

Pornhub: Opening the floodgates?

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Pornhub: Opening the floodgates?

This forum piece analyses and situates the crisis Pornhub currently faces. It argues that the crisis is largely of Pornhub's own making and is symptomatic of an industry ripe with deep issues that are starkly at odds with contemporary values. As a result, this crisis will likely only mark the beginning of Pornhub's unravelling.

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Pornhub is facing an existential crisis. Over the next months and perhaps even years, Pornhub will face an unprecedented level of scrutiny. This is Pornhub's moment: its first major foray onto the public scene. However it ends, this crisis will be a decisive moment for the company. Although the crisis is largely of its own making, Pornhub is not ready for primetime. With the public scrutiny it brings, this crisis may just be the beginning of Pornhub's unraveling. This forum piece sets out the other woes the future may bring.

On December 4th, the New York Times published a scathing, detailed feature on Pornhub (Kristof 2020). Pornhub is the most visited website for free adult entertainment. Its pages are viewed tens of billions of times each year (Pornhub 2019). As an order of magnitude, that's more than Amazon (Kristof 2020). The New York Times piece exposes the dark side of Pornhub. Though Pornhub has sought to brand itself as a mainstream site, buying a billboard on Times Square (Maskeroni 2014) and donating to Black Lives Matter (Pornhub ARIA 2020), it is home to countless rape videos. From child abuse victims to former spouses who become victims of "revenge porn" to young girls who get coerced into becoming pornstars, the site is replete with videos of what is essentially rape. Since Pornhub's parent company is headquartered in Montreal, the piece calls on Canadian Prime Minister Justin Trudeau to do something – though it's not clear what.

After the piece was published, and in the midst of a global pandemic, people started to get outraged. Prime Minister Trudeau reported the next day that he was “concerned” and told federal agencies to look into Pornhub (Canadian Press 2020; Markowitz 2020). A few days later, Visa and Mastercard stopped allowing Pornhub to charge their cardholders (Friedman 2020). (American Express has long had a policy prohibiting the use of its cards on adult websites (Browne 2020).) It now seems you can only subscribe to the world’s most visited porn site is with Bitcoin. By the end of the same week, the Canadian Parliament had sent subpoenas to Pornhub executives (Ross 2020).

When visiting the website (for research purposes), you can now find a corporate responsibility statement at the top of the homepage, just above a mosaic of porn videos (Pornhub 2020a). Pornhub has been saying that it’s looked into the issues raised by the New York Times since April, hiring an outside law firm to investigate (Pornhub 2020b). It also uses the usual PR buzzwords. It told the Canadian Press it has “industry-leading” policies and “vast teams” of people to police rape videos, all because it has “zero tolerance” for sexual abuse (Marowits 2020).

What is perplexing, in equal measure as the swift and overwhelming public outcry, is that Pornhub executives had yet to understand, until December 2020 (or April 2020, per their contention), that this was a ticking time bomb. With the snowball effect of the #MeToo movement, which brought some of the world’s most powerful individuals to account, and shook entire industries (Cossman 2019; Sunstein 2018; Tippet 2018), it should have been clear to Pornhub’s executives that Pornhub would eventually be the subject of both public scrutiny and public outcry.

The confluence of technology and growing public awareness of the challenges it poses for sexual privacy has left technology platforms in part responsible for

safeguarding individual rights. Like Facebook and YouTube, Pornhub is simply a platform. It does not produce adult entertainment videos (though other MindGeek subsidiaries do). The videos it houses are uploaded by individual users. It is these users who violate the rights of the individuals portrayed in the videos – former spouses, children, unconsenting victims. The issue of course, putting aside the inherent friction and financial costs of the justice system, is that the users who upload the videos are almost always anonymous and untraceable (Associated Press 2020; Kristof 2020).

Discrete and novel challenges for the justice system arose with the advent of technology, which empowered the widespread dissemination of intimate photos and videos of former spouses (Citron and Franks 2014) and the creation of highly realistic fake intimate videos of individuals without their consent (deep fakes) (Chesney and Citron 2019). These and other issues were eventually reconceptualised as violations of sexual privacy (Citron 2019) – a novel concept. The work of enterprising and innovative scholars, predominantly Danielle Keats Citron and Mary Anne Franks, led to legal reforms that criminalised harmful behaviour and made it easier for victims to sue (Franks 2015).

