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The Pornographic State

Regulating Pernicious Online Content in the Digital Era

Caroline Ruth Keen

A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Sociology, The University of Auckland, 2018
Abstract

Attempts by Western democratic governments to block citizens’ access to illegal or harmful internet content remain highly contentious. This thesis aims to explain recent debates in Australia and UK (2007-2015) about regulating internet content. More specifically, it explores how these governments responded to civil concern about potential internet media harms to children. Research examined (a) how policies evolved, (b) whose interests dominated policy debates and outcomes, and (c) how children’s interests were perceived and represented in emerging policies. Employing a Grounded Theory methodology, this research offers a thematic analysis of news media, policy documents, and qualitative interviews. As policy debates over social media generate conflicting notions of ‘childhood, first-hand accounts from 20 ‘elite’ informants involved in policy debates in both countries were used to understand how civil, private and state actors variously drew on the concept of ‘the child’ in debates on ‘internet risk’ and ‘responsibility’ to rationalise their strategies and policy positions. Analysis revealed that, under the auspices of neoliberalism, private actors remained exempt from media regulation, only engaging in self-regulation if this served their own interests. Private actor constructions of children as both ‘savvy’ and ‘risky’ played an important role in rationalising these policy outcomes, as well as shifting regulatory attention away from issues of media to issues of children’s conduct online. In the absence of state regulation, individual internet users, families and children were made responsible for managing media risks. These findings were consistent with Wacquant’s notion of the neoliberal state, whereby states draw on laissez faire economic principles that re-regulate in favour of corporations, but simultaneously draw on the neoliberal ‘cultural trope of individual responsibility’ (Wacquant, 2010, p. 197). This obligates less powerful individuals in managing their own security, and increasing surveillance and discipline for those that fail, or are perceived to be unable to do so. A key implication of this research is that while media regulation remains inconsistent and contingent on private interests, state policies which oblige parents to manage media risks are less defensible in light of democratising family landscapes (Beck, 1997), individualisation (Beck and Beck-Gernsheim, 2000) and a growing discourse in children’s rights.
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## Glossary

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABA</td>
<td>Australian Broadcasting Authority</td>
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<tr>
<td>ACL</td>
<td>Australian Christian Lobby</td>
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<tr>
<td>ACMA</td>
<td>Australian Communications and Media Authority</td>
</tr>
<tr>
<td>Active Choice</td>
<td>Active Choice is an ISP Code of Practice established in the UK</td>
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<td>AFP</td>
<td>Australian Federal Police</td>
</tr>
<tr>
<td>ALRC</td>
<td>Australian Law Reform Commission</td>
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<tr>
<td>App</td>
<td>Software application</td>
</tr>
<tr>
<td>ARPANET</td>
<td>Advanced Research Projects Agency Network</td>
</tr>
<tr>
<td>ASP</td>
<td>Australian Sex Party</td>
</tr>
<tr>
<td>BBFC</td>
<td>British Board of Film Classification</td>
</tr>
<tr>
<td>Blacklist</td>
<td>A list of URLs, IP addresses or domain names users are denied access to</td>
</tr>
<tr>
<td>BSkyB</td>
<td>British Sky Broadcasting</td>
</tr>
<tr>
<td>BT</td>
<td>British Telecom</td>
</tr>
<tr>
<td>CAIC</td>
<td>Child Abuse Image Content</td>
</tr>
<tr>
<td>CCCIS</td>
<td>Children’s Charities Coalition on Internet Safety</td>
</tr>
<tr>
<td>CEOP</td>
<td>Child Exploitation and Online Protection Centre</td>
</tr>
<tr>
<td>Civil Sector</td>
<td>Used in this work to mean agencies that are not in state or private sectors and who work with aspects of children’s welfare</td>
</tr>
<tr>
<td>Cleanfeed</td>
<td>British Telecom’s child pornography filter</td>
</tr>
<tr>
<td>‘cleanfeed’</td>
<td>A general term used in Australia not specifically referencing child pornography filtering but a filtering proposal for a broader range of content</td>
</tr>
<tr>
<td>Communications Alliance Ltd.</td>
<td>is the industry organisation that took over the role of Internet Industry Association (IIA) in March of 2014</td>
</tr>
<tr>
<td>CSA</td>
<td>Child sexual abuse</td>
</tr>
<tr>
<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
</tr>
<tr>
<td>DBCDE</td>
<td>Department of Broadband Communication Digital Economy</td>
</tr>
<tr>
<td>DNS</td>
<td>Domain Name System (DNS) blocking was introduced in 1997 to make it difficult for internet users to locate specifying websites, originally used to block spam email</td>
</tr>
<tr>
<td>ECPAT</td>
<td>Ending Child Prostitution, Child Pornography and Child Trafficking for Sexual Purposes</td>
</tr>
<tr>
<td>EFA</td>
<td>Electronic Frontiers Australia</td>
</tr>
<tr>
<td>EFF</td>
<td>Electronic Frontier Foundation</td>
</tr>
<tr>
<td>Email</td>
<td>Electronic mail</td>
</tr>
<tr>
<td>EROS</td>
<td>EROS is the adult industry association in Australia</td>
</tr>
<tr>
<td>eSafety Commissioner</td>
<td>is the Australian office of Commissioner for eSafety</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EuroISPA</td>
<td>European Internet Service Providers Association</td>
</tr>
<tr>
<td>FFF</td>
<td>Family Friendly Filters is a Code of Practice established by the IIA that certifies filtering software that comply with the ACMA’s blacklist.</td>
</tr>
<tr>
<td>gTLD</td>
<td>Generic Top-Level Domain</td>
</tr>
<tr>
<td>Homesafe</td>
<td>TalkTalk’s ‘whole home’ filtering service</td>
</tr>
<tr>
<td>ICANN</td>
<td>International Corporation for Assigned Names and Numbers</td>
</tr>
<tr>
<td>ICH</td>
<td>Internet Content Host</td>
</tr>
<tr>
<td>ICP</td>
<td>Internet Content Provider</td>
</tr>
<tr>
<td>ICRA</td>
<td>Internet Content Rating Association</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>---------</td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>IETF</td>
<td>Internet Engineering Task Force</td>
</tr>
<tr>
<td>iGEA</td>
<td>Interactive Games and Entertainment Association</td>
</tr>
<tr>
<td>IGF</td>
<td>Internet Governance Forum</td>
</tr>
<tr>
<td>IIA</td>
<td>Australian Internet Industry Association. The Communications Alliance replaced the IIA on the 24th March 2014</td>
</tr>
<tr>
<td>iiNet</td>
<td>iiNet is an Australian ISP</td>
</tr>
<tr>
<td>IMCB</td>
<td>Independent Mobile Classification Board (UK)</td>
</tr>
<tr>
<td>INTERPOL</td>
<td>International policing agency</td>
</tr>
<tr>
<td>IP</td>
<td>Internet Protocol</td>
</tr>
<tr>
<td>IRC</td>
<td>Internet Relay Chat</td>
</tr>
<tr>
<td>ISP</td>
<td>Internet Service Provider</td>
</tr>
<tr>
<td>ISPA</td>
<td>Internet Service Provider Association</td>
</tr>
<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>IWF</td>
<td>Internet Watch Foundation (UK)</td>
</tr>
<tr>
<td>LINX</td>
<td>London Internet Exchange is an ISP in the UK</td>
</tr>
<tr>
<td>Mailing Lists</td>
<td>A collections of email addresses</td>
</tr>
<tr>
<td>MUDs</td>
<td>Multi-User Dungeons</td>
</tr>
<tr>
<td>NBN</td>
<td>National Broadband Network</td>
</tr>
<tr>
<td>NSPCC</td>
<td>National Society for the Prevention of Cruelty to Children</td>
</tr>
<tr>
<td>Ofcom</td>
<td>The Office of Communications is the independent regulator and competition authority for the UK communications industries</td>
</tr>
<tr>
<td>OFLC</td>
<td>Office of Film Literature Classification</td>
</tr>
<tr>
<td>OCPs</td>
<td>Online Content Providers</td>
</tr>
<tr>
<td>PEGI</td>
<td>Pan European Game Information</td>
</tr>
<tr>
<td>Proxy Server</td>
<td>A Proxy server is a server (a computer system or an application) that acts as an intermediary for requests from clients seeking resources from other servers</td>
</tr>
<tr>
<td>QDA</td>
<td>Qualitative data analysis software</td>
</tr>
<tr>
<td>RAS</td>
<td>Restricted Access System Declaration</td>
</tr>
<tr>
<td>RMIT</td>
<td>Royal Melbourne Institute of Technology</td>
</tr>
<tr>
<td>SE</td>
<td>Search Engine</td>
</tr>
<tr>
<td>SNS</td>
<td>Social Network Service, also known as a social networking site</td>
</tr>
<tr>
<td>SSSCCS</td>
<td>Senate Select Committee on Community Standards</td>
</tr>
<tr>
<td>TalkTalk</td>
<td>TalkTalk is an ISP in the UK</td>
</tr>
<tr>
<td>TCP/IP</td>
<td>Transmission Control Protocol/Internet Protocol</td>
</tr>
<tr>
<td>TLD</td>
<td>Top Level Domain</td>
</tr>
<tr>
<td>UGC</td>
<td>User Generated Content</td>
</tr>
<tr>
<td>UNCRC</td>
<td>United Nations Convention of the Rights of the Child</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>URL</td>
<td>Universal Resource Locator</td>
</tr>
<tr>
<td>VGT</td>
<td>Virtual Global Taskforce</td>
</tr>
<tr>
<td>Web 2.0</td>
<td>The introduction of dynamic web pages, and user generated commentary on social media websites occurring in the early 2000s</td>
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Introduction

