibits “nudity” but allows content showing “[c]ertain types of nudity and body exposure that are part of cultural behaviors and settings, like breastfeeding and traditional dress festivals.”¹⁶⁶ Meta’s nudity policies have also evolved over the years to include exceptions where nudity clearly serves a non-sexual purpose.¹⁶⁷

Overall, companies and lawmakers talk a lot about keeping people safe from sex harms. At times, their actions respond to serious dangers, including the risk that platforms rife with sex harms will be ostracizing spaces. In practice, however, many safety projects simply validate the idea that those exposed to sex are so powerless, the harm so difficult to undo, that those with regulatory power must prevent online sexuality altogether.

B. Personal

BTF is personal because it conceptualizes sex harms as arising from individual relationships between wrongdoers and victims without accounting for the social conditions that produce harm. It adopts what Rubin has called “sexual essentialism” — the idea that “sexuality has no history and no significant social determinants.”¹⁶⁸ BTF imagines sexual encounters as occurring between the rational individuals from classic liberalism, whose wants have no origin other than their own free

161. David Cole, *Playing by Pornography’s Rules: The Regulation of Sexual Expression*, 143 U. PA. L. REV. 111, 115 (1994).

162. See generally Waldman, *supra* note 27, at 934–50 (discussing how content moderation often encodes anti-queer norms); Waldman, *supra* note 18, at 988, 998–1002 (detailing how tech companies disproportionately censor queer and nonnormative sexual expression).

163. See Rubin, *supra* note 135, at 158.

164. See, e.g., *Meta Sexual Activity Policy*, *supra* note 20.

165. *Sensitive and Mature Themes*, *supra* note 114.

166. *Id.*

167. See TARLETON GILLESPIE, CUSTODIANS OF THE INTERNET 168 (2018).

168. Rubin, *supra* note 135, at 156.

will.¹⁶⁹ Based on this logic, corporate and legislative attempts to confront sex harms are grounded in classic liberal interests like consent and privacy — both understood as protections of individuals’ free choices. As a result, while BTF sometimes adopts a dominance-feminist tone, it often speaks the language of liberal feminism, too.

BTF’s personal model of sex injuries is over and underinclusive. At times, BTF safety regulations sweep too broadly by conflating instances of grave harm, minimal harm, and benign activity. At other times, they miss harms by failing to account for important social determinants of injury. In both circumstances, BTF interventions fall short of promoting safer conditions for online sexuality and can even be counterproductive.

Consider how consent has become key to many BTF projects to regulate sexual communications. Lawmakers and companies increasingly assert that people should not share sexual messages without the receiver’s affirmative permission.¹⁷⁰ Accordingly, an agreement to receive a sexual message becomes the only relevant element to distinguish harmful from harmless experiences, turning a sender’s failure to secure this kind of permission into a sex harm. Most cyberflashing laws adopt this principle by assuming that any unsolicited nude image is harmful to the receiver, with one California bill even proposing criminal liability if the sender failed to obtain the recipient’s prior “request or consent . . . communicated in writing.”¹⁷¹ Likewise, Bumble treats the sending of nude images as sexual harassment whenever the recipient “doesn’t ask for them” first, even if both parties are eager to interact sexually or the surrounding context reasonably gives that impression.¹⁷² Indeed, the company applies this consent principle to *all* sexual interactions, not just images, by demanding that users repeatedly seek each other’s permission before making any sexual comments or advances.¹⁷³

Focusing solely on a recipient’s permission misconstrues harm and thus misdiagnoses what safety requires. Bumble and state legislatures are right that sending sexual messages without getting prior approval can make some experiences harmful. But the idea of harm as stemming necessarily and exclusively from the lack of such consent is incomplete as a descriptive matter and troubling as a normative ground for

169. See Julie E. Cohen, *What Privacy Is For*, 126 HARV. L. REV. 1904, 1905 (2013) (describing the liberal self as “inherently possess[ing] the capacity for autonomous choice and self-determination”).

170. See, e.g., *Bumble-Backed Anti-Cyberflashing Bill Passes in California*, BUMBLE, <https://bumble.com/en-us/the-buzz/bumble-california-cyberflashing-bill-law> [<https://perma.cc/AJ98-W2M4>].

171. S.B. 1182, Reg. Sess. (Cal. 2020).

172. See *Bumble Sexual Harassment Policy*, *supra* note 55.

173. *Id.*; Engle, *supra* note 145; *With Bumble’s Private Detector, You Have Control Over Unsolicited Nudes*, *supra* note 73.

regulatory interventions. Consent is a flawed proxy to identify benign experiences, at least in this context.¹⁷⁴

John might receive an image of his friend Alison’s naked breasts without expecting it. He might feel highly aroused. Maybe the image marks the beginning of a new phase in their friendship. John might later open a dating app and be greeted by a photo of a stranger’s penis. He might again feel aroused. Perhaps his arousal will come as a surprise to him and open new sexual interests. Others might feel offended in the same situation, but John is intrigued. Later that night, John’s spouse might ask if he wants to see them naked during a video call. John is exhausted and would rather go to sleep, but his lack of sexual interest has been a difficult issue in their relationship lately. He does not want to hurt their feelings and agrees with simulated excitement but experiences the engagement as an unpleasant duty. Consent might still be the least-bad rule to regulate (at least some) sexual behavior.¹⁷⁵ But just as consent is neither necessary nor sufficient to make an exchange pleasurable, nonconsent is neither necessary nor sufficient to make an exchange harmful.

By fixating on consent in this context, BTF assumes that benign interactions are sex harms while ignoring important features that can make sexual communications harmful. Most saliently, BTF’s approach fails to account for contextual factors that distinguish unsafe from safe experiences, including the relationship between the receiver and sender, their previous communications, and the norms of the platform on which they are engaging. It also overlooks any broader social context that explains why nudity — especially male genitalia — can signify a threat or otherwise make a person feel unsafe.

Indeed, not only does BTF’s approach fail to address the conditions that make some interactions unsafe,¹⁷⁶ it risks making things worse. While the regulations formally apply to male and female bodies, cyberflashing is usually framed as a problem of “dick pics.”¹⁷⁷ As a result, BTF’s consent rules implicitly endorse the claim that representations of male genitalia are dangerous or offensive. By reifying this contested meaning, they disrupt communities or speakers with different norms who propose that images of male genitalia can be arousing or inviting. These norms, if successful, have the potential to make sexual

174. See JOSEPH FISCHER, *SCREW CONSENT 2* (2019). For other critiques of consent as a meaningful concept in online communications, see WOODROW HARTZOG, *PRIVACY’S BLUEPRINT: THE BATTLE TO CONTROL THE DESIGN OF NEW TECHNOLOGIES* 207 (2018); Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 WASH. U. L. REV. 1461, 1471 (2019); Elettra Bietti, *Consent as a Free Pass: Platform Power and the Limits of the Informational Turn*, 40 PACE L. REV. 310, 311 (2020).

175. See FISCHER, *supra* note 174, at 3.

176. Cf. MacKinnon, *supra* note 147, at 643 (making an analogous critique of rape laws).

177. See, e.g., Clare McGlynn, *Cyberflashing: Consent, Reform and the Criminal Law*, 86 J. CRIM. L. 336, 337 (2022).

interactions safer since they weaken the shared understanding of male genitalia as a source of unsafety.

A second liberal interest at the heart of BTF is sexual privacy. Here, too, regulators draw on liberal and prudish commitments, borrowing the legitimacy of mainstream liberal discourse to advance sex-negative projects. BTF's purely personal conceptualization provides an incomplete picture of how invasions of sexual privacy cause harm and lead to analogously counterproductive measures.¹⁷⁸

Consider how Meta bans sexual portrayals on Facebook and Instagram. According to the company's "Policy Rationale," Meta's platforms "default to removing sexual imagery to prevent the sharing of non-consensual . . . content."¹⁷⁹ Meta's Oversight Board has proposed a pair of similar rules for AI-generated sexual imagery: first, Meta should remove nonconsensual sexual deepfakes because merely labeling them as fake inadequately responds to their consent-based harm; and second, platforms should treat signs of AI in sexual images as inherent evidence of nonconsent.¹⁸⁰ In short, *all* nudity — whether real or deepfake — should be removed to prevent the privacy harm caused by *nonconsensual* nudity. While these sweeping rules might recall Catherine MacKinnon and Andrea Dworkin's proposed anti-pornography ordinances,¹⁸¹ Meta and its Board frame these interventions as necessary to protect people's privacy. At least implicitly, this suggests that the sole harm of NCII is the violation of an individual's preference to keep their nude image private. This liberal conceptualization, with its eyes fixed on privacy and consent, renders coherent the safety intervention of removing all nudity by default.

The problem is that this vision of harm fails to account for another important source of harm in this context: the social meaning of sexual images. Unwanted exposures can cause harm not only because they violate the individual's preferences, but also because of how others might interpret and react to a sexual image. For example, the disclosure might harm the depicted person because it causes others to see them as a sexual object.¹⁸² Current and potential employers, colleagues, and friends might change their view about the person, considering them unworthy

178. Dvoskin, *supra* note 15, at 70.

179. *Meta Sexual Activity Policy*, *supra* note 20; cf. Danielle Keats Citron, *A New Compact for Sexual Privacy*, 62 WM. & MARY L. REV. 1763, 1822 (2021) (endorsing a policy that would require companies to obtain the subject's written consent before any nude photo could be posted online).

180. *Explicit AI Images of Female Public Figures*, OVERSIGHT BD. (Jan. 27, 2025), <https://www.oversightboard.com/decision/bun-7e941o1n> [<https://perma.cc/R4HD-A44X>]; OVERSIGHT BD., CONTENT MODERATION IN A NEW ERA FOR AI AND AUTOMATION 7 (Sep. 2024), <https://www.oversightboard.com/wp-content/uploads/2024/09/Oversight-Board-Content-Moderation-in-a-New-Era-for-AI-and-Automation-September-2024.pdf> [<https://perma.cc/FVP8-UYQX>].

181. See *Am. Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

182. Danielle K. Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1900 (2019).

of respect or unfit for the workplace. Tellingly, Justice Lori Douglas quit her position after her nude images were found online,¹⁸³ and her colleagues and members of the legal profession considered them to be incompatible with serving in the judiciary.¹⁸⁴ Victims might be disrespected in a society that devalues women when they appear more easily accessible.¹⁸⁵

Once we recognize that social interpretations of nudity can be as important as the individual's choice in making sense of the resulting harm, Meta's approach to nonconsensual nudity appears counterproductive. Transforming the meaning of willing and unwilling public nudity — something that can be done in part through online sexual expression — can alleviate the harm of NCII. Indeed, sexual expression can challenge social norms underlying various gendered harms. The National Coalition Against Censorship and artist Micol Hebron have organized campaigns protesting Meta's prohibition on displaying female nipples, arguing that it stigmatizes people exploring gender and identity.¹⁸⁶ Both campaigns featured "acceptable male nipples" covering "unacceptable female" ones,¹⁸⁷ echoing topless protests historically used by women to contest the meaning of female nudity.¹⁸⁸ Nudity at pride parades also illustrates its role as a political tool to resignify sexual practices and nudity itself.¹⁸⁹ Sexual expression is a powerful tool for reducing the social sanctions suffered by those who lose some of their sexual privacy, but BTF's individualized framing of sexual privacy injuries obscures this potential.¹⁹⁰

By accentuating consent and privacy, then, BTF's regulatory interventions tend to frame the root of sex harms in personal terms: they aspire to protect individuals without interrogating what causes harm,

183. Mary Anne Franks, "Revenge Porn" Reform: A View from the Front Lines, 69 FLA. L. REV. 1251, 1265–66 (2017).

184. *Nude Photos of Judge Contained in Complaint*, CBC NEWS (Aug. 31, 2010, at 18:00 ET), <https://www.cbc.ca/news/canada/manitoba/nude-photos-of-judge-contained-in-complaint-1.900235> [<https://perma.cc/R69P-VLA9>] (quoting Sébastien Grammond, Dean of Civil Law at the University of Ottawa, saying that "[i]f pictures of you naked end up on an internet site, it's quite difficult to say you have the credibility to be a judge").

185. Dvoskin, *supra* note 15, at 85.

186. Kari Paul, *Naked Protesters Condemn Nipple Censorship at Facebook Headquarters*, THE GUARDIAN (June 3, 2019, at 15:09 ET), <https://www.theguardian.com/technology/2019/jun/03/facebook-nude-nipple-protest-wethenipple> [<https://perma.cc/2W33-DMU4>]; Morwenna Ferrier, *How to Beat Instagram and Facebook's Female Nipple Ban? Use Male Nipples Instead*, THE GUARDIAN (July 7, 2015, at 13:16 ET), <https://www.theguardian.com/lifeandstyle/shortcuts/2015/jul/07/instagram-facebook-female-nipple-ban-use-male-nipples-instead> [<https://perma.cc/JLR3-NRV8>].

187. Ferrier, *supra* note 186.

188. See, e.g., Libby S. Adler, *A Short Essay on the Baring of Breasts*, 23 HARV. WOMEN'S L.J. 219, 220 (2000).

189. Joseph J. Fischel, *Keep Pride Nude*, BOS. REV. (June 23, 2021), <https://www.boston-review.net/articles/keep-pride-nude> [<https://perma.cc/Y6LW-VEXY>].

190. Dvoskin, *supra* note 15, at 63.

let alone trying to undermine those causes.¹⁹¹ The tech industry is obsessed with developing better tools to find and remove nude images, but it cares little about understanding or resisting why seeing or sharing nudity can be scary for the viewer or stigmatizing for the depicted person. Put differently, while an emancipatory project might ask how to deactivate the conditions that make male nudity threatening and female nudity humiliating, BTF merely offers consent and privacy as porous shields against those meanings.