The following logical step, after empowering victims to recover from their abuser and seek the removal of the content, would be to hold platforms where the content is uploaded (such as Pornhub and social media sites) accountable. Indeed, some scholars are already making that case (Citron and Norton 2011; Citron and Wittes 2017). It is therefore exceedingly perplexing that Pornhub executives did not seek to more aggressively address the presence of rape videos on Pornhub much earlier. The crisis Pornhub is now facing is largely of its own making.

Let me suggest, however, that this is not an isolated instance of corporate negligence. Instead, this crisis is symptomatic of an industry ripe with deep issues that

are starkly at odds with contemporary values. The persisting taboo around porn may well have caused these issues to persist, shielded from public scrutiny. As Pornhub faces public scrutiny, these issues are likely to finally obtain the scrutiny they warrant. I set out below three examples of such issues.

Let us first circle back to the beginning. As the New York Times piece mentions, Pornhub is based in Montreal, Canada. The company is owned by MindGeek (Waterson 2019). MindGeek essentially also owns most of the porn industry. The other free websites like YouPorn and RedTube? That's MindGeek (Auerbach 2014). The biggest subscription-based websites for premium content like Reality Kings, Brazzers, and Mofos? That's MindGeek too (Auerbach 2014; Pardon 2010; Sanford 2014). In fact, without much of a logical leap, one could conclude that Pornhub's business model is to profit off the piracy of MindGeek's premium content, instead of letting another website do so.¹ As a legal scholar, I can confirm that there usually is a word for a company that owns all of its competitors: a monopoly. And monopolies are illegal (Khan 2017). MindGeek ostensibly got away with these practices because no one wants to talk about porn, including politicians.² As a result of the public scrutiny Pornhub now faces, these issues may well catch the eye of antitrust regulators.

Another issue with the adult industry, not divorced from the first, is how it treats performers. Again, the persisting taboo around porn may have allowed MindGeek to get away with practices that would not withstand public scrutiny. The going rate for the in-demand performers appears to now be around \$1,000 per scene (Harvey-Jenner 2017; Morris 2016; Snow 2019). Given the staggering number of views that porn sites attract (Kristof 2020; Pornhub 2019), \$1,000 seems like a pittance. Most importantly, there is no profit stream for performers. They get a fixed amount, while MindGeek keeps the profit. (This is particularly problematic given the temporary nature of performer

careers.) With greater scrutiny, the public, and governments, may start to question how MindGeek treats its talent.

Let us close with a final issue with the adult industry: its blatant and unquestioned implicit racism. Did you know the industry pays pornstars more to have sex with a Black person (Brown 2020; Snow 2020)? Yes, that is correct. Usually, there is a rate for a “girl-girl” scene, a higher rate for a “boy-girl” scene, and a higher rate for anal sex. There is also a higher rate for having sex with a Black male. The word we would customarily use for such a practice is “racism.” The widespread acceptance of the practice in the porn industry is both repugnant and staggering – especially in light of the widespread attention 2020 has brought to racial inequality (Buchanan, Bui and Patel 2020; Smith 2020). As Pornhub faces scrutiny, the tacit racism it fails to denounce will likely be the subject of further public outcry.

From these three examples, it is clear that the crisis Pornhub is now facing may well just mark the beginning of Pornhub’s unraveling. It is easy to see how the crisis may bring to the fore the other fundamental issues which define MindGeek and the modern adult entertainment industry. Hopefully this crisis will mark the beginning of an equally deep and fundamental transformation for the industry.

Notes

1. This self-serving business model for Pornhub is arguably detrimental to performers who derive their income from the premium content.
2. An analogous conundrum is the absence of any publicly traded adult entertainment company. Given the tens of billions of views Pornhub and other MindGeek websites attract, it is surprising that investment bankers and institutional investors did not encourage porn companies to become publicly traded. This ostensibly reinforces my argument regarding the persistent taboo which surrounds the industry.

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