Childhood, Internet Content Risks, and Neoliberalism

Since the late 18th century ‘childhood’ has been constructed as asexual (Buckingham and Chronaki, 2014, p. 303). Thus, sexual knowledge has been viewed as a key distinguishing factor that separates childhood from adulthood necessitating that institutional regimes of care (within public spaces, schools and the family) are tasked with preserving children’s innocence of sex and sexual experience (Egan and Hawkes, 2007, 2010, 2013; Hawkes and Egan, 2008; Jackson, 1982). Part of this duty of care has been the careful management of their media, and in particular the prevention of children’s premature exposure to sexual media. Children’s innocence has therefore been a key site of anxiety, as evidenced by the moral purity campaigns of the late 19th century, social hygiene movements in the early 20th century, and the medicalisation of children’s sexuality that warned of the dangers of children’s premature sexualisation (Egan and Hawkes, 2007, 2010; Hawkes and Egan 2008). Children’s premature exposure to pornographic materials has been a reoccurring anxiety which continues to be central to current debates about media regulation. This is because when children’s behaviour appears sexualised it is seen as breaching commonly accepted social meanings of what childhood ought to be, and existing media regulations put in place to protect children from premature exposure to adult sexual knowledge are perceived to have failed.

In the late-modern context where technological innovations are thought to manufacture risks unrelated to natural and traditional ways of life (Giddens, 1991a, 1994), civil concerns about children and sexual media have been recast within the rhetoric of risk. Notions of the ‘risk society’ (Beck, 1992) and risk discourse now appear to dominate political and cultural spheres (Giddens, 1991a). Across Western democratic states current trends toward implementing neoliberal economic and political rationalities further complicate the issue of how media regulation is negotiated, since neoliberalism co-opts risk discourse to foist a rhetoric of increasing governmentality (Lupton, 1999; Rose, 1999) and thereby rebuff formal state regulation of internet content.

Under neoliberalism media debates tend therefore to focus on the management of risks and the need for individuals to be self-governing. As Beck and Beck-Gernsheim (2002)
have pointed out, individuals are increasingly tasked with making choices no longer dictated by tradition, but rather than this being empowering, Beck and Beck-Gernsheim (2002) view this as burdening individuals with the job of managing risks previously dealt with by formal and informal regulation. Individuals are then increasingly responsible for managing and avoiding risks, as well as being accountable for the outcomes of their choices. This presents a dilemma when considering the safety and wellbeing of children. While the sociology of childhood that emerged during the 1980s had an emancipatory tone, in that it proclaimed children were ‘active social actors’ who were independently making life-altering decisions (James and Prout, 1997), the concept that children could be self-policing and self-governing so as to not require protective state regulation, conflicts with established modernist notions of what childhood is. Indeed, Beck and Beck-Gernsheim’s theorising about individualisation did not give much thought to children’s capacity to act independently and responsibly (Staksrud, 2013, p. 27-28). When it comes to children, the responsibility for monitoring and managing children’s use of the internet has typically been assigned to parents.

The globalisation of media and communications driven by the internet stimulates both global markets and a growing transnational culture which sees unprecedented movement of information and people across national borders (Lunt and Livingstone, 2012, p. 1). Most nation-states have, nevertheless supported connection to the internet and the continued upgrading of IT infrastructure so that businesses, schools and residential households could access the economic and educational opportunities that the global internet has to offer.

Children and Online Media Risks

However, accompanying such opportunities is the concern that there are also risks that may put children in danger. The technological innovations accompanying the convergence of media and communications have produced personalised and mobile internet access which, while offering benefits such as access to information, privacy and convenience, are perceived as problematic to the management of childhood. The risks facing children online fall into three categories, that of content, contact and conduct risks in which children may be unknowing recipients of content or communications, or may themselves take risks through accessing content and engaging in communication or conduct that may be harmful to themselves or others (Staksrud, 2013, p. 55).