C. Punitive

BTF embraces a punitive form of feminism.¹⁹² We use the term “punitive” in its literal sense of imposing punishment, which may — but need not — involve incarceration. Sometimes, BTF does engage in carceral interventions.¹⁹³ Other times, regulations might have significant punitive implications for people’s lives, as when tech companies interfere with sex workers’ livelihoods by excluding them from platforms that function as their workplace.¹⁹⁴ Yet other times, people might face less severe consequences like account restrictions, which would be irresponsible to lump with prison but that follow analogous remedial tenets.¹⁹⁵ Overall, BTF prioritizes “carceral logics” that embrace individual sanctions as a way to punish and deter wrongdoing.¹⁹⁶

When regulators engaged in BTF turn to law, the result often skews carceral, with criminal statutes framed as vehicles for feminist goals.¹⁹⁷ In explaining the company’s decision to lobby for cyberflashing laws, Bumble’s CEO lamented how the “digital world can be a very unsafe place overrun with lewd, hateful and inappropriate behavior,” partly because “[t]here’s limited accountability, making it difficult to deter

191. See Aziz Z. Huq, *On the Genealogy of Intimate Digital Harm*, 122 MICH. L. REV. 1113, 1116, 1132 (2024) (reviewing DANIELLE K. CITRON, *THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, INTIMACY, AND LOVE IN THE DIGITAL AGE* (2022) (W.W. Norton ed., 2022)) (exploring related limitations of framing intimate-privacy harms as “discrete and individualized wrongs” by “bad actors”).

192. For explorations of carceral feminism, see generally GRUBER, *supra* note 31; Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS: J. WOMEN CULTURE & SOC’Y 45, 47 (2010); Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 DIFFERENCES 128, 143 (2007); I. India Thusi, *Feminist Scripts for Punishment*, 134 HARV. L. REV. 2449, 2451 (2021).

193. See *supra* notes 87–91.

194. Levendowski, *supra* note 25, at 840–45; see generally Benjamin Levin, *Criminal Employment Law*, 39 CARDOZO L. REV. 2265 (2018) (surfacing the problems of “shifting punitive authority” to unaccountable private actors).

195. See FISCHER, *supra* note 174, at 8 (highlighting the distinction between imprisonment and the consequences of colleges’ responses to sexual misconduct by saying that “it is one matter to look like a duck . . . and another matter to be a duck”).

196. See Gillett, Stardust & Burgess, *supra* note 22, at 5, 7.

197. See *supra* Section II.B.

people from engaging in poor behavior.”¹⁹⁸ For her, criminalization of cyberflashing offers the solution, whether by punishing the people who send nudes or by deterring the people who otherwise might. Lawmakers have been receptive to this punitive impulse. Several jurisdictions categorize acts of cyberflashing as “[s]exual offenses” within their criminal codes.¹⁹⁹ This treatment could have various implications, including adding those convicted of cyberflashing to a sex offenders’ registry.²⁰⁰ It can also strengthen calls for imprisonment. In the United Kingdom, for example, the Deputy Prime Minister lauded the government’s efforts to “keep[] sexual and violent offenders behind bars for longer,” noting that “[m]aking cyberflashing a specific crime is the latest step — sending a clear message to perpetrators that they will face jail time.”²⁰¹ Even when cyberflashing laws impose only civil liability, the remedies can include severe sanctions: not only may defendants face unspecified punitive damages, but plaintiffs may sometimes seek statutory damages — as with California’s eye-catching bounty of \$30,000 for receiving a single nude image.²⁰²

Tech companies are also increasingly entangled with the criminal legal system. As an example, Rosalie Gillett, Zahra Stardust, and Jean Burgess refer to Tinder’s program offering users free background checks on potential dates based on public records and reports of violence or abuse.²⁰³ Tinder also encourages users to file reports if they discover other users with criminal records or a history of violence,²⁰⁴ and the company has even enabled users to “log details about their dates and alert law enforcement if they feel unsafe.”²⁰⁵ Bumble encourages users to contact police when they receive an unsolicited nude,²⁰⁶ while other companies pledge to involve law enforcement unilaterally, as when Meta assures that its specialized sextortion teams will

198. Erin Carson, *Bumble Will Use AI to Protect You from Unwanted Dick Pics*, CNET (Apr. 24, 2019, at 10:09 ET), <https://www.cnet.com/culture/bumble-will-use-ai-to-protect-you-from-unwanted-dick-pics/> [<https://perma.cc/R3VJ-A46D>]; see Thompson, *supra* note 75.

199. See TEX. PEN. CODE § 21.19; Sexual Offences Act 2003 c. 42 § 66A; SING. PEN. CODE 1871 § 377BF.

200. See Mike Wright, ‘Cyber Flashing’ Should Be a Sex Crime, Woman’s Charity Says, THE TELEGRAPH (Feb. 19, 2020, at 12:01 ET), <https://www.telegraph.co.uk/news/2020/02/19/cyber-flashing-should-sex-crime-womans-charity-says> [<https://perma.cc/2SKY-MLKP>].

201. Jade Biggs & Kimberley Bond, *Cyberflashing: What Is Cyberflashing? The Offence Could Now Lead to Jail Time*, COSMOPOLITAN (Jan. 31, 2024), <https://www.cosmopolitan.com/uk/reports/a38148523/cyberflashing> [<https://perma.cc/8BBP-SG7R>].

202. CAL. CIV. CODE § 1708.88.

203. Gillett, Stardust & Burgess, *supra* note 22, at 6.

204. Garbo Launches Background Check Platform to Public and on Tinder, *supra* note 126.

205. Gillett, Stardust & Burgess, *supra* note 22, at 7.

206. *I’ve Received an Unsolicited Lewd Photo, What Should I Do?*, BUMBLE (Mar. 2022), <https://bumble.com/en/help/unaufgeforderete-fotos-nicht-texas> [<https://perma.cc/9AUA-Y7EH>].

“investigate and remove these criminals and report them to authorities.”²⁰⁷ Companies are even training and guiding police and prosecutors to facilitate legal investigations and cases.²⁰⁸ Snapchat, for example, calls law enforcement “crucial partners in [its] efforts to combat illegal or harmful activity on [its] platform.”²⁰⁹ In order to build professional connections and explain Snapchat’s services to law enforcement, the company hosts an annual Snap Law Enforcement Summit, with over 6,500 members of law enforcement registering for the most recent gathering.²¹⁰ As Snapchat’s Head of Law Enforcement Outreach has publicly declared: “We appreciate the challenges faced by law enforcement in the digital age and strive to support their work to protect our communities.”²¹¹

BTF’s punitive reflex finds support beyond legislative chambers and corporate offices. Laws criminalizing the sharing of NCII present a paradigmatic example of BTF’s carceral trend. The statutes draw on proposals by leading scholars Danielle Citron and Mary Anne Franks, who have written extensively about the value of criminal law in bringing about social change and advocated for such measures through the Cyber Civil Rights Initiative (“CCRI”).²¹² But as Robin West cautioned in a largely favorable review of Citron’s first book on the topic: “Any number of otherwise sympathetic readers will find troubling Citron’s reliance, and possible over-reliance, on criminal law as the hoped for legal response to much of this behavior. We already over-incarcerate our co-citizens.”²¹³ Indeed, West warned that the book’s core proposals would require “yet another expansion of the role the criminal

207. *Combating Sextortion and Intimate Image Abuse*, *supra* note 102.

208. *Id.*

209. *Investing in and Expanding Our Law Enforcement Operations*, SNAP INC. (Dec. 2, 2021), <https://values.snap.com/news/investing-in-and-expanding-our-law-enforcement-operations> [<https://perma.cc/CV9J-U6M6>].

210. *Snapchat Collaboration with Law Enforcement Continues with 4th Annual Summit*, SNAP INC. (Dec. 18, 2024), <https://values.snap.com/news/snap-fourth-annual-law-enforcement-summit> [<https://perma.cc/SBG2-G98E>].

211. *Snap’s Commitment to Collaboration with Law Enforcement*, SNAP INC. (Dec. 19, 2023), <https://values.snap.com/news/snaps-commitment-to-collaboration-with-law-enforcement-2023> [<https://perma.cc/RDU3-FNFQ>].

212. Danielle K. Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 349 (2014); Citron, *supra* note 182, at 1931; *Legislative Reform*, CYBER CIV. RTS. INITIATIVE, <https://cybercivilrights.org/legislative-reform> [<https://perma.cc/94ET-HRZS>].

213. Robin West, *Cyber-Sexual Harassment*, JOTWELL (Jan. 21, 2015), <https://juris.jotwell.com/cyber-sexual-harassment> [<https://perma.cc/R76G-QX6X>]; *see also* Aya Gruber, *Cautions against Criminalization*, in CRIMINALIZING INTIMATE IMAGE ABUSE: A COMPARATIVE PERSPECTIVE 80, 83–96 (Gian Marco Caletti & Kolis Summerer eds., 2024) (offering three “cautions” against criminalizing NCII); Levendowski, *supra* note 25, at 826–31 (criticizing efforts to criminalize NCII as an example of carceral feminism); Huq, *supra* note 191, at 1130 (expressing concern about “carceral-state capture” of proposals to regulate intimate image abuse).

justice [system occupies] in maintaining social order.”²¹⁴ The recent spate of state laws criminalizing AI-generated NCII might prompt similar concerns and critique.²¹⁵

Citron and Franks have responded to this general criticism in various works.²¹⁶ Franks, for example, endorses general concerns about overcriminalization, mass incarceration, and bias, but she nonetheless argues that none of them provide a “compelling reason” not to criminalize NCII and that “[o]ne can simultaneously support the criminalization of serious harms while criticizing the flaws of our current criminal justice system.”²¹⁷ She maintains, too, that American society “tends to under-police harms disproportionately affecting women” and, in particular, “undercriminalizes male violence against women.”²¹⁸ This rebuttal of the carceral critique is then paired with an affirmative argument for criminalizing NCII: “the immediate and often irreparable nature of the harm . . . requires the maximum deterrence potential and moral force of criminal law.”²¹⁹

To be sure, critiques of criminalization should contend with the justifications for using criminal law to address any given harm.²²⁰ Our point here, however, is that BTF’s punitive measures (whether through criminalization or otherwise) often rely on blunt individual sanctions to address sex-related harms that are, at least partly, socially determined. And while some scholars seek to justify this faith in punishment as a tool for social change (as well as for social control), companies and lawmakers often seem to assume uncritically that such interventions are all that is required to address complex interpersonal and social experiences.

Perhaps this is unsurprising, and it is hardly unique to BTF. Punishment exerts a surprising gravitational pull on the imagination of otherwise progressive and liberal scholars and activists.²²¹ As Ben Levin and Kate Levine identify, although skepticism toward criminal law is

214. West, *supra* note 213.

215. See *supra* Section II.B.2; see generally Kadri & West, *supra* note 90 (presenting an empirical study of recently proposed regulations of deepfakes through criminal and tort law).

216. See, e.g., Mary Anne Franks, *The Crime of “Revenge Porn,”* in APPLIED ETHICS IN CRIMINAL LAW 661, 663, 673–78 (Lawrence Alexander & Kimberly Ferzan eds., 2019) [hereinafter Franks, *The Crime of “Revenge Porn”*]; Franks, *supra* note 183, at 1302–08; Citron & Franks, *supra* note 212, at 362.

217. Franks, *The Crime of “Revenge Porn,”* *supra* note 216, at 673 (arguing that “[s]ome ‘overcriminalization’ concerns amount to little more than the sense that ‘there are just too many damn laws’”).

218. *Id.* at 674.

219. *Id.* at 665; see also *id.* at 675–78 (expanding this argument in favor of criminalization).

220. See, e.g., Gruber, *supra* note 213, at 83–96 (combining general cautions against criminal punishment with specific concerns about criminalizing NCII).

221. Aya Gruber, *Sex Exceptionalism in Criminal Law*, 75 STAN. L. REV. 755, 769 (2023); Kate Levine, *The Progressive Love Affair with the Carceral State*, 120 MICH. L. REV. 1225, 1233 (2022).

broad in the left and among progressives, academics and activists remain supportive in specific areas, especially where their sympathies toward victims might be higher.²²² Consider how Professor Hany Farid, a prominent deepfakes scholar and CCRI board member, answered a question about how to reduce the harms of sexual deepfakes and the “societal harms” of digital abuse more broadly: “I think the internet would be better if you could get punched in the face through your screen . . . The reality is there are awful people out in the physical world who do awful things, but there’s a lot more of them online because there’s no consequences.”²²³ Farid’s flippant reply was made partly in jest, but his next suggestion was delivered more seriously: “We need to put people like Andrew Tate in jail for the rest of their miserable lives”²²⁴ — a reference to the misogynist influencer who has been banned from YouTube, Facebook, Instagram, and TikTok.²²⁵

The continued enthusiasm for punitive responses and carceral logics may stem from many factors. At least in this area, we speculate that a key motive is BTF’s tendency to conceptualize sex harms as violations of individual rights rather than as symptoms of unequally distributed power to shape sexual meaning and experiences.²²⁶ If sending a nude image causes harm because the image means violence, threat, and danger, there might be interventions that can deactivate that meaning. Likewise, if having your sexual image shared without your consent implies unprofessionalism and humiliation, there are counternarratives that could disrupt those connotations. But if these meanings are fixed and the harms inevitable — as BTF suggests they are — then only the sender’s or sharer’s behavior seem like sensible objects of regulation.²²⁷ Like other criminal laws that situate social problems at the interpersonal level, BTF’s emphasis on wrongdoers reflects an understanding of sex harms as the product of individual action alone.²²⁸

BTF’s punitive disposition fits more generally with the feminisms that have had uptake in governance institutions. Janet Halley and her co-authors observe that dominance and liberal feminisms have found successful ways of working together in the governance of sexuality,

222. Ben Levin & Kate Levine, *Redistributing Justice*, 124 COLUM. L. REV. 1531, 1534, 1538 (2024).

223. WILLA, *Virtual Summit on Deepfake Abuse: Deepfake Abuse is Now Mainstream: What Can Tech Do?*, at 47:21–53:22 (YouTube, Mar. 20, 2024), <https://www.youtube.com/watch?v=mYVEMDktgUw>.

224. *Id.* at 53:27.

225. *Who Is Andrew Tate? The Self-Proclaimed Misogynist Influencer*, BBC (Feb. 27, 2025), <https://www.bbc.com/news/uk-64125045> [<https://perma.cc/4PWL-B7EW>].

226. See *supra* Section III.B; see also Huq, *supra* note 191, at 1116 (making a related critique); Gillett, Stardust & Burgess, *supra* note 22, at 5 (arguing that companies are “guided by criminal legal assumptions that individuals — rather than structural conditions — produce crime, and that punitive punishment deters offending”).

