

## # 9: Consent in the Digital Era

*The ninth of the ten part essay series has been adapted from a presentation by Bishakha Datta at the Global Dialogue on Decriminalisation, Choice and Consent.*

In 2012, American data scientist Adam Kramer ran an experiment involving 689,003 Facebook users: he wanted to see whether emotions on social media were contagious. Lasting for a week, half the unsuspecting users chosen for the experiment saw only ‘happy’ content on their home feeds, whereas the other half saw negative or ‘sad’ content. The investigating scientists then analysed whether this influenced the moods of users and had an impact on the type of content they posted themselves. But the idea of manipulating Facebook for a science experiment hit a nerve with people across the world. They wanted to know where - as with all science experiments – where was their consent to their information being used for research? In reply, Facebook referred users to their Terms of Service, where, after all, didn’t we ‘consent’ for Facebook to use our information for a range of things?

The question of consent haunts many of the complexities raised by the digital world, most notably with reference to rapidly shifting notions of privacy. In reality, the digital world is simultaneously a public *and* a private space. For example, the internet may be private when a physically disabled woman uses a chat room for a sexual encounter. But it becomes public when she advocates for the rights of women with disabilities across social media.

But where’s the line and who gets to draw it? Can Facebook use our semi-public (or semi-private, depending on how full or empty you see the glass) home feeds to then manipulate our moods on the grounds that the information was public to start with? What about our location data, email addresses and all the information about us it collects but is not on our home feed? Or can we, as users, argue that our data is private and should be restricted to our chosen Facebook friends?

In India, several instances involving sex, sexuality and information technology have populated newspaper headlines over the past decade. This now exceedingly long list of privacy violations began most notably in 2004 with the ‘DPS-MMS Scandal’, in which a young man and woman studying at the Delhi Public School filmed themselves having sex on a mobile phone. Soon after, the video went viral via Multi Media Messaging (which predated the worlds of Whatsapp, BBM and Snapchat as the most popular medium for sharing images and videos) and became the first notable instance of sex being made public via digital technology. For many of us, the consent issue is clear from the get-go:

the sex was consensually filmed but non-consensually distributed. However, against the backdrop of a national discourse steeped in notions of honour, chastity and shame, what policymakers and the public discussed was not that a boy had distributed a private video without a girl's consent, but that a boy and a girl *were having sex in the first place*.

Fast-forward to the present moment. Today one of the most popular forms of pornography in India is amateur porn. In its particularly Indian avatar, some amateur porn depicts situations where either one or all of the individuals being filmed are unaware of a hidden camera's existence (for example, in hotel rooms or cyber cafes - the latter being a popular place for young people in India to find privacy) or that the woman who is the subject of the video is drugged or hurt, and unable to consent to anything at all. Other amateur porn is, of course, consensually filmed, distributed and enjoyed, but when consent is off the table, it's less porn and more abuse.

Ten years after the DPS-MMS scandal the conversation around sex and shame has barely changed. With women's virtue and chastity being seen as necessarily compromised by sex, this moral discourse not only dismisses and overrides consent violations, but makes it difficult for any woman who feels her consent has been violated to report it and access justice. Therefore, despite the fact that most amateur porn websites have lengthy disclaimers about consent, in reality the enforced shame around having 'illicit' sex takes precedence over non-consensual sex, filming, or distribution of videos. When morality is the highest stake, the question of consent remains both unasked and unanswered.

Issues of consent and the digital world aren't just about how offline situations get represented online – it's also about how we, as users of digital technology, are able to represent ourselves. In America there's recently been a lot of talk about teenagers sexting each other. In case the phenomenon has bypassed you, a sext is just what it sounds like: sex via text, often including some nude selfies. But at least 20 states in America have passed laws criminalising the possession or distribution of nude photographs of minors – even if the minor is you. So teenagers sexting each other can be booked under child pornography laws. In her forthcoming book *Sexting Panic: Rethinking Criminalisation, Privacy and Consent*, author Amy Hasinoff explains that 'sexting is a form of sexual activity, not a gateway to it.' Which means that if you're 17 years old it's perfectly legal for you to have physical sex offline, but if you send a sext, it becomes a matter for the police. Consent? It often gets buried below moral panics or legalities that both operate under the logic of 'a sext is a sext'.

Whether we legally fall into the category of 'adult', 'child' or somewhere in between, as users of the internet we are constantly negotiating digital space and the various

boundaries it draws or opens up. And because most of this space is owned by a mixture of corporations, states and individuals, it's never clear who's making the decisions about what we do online. Recently, Apple rejected HappyPlayTime, a sex education app designed to remove stigma around female masturbation. The rejection was made on the grounds of obscenity. However, apps such as iLust and iStare (which challenge you to stare at a woman's breasts for as long as possible) and Kawaii Assistant (offering 'your own personal Japanese secretary right in the palm of your hands') are welcomed by Apple and are downloaded by large numbers of people. Similarly on Facebook, women's own representations of their bodies have been deemed as 'inappropriate' or 'obscene', whereas countless pro-rape pages remain unchecked.

This is no accident. In a 2012 book entitled *Consent of the Networked*, author Rebecca MacKinnon tells readers that governments and corporations are actively working to fit the internet to their own needs. In this way, the tedious, difficult-to-read Terms of Service that precede every portal we join are designed not to protect us - the users, but instead to protect the providers - the internet platforms. It also means that companies and governments are allowed to decide what is 'obscene' as per their own prejudices around representations of sex, rather than whether the representations were made and distributed consensually. In fact, most laws and intermediary regulations pertaining to content online rarely talk about consent, and when they do, it's still clear from some of the examples here that some people's consent is seen as being more worthy than others'.

MacKinnon argues that our freedom in the internet age depends on whether we defend our rights on digital platforms and networks in the same way that people fight for their rights and for accountable governments in offline spaces. It is time to stop thinking of ourselves as passive 'users' of technology and instead act like citizens of the internet - or as netizens - and take ownership and responsibility for our digital future. And in doing so, we must place questions of consent and agency at the heart of our conversations.

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