Rapid technological advances since the late 1970s have witnessed the adult industry capitalising from the Polaroid camera, the VCR, camcorders, scanners, and online chat, and
the industry’s adoption of digital and internet technologies (Waskul, 2004, p. 235). However, with each new innovation, regulatory mechanisms have typically been put in place to control illegal content and to prevent children’s access to age inappropriate content. This thesis is not concerned with adults accessing legitimate pornography, but is focused on pornography on the internet as it relates to children. While much commercial internet pornography is legitimate for adults to consume, the lack of regulation around who gets access to it results in a significant number of children being exposed to pornography on the internet. After almost twenty years, researchers now generally perceive internet pornography as being risky to children (Buckingham and Chronaki, 2014; Livingstone, Haddon, Gorizig and Olafsson, 2011; Third, Collier, Forrest-Lawrence, 2014) and a range of concerns have emerged from research around the issue of children and pornographic media.

Earlier studies indicated that pornography has ‘become more hard core, explicitly degrading and dehumanising, with a greater focus on aggressive sexual activity’ (Bridges, 2010; Crabbe & Corlett, 2010; Dines, 2010; Ezzell, 2009). Researchers asserted that children’s exposure to pornography has become ‘routine’ and that exposure is particularly problematic among boys and young men who regularly consume ‘violent materials’ as ‘consumption intensifies attitudes supportive of sexual coercion’ while also increasing sexual assaults (Flood, 2009). However, while these early studies appeared to link the consumption of pornography to aggressive sexual conduct, proving a causal link is problematic (Buckingham and Chronaki, 2014).

What we do know from more recent research is that ‘a significant proportion of children and young people are exposed to or access pornography’ (Horvath et al., 2013, p. 65). Even accounting for the variation in age ranges across research studies, ‘children and young people report considerable exposure and access rates across time and countries’ ranging from around 43 per cent to 99 per cent (Horvath et al., 2013, p. 22). European research estimates that ‘one in four teenagers have encountered online pornography, and one in three have encountered online hate or violent content’ (Livingstone, 2011, p. 510). Determining, exactly what kinds of content children and adolescents may be exposed to (and the risk of harm) is difficult as ‘the term “pornography” can refer to diverse kinds of sexual content ranging from “top shelf” or partial nudity to graphic depictions of sexual intercourse to violent and illegal images of abuse’ (Livingstone and Smith, 2014, p. 639). There have been some surveys that found that the majority of young people have viewed ‘soft porn’, and that a significant minority are exposed to more extreme pornographic forms such as
‘paraphilia, sexual violence, indecent images of children’ (Buckingham & Bragg, 2003; Cowell & Smith, 2009; Flander et al., 2009). Self-reports by children in the EU Kids Online project indicate that of the 14% of 9-16 year olds were exposed to pornography in the last year, and one third of them were ‘bothered by this’ (Livingstone and Smith, 2014, p. 643). Other research revealed that children’s exposure to internet pornography can result in children engaging in more extreme pornographic sexual acts, itself deemed ‘risky’ behaviour (Sinkovic et al., 2012). Pornography continues to be viewed by some researchers as ‘a factor in abusive behaviour’ which they attribute to the ‘distorted messages about sex embedded in pornography’, and that ‘sexually abusive behaviour by other children and young people accounts for about half of all child sexual abuse’ (McKibbin, Hamilton, and Humphreys, 2016).

Given the ethical difficulties of talking with children about sexual materials it is difficult to really know if what children are seeing is predominantly pornographic, violent or degrading material, or material that may have some educational value (Horvath, 2013, p. 64).

Much research finds the exposure to pornography to be gendered, some reporting that young women feel pornography has a detrimental effect on their self confidence in terms of their body image and sexual interactions, while young men were focused on pornography as a commodity that benefited them (Horvath et al., pp. 19-21). It is now generally accepted that ‘there is a link between exposure to pornography and sexually aggressive behaviours in boys’ and that ‘for girls, pornography use is related to experiences of sexual victimisation’ (Livingstone, 2017). Further, children and young people now engage in ‘peer to peer’ sexting producing new policy concerns (Albury and Crawford, 2012), as well as concern about the pressures that girls now face to produce and share personal sexualised images (Ringrose et al., 2012; Phippen, 2012), which may then be used to victimise them through making such intimate images public (Brown, 2011; Phippen, 2012). This trend raises concerns about issues of consent and coercion, and the normalising of sexting practices among children and young persons (Horvath, 2013, p. 64). While the long term consequences of children’s exposure to pornography may be less clear, (Millwood Hargrave and Livingstone, 2009), there is now genuine concern that children’s access and use of pornographic materials within the converging media and communications environment may have some negative consequences (Livingstone, 2017). Alongside concerns about children’s exposure to pornography, has been the ongoing concern about their sexual exploitation in the production of child pornography, thought to have grown due to the internet (Child Exploitation and Online Protection Centre, CEOP 2009; Smith, 2012; Wolak, Findelhor, Mitchell and Ybarra, 2008).
Pornography as it Relates to Children

What much of the research does not address, is that although traditional regulations that prohibit illegal child pornography, and prevent children from accessing pornography still do apply to offline content and often content hosted within national borders, such measures have not been effectively applied to internet content that is hosted overseas. ISP network level filtering is the only effective measure that we have at present which can prevent access to non-compliant content. However, states have generally failed to legislate that ISPs block non-compliant content. This project is focused on the failure of Western states to regulate internet intermediaries who, in effect, make both legal and illegal representations of pornography accessible on the internet.

In this thesis I am not, therefore, trying to make specific claims about which forms of pornography are right or wrong for adults to view, but am addressing internet pornography as it relates to children with three particular areas of concern. The first area of concern, and the subject of ongoing regulatory debate, is that the internet has increased children’s exposure to commercial and illegal forms of pornography. There is genuine concern that this may negatively affect some children (Ringrose et al., 2012, Phippen, 2012; Livingstone and Smith, 2014), and that viewing violent pornography and nonconventional sexual acts may be changing sexual expectations and practices among children and youth (Bridges, 2010; Crabbe & Corlett, 2010; Dines, 2010; Ezzell, 2009; Flood, 2007, 2009). A second key area of concern is the sexual exploitation of children in the production and consumption of child pornography, and their continued victimisation through these images being recirculated over the internet (Child Exploitation and Online Protection Centre, CEOP 2009; Smith, 2012; Wolak, Mitchell and Finkelhor, 2007; Wolak, Finkelhor, Mitchell and Ybarra, 2008). The third area of concern is around the risk of children being ‘in porn’. While this thesis does not address the issue of user-generated pornographic materials or peer-to-peer sexting, children and young persons’ production of sexual images is at times problematic. That is, aside from the harms that can occur when self-generated sexual images are publically distributed without consent across peer groups (Brown, 2011; Nightingale, Dickenson and Griff, 2000; Phippen, 2012), such images can also end up on pornography websites (Smith, 2012) causing further harm to those who fall victim to such actions.