227. See Kennedy, *supra* note 23, at 1321; Huq, *supra* note 191, at 1116.

228. Benjamin Levin, *Victims’ Rights Revisited*, 13 CALIF. L. REV. ONLINE 30, 37 (2022).

often turning to criminal responses.²²⁹ To Halley, these feminist initiatives exhibit

a commitment to social order and social control as the preeminent goals, an understanding of human sexuality as a profound challenge to social order requiring repression and delegitimation, a classification of the state as a protector and of women as a pervasively vulnerable social group in need of its protection (more like children than like men), [and] a belief in the logic of repressive criminalization as the primary legal tool for dealing with social problems.²³⁰

With BTF, too, women's safety supposedly requires that the state and corporations exert extensive control over sexual communications to prevent and punish wrongful behavior. Closely evoking the reasoning of dominance feminism, BTF talks about sex as dangerous for women as a class.²³¹ But BTF also translates this structural vision of sex harms into the liberal legal paradigm by reworking sexual harms as violations of individual interests like consent and privacy. The structural vision that comes from dominance feminism also helps explain the exceptionally great harm allegedly caused by behaviors that could otherwise be perceived as harmless, such as the receipt of an unsolicited nude image. Indeed, BTF often collapses a continuum of harm into its most harmful expression: cyberflashing is *just like* in-person flashing, producing disgust is *just like* making someone unsafe, isolated instances of unsolicited sexual messages are *just like* sexual harassment.²³² As in other contexts, expanding the concept of harm leads to the control of behavior that has no actual victims.²³³ In addition, conceptualizing harms as great enables the reliance on criminal punishment as a proportional measure.²³⁴ The outcome is a potent vision of online sexuality as a space permeated by the grave infringement of women's individual rights, thereby justifying BTF's punitive initiatives for social control.

229. Halley, *supra* note 31, at 43.

230. *Id.* at 44.

231. See *supra* Section II.B.

232. See Sharon Marcus, *Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention*, in *FEMINISTS THEORIZE THE POLITICAL* 385, 389 (Judith Butler & Joan W. Scott eds., 1992); HALLEY, *SPLIT DECISIONS* 199 (2006); Gruber, *supra* note 221, at 810.

233. Bernard E. Harcourt, *The Collapse of the Harm Principle*, 90 *J. CRIM. L. & CRIMINOLOGY* 109, 114 (1999).

234. Dvoskin, *supra* note 15, at 95.

D. Profitable

Unsurprisingly, BTF often makes sense from a business perspective. By this, we do not mean that BTF projects are always lucrative. Although some users' preferences might combine with economic and legal incentives to push companies to sanitize online spaces,²³⁵ there is a surplus of aversion toward sexuality that these incentives cannot explain. Our theory is that some prudish and punitive approaches respond to the emergence of a new common sense that legitimizes and expects extensive regulation of online sexuality. This new common sense is driven by converging interests between Big Tech executives and conservative and progressive voices from outside the companies. Increasingly, conservatives favor broad sexuality regulation on moral or cultural grounds; progressives support it to foster inclusive online environments; and company leaders acquiesce to avoid reputational blowback and regulation that could undermine their businesses. Accordingly, even if any singular BTF project is not directly profitable, company executives support sexuality regulation that is perceived to be in their corporate interests, whether economically, legally, reputationally, or otherwise. This is a story, then, of how feminist ideas that conceptualize safety in terms of social order have found their way into the Big Tech C-suite and legislative offices.

In terms of companies' direct incentives in this realm, advertisers often prefer their brands not to appear next to sexual images, and some tech companies openly acknowledge that they restrict sexualized content to suit advertisers' desires.²³⁶ Banning nudity supposedly meets the preferences of consumers, too.²³⁷ Legal risks can also make companies sensitive to hosting sexual expression, as we saw in the wake of FOSTA's passage with corporate aversion toward sexual expression and sex work.²³⁸ And tech companies also respond to economic

235. See Niva Elkin-Koren, Giovanni De Gregorio & Maayan Perel, *Social Media as Contractual Networks: A Bottom Up Check on Content Moderation*, 107 IOWA L. REV. 987, 990, 1000–03 (2022) (discussing how market pressures, especially from advertisers, influence content moderation); Waldman, *supra* note 27, at 928–29 (exploring how online platforms adopt economic rationales to justify moderation of sexual content).

236. See *Advertiser-friendly Content Guidelines*, YOUTUBE HELP, <https://support.google.com/youtube/answer/6162278> [<https://perma.cc/2YEC-TXJC>] (outlining what kind of content is suitable for advertisers and excluding “[c]ontent that features highly sexualized content”); see also Rachel Griffin, *From Brand Safety to Suitability: Advertisers in Platform Governance*, 12 INTERNET POL’Y REV. 1, 4 (2023); Paddy Leerssen, *The Political Economy of Content Moderation* (manuscript, at 28) (“[A]vailable research . . . suggests that commercial moderation, as an advertising-driven enterprise, is typically averse to political content and controversy and broadly culturally conservative in its orientation.”).

237. See Waldman, *supra* note 27, at 942.

238. Kendra Albert, *Five Reflections from Five Years of FOSTA/SESTA*, 40 CARDOZO ARTS & ENT. L. REV. 413, 424 (2022); see also Citron & Jurecic, *supra* note 16, at 8–14; Danielle Citron & Quinta Jurecic, *FOSTA: The New Anti-Sex-Trafficking Legislation May*

pressure from other actors in the ecosystem: Tumblr banned nudity following pressure from Apple; OnlyFans's commission structure prevents it from functioning as an app; and Pornhub sanitized its platform following the threats of payment processors Visa and Mastercard.²³⁹

Indeed, even when a rogue tech company tries to resist BTF, some actors in the internet infrastructure can enforce their policies across the stack. Feeld, a dating app marketed for the curious and open-minded, has restrictions similar to Bumble's, such as rules prohibiting images showing "nudity, lingerie, briefs or jocks, close-ups of bulges, breasts, butts, or other sexualised body parts, even if they're covered."²⁴⁰ But in Feeld's case, the prudishness comes from Apple and Google, whose app stores bar "images that objectify a part of the human body."²⁴¹ Faced with these prudish mandates, Feeld relents, although not without protest: "While we never want to restrict your expression, we need to abide by their rules if we want to continue offering our app to the community."²⁴² In order to run a financially viable dating app, Feeld has no choice but to cave.

These economic and legal incentives are powerful, but they cannot fully account for the sweeping policing and sanitization of online sexuality across online platforms. For example, dating apps might be pressured by Apple to restrict nudity, but it is unclear why Apple is so invested in this policy. Similarly, lawmakers are not translating Bumble's sexual-exposure policies into law solely due to advertisers' preferences or corporate financial interests. So, what accounts for the surplus of BTF interventions?

Ideological and cultural drivers might be doing some work. BTF is immersed in a broader common sense that suspects sexuality as a source of immediate danger that threatens people's participation in public discourse.²⁴³ As a result, restrictions on online sexuality are readily

Not End the Internet, But It's Not Good Law Either, LAWFARE (Mar. 28, 2018), <https://www.lawfaremedia.org/article/fosta-new-anti-sex-trafficking-legislation-may-not-end-internet-its-not-good-law-either> [https://perma.cc/U6EL-BYDU]; Danielle Citron & Quinta Jurecic, *Platform Justice: Content Moderation at an Inflection Point*, LAWFARE (Sep. 7, 2018), <https://www.lawfaremedia.org/article/platform-justice-content-moderation-inflection-point> [https://perma.cc/8RMR-UEZC].

239. KATRIN TIIDENBERG, NATALIE ANN HENDRY & CRYSTAL ABIDIN, *TUMBLR* 33–35 (2021); Dow Jones, *Why OnlyFans Isn't in the App Store*, WALL ST. J. (May 13, 2021), <https://www.wsj.com/video/why-onlyfans-isnt-in-the-app-store/5279EBA8-B93B-4AC5-A1DE-2C681BE715FC>; Gillian Friedman, *Mastercard and Visa Stop Allowing Their Cards to Be Used on Pornhub*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/business/visa-mastercard-block-pornhub.html> [https://perma.cc/RU67-T84G].

240. *Photo Guidelines*, FEELD, <https://support.feeld.co/hc/en-gb/articles/9406756498204-Photo-Guidelines> [https://perma.cc/ZY5M-NUKA].

241. *Id.*

242. *Id.*

243. See Hannah Bloch-Wehba, *The Rise, Fall, and Rise of Cyber Civil Libertarianism*, in *FEMINIST CYBERLAW* 153, 162 (Meg Leta Jones & Amanda Levendowski, eds., 2024).

deemed permissible as long as they do not excessively censor non-sexual content of allegedly higher value.²⁴⁴ While it is impossible to pinpoint precisely how this common sense has taken hold, our sense is that this is partly a story of interest convergence between tech companies and conservative and progressive lawmakers and activists.

New technologies have historically generated moral panics and scrutiny, especially from voices on the right concerned with how emerging media can promote sexuality. At the beginning of the twentieth century, the rise of film production and popularization of radio provoked conservative pressure to limit sexual content.²⁴⁵ The blooming pornography industry reignited these efforts in the earlier internet era. Famously, a primary driver behind enacting the Communications Decency Act in 1996 was to encourage website operators to remove sexual materials.²⁴⁶ Nearly three decades later, conservatives maintain their support for regulating online sexuality. The Heritage Foundation’s Project 2025, for example, begins with a set of demands for President Trump’s administration: “Pornography should be outlawed. The people who produce and distribute it should be imprisoned . . . And telecommunications and technology firms that facilitate its spread should be shuttered.”²⁴⁷

On the more progressive end of the political spectrum, the shift of regulatory power to technology companies created space for changing expectations surrounding platform regulation. For a while it seemed like every major political event provoked calls for companies to restrict

244. In this regard, Meta’s Oversight Board has issued two telling decisions regarding the company’s ban on sexualized nudity. After Meta removed an image of a female breast in a cancer-awareness Instagram campaign, the Board considered how the company’s automated tools were mistakenly censoring non-sexual images. *Breast Cancer Symptoms and Nudity*, OVERSIGHT BD. (Jan. 28, 2021), <https://oversightboard.com/decision/IG-7THR3SII> [<https://perma.cc/2DB8-M9AB>]. Two years later, the Board expressed concern about how Meta’s nudity policies might unfairly impact transgender people. *Gender Identity and Nudity*, OVERSIGHT BD. (Jan. 17, 2023), <https://oversightboard.com/decision/BUN-IH313ZHJ> [<https://perma.cc/Z4HU-GFXQ>]. In neither case did the Board ever question the premise that Meta could ban sexualized nudity, even though its decisions regularly assert that the company should follow international human rights law and, thus, protect speech that international law protects. *Id.* Rather, the Board has tacitly accepted Meta’s nudity bans and merely demands protection for non-sexual content that serves other purposes, such as women’s healthcare or sex and gender equality.

245. Brenda Dvoskin, *The Illusion of Inclusion: The False Promise of the New Governance Project for Content Moderation*, 93 *FORDHAM L. REV.* 1315, 1346–59 (2025).

246. JEFF KOSSEFF, *THE TWENTY-SIX WORDS THAT CREATED THE INTERNET* 10 (2019).

247. PROJECT 2025, *MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE* 5 (Paul Dans & Steven Groves eds., 2023); see also Kim Kelly, *Sex Workers Are Trying to Warn Us About Project 2025*, *THE NATION* (Nov. 4, 2024), <https://www.thenation.com/article/politics/sex-workers-are-trying-to-warn-us-about-project-2025> [<https://perma.cc/5WCW-E3KA>]; Melissa Gira Grant, *The Real Targets of Project 2025’s War on Porn*, *NEW REPUBLIC* (July 10, 2024), <https://newrepublic.com/article/183636/project-2025-war-porn-trans-drag> [<https://perma.cc/2J7W-JCW7>].

online activity more aggressively.²⁴⁸ Many of the concerns swirling around Big Tech were valid. The widespread online harassment of female journalists inhibited their participation on social media.²⁴⁹ New forms of sexual abuse emerged and were ignored by the tech industry.²⁵⁰ And platforms' optimization for engagement and virality often prioritized content that undermined public health, electoral integrity, and human rights.²⁵¹ Faced with increasing outcry about the varied harms caused and enabled by Big Tech, progressive proposals tended to center narrowly on restricting online speech.²⁵² These efforts initially focused on corporate responses, but legislators on the left have increasingly reached for law as well.²⁵³

These pressures from the right and left cultivated a cultural shift from libertarian tenets about internet governance to a new common sense that assumes some forms of online activity should be heavily restricted to keep the public sphere safe.²⁵⁴ Evelyn Douek refers to this shift as a “cultural reevaluation” of what good platform governance looks like.²⁵⁵ Consider, for example, the opening line of a 2019 *New York Times* op-ed: “The idea that platforms like Twitter, Facebook, and Instagram should remove hate speech is relatively uncontroversial.”²⁵⁶ Likewise, bipartisan proposals to regulate online harms have frequently been introduced in the U.S. Congress in recent years.²⁵⁷ One might

248. See, e.g., Alexandra Stevenson, *Facebook Admits It Was Used to Incite Violence in Myanmar*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/technology/myanmar-facebook.html> [<https://perma.cc/UQ94-PY9Z>].

249. INT'L CTR. FOR JOURNALISTS, THE CHILLING: A GLOBAL STUDY OF ONLINE VIOLENCE AGAINST WOMEN JOURNALISTS 8 (Julie Posetti & Nabeelah Shabbir eds., 2022), <https://www.icfj.org/our-work/chilling-global-study-online-violence-against-women-journalists> [<https://perma.cc/EWJ6-7TUM>].

250. See DANIELLE K. CITRON, THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, INTIMACY, AND LOVE IN THE DIGITAL AGE 24–49, 64–81 (2022).

251. JULIE COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM 85 (2019); Julie Cohen, *Infrastructuring the Digital Public Sphere*, 25 YALE J.L. & TECH. SPECIAL ISSUE 1, 26 (2023).

252. See, e.g., CTR. FOR AM. PROGRESS, RECOMMENDED INTERNET COMPANY CORPORATE POLICIES AND TERMS OF SERVICE TO REDUCE HATEFUL ACTIVITIES 4 (2022).

253. See, e.g., Lorena O'Neil, *AOC's Deepfake AI Porn Bill Unanimously Passes the Senate*, ROLLING STONE (July 24, 2024), <https://www.rollingstone.com/politics/politics-news/aoc-deepfake-porn-bill-senate-1235067061> [<https://perma.cc/M5GJ-6DMZ>].