All of these areas are typically subject to regulation by states in other ways. For instance, there are regulations controlling the distribution of legal but ‘adult only’ content,
and the production of sexual images of minors is highly criminalised. However, the
suggestion that states regulate non-compliant internet content by legislating that ISPs filter
content is invariably met with resistance.

**My Own Position**

My own view is that the issues of children being ‘in porn’ and ‘exposed to violent’
pornographic content are genuine concerns that we should be thinking about, both in terms of
protecting children from exploitation, as well as consideration of the potentially negative
subjectivities that may be brought about in boys and young men viewing violent and extreme
sexual materials. However, in this project I do not set out to argue if media censorship or
regulation should exist, but rather work from the position that media regulation has existed
since the printing press, and that in this new digital media environment it is therefore
unsurprising that civil actors continue to lobby for formal state regulation of internet content
of a pornographic, obscene or illegal nature. Under neoliberal contexts in Western democratic
states, the use of technological means such as filtering to censor online content remains
highly contentious and more often than not relies on the voluntary cooperation of private and
civil actors. It is therefore not a question of ‘whether to regulate’, rather it is a question of
‘what forms of regulation’ have been achieved, how state regulation is occurring, and
whether these adequately address civil concerns.

**The Ecology of Regulation**

Whereas media regulation to protect children was previously a widely accepted role for states
(Lunt and Livingstone, 2012, p. xii), efforts to negotiate such protections in today’s global
media and communications environment have been highly contentious and difficult to realise.
Prior to the internet, a key objective of state regulation was the reinforcement of national
community standards, and within that the protection of minors from content deemed harmful
to their development into adults. I use the term ‘national community standards’ to refer to a
country’s national classification laws in which media is either prohibited or given a
classification in relation to the audience for whom the material is to be published, i.e. children
versus adults. Classification systems applied to film and texts are developed from the notion
of a ‘community standard’ and are applied to indicate audience suitability and if necessary
limit access to it (Beattie, 2009, p. 82). Efforts to transfer existing ‘community standards’ to
internet content have had limited success. This being the case, concerns at the civic level
continue to emerge and look to states to regulate content. As Chapter Two outlines, there have been successive attempts to criminalise content and communications on the internet, through forcing private actors (service and content providers) or institutions (libraries and schools) to block designated content (discussed in Chapter Two). However, the suggestion that internet content be regulated through top down measures such as ISP network level blocking of access to designated content has, however, been met with considerable resistance.

Of course regulatory responses are shaped by a nation’s historical approach to media regulation, academic research about internet risks, international governance organisations promoting legislative approaches, and local political and media accounts of social problems (Lunt and Livingstone, 2012, p. x). This can result in policy outcomes in many Western democratic states falling short of meeting civil demands for formal state regulation of private actors. Instead, a range of policies have been negotiated, introducing ‘softer’ regulatory policies implemented by a range of non-state actors (Staksrud, 2013, p. 85).

Although this thesis focuses on the issue of ISP filtering, this is not meant to imply that there has been little effort or success in addressing many of the challenges the internet presents to ensuring the safety to children. Rather, a range of measures addressing the risks that illegal or problematic content pose to children have resulted from the efforts and interactions across three broad areas. First, ‘governmental regulation, coordination, and standard setting’ that may involve international organisations pushing for new policy approaches, and organisations interfacing with police networks; second, ‘multi-stakeholder governance (including co- and self-regulation)’ involving civil and private actors; and third, ‘education, awareness-raising and research’ carried out by a range of state and non-state actors (London School of Economics, 2015).

Thus, a diverse range of regulatory mechanisms have evolved over time. Although by no means an exhaustive account, these have included a wide range of organisations and approaches such as: Transnational organisations providing policy directions European Union (EU), the United Nations (UN); content classification and labelling schemes (CEO Coalition); attempts to establish .XXX and .KIDS top level domains (TLDs); applying filtering as well as media safety education in schools; police education programs; public awareness campaigns; European Financial Coalition (EFC) which block payments intended to trade in child pornography; police networked organisations such as Interpol, Child Exploitation and Online Protection Centre (CEOP) or End Child Prostitution and Trafficking
(ECPAT), the Australian Crime Commission (ACC), the UK National Crime Agency (NCA), the Internet Watch Foundation (IWF), International association of Internet Hotlines (INHOPE), and the UK Safer Internet Centre (UK SIC); training programs across tourism industries to identify child prostitution and trafficking (ECPAT); considerable legislation that prohibits the viewing, possession, trading or production of child sexual abuse materials, and limits the movements of registered child-sex offenders to prevent them from committing sexual offences against minors in other countries (McGuirk, 2018).

Negotiations may take place through formal processes such as the passing of new legislation, public consultation and inquiries, or it could be in less formal interactions between organisations who come together to find a regulatory solution.

It is evident that moral panics have been influential in sparking debates, and media has played a role in bringing issues to the attention of politicians, state and civil agencies as well as raising public awareness and anxiety around the problems of protecting children online (Livingstone and Third, 2017). In this regard moral panics have at times had a role in identifying issues and setting agendas.

However, while moral panics can lead to a desire for regulation, moral panics themselves do not determine a regulatory outcome. Individuals and organisations with different ideological positions and interests are invariably drawn together to find a regulatory framework that works for them. In this way, internet regulation is a dynamic ecosystem involving a range of competing stakeholders who come together to negotiate regulatory responses. But whose interests dominate these negotiations and influence policy outcomes? The primary point made in this thesis is that within the field of internet governance there are more powerful players in the mix.

Although, the use of filtering is a powerful issue that is often at the centre of debates about children and internet content, researchers have not yet given attention to ‘just filtering’. While ISP filtering is one of a range of possible tools that can be deployed to limit and control internet content, by focusing just on the issue of ISP filtering this thesis attempts to explain why specific practices emerge or don’t emerge, and are controlled by private actors, and finally, what theory is needed to make sense of these policy outcomes.

Given continued technological innovation, it is also the case that filtering alone is unlikely to be a total solution to the problems of illegal or harmful content. Future research
will of course need to take into account that the ways in which children come to be exposed to pornographic content now extends beyond commercial pornography websites, such as search engine requests, advertising and profiling, social networking sites and other business models that push content through new digital devices and applications in numerous ways. Although this thesis looks at ISP filtering, policymakers, while considering other ways of limiting children’s access, may also need to address the consequences of children’s inevitable exposure and use of problematic content (Nash et al., 2015, p. 28).