254. Brenda Dvoskin, *Representation Without Elections: Civil Society Participation as a Remedy for the Democratic Deficits of Online Speech Governance*, 67 VILL. L. REV. 447, 487–89 (2022); Bloch-Wehba, *supra* note 243, at 159; Noah Feldman, *A Supreme Court for Facebook*, in GLOBAL FEEDBACK AND INPUT ON THE FACEBOOK OVERSIGHT BOARD FOR CONTENT DECISIONS app. at 101 (June 27, 2019).

255. Douek, *supra* note 3, at 778–79; see also Quinta Jurecic, *Gab Vanishes, and the Internet Shrugs*, LAWFARE (Oct. 29, 2018, at 18:37 ET), <https://www.lawfaremedia.org/article/gab-vanishes-and-internet-shrugs> [<https://perma.cc/Y6R3-N8EK>] (referring to this phenomenon as a “change of heart”); *supra* Section II.A.

256. Brittan Heller, *Is this Frog a Hate Symbol or Not?*, N.Y. TIMES (Dec. 24, 2019), <https://www.nytimes.com/2019/12/24/opinion/pepe-frog-hate-speech.html> [<https://perma.cc/D2MH-Y3XW>].

257. See, e.g., O'Neil, *supra* note 253.

have imagined otherwise in a country with notoriously strong reverence for free speech and free markets, but this new common sense ushered in significant changes at major tech companies like Meta and even Twitter.²⁵⁸

Even in recent times, as conservative anxieties about the alleged silencing of their voices have fueled calls for fewer restrictions on online speech, the trend of regulating online sexuality has persisted.²⁵⁹ When Elon Musk rebranded Twitter as X, he pledged to be more permissive about what people could post on his platform.²⁶⁰ The backlash to his agenda from diverse constituencies suggests how deeply entrenched certain regulatory expectations have become.²⁶¹ But even if some share Musk's views, X has not changed its restrictions on sexual expression and activity under its safety framework.²⁶² Likewise, Meta's January 2025 announcements promising fewer bans on online content left intact its restrictions on nudity and sexual expression.²⁶³

As a result, companies have lumped sexuality regulation into the slate of industry best practices that help them appear as responsible actors before activists, the government, and the public, while lawmakers from across the political spectrum have cajoled and even compelled corporate leaders in this direction. This is not to say that companies, politicians, and activists are always singing from the same hymn sheet. Indeed, progressives and conservatives have often disagreed about how — and especially why — to regulate online sexuality. Yet they have overlapped in their agreement that sexuality poses serious risks that require legal and corporate restrictions. The main dissent has come

258. Vijaya Gadde, *Twitter Executive: Here's How We're Trying to Stop Abuse While Preserving Free Speech*, WASH. POST (Apr. 21, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/04/16/twitter-executive-heres-how-were-trying-to-stop-abuse-while-preserving-free-speech> [<https://perma.cc/3FPZ-4P3D>]; *Hateful Conduct*, META (Jan. 7, 2025), https://www.facebook.com/communitystandards/recentupdates/hate_speech [<https://perma.cc/3GQP-44QB>].

259. See Douek & Lakier, *supra* note 12, at 103.

260. Matt O'Brien, Barbara Ortutay & David Klepper, *Explainer: How Elon Musk Is Changing What You See on Twitter*, AP NEWS (Dec. 13, 2022, at 17:09 ET), <https://apnews.com/article/elon-musk-twitter-inc-technology-europe-business-1b3d4266c5acdab47fc1c95fe8026590> [<https://perma.cc/QNM8-MVHK>]; see *The X Rules*, *supra* note 13; Adrian Kopps, *Two Years After the Takeover*, DIGITAL SOCIETY BLOG (Oct. 28, 2024), <https://www.hiig.de/en/policy-changes-of-x-under-musk> [<https://perma.cc/MYE7-8FFD>].

261. See, e.g., *Civil-Society Groups Call on Twitter's Top-20 Advertisers to Demand that Elon Musk Fulfill His Promise to Safeguard Their Brands and Protect Users*, FREE PRESS (Nov. 1, 2022), <https://www.freepress.net/news/press-releases/civil-society-groups-call-twit-ters-top-20-advertisers-demand-elon-musk-fulfill-promises> [<https://perma.cc/S6EE-BH5R>]; *Here Today, Elon Tomorrow: Are Advertisers Abandoning X?*, TECHINFORMED (Aug. 23, 2024), <https://techinformed.com/why-advertisers-are-boycotting-x-elon-musk-impact-2024> [<https://perma.cc/9T9B-7RMA>].

262. See *The X Rules*, *supra* note 13.

263. See Hendrix, *supra* note 14.

from sex workers and their allies.²⁶⁴ Their activism has provided persuasive accounts of how anti-sex policies discriminate against queer and commercial sex, hurt sex workers financially, and make sex work more dangerous.²⁶⁵ Yet, possibly due to the stigmatization of sex work more broadly, their voices have been sidelined.²⁶⁶

One could assume that companies just do whatever is good for business or a majority of users “prefer.” Surfacing the ideological drivers of corporate behavior shows that these “preferences” do not exist in the ether. They are constituted by actors engaged in BTF, including feminist advocates.²⁶⁷ BTF gives cover to company actions aimed at appeasing advertisers, lawmakers, and civil society, while also shaping those preferences into the common sense of the era. Accordingly, the important takeaway is that business interests are not fixed. Rather, scholars and activists that help shape what feminism demands have an opportunity to influence what ultimately “‘make[s] sense’ to power.”²⁶⁸

IV. REIMAGINING SAFETY: A COMPETING FEMINIST AGENDA FOR ONLINE SEXUALITY

Even if safety ought to be a key goal of sexuality regulation, the current BTF framework is troubling. Much like how teaching sexual abstinence is a failed safety intervention,²⁶⁹ BTF’s prudish and punitive approaches often fail to help people navigate online sexuality safely. Inspired by queer and critical feminist theory, this Part offers conceptual and practical guidance to salvage safety in the age of Big Tech.

The first section introduces an alternative understanding of the relationship between safety and sexuality. It supplements BTF’s understanding of sex harms as purely the result of wrongdoer-victim

264. See, e.g., YORK, *supra* note 19, at 124; Danielle Blunt & Zahra Stardust, *Automating Whorephobia: Sex, Technology and the Violence of Deplatforming*, 8 PORN STUD. 350, 350 (2021); Zahra Stardust, *Submission to the Oversight Board on Gender Identity, Nudity and Sexual Solicitation*, QUEENSLAND UNIV. OF TECH. (2022), https://eprints.qut.edu.au/234610/1/Oversight_Board_Zahra_Stardust_090822.pdf [<https://perma.cc/FJW6-U4MV>].

265. See, e.g., Carolina Are, *The Shadowban Cycle: An Autoethnography of Pole Dancing, Nudity and Censorship on Instagram*, 22 FEMINIST MEDIA STUD. 2002, 2016 (2022); Danielle Blunt, Ariel Wolf, Emily Coombes & Shanelle Mullin, *Posting into the Void: Studying the Impact of Shadowbanning on Sex Workers and Activists*, HACKING//HUSTLING, <https://hackinghustling.org/posting-into-the-void-content-moderation> [<https://perma.cc/Y42X-6Z8Z>].

266. Dvoskin, *supra* note 245, at 1335.

267. That is not to say, of course, that all feminist advocates working on issues of technology and sexuality are engaging in BTF, nor that any advocate’s involvement in a particular BTF project makes them responsible for everything companies and lawmakers do in this space. We mention the partial role played by these external stakeholders because to ignore it would provide an incomplete and misleading account of what sometimes appears to be influencing companies and lawmakers when they advance a BTF agenda.

268. See Halley, *supra* note 26, at ix.

269. Susan Appleton & Susan Stiritz, *The Joy of Sex Bureaucracy*, 7 CALIF. L. REV. ONLINE 49, 54 (2016).

interactions by highlighting the social determinants of sexual safety. With these social determinants brought to the fore, it becomes apparent that safety is often best served by empowering people to shape the norms and terms of online sexuality. The second section then illustrates how to implement this vision across four different axes: designing tools to manage sexual risks, encouraging alternative social configurations of gender and sexual relations, preserving space for the emergence of sexual counternarratives, and avoiding legal rules that make sexuality unnecessarily risky.

A. The Social Determinants of Sexual Safety

Encounters with sexuality are safer for people who have greater autonomy. Autonomy means power to enter and exit a sexual encounter and to set the terms of such experiences.²⁷⁰ It also requires power to co-produce with fellow members of society the formal laws and informal conventions that regulate sexual meaning and experiences. Conversely, in the paradigmatic scenarios of unsafe sexual experiences, two deficits undermine people's autonomy. First, a person might lack power to decide the terms of particular activities, as when they receive an unwanted sexual message or their nude image is shared without permission. Second, they might have less power to participate in the social production of norms that structure experiences, both individually and as members of a social group. For instance, if someone's nude image is made public, they might be subject to reputational harm, even if they disagree with such conventional meaning. These two sources of unsafety are intertwined but worth separating for analytical and regulatory purposes.

Conventional narratives or scripts can undermine or enhance autonomy.²⁷¹ They set expectations and assign meaning to people's behavior, operating as the background against which people make decisions. To illustrate how this can occur with online sexuality, let us look at three paradigmatic cases of potentially harmful sexual acts: sending unwanted sexual communications, distributing NCII, and producing sexual deepfakes. In each scenario, conventional narratives limit people's autonomy and put them in danger. The dominant narrative sustaining BTF is an essentialist heterosexual view of sexuality that imagines men as naturally more dangerous than women, who are necessarily disempowered. We surface how these narratives affect people's safety not only to understand the roots of unsafe sexuality, but also to explore how different conventions could enhance safety.

Let us first take the case of unwanted communications. Imagine a woman receives the image of a penis as a first message in a chat on a

270. See FISCHER, *supra* note 174, at 181.

271. Marcus, *supra* note 232, at 392.

dating app. Cyberflashing laws and many dating apps' policies make a set of assumptions, including that the receiver will feel violated.²⁷² These assumptions are worth interrogating. When a man starts a conversation on a dating app with a picture of a penis, why does it cause offense or alarm? Why is the interaction shameful for the receiver instead of the sender? Why are representations of male genitalia threatening? If they are threatening, why do men send them? Why are images of female genitalia inviting instead? Similarly, why or when is sexting offensive? Why does it favor women — why is it feminist — to restrict unsolicited sexual messages?

The receiver's reaction is actually hard to predict. She might find it arousing, hilarious, scary, disgusting, disrespectful, or disappointing.²⁷³ Cyberflashing laws and corporate policies banning unsolicited nudity assume that she will often find it violative of her autonomy — close to harassment, threats, or sexual abuse.²⁷⁴ The assumption might make sense given what we know about existing social conventions. The nude image might convey that the man has decided that the engagement will have the main — even sole — purpose of leading to a sexual experience. The woman might expect the man to know that, at least in their social context, a man wanting only sex is read as disrespectful because respect requires a romantic, long-term, not-just-sexual interest. Convention dictates that she is supposed to be interested in romance. Accordingly, she might expect him to know that his decision to take this option off the table is disregarding her presumptive will. The prevailing consent framework for cyberflashing regulation gives her the option to accept or reject the offer of a sexual experience, but not to shape its terms. Thus, the nude image creates harm through an intricate web of social conventions that are (expected to be) known and that hinder the receiver's autonomy to participate in the design of the engagement. These conventions have costs for men, too. Some men might prefer their nude pictures to be read as invitations to play and not a sign of disrespect. Such a meaning would give men more freedom to engage in play without having to avoid coming across as disrespectful — a freedom that women generally enjoy more than men.

Now consider a second scenario in which a person shares someone else's nude images without permission. One could ask analogous questions as in the first scenario. Why are nude bodies a source of humiliation? Why are women often perceived as less valuable after being seen naked? Why would the images harm someone's reputation? Here, similar mechanisms make the nude image a source of danger. Most

272. See *supra* Section III.A.

273. See Alexandra S. Marcotte, Amanda N. Gesselman, Helen E. Fisher & Justin R. Garcia, *Women's and Men's Reactions to Receiving Unsolicited Genital Images from Men*, 58 J. SEX RSCH. 512, 516–17 (2021).

274. See *supra* Sections III.B–C.

obviously, the depicted person does not participate in deciding how to relate to others, but it is not only the lack of participation in that specific instance that causes harm. A preexisting set of norms gives meaning to the experience. A school teacher resigns after the school finds out that she has been running an Only Fans account.²⁷⁵ A judge quits the bench after her nude images are found online because public nudity is incompatible with the honor needed to serve in the judiciary.²⁷⁶ A girl's classmates bully her after her nude selfie circulates online because they have learned that being seen naked renders a girl worthless.²⁷⁷ The victims surely did not agree to the sharing of their images. But they might also disagree with the meaning assigned to these images as damaging their reputation, morality, or capacity to work.

A third typical instance of unsafety involves the production of sexual deepfakes. These are commonly videos that juxtapose a person's face with a porn actress's nude body to create the illusion that the person is performing a sex act.²⁷⁸ As Danielle Citron documents, the producers, viewers, and subjects of sexual deepfakes often interpret them as humiliating, reducing the individuals to sexual objects and breathing life into the threat of sexual violence that looms over women's lives.²⁷⁹ Sexual deepfakes work as a source of humiliation not only — not even primarily — because they are produced without the subject's consent, but because they validate preexisting narratives that inscribe shame on certain sexual acts and participating in porn. It is hard to imagine that a deepfake of someone winning a marathon would be harmful in any meaningful sense. Similarly, deepfakes depicting sexual acts associated with female domination might humiliate women less than those showing them performing acts of submission. If the subject does not endorse this reading of the material, she will still be sanctioned by those viewers who do. For the porn actress, the non-economic harm comes from the change in the meaning of the performance or the collapse of its multiple meanings into its most harmful one. Even if the original performance was a celebration of sexual submission, the deepfake excludes that meaning and instead prioritizes a harmful interpretation.

Autonomy is undermined in two ways in these scenarios. Most immediately, one participant decides the terms of a sexual experience on behalf of the other. BTF narrowly focuses on this source of unsafety.²⁸⁰

275. Sean Keane, *Teachers' OnlyFans Side Hustles Lead to Resignation, Public Battle*, ABC NEWS (Aug. 14, 2024, at 11:22 ET) <https://abcnews.com/US/teachers-onlyfans-side-hustles-lead-resignation-public-battle/story?id=112799593> [<https://perma.cc/47RD-KRW4>].