This thesis argues that under neoliberal governance, private actors clearly have increased influence in shaping policies around internet content and the safety of children. Neoliberal economic doctrine while supporting the deregulated market also assumes that states have withdrawn resources from areas of social provision (Harvey, 2005; Wacquant, 2010), and underpins the idea that internet content should not be regulated. It is at this point that the central research problem and question in this thesis comes to light.

**Key Research Problem**

The chief research problem being addressed in this thesis is the extent to which Western states have failed to regulate internet content and that the deregulated market continues to generate new risks to children’s safety, among them their exposure to harmful content. Instead, states appear to have stepped back from enforcing media regulation that previously protected citizens (and children in particular), while private actors involved in providing internet access and content at best pursue models of industry self-regulation that place responsibility for managing these internet risks with individual internet users, a situation that is problematic when it relates to children. If, in Western democratic states, regulatory power has shifted from nation-states to non-state (often global corporate) actors, we need to consider how media regulation is negotiated today and whose interests are represented in these policy outcomes.

The central theoretical research question this thesis examines is, how are states responding to civil concerns about children’s exposure to pornography? This question is explored through a thematic analysis of interviews, media articles and policy documents. The following questions guided the analysis of these evidentiary sources: (a) How is media regulation worked out? (b) Whose voices are present in policy outcomes? (c) Who benefits most? and (d) How were children’s interests perceived and represented in resulting policies?
This thesis makes the case that under neoliberal government, states fail to regulate the private sector to implement national regulation which reflects shared national values and protections, or that attempt to protect children from exposure to harmful content. Governments and industries in adopting a deregulatory focus may in fact risk the ‘sideling of citizen interests compared with both consumer and more significantly, industry interests’ (Lunt and Livingstone, 2012, p. ix). Under neoliberal doctrine, it would appear that regulatory outcomes are increasingly driven by political and economic considerations which encourage individual self-regulation online. However, in addressing the effects of the deregulated market, rather than withdrawing from areas of social provision such as the protection of citizens from online risks, I suggest that states have shifted their focus from regulating markets to regulating individual citizens. I draw on elements of Wacquant’s (2010) theory of neoliberal state crafting to explain the state’s withdrawal from regulating markets, and the state’s corresponding response to perceived social harms brought about by the continued lack of controls over internet content and in particular pornographic materials within the deregulated internet market.

**Enforcing National Media Regulation on the Internet in Western Democratic States**

Globally, internet governance has been heavily influenced by the efforts of technical designers, private corporate policies, global institutions, national laws and policies, and international treaties (DeNardis, 2012, p. 722). Unlike any other media technology, the internet presents many new challenges to the role and ability of nation-states to maintain national community standards. Aside from addressing the technical and economic efficiencies of the internet, governance concerns have been extended to issues of national security, individual liberty and privacy, copyright and intellectual property rights, national media classification and censorship, and the security and protection of citizens. In this new globally networked society, the sovereignty of nation-states over national media standards and regulation is particularly challenging (Flew, 2016, p. 75). The internet has challenged traditional national media regulation which previously protected children and young persons from exposure to pornographic media. Policymakers have therefore looked for new ways of governing media consumption to enforce national media standards and provide protections for children.
In response to its global and borderless nature, many states have implemented technical measures to prohibit illegal content and control the distribution of legal but culturally problematic content. A number of states have attempted to regulate online media using internet content filtering schemes to prevent citizens from accessing specific content (Deibert et al., 2008). Although highly contentious, ISP filtering is one established method of controlling content online, which has been implemented by internet service providers (ISPs) either through voluntary industry self-regulation, co-regulation (where functions are shared between state and non-state actors), or implemented at the direction of national courts.

While authoritarian states have used some radical methods to stop citizens accessing politically or culturally unsanctioned content (Brown and Marsden, 2013, p. 94) governments in Western democratic states shy away from imposing state regulation onto internet content. There are, however, incidents where governments may require ISPs to block access to content like ‘incitement to violence, and genocide denial’ or the ‘glorification of terrorism’ or ‘sites encouraging suicide or anorexia’ (Brown and Marsden, 2013, p. 94). However, in Western democratic states, this is rarely extended to blocking a broader range of content that is illegal and does not meet national community standards.

Nevertheless, Western liberal democratic countries have also employed filtering and surveillance technologies in a number of ways and for different purposes. As neoliberal government doctrine has worked against strong state regulation of internet content, the existing filtering arrangements in Western democratic states are often private. Filtering practices are not new and are used across a wide range of settings to protect business interests, and the liability of institutions (businesses, schools, public settings) which have a duty of care to those who work for or attend education within those spaces. Many adults and children will have been subject to filtering technologies, albeit without knowing, within public and commercial spaces. Institutions such as schools and universities, corporate businesses, public access points such as libraries, internet cafes, and airports, can be subject to filtering in order to comply with perceived moral and legal norms. Corporations also use filtering systems to guard against productivity loss and misuse of company IT (e.g. Facebook, Trade Me, eBay). Many schools follow developmental guidelines and so employ filtering to prevent children from accessing age-inappropriate content. Filtering software companies have also targeted parents, offering home PC filtering solutions. Both the public and business sectors therefore regularly utilise technological methods to prevent access to certain information online, chiefly to avoid liability and manage business risk. Consequently, a
diverse and expansive private industry producing filtering systems has burgeoned to enable
government institutions, businesses and families to prohibit and regulate user access to
information in digital online environments.

Although private and public institutions frequently block ‘illegal’, ‘obscene’ and
potentially ‘harmful’ content, this material remains accessible on the public internet.
Additionally, many Western democratic states require ISPs to block content hosted within
sovereign borders that is deemed illegal under national law, thus preserving the regulatory
power of the state over media perceived to be located within its territories. However, the
problem of content hosted overseas remains a key challenge to states. Western democratic
states have toyed with the idea of ISP level network filtering as a means to enforce national
censorship. Almost all Western states have pressured private actors (ISPs and intermediaries)
into blocking content ranging from gambling sites to child pornography. However, outside of
public or business settings state efforts to censor user access to online content remain
controversial. For instance, Western democratic governments that have attempted to limit
citizens’ private access to obscene or harmful internet content, in order to enforce national
regulatory boundaries, have received strong criticism from civil liberties advocates and
private actors within industries whose interests would be affected by such regulation. While,
atttempts to filter obscene or harmful content may provoke considerable public debate and
civil opposition, filtering has become a more appealing method of limiting access to violent
and sexual content (Penfold, 2001), as well as content that is ‘racist and xenophobic’ (Brown
and Marsden, 2013, p. 97), culturally sensitive, that incites violence, self-harm, terrorist acts,
or information that is thought to threaten national security. For the most part filtering has
been achieved through seeking the voluntary cooperation of ISPs to block access to specified
content (Brown and Marsden, 2013, p. 98).