276. Franks, *supra* note 183, at 1265–66.

277. Michelle Dean, *The Story of Amanda Todd*, NEW YORKER (Oct. 18, 2012), <https://www.newyorker.com/culture/culture-desk/the-story-of-amanda-todd> [<https://perma.cc/VCM4-SXG2>].

278. Citron, *supra* note 182, at 1921.

279. *Id.* at 1921, 1924.

280. *See supra* Section III.B.

More profoundly, conventional narratives constrain people's options by distributing power among the participants, prescribing their behavior, and determining social sanctions for diverging from the set expectations.

The works of Sharon Marcus and Christine Helliwell illustrate how conventional narratives can restrict autonomy and diminish safety in the context of sexual violence. Marcus argues that rape is "enabled by narratives."²⁸¹ Conventional ideology imagines rape as inevitable: women are weak and cannot defend themselves or fight back against rapists; if they fight, rapists will become more violent and the rape more painful; accordingly, only post-rape interventions like punishment make sense.²⁸² This rape script teaches women to feel fear and disempowers them to combat rape even though empirical data suggests fighting back can be effective.²⁸³ Marcus finds that this conventional script imagines penises to possess "the objective capacity to be weapons, tools, and instruments of torture."²⁸⁴ With the purpose of increasing women's safety, Marcus calls not for stricter post-rape intervention, but for changing the rape narrative to deactivate rapists' power to harm in the first place.²⁸⁵

Helliwell's ethnographic work in the Dayak community of Gerai in Indonesian Borneo provides an example of another possible rape narrative — one that might enhance safety.²⁸⁶ She tells the story of a man who entered a woman's house, got inside her mosquito net, and climbed under her blanket while ordering her to stay quiet.²⁸⁷ The woman pushed him off, and her neighbors saw the man run away. Helliwell heard the story the next morning from the neighbors, who were laughing at the thought of the half-naked man running down the street.²⁸⁸ She could not understand why they were laughing about an attempted rape.²⁸⁹ Finally, the woman herself joined the conversation, and Helliwell was relieved to learn that she was indeed angry:

Her anger was palpable . . . Had she been frightened? I asked. Of course she had — Wouldn't I feel frightened if I awoke in the dark to find an unknown person inside my mosquito net? Wouldn't I be angry? Why then, I asked, hadn't she taken the opportunity, while

281. Marcus, *supra* note 232, at 389.

282. *Id.* at 388.

283. *Id.* at 389.

284. *Id.* at 395.

285. *Id.*

286. Christine Helliwell, "It's Only a Penis": Rape, Feminism, and Difference, 25 SIGNS: J. WOMEN CULTURE & SOC'Y 789, 789 (2000).

287. *Id.*

288. *Id.*

289. *Id.* at 789–90.

he was entangled in her mosquito net, to kick him hard or to hit him with one of the many wooden implements near at hand? She looked shocked. Why would she do that? she asked — after all, he hadn't hurt her. No, but he had wanted to, I replied. She looked at me with puzzlement. Not able to find a local word for *rape* in my vocabulary, I scabbled to explain myself: "He was trying to have sex with you," I said "although you didn't want to. He was trying to hurt you." She looked at me, more with pity than with puzzlement now, although both were mixed in her expression. "Tin [Christine], it's only a penis," she said. "How can a penis hurt anyone?"²⁹⁰

Helliwell's story shows how the social conceptualization of the penis as a weapon might reinforce power differentials between those who have a penis and those who might be attacked by it. The passage reveals the surprise that many, us included, might feel at the idea that a penis might not be perceived as dangerous. More generally, it might be surprising that the meaning — and power — of the penis might be underdetermined.

Recognizing how conventional narratives create sexual danger enables possibilities that BTF overlooks. Instead of merely preventing risky encounters or punishing wrongdoers, safety interventions can cultivate new conventions. If it is not the sexual image — whether unsolicited, shared without consent, or artificially produced — that causes harm, but what the image is expected to mean in a society, then changing that expectation can deactivate its power to harm. Similarly to Helliwell's example, some online communities find dick pics less offensive than others and, accordingly, the senders in those places have less potential to inflict injury.²⁹¹

Indeed, looking at the discursive status of sexual experiences implies a theory of social change.²⁹² The discourses that assign meaning to human behavior are fragmented, imperfectly reproduced, and in constant struggle. Within these interstices, hope for other narratives lies. In this spirit, the next section proposes safety interventions aimed at increasing people's autonomy to set the terms of sexual experiences as well as people's power to shape social norms that operate in the background of sexual life.

290. *Id.* at 790.

291. See Marcotte et al., *supra* note 273, at 516.

292. Dvoskin, *supra* note 15, at 106.

B. Productive Interventions

Importantly, not all current forms of BTF should be avoided. Sexuality is risky, and some BTF interventions have usefully addressed these risks — StopNCII’s technology mitigates invasions of sexual privacy caused by NCII, and Google’s tools help shield female journalists from gendered harassment, to cite a pair of promising examples.²⁹³ But for those who share our concern that current calls for safety inappropriately expand control over sexual activities and sanitize public and private spaces, we offer a set of alternative proposals.

The first intervention we propose is to offer technical tools that increase people’s control over sexual experiences. Our three other interventions more directly aim to pierce conventional narratives that limit people’s choices and unfairly sanction their sexuality. In outlining these interventions, this section imagines how the three scenarios discussed above would become safer if our proposals were adopted.

Before proceeding, we should again recognize the limits of these interventions. The project of making sexuality completely safe is either unattainable or too detrimental for erotic life. Sexual abstinence might be the safest path, but it does not work because either people seek out risk or the cost for eroticism is too high. It is not merely an issue of tolerating an unavoidable minimum level of risk. At least for some, pleasure and danger are deeply intertwined.²⁹⁴ Eroticism stems from transgression of limits, and risky behavior might produce desire.²⁹⁵ Accordingly, safer conditions might only encourage riskier behavior.²⁹⁶ Similarly, safety measures might be a turn-off and go unused. For example, obtaining written consent from the other party could be safer but not conducive to the activity.²⁹⁷ As in any other realm of regulation, people will disagree about the optimal level of risk. The goal of our proposed approach is not to eliminate risk, but to help people navigate those risks with more autonomy and thus more safety.

1. Designing Technology to Increase Control

Designing safe online platforms requires balancing multiple goals. On the one hand, safety features should take seriously the harms that can stem from online sexuality and generally help users navigate

293. See *supra* note 105; Nico Grant, *Google and Twitter Try to Help Women Who Face Online Attacks*, BLOOMBERG (Mar. 8, 2022), <https://www.bloomberg.com/news/articles/2022-03-08/google-twitter-try-to-clamp-down-on-online-harassment-of-women> [<https://perma.cc/7RUD-87LT>].

294. See generally Vance, *supra* note 35 (collecting the essays producing the framework of pleasure and danger to think through sex regulation).

295. Kennedy, *supra* note 23, at 1361.

296. See Cole, *supra* note 161, at 166.

297. FISCHER, *supra* note 174.

sexuality at their preferred level of risk. On the other hand, safety precautions should avoid fixating narratives that can partly constitute sex harms. With that dual purpose in mind, one should ask three questions to assess the merits of safety features: Who is this feature trying to keep safe from what? How does this feature affect possibilities for pleasure and emancipation? And which conventions does this feature validate or challenge? Let us briefly unpack each question.

First, because this is a balancing exercise, it is crucial to identify precisely the harm a safety feature is targeting. As we have seen, measures taken in the name of sexual safety often clump together serious abuse with reactions of disgust or mere preferences.²⁹⁸ Calls for safety that collapse everything from sextortion to sexting make a nuanced assessment impossible. The next step is to evaluate how a safety feature affects opportunities for pleasure and emancipation. To us, it is important to defend pleasure for its own sake, beyond the possibilities that pleasure brings for political transformation.²⁹⁹ BTF often assumes that a value other than pleasure is necessary to justify the protection of sexuality, as when platforms permit nudity only if it serves non-sexual purposes like healthcare.³⁰⁰ But a key question ought to be: Does this safety feature needlessly curtail opportunities for play that can be healing, liberating, or simply pleasurable? The final step interrogates which conventions the safety feature endorses or challenges. As the next subsections explore in more detail, challenging harmful sexual scripts and preserving space for counterhegemonic narratives can enhance safety. Both the design and styling of safety features can be important sites of discursive struggle.

A few examples illustrate how to evaluate safety features under these principles. In general, safety measures that treat sex as inevitably unsafe should trigger suspicion. For instance, several platforms now rely on AI to detect draft sexual messages and discourage users from sending them, as with Plenty of Fish's Are You Sure? tool.³⁰¹ Other platforms — including Reddit, Tumblr, and X — eschew the broad sexuality bans favored by other platforms, but they still force users to label certain types of sexual content before posting it.³⁰² Labeling is generally preferable to censoring and, at least on some platforms, lets people

298. See *supra* Section III.A.

299. See Margo Kaplan, *Sex-Positive Law*, 87 N.Y.U. L. REV. 89, 96–98 (2014); see generally Nadine Strossen, *A Feminist Critique of 'the' Feminist Critique of Pornography*, 79 VA. L. REV. 1099, 1140–71 (1993) (detailing ten ways that censoring pornography might undermine the interests of women and feminists).

300. See *supra* notes 163–67 and accompanying text.

301. See Johannson, *supra* note 157 and accompanying text.

302. *Reddit Content Policy*, REDDIT, <https://www.redditinc.com/policies/content-policy> [<https://perma.cc/JZT7-N8DX>]; *Tumblr User Guidelines*, *supra* note 58; *Adult Content*, X (FORMERLY KNOWN AS TWITTER), <https://help.x.com/en/rules-and-policies/adult-content> [<https://perma.cc/78NL-E4AW>] [hereinafter *X Adult Content Policy*].

toggle their settings depending on when they wish to engage with sexual content.³⁰³ Nonetheless, labeling requirements that apply only to sexual content can stigmatize sexuality, especially when companies justify them in sex-negative terms. Notice, for instance, that referring to sexual content as “not safe for work” validates the idea that sex and work do not belong together, reinforcing the stigmatization of jobs in the sex industry.³⁰⁴

Even optional features can be sex-negative interventions. Take, for example, Plenty of Fish’s “No Dick Pics” Badge, which is problematic even though it is optional.³⁰⁵ It attributes the meaning of the dick pic not to the context of the conversation, but as a dividing line between people who play nice and people who do not. In that sense, it reinforces the idea that respectful users will not share nudes. Or consider how dating app Hily promotes its tool that blurs sexual images in chats.³⁰⁶ Hily lets users decide whether to turn on this feature, while also making it quite easy to unblur sexual images with a simple tap.³⁰⁷ Better still, Hily lets users disable the feature entirely or merely for specific chats.³⁰⁸ But Hily’s messaging deflates the benefits of these control-enhancing affordances. Anyone who sends a nude image (whether solicited or not) will see their Hily “risk score” go up.³⁰⁹ Once a user’s score hits a certain level, the company pledges to limit their activity on the app “so that they reconsider their communication style.”³¹⁰ As Hily’s CEO concludes: “We want our app not to just be a safer space, but also to help people be better.”³¹¹

Safety features need not fall into these traps. Technology should help users engage in sexuality with less risk and without moralizing their behavior. For example, platforms should protect people’s sexual privacy by blocking screenshots of private messages and images.

303. *Compare Pinterest Community Guidelines*, PINTEREST, <https://policy.pinterest.com/en/community-guidelines> [<https://perma.cc/9C8B-RBQY>] (providing that Pinterest may hide nudity or erotica from users unilaterally), *with Mature / NSFW Content*, TUMBLR, <https://help.tumblr.com/mature-nsfw-content> [<https://perma.cc/Z9FG-YNG6>] (explaining how Tumblr users can rely on labeling to “adjust their feeds to their own comfort levels” with certain “mature” content), *and X Adult Content Policy*, *supra* note 302 (detailing how labeling empowers users by “restricting exposure to Adult Content for . . . adult users who choose not to see it”).

304. *Mature / NSFW Content*, *supra* note 303; Zahra Stardust, *Safe for Work: Feminist Porn, Corporate Regulation and Community Standards*, in *ORIENTING FEMINISM: MEDIA, ACTIVISM AND CULTURAL REPRESENTATION* 155, 158 (Catherine Dale & Rosemary Overell eds., 2018).

305. *See POF NDP Badge*, *supra* note 146.

306. Luke Smith, *Hily Launches Blur Feature on Inappropriate Images*, GLOBAL DATING INSIGHTS (Mar. 5, 2021), <https://www.globaldatinginsights.com/news/hily-launches-blur-feature-on-inappropriate-images> [<https://perma.cc/NBZ5-7UDW>].

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

Similarly promising tools include preventing image downloads, limiting image views by time or frequency, restricting message forwarding, and enabling disappearing chats and message unsending. These features are not infallible and might make reporting abuse more difficult, but they add productive layers of friction and signal that some sexual conversations are private — not disgusting.

Other affordances can make it safer to both share and conceal sexual images. Platforms that allow users to send photos should offer easy in-app editing to facilitate removal of identifying features and metadata from images, lessening the risks of negative consequences if sexual images are later disseminated online.³¹² Platforms should also enable users to store images in hidden and encrypted folders that are more secure if someone accesses their device without permission. Likewise, platforms should give users the option of establishing password protection for particular images or conversations. And safety features should seek to mitigate sex harms once they have occurred. For example, StopNCII's hashing program — which prevents repeated uploads of pictures that have been reported as nonconsensual — offers a tailored tool that lessens the harmful consequences of NCII without inhibiting sexual freedom.³¹³ A productive extension might apply the same technology to sexual deepfakes. Finally, people should be supplied with tools to block users who engage in sex harms and to document their experiences.³¹⁴

Some Big Tech companies already offer features like these. Instagram has piloted sophisticated blocking tools that allow people to not only block other users but also preemptively bar any new accounts those users might create.³¹⁵ The company has also launched a separate feature letting people “restrict” other users, limiting exposure to their content without tipping them off that their account has been blocked entirely.³¹⁶ These innovations are commendable in an industry that often relies on blunt blocking tools that can pose inadvertent risks to abuse victims, such as by allowing users to discover when they have

312. See *Staying Safe Online: How to Minimize Your Risk of Image-Based Sexual Abuse*, CYBER CIVIL RIGHTS INITIATIVE (Oct. 10, 2024), <https://cybercivilrights.org/staying-safe-online-how-to-minimize-your-risk-of-image-based-sexual-abuse> [https://perma.cc/B4E8-XMGW] (suggesting ways to create nude images that omit identifying information).

313. See *supra* note 105 and accompanying text.

314. See, e.g., *Harassment Manager*, JIGSAW, <https://www.thinkwithgoogle.com/consumer-insights/consumer-trends/trending-visual-stories/harassment-manager/> [https://perma.cc/Q2R3-XMXA].

315. *Introducing New Tools to Protect Our Community from Abuse*, INSTAGRAM (Apr. 21, 2021), <https://about.instagram.com/blog/announcements/introducing-new-tools-to-protect-our-community-from-abuse> [https://perma.cc/94P7-446B].

316. *Stay Safe*, META, <https://about.meta.com/actions/safety/topics/safety-basics/tools/stay-safe> [https://perma.cc/FEU6-VSV8].

been blocked.³¹⁷ And yet these piecemeal tools are offered too inconsistently. Risks emerge from the cracks in protection between different platforms.³¹⁸

While many of these safety features would need to stem from companies, law can also encourage the adoption of productive tools. Given recent technological advances in removing NCII, lawmakers could mandate that platforms establish processes to empower users to make such requests. Indeed, this idea has already entered the regulatory imagination, at least in part. The TAKE IT DOWN Act requires covered platforms to create reasonable procedures to remove real and deepfake NCII pursuant to a valid request, as soon as possible and at least within forty-eight hours.³¹⁹ The law's mandates are enforced by the Federal Trade Commission, which can hold companies accountable for failing to comply with these obligations.³²⁰ Similarly, California recently passed S.B. 981, requiring platforms to have mechanisms for users to report sexual deepfakes of themselves.³²¹ Once reported, the content must be blocked temporarily while the company investigates and permanently removed if confirmed to be NCII.³²² These laws show some promise, particularly in detailing precisely the processes platforms must establish to allow people to flag NCII and request its removal.³²³

317. See Kadri, *Networks of Empathy*, *supra* note 41, at 1089–90 (discussing the drawbacks of simplistic blocking tools offered by some online platforms); Yael Grauer, *Can People Tell When You've Blocked Them on Texting or Social Media Messaging Apps?*, CONSUMER REPS. (Jan. 24, 2022), <https://www.consumerreports.org/electronics/digital-security/can-people-tell-when-blocked-texting-social-messaging-apps-a9942470743> [<https://perma.cc/GQ7K-M39T>] (detailing how some platforms reveal when a user has been blocked and explaining how blocking might undermine a person's safety when they are experiencing harassment).

318. LUCY QIN, VAUGHN HAMILTON, YIGIT AYDINALP, MARIN SCARLETT, SHARON WANG & ELISSA M. MEDMILES, *TOWARD SAFER INTIMATE FUTURES* 9–11 (2023).

319. TAKE IT DOWN Act, *supra* note 6.

320. *Id.*

321. Cal. S.B. 981 § 1(d)(1) (2024).

322. *Id.*

323. For example, the TAKE IT DOWN Act provides sensible and detailed requirements on this front. See TAKE IT DOWN Act, *supra* note 6, providing that the written notification and request must include:

(i) a physical or electronic signature of the identifiable individual (or an authorized person acting on behalf of such individual); (ii) an identification of, and information reasonably sufficient for the covered platform to locate, the intimate visual depiction of the identifiable individual; (iii) a brief statement that the identifiable individual has a good faith belief that any intimate visual depiction identified under clause (ii) is not consensual, including any relevant information for the covered platform to determine the intimate visual depiction was published without the consent of the identifiable individual; and (iv) information sufficient to enable the covered platform to contact the identifiable individual (or an authorized person acting on behalf of such individual).

Yet they also risk leaving too much discretion for companies to claim compliance through the kinds of prudish and counterproductive measures that BTF has largely favored to date. Worse still, they might create further legal incentives for companies to remove and punish lawful online sexuality.

The TAKE IT DOWN Act, for example, immunizes companies from any claim based on their “good faith” removal of material claimed to be NCII but ultimately deemed lawful.³²⁴ The Act also threatens companies with high fines if they fail to “reasonably comply” with the statute’s takedown obligation within forty-eight hours.³²⁵ The law features no requirement for people reporting NCII to certify the truth of their claims, no provision to deter frivolous or bad-faith takedown requests, no notification requirement to alert people when companies remove their content, no right to challenge a company’s decision to take down content, and no immunity to insulate a company’s good-faith attempts to investigate the illegality of alleged NCII.³²⁶ The Act also obliges platforms to remove identical copies of any material they take down.³²⁷

These features combine to create precarious conditions for online sexuality.³²⁸ By shielding “good faith” removals of lawful sexual

Additionally, the Act provides clear guidance about the kind of notice a covered platform must provide about the notice and removal process. *See id.* (outlining that covered platforms must provide “a clear and conspicuous notice” that “is easy to read and in plain language” and “provides information regarding the responsibilities of the covered platform . . . , including a description of how an individual can submit a notification and request for removal”).

324. *Id.* § 3(a)(4).

325. *Id.* §§ 3(a)(3), (b)(1)–(2); *see also* James Grimmelmann, *Deconstructing the “TAKE IT DOWN” Act*, 68 COMM. ACM 28 (2025), <https://cacm.acm.org/opinion/deconstructing-the-take-it-down-act> [<https://perma.cc/W7Q2-Y682>].

326. *See* TAKE IT DOWN Act, *supra* note 6; Alexandra Martinez, *Trump’s Take It Down Act Threatens Free Expression, Artists and Digital Rights Advocates Warn*, PRISM (July 21, 2025), <https://prismreports.org/2025/07/21/take-it-down-act-censorship-art> [<https://perma.cc/R3GD-LV23>]; David Inserra, *The TAKE IT DOWN Act Shows Noble Intentions Can Make Bad Tech Policy*, CATO INSTITUTE (Apr. 16, 2025), <https://www.cato.org/blog/take-it-down-act-shows-noble-intentions-can-make-bad-tech-policy> [<https://perma.cc/8PVF-HAFU>].

327. TAKE IT DOWN Act, *supra* note 6.

328. Martinez, *supra* note 326 (asserting that the Act “is a wolf in victim’s clothing”); Joe Mullin, *The TAKE IT DOWN Act: A Flawed Attempt to Protect Victims That Will Lead to Censorship*, ELEC. FRONTIER FOUND. (Feb. 11, 2025), <https://www.eff.org/deeplinks/2025/02/take-it-down-act-flawed-attempt-protect-victims-will-lead-censorship> [<https://perma.cc/GT9T-JLKZ>]; *CCRI Welcomes Recent Calls for Federal Legislation against Image-Based Sexual Abuse*, CYBER CIVIL RIGHTS INITIATIVE (Mar. 7, 2025), <https://cybercivilrights.org/ccri-welcomes-recent-calls-for-federal-legislation-against-image-based-sexual-abuse> [<https://perma.cc/3EXT-TH3P>] (praising the Act’s provisions criminalizing NCII but expressing reservations about its reporting and removal requirements); Kaylee Williams, *A “Victory for Survivors” or “Bittersweet News” — Experts React to Passage of the TAKE IT DOWN Act*, TECH POLICY PRESS (May 1, 2025), <https://www.techpolicy.press/a-victory-for-survivors-or-bittersweet-news-experts-react-to-passage-of-the-take-it-down-act> [<https://perma.cc/FKM6-C27B>] (quoting Professor Mary

content and threatening penalties for takedown delays and omissions, companies can avoid liability without implementing expensive new procedures by purging sexuality proactively.³²⁹ Even if companies undertake to review complaints, the Act provides a strong incentive to remove all flagged sexual content.³³⁰ Companies will surely struggle to conduct a thorough investigation into whether any given image or video was illegally shared in merely two days, so both prudence and efficiency seem to favor removal over rigor.³³¹

To make matters worse, the lack of consequence for reporting lawful sexual content — or, indeed, *any* content — could empower censorship of disfavored material and groups.³³² As James Grimmelman warns in reviewing the Act’s provisions, “Censorious prudes might falsely claim to represent victims of NCII to take down fully consensual posts by sex workers, sexual and medical educators, and others.”³³³ Indeed, when President Trump addressed a joint session of Congress shortly after the Senate passed the TAKE IT DOWN Act, he candidly shared his view of the law’s potential: “I’m going to use that bill for myself too if you don’t mind, because nobody gets treated worse than I do online, nobody.”³³⁴ Others have raised related concerns about how the current administration could weaponize the Act to target sexual minorities.³³⁵

Anne Franks as saying that the Act’s takedown provision is “highly susceptible to misuse” and likely to be “counter-productive for victims”).

329. See Kelley, *infra* note 331.

330. Martinez, *supra* note 326; Inserra, *supra* note 326. Some have also raised concerns that the Act creates incentives for platforms to avoid or weaken encryption — a tool that many rely on when engaging in lawful online sexuality. See Kelley, *infra* note 331; Inserra, *supra* note 326.

331. Jason Kelley, *Congress Passes TAKE IT DOWN Act Despite Major Flaws*, ELEC. FRONTIER FOUND. (Apr. 28, 2025), <https://www.eff.org/deeplinks/2025/04/congress-passes-take-it-down-act-despite-major-flaws> [https://perma.cc/6AUD-FW8M].

332. See Trudi Sundberg, *Federalizing NCII Regulation: The Take It Down Act’s Approach to Criminalization, Platform Liability, and Threats to Disseminate*, 59 GA. L. REV. 1207, 1224 (2025).

333. Grimmelman, *supra* note 325 (raising the additional concern that “even harassers — the very people the Act is meant to target — could in some circumstances use its takedown notices to suppress their victims’ self-expression”); see also Martinez, *supra* note 326 (warning that the Act “looks less about predators lurking on minors with AI porn fakes and a lot more like a tool for the Heritage foundation to run a muck [sic] on ideological differences against LGBTQ communities”); Inserra, *supra* note 326 (cautioning that “consensual sexual content online” could be targeted under the Act’s takedown system).

334. Martinez, *supra* note 326.

335. As Grimmelman warns, the Federal Trade Commission could expansively interpret the term “intimate visual depiction” while stringently construing what constitutes a “reasonable” takedown policy. Grimmelman, *supra* note 325. If this were to happen, “Platforms might well be forced to remove LGBTQ+ content, sexual education materials, and much else on the basis of dubious takedown requests from censorious vigilantes.” *Id.*; see also Kelley, *supra* note 331 (raising alarm about the malleability of key terms in the Act); Adi Robertson, *The Take It Down Act Isn’t a Law, It’s a Weapon*, THE VERGE (Mar. 6, 2025), <https://www.theverge.com/policy/624974/take-it-down-act-deepfakes-nonconsensual->

Legislation should instead identify and encourage specific tools that better balance sexual autonomy and risk mitigation. Incorporation of StopNCII's hashing technology, which empowers users to request removals of their sexual images across multiple platforms with a single request, could be a mandatory safety feature on platforms that permit widespread sharing of imagery. This type of tailored legal requirement is superior to calls for more responsible governance of online spaces.³³⁶ Instead of relying on vague reasonability standards, which can leave space for BTF's tendencies to take hold and give them greater legitimacy, platforms should be subject to specific obligations, perhaps at the price of preserving their immunity from civil liability.³³⁷ The TAKE IT DOWN Act, for example, could be amended to require platforms to employ hashing technology to remove existing NCII and then prevent those images from being uploaded subsequently, pairing these specific mandates with greater statutory protection for lawful sexual content.

Finally, lawmakers should foster the creation of new safety tools by financing the work needed to devise robust and careful interventions. A recent federal bill proposed funding clinics to help people facing tech abuse and support the underlying research that makes this work possible.³³⁸ These clinics could be run by researchers with disciplinary expertise in areas including computer science and law. By working directly with people experiencing abuse, they could be in a unique position to imagine and develop technologies that might help mitigate novel vectors of harm, such as those posed by new surveillance technologies, smart devices, and communications platforms. While money alone does not guarantee that the tools they might design would be productive, this funding could cultivate the nascent professional network of technologists seeking to support people suffering harm through technology.³³⁹

2. Encouraging Alternative Social Configurations

Corporate and state regulation of sexual safety often grapples with narratives about gender roles: male nudity offends, female nudity is

pornography-trump-constitutional-crisis [<https://perma.cc/F7XP-HATD>] (arguing that the federal government could selectively enforce the Act and use it to attack and extort political opponents, including the platforms themselves).

336. See, e.g., Danielle K. Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 *FORDHAM L. REV.* 401 (2017).

337. See Danielle K. Citron, *How to Fix Section 230*, 103 *B.U. L. REV.* 713, 750 (2023) (recommending that Section 230 immunity is subjected to specific legal requirements such as not explicitly encouraging the distribution of sexual images without consent).

338. H.R. 6173, 118th Cong. (2023).

339. See, e.g., CLINIC TO END TECH ABUSE, <https://ceta.tech.cornell.edu> [<https://perma.cc/XK4F-TSV9>]; SAFER DIGITAL INTIMACY, <https://www.safedigitalintimacy.org> [<https://perma.cc/54GH-LMLL>].

embarrassing; men threaten consumption, women are objects to be consumed; men solicit, women consent. Top-down interventions can challenge these narratives and promote alternative social configurations that see gender playing a lesser role in determining people's choices.

Opportunities to restate or disrupt these narratives appear not only in the regulation of online spaces, but also in other regulatory domains that reify gender roles. For example, Joseph Fischel argues that institutional practices such as binary-gendered bathrooms and extracurricular activities at schools dictate expectations for masculinity and femininity that stifle people's choices to enjoy sexuality on terms that make them feel comfortable and safe.³⁴⁰ Conversely, "all-gender bathrooms and the gender desegregation of privileged social spaces like fraternities *do* promise greater sexual access," meaning that people might be able to participate in social spaces "without being harassed, beaten, or made to feel inferior."³⁴¹ In the same direction, Florence Ashley proposes "genderfucking" as a methodology to resist gender governance by undermining the state's legitimacy to define and police gender categories.³⁴² They also find that the institutionalization of gender through practices that validate gendered expectations limit people's autonomy and their options to navigate sexuality more safely.³⁴³ Accordingly, they propose refusing gender markers for official identification documents and challenging gendered spaces such as bathrooms and carceral facilities.³⁴⁴ These interventions can, at first sight, seem removed from online sexuality. However, they target the core of the problem: the rigid and constraining expectations for genders that explain why women have less power to participate autonomously in erotic life.