There are now many examples of self- or co-regulatory schemes in which socially
concerning content is blocked. ISPs in Canada, the UK, France and Germany have, under
government pressure, established voluntary filtering systems to block a range of content such
as child sexual abuse material, hate speech, and in some cases illegal file sharing sites
(Maurushat and Watt, 2009), as well as content deemed to incite violence, promote terrorism,
and in some countries materials denying genocide, or social problems such as sites
encouraging suicide or anorexia (Brown and Marsden, 2013, p. 97; Deibert et al., 2008,
Deibert and Rohozinski, 2010). Consequently, earlier counterclaims that technology would
be costly and inefficient appear to be less convincing as filtering is becoming an established
Filtering technology, like other internet technologies, is developed to meet market demand (whether that be from governments, private actors or consumers) and will increasingly be seen as a viable option for governments to censor internet content in the interests of national security, stopping crime and to address social issues, although there is less agreement about filtering content on moral grounds.

Privatised filtering schemes have been criticised for being ‘opaque and lacking in due process and democratic scrutiny’ (Brown and Marsden, 2013, p. 98), thus lacking the necessary public oversight to guarantee that schemes are in the public’s best interest. The fact that ISPs more often self-regulate under the threat of legislation, raises concern about a lack of transparency (Maurushat and Watt, 2009), whereby not only it is feared that private actor solutions may fail to meet civil expectations, but they may just as easily be overly broad in their censorship to protect their own interests (United Nations Human Rights Council, 2011, p. 1). States, NGOs, and private organisations have been known to regulate internet content in the public interest, but without oversight, little is known as to the extent or adequacy of such measures. Concerns have been expressed by the various reports of the Special Rapporteur to the United Nations that question the privatisation of censorship, and lobby for greater transparency (Akdeniz 2011; La Rue, 2009, 2014). While there are concerns about overly broad censorship, there is as much cause to be concerned about the inconsistency and lack of industry self-regulation (Haufer, 2003).

This brings us back to the question of state regulation, and whether the current process of policy negotiation adequately addresses civil concerns. Civil concerns continue to emerge about the risks that pornography and other harmful content may pose to children, raising the prospect of renewed interest in state regulation executed via ISP network level filtering (Commonwealth of Australia, 2016), and more broadly for regulation of stakeholders to ensure ‘more responsible industry practice, either where self-regulation is proving ineffective or where UK government lacks powers to persuade international industry players’ (Nash et al. 2016).

**Key theoretical concepts**

This thesis draws from a range of academic disciplines to contextualise the study. For instance, I draw on key sociological (Buckingham, 2000, Drotner, 1999; Egan and Hawkes, 2010; Hawkes and Scott, 2005) and historical (Hamowy, 1977; Hunt, 1998, 1999) texts, as well as childhood studies (James and Prout, 1997; James, Prout and Jenks, 1998) to examine
changing social, economic and political trends that have affected how states regulate sexuality and sexual media to sustain modernist notions of ‘childhood’. This provides a conceptual framework against which to analyse the current competing constructions of childhood and their relation to internet media within the policymaking process. I also draw on key sociological theories that examine issues of social regulation in the ‘risk society’ (Beck, 1992, 1999; Giddens, 1991a, 2002; Livingstone, 2009; Livingstone et al., 2011; Staksrud, 2013) and trends toward governmentality and self-regulation (Rose, 1989, 2000; Wacquant, 2010) while at the same time drawing from political economy and media communications literature to examine neoliberalism with respect to internet governance and the role of state (Brown and Marsden, 2013; Curran, Fenton and Freedman, 2012; Flew, Iosifidis and Steemers, 2016; Hardy, 2014; McChesney, 2013; Peck, 2001; Wacquant, 2010, 2012).

Research Design, Method and Archives

The ways in which states have responded to social concerns about pornography and other harmful content have varied in accordance to local political historical conditions. This research looks at two case studies to analyse how state and private actors have responded to civil concerns to address content risks to children online, principally, recurrent calls to censor illegal and adult content through the use of filtering methods. Both Australia and the UK have had reoccurring debates about regulation of online content. This thesis examines the perspectives and strategies of stakeholders across state, civil and private sectors in these two countries and identify whose voices dominate eventual regulatory outcomes.

Case Studies

State proposals to regulate internet content through the establishment of ISP level filtering have more recently been the subject of much debate in Australia and the UK and provide an opportunity to analyse how debates about internet content regulation are negotiated between civil, private and state actors. This research examines recent policy debates and outcomes in both Australia and the UK. In Australia the Rudd-Gillard Governments (2007-2012) policy aimed to forcibly regulate internet content through establishing a state-run internet filter, to apply existing community standards, and to protect minors from harmful internet content. When the Rudd Government set aside their filtering policy, there was revived debate in the UK which also focused on concerns about children, pornography and the internet. A two-country case study offers the opportunity to develop a substantive theoretical explanation of
the process by which regulation is negotiated and agreed within Western neoliberal regulatory settings

Australia

Since the mid-1990s ISPs and content providers within Australia have been required, when notified, to remove content deemed illegal under national media regulations and which is hosted on Australian soil. Australian ISPs did however resist pressure to implement filtering to block illegal content (such as child pornography) that is hosted offshore. However, at the end of 2007 the newly elected Rudd Government took a stronger stance on censoring online content putting forward a three-pronged approach to address the risks to children online providing funding for: cyber safety education and to raise awareness of online risks; to bolster law enforcement to protect children; and the implementation of ISP network level filtering (Conroy, 2007). However, the issue of content filtering was very controversial as the Federal Government intended to establish a state-run blacklist which ISPs would be required to filter (Lumby and Albury, 2010; Lumby, Green and Hartley, 2009), signifying a retrenchment of the neoliberal status quo in which private actors were accustomed to developing their own alternative industry Codes of Practice. The Government’s initial filtering proposals led to fears that censorship would be too broad and unrestrained, blocking ‘all hard-core pornography – adult, child, extreme and otherwise’ (Brown and Marsden, 2013, p. 103). The Federal Government’s attempt to regulate internet media could be seen as symbolising efforts to ‘bring the state back in’ (Flew et al., 2016) as a regulator of online content, but this policy was clearly out of sync with other Western democratic states. The Government’s proposal to filter continued throughout the duration of the Rudd-Gillard administrations (2007-2012) but was ultimately unsuccessful. This case offered an opportunity to examine state efforts to address the formal regulation of private actors, and the balance of power between state, civil and private actors. It also offers an opportunity to examine how the state responded to ongoing civil concerns about social disorder created by the deregulated market.

United Kingdom

A classic example of industry self-regulation is that of the British Telecom (BT) Cleanfeed filtering system established in 2003 to block British internet users from accessing child pornography hosted on overseas servers. Utilising the Internet Watch Foundation’s (IWF) Child Abuse Image Content (CAIC) blacklist that targeted actual web pages and images
identified by their uniform resource locators (URLs), BT’s Cleanfeed was a more precise filtering system that did not suffer from the granularity of DNS\(^1\) blocking used by Nordic and Scandinavian ISPs (Brown and Marsden, 2013, p.103; Marsden, 2001). However, as a charitable incorporated body funded by the EU and the internet industry, the IWF lacked transparency, accountability or judicial oversight (McIntyre and Scott, 2008, p. 121-122), raising doubts about the organisation’s legitimacy (Edwards and Waelde, 2009). While for the British Government, the problem of child pornography was effectively delegated to the private sector there were concerns that ISPs might under or over block to benefit their own interests (Kreimer, 2006).

In 2007 the civil sector called for the British Government to make the filtering of child pornography mandatory and to broaden the scope of filtering to include ‘extreme’ pornography and websites supporting terrorism (Brown and Marsden, 2013, p. 103). This was by and large unsuccessful. However, since this time there has been a consistent campaign to address issues of children and internet pornography. Under an industry self-regulatory model larger ISPs have, under the threat of legislation developed, ‘whole home’ filtering services and offered this to families through a program called Active Choice, although the number of households taking up these services varied (Miller, 2014; Ofcom, 2014b). In 2012 there was renewed pressure for ISPs to provide ‘default-on’ filtering to residential homes, should account holders fail to choose. Further, the state has vowed to force ISPs to block pornography websites that do not have strong age verification in place. Overall, results are mixed, and policies rely on the cooperation of private actors and the willingness of parents to choose to filter content.

**Research Design**

Using Grounded Theory to guide the research process (Charmaz, 2014; Glaser and Strauss, 2009; Strauss and Corbin, 1990, 1998), a grounded theory approach was undertaken to collate and analyse texts from qualitative interviews, media articles, and documents such as research reports, policy documents, submissions and media releases. Examining media and documents enabled the evaluation of the respective policy positions, and key arguments put forward by

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\(^1\)Domain Name Server (DNS) blocking was a technological method introduced in 1997 to make it difficult for internet users to locate specific domains or web sites. It was originally developed to block spam email where these had a known IP address.
various actors in the news, and comparison with official policy statements. This facilitated identification of key social and political influences operating within national debates about regulation. In order to assist in understanding power relations between stakeholders and how they influenced policy, a number of open qualitative interviews\(^2\) were conducted which explored the issues interviewees felt were most relevant to their organisation. A thematic analysis was conducted by working iteratively across these key texts (Braun and Clarke, 2006, p. 78; Patton, 1990), using coding to identify key themes within civil, state and private sector perspectives. Media and policy documents were collected and analysed concurrently, so that subsequent data collection and analysis could be more selective, looking to disprove or validate hypotheses and further develop theoretical concepts (Bryant and Charmaz, 2007, pp.14-16). By utilising Strauss and Corbin’s (1990, 1998) paradigm model I could analyse data by asking questions such as ‘when, where, why, who, how, and with what consequences’ (Charmaz, 2014, see Axial Coding, paragraph 5). The paradigm and conditional matrix tools provided a way to investigate codes and examine their causal conditions, contextual dimensions, and intervening conditions. In this way I could identify the events and conditions (national, transnational and global) impacting the strategies and interactions of civil, private and state actors.

**Personal Background and Positioning**

Prior to embarking on this research I worked as a business consultant in the filtering industry, primarily marketing ISP network level child pornography filtering systems to state and non-state organisations across several Western democratic countries. I became fascinated by the observation that while forms of child pornography and pornography were subject to national regulation inside national borders, the suggestion that such regulation be applicable to internet content beyond the regulatory reach of states was very contentious. In this role I observed first-hand the difficulties in bringing parties together to discuss the adoption of ISP filtering technologies, and the ideological tensions and regulatory constraints across different national settings. As a result I became intrigued about how decisions are made and who was having the greatest influence.

On a personal level, my work in this field also heightened my awareness of the risks children may face online, and this combined with my own situation as a parent faced with mediating

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\(^2\)See Kvale and Brinkmann (2009).
my own child’s internet activities stimulated my interest in embarking on doctoral research to examine highly contested debates about ISP filtering as a potential solution.

My professional experience was also methodologically significant, in that my experiences and interactions with stakeholders contributed to the sampling design and interview process. The purposive sampling framework was, in a sense shaped by my understanding of a particular field as an actor within it. This was beneficial as I was able to identify and directly approach key stakeholders for interviews, who then also introduced me to other colleagues within their networks whom they viewed as having an impact on the national regulatory landscape. However, it should be acknowledged that this sampling process while providing access to key influencers, may at the same time have excluded other lower profile actors in the field from being included in the study. My professional experience was also important in the interview process as I was viewed as an insider and quasi expert within the policy landscape. Possessing a working knowledge of ISP filtering technologies and the regulatory debates occurring across several countries heightened participants’ interest in taking part in my research, and enabled both interviewer and interviewee to engage in ‘discussion on an equal footing’ (Pfadenhauer, 2009, p.87). The benefits and constraints of this ‘insider status’ are further discussed in Chapter Three.

**Elite Interviews**

Interviews were conducted with key stakeholders in both the United Kingdom and Australia, providing highly qualitative texts to assist in understanding the processes of regulation and policy outcomes. Interviewees were representatives across a range of state, civil and private stakeholders such as Internet Service Providers, content providers, filtering vendors, information and communication technology (ICT) communities, industry associations, government censors and police, cyber safety consultants, child protection agencies, and political representatives. Appendix A provides a fuller description of the key interview respondents involved in this study. All of the interviewees held ‘elite’ positions within their respective organisations, but were also ‘experts’ who were actively trying to influence internet content regulation policies in their respective national settings (Bogner, Littig and Menz, 2009, p. 7). Many had provided expert opinion and submissions into the process and were regularly quoted by the media. Where media analysis offered a timeline of key events within debates and identified key claims being put forward by various stakeholders, one-on-one qualitative interviews enabled me to explore with interviewees their organisational
perspectives about children, pornography and internet content regulation and the key discourses underpinning their policy positions. These interviews followed an open-ended format where, to a large degree, interviewees moved through issues of the most interest and importance to their organisation’s particular world view. When invited to offer their perspectives in an open qualitative interview format, they were all eager to express their (organisational and personal) perspectives regarding their national debates about children, internet pornography and regulating internet content.

**Media and Document Analysis**

Aside from drawing on interviews my analysis also drew on data from policy documents and media articles which provided contextual information within each country, identifying public consultations, key influencers, research and political agendas. I examined a range of policy related documents such as organisational media releases, legislation, industry Codes of Practice, official parliamentary debate, inquiries, discussion papers and submissions relating to government commissioned research and consultation documents about children’s safety or effects of pornography, proposed state or industry technological solutions, or alternative regulatory regimes to address user self-governance.