The regulation of transgender people's lives offers a particularly contentious space for law to interject in social discourse about gender and sexuality. Scott Skinner-Thompson has powerfully documented the current efforts to deny recognition to trans people and remove them from public life.³⁴⁵ Skinner-Thompson maps laws banning trans participation in sports teams, prohibiting drag shows, censoring queer books, outlawing gender-affirming care, preventing discussions about queerness in public schools, insisting on binary and exclusionary bathrooms, and thwarting access to accurate identification documents.³⁴⁶ Beyond obviously affecting trans peoples' interests, these laws reify the

340. FISCHEL, *supra* note 174, at 166–67.

341. *Id.* at 167 (internal footnotes omitted).

342. Florence Ashley, *Genderfucking as a Critical Legal Methodology*, 69 MCGILL L.J. 177 (2024).

343. *Id.*

344. *Id.* at 197–202.

345. Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965, 984–1007 (2024).

346. *Id.*

reproduction of “gender ideology.”³⁴⁷ Interestingly, some of the strategies to fight back against anti-trans legislation engage in an unproductive form of gender essentialism by insisting on gender identity as an immutable characteristic that triggers heightened scrutiny under the Equal Protection Clause.³⁴⁸ But other strategies resist validating transnormative narratives.³⁴⁹ Kendra Albert, for example, invites lawyers advocating in favor of transgender clients to consider whether their legal strategy suggests that transgender people need to pass as cisgender to receive the protections they are seeking.³⁵⁰ The emancipatory potential of the trans movement to make sexuality safer for all lies in strategies that not only enable trans people to participate in all areas of life but also challenge gender as a governance category.

A comparison between the dating apps Feeld and Bumble illustrates how top-down interventions can reshape dating norms. By governing sexual and romantic relationships in different ways, these platforms can disrupt behavioral expectations and redistribute power to set the terms of sexual experiences.

One of Bumble’s technological interventions to change dating norms was to allow only women to send the first message when they match with men.³⁵¹ Who sends the first message might not shift the dynamics of the whole exchange, but the feature’s symbolic value defies the idea that women are passive recipients of men’s offers. It requires women to take action and express their interests.³⁵² While the feature could be read as empowering women to express their desires, the app also presents a rigid idea of what respect looks like to women: no disgusting nudity.³⁵³ The main remedy to unwanted nudity is a strong insistence on consent, but the consent focus misses who gets to make the offer and what meaning that offer has. Indeed, the company so often

347. Scott Skinner-Thompson, *Law’s Gender Ideology*, 86 MD. L. REV. (forthcoming 2026) (manuscript at 8) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5406122 [<https://perma.cc/P2C5-57JU>]).

348. Skinner-Thompson, *supra* note 345, at 1019–20.

349. Kendra Albert, *You Should be Ashamed of Yourself: Privacy Claims by Transgender Litigants and Navigating Transnormativity*, 59 HARV. C.R.-C.L. L. REV. 73, 75, 92–101 (2024) (exploring the challenges of litigating against anti-trans laws without endorsing transnormative narratives); Skinner-Thompson, *supra* note 345, at 1018.

350. Albert, *supra* note 349, at 99.

351. Jessica Bennett, *With Her Dating App, Women Are in Control*, N.Y. TIMES (Mar. 18, 2017), <https://www.nytimes.com/2017/03/18/fashion/bumble-feminist-dating-app-whitney-wolfe.html> [<https://perma.cc/L9HC-HZVS>]. In April 2024, the company rolled out an option that would allow male users to send the first message if female users set up a prompt to which men could respond to begin a conversation. Clare Duffy, *Dating App Bumble Will No Longer Require Women to Make the First Move*, CNN (Apr. 30, 2024), <https://www.cnn.com/2024/04/30/tech/bumble-relaunch-men-make-first-move> [<https://perma.cc/WDD4-SR8J>].

352. See Douglas N. Husak & George C. Thomas III, *Date Rape, Social Convention, and Reasonable Mistakes*, 11 L. & PHIL. 95, 114–15 (1992) (surfacing the mistakes that can happen in dating because of the expectation that women will not express their desires).

353. See *supra* Section III.A.

frames nudity as gross, it is hard to imagine why anyone would consent to seeing it.³⁵⁴ Overall, Bumble’s public campaign drills down on differentiating women and men. Unfortunately, in doing so, it perpetuates conventions about what women like and do not like that reinforce traditional dating norms at the root of many sexual harms.

Now consider Feeld’s attempt to redefine dating norms. Feeld defies the gender binary, invites creativity in dating arrangements, and makes space for non-monogamous and group encounters. While Bumble reinforces the binary logic and strives to create equality within it, Feeld disrupts that structure. Feeld’s homepage says it is a dating app for “those open to experiencing people and relationships in new ways,” declaring that “[p]olyamory, consensual non-monogamy, homo- and heteroflexibility, pansexuality, asexuality, aromanticism, voyeurism, and kink are just a few of the sexual identities and desires that make up the Feeld community.”³⁵⁵ And it’s not just talk. One feature to promote “experiencing people and relationships in new ways” allows people to use the app paired with one or more partners, enabling them to participate in dating as a couple.³⁵⁶ Users can also create group chats to organize events or group encounters.³⁵⁷ Unlike Bumble, Feeld defies the social institutions that reify heterosexuality and long-term relationships as the normal mode of romantic engagements. It does not pitch the solution as protecting women from men’s aggressiveness, but rather as making more space for new relationship configurations.

The type of freedom that enhances safety comes from institutional designs that destroy the expectations associated with gender identity. Feeld’s design wisely avoids prescribing specific modes of engagement. Instead, it identifies monogamy as a space that can reproduce scripts about how normal relationships should function and the roles each partner should play. In particular, traditional scripts around monogamous relationships — especially heterosexual ones — tend to prescribe roles of a more active partner who initiates and a more passive one who receives. That culture supports the ideas that a penis is a weapon; that its representation is offensive; that unconsented exposure to it produces harm that cannot be undone; and that all the power to harm resides in the person with a penis, from which others can protect themselves with only the weak shield of consent. Alternative dating configurations might confuse these roles in productive ways.

Now that we have examined Bumble’s and Feeld’s parallel approaches, let us imagine what images of nude male torsos signify on both dating apps. On Bumble, we know they are just like naked people entering a restaurant: disrespectful of the dress code and everyone in

354. See Weiss, *supra* note 159.

355. FEELD, <https://feeld.co> [<https://perma.cc/32H3-QSFP>].

356. *Id.*

357. *Id.*

the room. The appropriate response: “yikes!”³⁵⁸ The situation is not just gross, but also violative of others’ autonomy. Autonomy in this context means being able to spare oneself from staring at a naked torso that one never asked to see in the first place, even during the split second it takes to swipe someone off your screen.

What might that same image mean in a context that calls for experimentation and creativity in dating arrangements, that challenges binary gender norms? Might the representation of a torso become an invitation? Not a threat or disrespect, but an act of vulnerability? An offer? Can the images empower the users on the other side of the screen to exercise their ability to choose instead of making them feel unsafe? Users will notice Feeld’s design, the possibility to join the app with one or more partners, and the option to create group chats. They will see profiles flooded with acronyms that aim to capture various forms of partnerships, arrangements, sexual orientations, and preferences. In that sea of options and meanings, it might become harder to know what a torso means. The common knowledge necessary for the image to be disrespectful might have been pierced. In that confusion, new interpretations might emerge — hopefully, some are less threatening and more inviting. And it is not just about images on dating apps. Online spaces are a significant site for the construction and reproduction of social discourse — not only the discourse that signifies nudity online, but also that which sustains gender roles, models romantic and sexual relationships, and is the terrain for sexual violence both online and offline.

3. Preserving Space for Counterhegemonic Narratives

Conventional narratives are reproduced or challenged not only from the top, but also in everyday interactions. Whenever viewers interpret a sexual deepfake as humiliating, feel threatened by a nude image, or decide a teacher who makes amateur pornography cannot lead a classroom, they reproduce the conventional meanings of those actions.³⁵⁹ But those meanings are fragmented and disputed.³⁶⁰ For example, a nude image that fails to produce fear and instead causes arousal or laughter might pierce dominant narratives of what that image means.

Some spaces are particularly effective for producing counterhegemonic narratives. Famously, Nancy Fraser highlights the role of “parallel discursive arenas” where deviant individuals might retreat to “formulate oppositional interpretations of their identities, interests, and

358. Weiss, *supra* note 159.

359. Dvoskin, *supra* note 15, at 88.

360. See Kennedy, *supra* note 23, at 1384.

needs.”³⁶¹ Similarly, Chantal Mouffe underscores the value of spaces for conflict to contest hegemonic discourses.³⁶² Scott Skinner-Thompson shows that the heterogeneity of the public sphere is valuable for everyone and especially for members of marginalized or deviant groups to participate safely in social life.³⁶³ Ensuring subaltern spaces where counterhegemonic discourses can be circulated prevents “fragile majority monocultures and exclusionary groupthink” from taking hold.³⁶⁴

While conversations about topics like gender roles, dating norms, and sexual etiquette can occur in various contexts, an important site for discourse is sexuality itself.³⁶⁵ Accordingly, protecting spaces where sexuality can circulate is essential to producing alternative sexual scripts.³⁶⁶ Nightclubs, sex clubs, sexually themed street parades, queer dating apps, adult websites, spaces for cruising, and bathhouses are some spaces where people whose sexuality deviates from the norm can meet, create community, and construct counterhegemonic worlds.³⁶⁷ As Andrew Gilden points out, deviant sexuality provides alternative expectations for almost every line of the conventional script: “[G]ender is fluid; anyone can be sexy; kinship has infinite forms; and sexual pleasure is valuable for its own sake.”³⁶⁸

Parallel sexual narratives might reduce the potential for harm in the scenarios discussed in the previous section. In the first scenario, a man starts a conversation on a dating app with an image of his genitalia. It is possible to imagine a dating app where sending this type of picture early in the conversation is the norm. Some users might even expect that nude images of potential partners be available. These alternative expectations might more easily take hold in gay male communities, where the erosion of gendered roles might alleviate the typical stark contrast between male and female scripts. That does not mean that gay male culture need be a panacea of democratic hedonism,³⁶⁹ nor does it

361. Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 25/26 SOC. TEXT 56, 67 (1990).

362. Chantal Mouffe, *Which Public Sphere for a Democratic Society?*, 49 THEORIA 55 (2002).

363. Scott Skinner-Thompson, *Agonistic Privacy & Equitable Democracy*, 131 YALE L.J. F. 454, 456 (2021).

364. *Id.* at 457.

365. See Dvoskin, *supra* note 15, at 89.

366. Gilden, *supra* note 7, at 807 (“Public and commercial spaces allow queer people to build queer communities around a shared experience of marginalized sexuality.”).

367. See MICHAEL WARNER, *PUBLICS AND COUNTERPUBLICS* (2002); LAUREN BERLANT, *DESIRE/LOVE* 22 (2012); Susan Appleton, *Sex-Positive Feminism’s Values in Search of the Law of Pleasure*, in THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES (Deborah L. Brake, Martha Chamallas, & Verna Williams eds., 2022); Mary Anne Franks, *Beyond the Public Square: Imagining Digital Democracy*, 131 YALE L.J. F. 427, 448 (2021); Gilden, *supra* note 7, at 805.

368. Gilden, *supra* note 7, at 843.

369. Leo Bersani, *Is the Rectum a Grave?*, in 43 AIDS: CULTURAL ANALYSIS/CULTURAL ACTIVISM 197, 206 (Crimp ed., 1987).

imply that the interaction will feel completely safe. Rather, arousal might come from the possibility of an encounter between strangers that lacks the conditions of familiarity and trust that would produce a stronger feeling of safety. That evocation of unsafety might even make the picture erotically thrilling. The familiar, trusting, safe environment might, in contrast, fail to produce the same kind of erotic response. The norms of the community, then, do not provide the highest level of safety by fully minimizing risk. Instead, they puncture the rigid meaning of male genitalia as a weapon, disarming those who intend to threaten enough to empower all parties to play with the residual unsafety of quasi-anonymous sex. As these norms migrate into mainstream spaces, they benefit not just the users in the original community, but also others who might enjoy the availability of new interpretative options too.³⁷⁰

Turning to the second and third scenarios, the public circulation of nudity might also reduce the social sanctions imposed on those who are willingly or unwillingly naked in public.³⁷¹ If sex work was less stigmatized or women were not considered worthless once seen naked, perhaps sexual deepfakes could sometimes be a form of admiration instead of humiliation. If there was wider agreement that people's sexual lives are discontinuous from their ability to do their jobs, maybe the unauthorized distribution of sexual images could become less harmful and, accordingly, the voluntary sharing of that content could be safer.

BTF safety interventions, on the other hand, often undermine spaces for counterhegemonic narratives. Cyberflashing laws rigidly fixate the meaning of sexual communications and prevent the formation of alternative conventions.³⁷² FOSTA's amendments to Section 230 similarly weaken subaltern publics.³⁷³ Other proposals to subject platforms' immunity to a reasonableness standard risk producing equivalent effects since BTF will likely be the dominant ideology defining "reasonableness."³⁷⁴ Sexuality bans imposed by the influential app stores run by Apple and Google throttle the development of platforms where people could navigate, challenge, and play with social meaning.³⁷⁵ The Meta Oversight Board's assumption that all sexual deepfakes should effectively be banned prevents people from using this

370. Skinner-Thompson, *supra* note 363, at 458.

371. *See supra* Section III.B.

372. *Id.*

373. *Id.*

374. Dvoskin, *supra* note 15, at 81.

375. *Id.* at 63; *see also* JULIE E. COHEN, CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE 191 (2012) (discussing the importance of breathing room for play, creative processes, and reconfiguration of social matrices in the context of intellectual property).

technology to disrupt dominant narratives.³⁷⁶ Even informal calls for more responsible content moderation, especially when they push for more inclusion of advertisers in content governance, risk reinforcing BTF's prudish ideology.³⁷⁷

A feminist agenda for safety can go beyond simply resisting these BTF measures. Regulatory interventions should protect subaltern discursive arenas by promoting heterogeneity of the public sphere.³⁷⁸ These interventions might include decentralizing control over online speech distribution, extending privacy protections to some forms of public nudity, and encouraging sex education in schools.

Centralized industry control over speech production has historically made industries vulnerable to pressure to censor speech deemed immoral or dangerous, often including sexual expression.³⁷⁹ Heterogenous discursive environments, on the other hand, have often favored the production of non-conforming sexual narratives.³⁸⁰ To promote sexual safety, legal interventions should seek to maintain interconnected but plural publics,³⁸¹ rather than insisting on more responsible centralized administration of online speech.³⁸² As a few companies have come to dominate online information flows, discursive heterogeneity might require reintroducing diversity in the various nodes of the internet infrastructure that exert gatekeeping power.³⁸³ For example, if Apple's App Store did not exercise gatekeeping control over cellphone apps, a dating app like Feeld could allow more sexual freedom for its users.³⁸⁴ On social media platforms, too, regulation could cultivate competitive markets for content moderation in order to challenge the power of companies like Meta and TikTok to censor sexual

376. See *supra* note 178 and accompanying text; Samantha Cole, *Laws About Deepfakes Can't Leave Sex Workers Behind*, 404 MEDIA (June 4, 2024), <https://www.404media.co/laws-about-deepfakes-cant-leave-sex-workers-behind> [<https://perma.cc/5CF5-YMY2>]; Jessica Stoya, *The Future of Porn Is Consensual Deepfakes*, REASON (June 2024), <https://reason.com/2024/05/12/the-future-of-porn-is-consensual-deepfakes> [<https://perma.cc/PAF2-8DVG>].

377. See, e.g., Michael Vandenbergh, *Social Checks and Balances: A Private Fairness Doctrine*, 73 VAND. L. REV. 811, 843 (2020).

378. See A. Michael Froomkin, *Building the Bottom Up From the Top Down*, 5 I/S: A J. L. & POL'Y FOR THE INFO. SOC'Y 141, 142 (2009) (proposing a set of state policies designed to "promote self-organization of groups and democratic decentralized self-governance" through communications technologies).

379. Dvoskin, *supra* note 245, at 1347.

380. See PAUL STARR, *THE CREATION OF THE MEDIA: POLITICAL ORIGINS OF MODERN COMMUNICATIONS* 326 (2004) (comparing censorial effects in centralized and decentralized media industries).

381. Dvoskin, *supra* note 245, at 1366.

382. See, e.g., Martha Minow & Newton Minow, *Social Media Companies Should Pursue Serious Self-Supervision — Soon: Response to Professors Douek and Kadri*, 136 HARV. L. REV. F. 428, 432 (2023).

383. See generally Yochai Benkler, *Degrees of Freedom, Dimensions of Power*, 145 DAEDALUS 18 (2016) (mapping the new points of centralization in the internet infrastructure).

384. See *supra* Section III.A.

expression.³⁸⁵ Introducing friction in the processes for collecting and aggregating users' behavioral data would also interrupt the connecting circuits that homogenize the platform-based public sphere.³⁸⁶

Privacy law offers a different legal tool to advance heterogeneity. As Scott Skinner-Thompson and Andrew Gilden effectively argue, privacy protections in public spaces support the participation of subordinated or deviant groups in public discourse.³⁸⁷ In particular, they can encourage counterhegemonic expressions of sexuality by allowing individuals to participate in public events without fear that their nude images might be shared more widely.³⁸⁸ Unfortunately, Gilden's review of "revenge porn" statutes shows that twenty-nine states exempt images of people voluntarily exposing their bodies in public, while the remaining state laws apply only if the depicted person had a reasonable expectation of privacy (which courts have interpreted to severely limit the scope of protected activities).³⁸⁹ Our goal is not to expand the scope of criminal NCII laws. In our view, criminalization tends to make things worse and is not the path forward.³⁹⁰ The point, rather, is that privacy law could more thoughtfully protect sexuality in public spaces.

Finally, schools can be an effective site for discussing gender roles, family structures, and expectations for sexual behavior. As Susan Appleton and Susan Stiritz highlight, the United States is the only advanced economy that emphasizes abstinence in sex education.³⁹¹ Recent legislation to ban discussions about gender and sexual orientation at schools has only made things worse.³⁹² Conversations about sexuality that validate more sexual choices, disqualify toxic masculinity

385. See Mike Masnick, *Protocols, Not Platforms: A Technological Approach to Free Speech*, KNIGHT FIRST AMEND. INST. (2019); Daphne Keller, *The Future of Platform Power: Making Middleware Work*, 32 J. DEMOCRACY 168 (2021); FRANCIS FUKUYAMA, BARAK RICHMAN, ASHISH GOEL, ROBERTA R. KATZ, A. DOUGLAS MELAMED & MARIETJE SCHAAKE, *MIDDLEWARE FOR DOMINANT DIGITAL PLATFORMS* (2021); Kadri, *supra* note 3, at 993–96.

386. See Ayelet Gordon-Tapiero, Paul Ohm & Ashwin Ramaswami, *Fact and Friction: A Case Study in the Fight Against False News*, 57 UC DAVIS L. REV. 171, 175 (2023). Although Gordon-Tapiero, Ohm, and Ramaswami are thinking primarily about misinformation, the mechanisms they describe to slow down the aggregation of users' data and the sharing of online content could be useful to curb the homogenization of the platform-based public sphere more broadly. See *id.*; see also Cohen, *Infrastructuring the Digital Public Sphere*, *supra* note 251, at 29 (arguing that the current patterns of information flows respond primarily to platform infrastructures designed for volatile and viral content distribution).

387. Skinner-Thompson, *supra* note 363, at 456; Gilden, *supra* note 7, at 834.

388. Skinner-Thompson, *supra* note 363, at 458 (documenting the importance of privacy in public spaces to encourage counterhegemonic discourses more generally).

389. Gilden, *supra* note 7, at 820–21.

390. See SCOTT SKINNER-THOMPSON, *PRIVACY AT THE MARGINS* 40–41 (2020) (noticing that criminal responses have historically harmed queer communities).

391. Appleton & Stiritz, *supra* note 269, at 57.

392. See Skinner-Thompson, *supra* note 345, at 1000 (cataloguing laws erasing "queer people from the curriculum"); Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUM. L. REV. 1461 (2017) (criticizing "no promo homo" laws that restrict discussions of homosexuality in public schools).

models, encourage girls to express their desires, and generally equip kids with information are an obvious space to contest harmful sexual scripts, enhance autonomy, and promote safety around sexuality. As discussed above, the regulation of sexuality is neither the only nor the primary opportunity to deactivate the conventional narratives about genders that underlie many instances of harm.

4. Changing Dangerous Legal Background Rules

Sexuality is unsafe not only because social norms punish sexual deviance, but also because the law often does too. Anti-sex provisions in various fields of law create a dangerous legal environment for people to engage in online sexuality. Family courts have removed children from their parents' custody because of their lawful participation in BDSM communities and other counterhegemonic forms of sexuality.³⁹³ The criminalization of sex work and some anti-trafficking provisions make online sexuality unnecessarily risky.³⁹⁴ Work law tolerates employers sanctioning their employees for sexual conduct they consider undesirable.³⁹⁵ While a full analysis of how each of these legal areas should evolve is beyond what we offer here, a brief examination of work law protections usefully illustrates how the state can make sexuality safer by changing the background legal rules that increase the risks of sexual activity.³⁹⁶

Courts have often protected the termination of employees for their lawful sexual activity outside of work.³⁹⁷ Alexandra Brodsky surveys how employers sanction premarital sex, sex with colleagues, sex on institutional grounds, deviant sex, and past or present sex work.³⁹⁸ Workers lose their jobs when sexual images of them are distributed without permission, too.³⁹⁹ Employers often allege morality clauses and

393. Andrew Gilden, *Punishing Sexual Fantasy*, 58 WM. & MARY L. REV. 419, 436–38 (2016).

394. Albert, *supra* note 238, at 438 (arguing that FOSTA has made sex work more dangerous and that repealing its criminal provisions would make sex safer).

395. Alexandra Brodsky, *Discrimination on the Basis of Consensual Sex*, 99 N.Y.U. L. REV. 1487, 1494 (2024).

396. *See generally* Gali Racabi, *At Will as Taking*, 133 YALE L.J. 2257, 2259 n.3 (2024) (defining “work law” as encompassing employment law, labor law, and antidiscrimination law).

397. *See, e.g.*, *S.D. Unified Sch. Dist. v. Comm’n on Prof’l Competence*, 124 Cal. Rptr. 3d 320, 322–23 (Cal. Ct. App. 2011).

398. Brodsky, *supra* note 395, at 1494–500; *see also* Emme Witt, *Teachers Who Do Sex Work on the Side Are Usually Fired. Will They Ever Be Able to Claim Employment Discrimination?*, CASHMERE MAGAZINE (Nov. 1, 2022), <https://cashmeremag.com/teachers-sex-work-employment-discrimination-1256516> [<https://perma.cc/8T8D-JQNG>]; David Rennie, *UN Weapons Inspector Is Leader of S&M Sex Ring*, TELEGRAPH (Nov. 30, 2022), <https://www.telegraph.co.uk/news/worldnews/northamerica/usa/1414825/UN-weapons-inspector-is-leader-of-SandM-sex-ring.html> [<https://perma.cc/YHF6-TQAJ>].

399. *See, e.g.*, *supra* notes 183–84 and accompanying text.

reputational concerns.⁴⁰⁰ Brodsky shows that courts have largely accepted sanctions for consensual sex as legitimate unless they are enforced discriminatorily on the basis of gender or sexual orientation.⁴⁰¹ While she shows that these practices disproportionately affect women and sexual minorities, sex discrimination claims are hard to win.⁴⁰² And in any case, discrimination is not the sole — not even the main — problem. Six states have enacted NCII statutes that protect victims from workplace sanctions, but this limited shield extends only when images are distributed without consent.⁴⁰³ There is no protection for the worker who runs an OnlyFans account, posts images on Instagram of themselves at a queer nightclub, or blogs about attending a sexually themed parade.

The key point is that sex is less safe because the law protects workplace sanctions for sexual behavior.⁴⁰⁴ Of course, not all workplace regulation of sexuality is bad. Sex can be a form of harassment and an abuse of power, and it should be regulated as such. But delegating such discretionary sex regulation to employers makes sex unnecessarily unsafe because it leaves the adjudication of acceptable sex in the hands of people who have no incentive to protect sexual freedom and are often driven by conservative ideas of respectability and morality.⁴⁰⁵ It should come as no surprise when employers enforce the conventional narrative that individuals engaged in certain forms of sexuality are immoral or unfit to do their jobs.

Work law scholars, even those not working directly on sexuality, are developing potentially emancipatory paths toward online sexual safety. There are promising strategies to challenge employers' decisions or create new legal obligations to prevent employers from

400. See, e.g., *Savoie v. Lawrenceville Sch.*, No. A-0288-10T1, 2013 N.J. Super. Unpub. LEXIS 833, at *12 (N.J. Super. Ct. App. Div. Apr. 12, 2013); Gus Garcia-Roberts, *Ex-Porn Star Shawn Loftis on Miami-Dade Schools Refusing to Reinstate Him: "They're Going to Have a Lawsuit on Their F*#king Hands"*, MIA. NEW TIMES (Mar. 13, 2012), <https://www.miaminewtimes.com/news/ex-porn-star-shawn-loftis-on-miami-dade-schools-refusing-to-reinstate-him-theyre-going-to-have-a-lawsuit-on-their-f-king-hands-6548687> [<https://perma.cc/56AS-5FWA>]; Nicholas Bogel-Burroughs & Dan Simmons, *University Chancellor Fired After Making Pornographic Videos with His Wife*, N.Y. TIMES (Dec. 29, 2023), <https://www.nytimes.com/2023/12/28/us/wisconsin-la-crosse-joe-gow-porn.html> [<https://perma.cc/E7AC-CE7W>] (reporting that “[t]he University of Wisconsin System’s top official said she was ‘disgusted’ by the chancellor’s actions” after he made a sex video with his wife).

401. Brodsky, *supra* note 395, at 1490–91.

402. *Id.* at 1525–28.

403. Gildea, *supra* note 7, at 823–24.

404. Note, too, that this can also be true for non-sexual behavior, such as if a worker is fired after someone uses a hidden camera to photograph them showering in a hotel room and then posts the image online.

405. Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2072–87 (2003).

sanctioning private sexual conduct.⁴⁰⁶ Vicki Schultz's longstanding and wise proposals would create more democratic structures in the workplace to make decisions about workplace norms and adjudicate cases of abuse.⁴⁰⁷ In Schultz's account, a more horizontal organization of the workplace can enable the creation of norms that better respond to the sexual and non-sexual interests of the people who constitute it, including addressing situations they consider abusive while allowing forms of intimacy they consider beneficial.⁴⁰⁸

Proposals to diminish employers' power to sanction employees' sexual conduct can help us reimagine what sexual safety requires. Such interventions remind us that removing sex from online spaces and confronting sex harms with incarceration are unnecessary responses to sexual risk. Instead of futilely trying to eliminate the hazards of sexual life through prudish and punitive measures, law can foster conditions for people to play with the eroticism of its dangers without also risking social sanctions.

V. CONCLUSION

Big Tech feminism tends to be moralistic, repressive, and, most of all, unimaginative. Moves to erase sexuality from online spaces and expand control over people's lives should set off alarms — not because they are always negative interventions but because they are common signs that safety concerns are creeping into sexual freedom. Today, safety interventions by lawmakers and tech companies aim to prevent not only cases of gross harm, but also sexual activity that is just gross to some. We need not settle for this bargain. A more radical transformation of sex harms, we think, will often lie in ensuring breathing room for play and equipping individuals with tools to enhance their autonomy in sexual experiences.

406. See Brodsky, *supra* note 395; CARRIE GOLDBERG, *NOBODY'S VICTIM: FIGHTING PSYCHOS, STALKERS, PERVS, AND TROLLS* (2019) (fleshing out legal strategies to fight workplace sanctions).

407. Schultz, *supra* note 405, at 2172–84.

408. *Id.* at 2163–72.