In terms of the media, news articles relevant to each country’s debate were collected from across mainstream newspapers. In Australia the main news archive consisted of articles from *The Australian, The Age, Sydney Morning Herald*, and additional media where relevant from *The Daily Telegraph, Brisbane Courier Mail, The Canberra Times, The Melbourne Age, The West Australian, The Adelaide Advertiser*, and *The Northern Territory News*. These followed the Rudd Government filtering policy between 2007 and 2012. Specialist IT news, and pertinent televised debates were also analysed. In the UK a selection of media included *The Register, BBC News, The Guardian, The Daily Telegraph, The Daily Mail* and *The Observer*. These articles cover the period from 2011-2016.

**Defining State, Private and Civil ‘Actors’**

In following a thematic coding process, it became clear how to group different themes into three broad positions, those of state, private and civil categories. These positions represent ideal types, as in reality the lines between them are often blurred, porous and overlapping (Edwards, 2014, p. 3; World Economic Forum, n.d.).
In this research, there is no pure state, private or civil framing that matches an exact policy positioning. Similar to many other contexts, there are difficulties in assigning one person to a specific ideal type or position. Nevertheless, in conducting a thematic analysis I was able to identify representations across the data sets that reflected the underlying world views of each of these groupings.

Emerging from the data were political framings about the issues which appeared to respond to public concern about children and internet content. These representations, often made by politicians or government officials, were grouped together under the term ‘state actor’. The term ‘private actor’ is defined as individuals and organisations in the business sector who operate beyond the control of state, acting primarily in the interests of profit. In this project, this typically included organisations within the internet service and content industries. The ways in which state and private actors spoke about the issues roughly corresponded to their policy positions.

However, also emerging from the thematic analysis were protectionist discourses which favoured stronger state regulation and which seemed to belong to the ‘civil’ grouping. This civil grouping is perhaps more ambiguous, in that while civil framings might be assumed to come from an individual or organisation operating in the civil sector, it also included representations made by individuals working outside the civil sector. Thus, assigning each interviewee to a particular grouping was not always possible. People working within civil, state and private sectors do at times hold more than one and sometimes contradictory positions as they vacillate between organisational positions and their own personal reflections.

As the sampling design used in this research focused on recruiting ‘elite’ actors from across the regulatory landscape, the sample did not include a wide range of civil actors from organisations that we might consider to represent the civil sector, such as small community groups, child or parenting support agencies, and which may have yielded a range of policy positions vis a vis ISP filtering. Instead, the notion of the ‘civil actor’ emerged through thematic analysis which identified civil ‘framings’ of concern as they relate to children and the internet. The representations reflected a shared moral understanding about children and media risks that could be grouped together under the civil category. What was interesting was that this grouping not only included people who worked for civil sector organisations, but also included others whose representations of the issues reflected civil concerns based on
being a parent or a member of a community group working with children, or people who had turned their concern into a business enterprise, but whose beliefs and understandings were united by adopting this position. The ‘for profit’ businesses included in this civil group were small owner-operated organisations that were not economically powerful in the same way as corporate internet intermediaries who clearly belonged in the private actor category.

In order to make sense of these ambiguities I drew on Jeffrey Alexander’s (2006) work which defines the civil sphere as an emotively driven set of discourses indicative of broader moral or normative concerns which often stimulate debates about the cultural boundaries that shape social life. Alexander’s (2006) model allowed me to examine civil representations (without recourse to some form of judgement as to what is true or false, fair or disproportionate) and to locate discourses that were clearly driven by a moralistic undertow, and a concern over the moral challenges that the internet poses for children. In this research, these positions tended to be united as they pushed for a certain type of regulation that came across as protectionist and precautionary.

One final and important point, in selecting representations to illustrate the world views of state, civil or private groupings it must be acknowledged that an individual quotation does not fully represent an interviewee’s perspective, or necessarily give due credit to the range of initiatives that participants and their organisations have committed to as part of the broader regulatory landscape addressing children’s internet safety.

Chapter Outlines

Chapter One: Regulating Sexuality, Children and Media

How childhood is constructed is central to the question of media regulation. This chapter provides an account of the social, economic and political forces which have shaped the distinct status of the ‘modern child’ across Western democratic countries during the period between the late-19th to mid-20th centuries. It charts how ‘childhood’ came to be constructed as distinct from adulthood, as ‘asexual’ and ‘innocent’ of adult sexual life. It reviews how the medicalisation of sexuality and the growth of ‘developmental science’ within education provided the foundations for the management of modern childhood. This was achieved through the careful supervision and management of children within institutions of care, where their access to sexual knowledge (media) could be controlled or prevented. The ensuing economic, social and political trends of the 1950s-1960s resulted, however, in the
liberalisation of sexuality and sexual media. Following the relaxing of regulation of pornography, civil actors concerned about the effects that sexual and violent media could have on children’s development (Drotner, 1999; Sutter, 2000), have regularly called for states to regulate new media in order to protect the modern child from premature exposure to adult sexual commodities. Regulation was often renegotiated when new forms of media such as the TV and video were thought to threaten children.

The political climate of the remaining few decades of the 20th century and up until now have seen a shift toward market deregulation thereby increasing individual choice but also the responsibility for individual self-governance. At the same time the modernist construction of childhood has undergone challenge from a new paradigm within the sociology of childhood that questioned modernist notions of children as passive and vulnerable (James and Prout, 1997); and a global campaign to strengthen children’s rights to autonomy and self-determination (Eekelaar, 1986), both of which imply a more liberal view toward children and media. However, this has raised complicated questions as to how to protect children, and argument over whether sexual and violent materials are harmful to children, and if so who should be responsible for regulating children’s access to media (the state, private actors, family or children themselves?). How childhood is constructed remains central to current debates about regulating media, and pornography in particular. This chapter provides a conceptual background of the intersections between the regulation of childhood, sexuality and media, against which to analyse the competing policy perspectives of state, civil and private actors as they draw on different constructions of children to contest state regulation of internet content, and in particular the regulation of sexual and violent content that may be harmful to children.

Chapter Two: Theorising the Failure of Nation-states to Regulate Internet Media

Chapter One provides an overview of how childhood, sexuality and media have been regulated up until the commercialisation of the internet in the mid-1990s. Chapter Two looks at the early efforts of states to regulate internet media and develops a theoretical framework to address the main research problem - the failure of states to regulate private actors within the internet service and content industries. This chapter therefore charts the failure of
governments in the US, UK and Australia to regulate internet content during the internet’s early history, paying specific attention to the regulation of ‘obscene’ or ‘prohibited’ content, and within that, the attempts to protect children from exposure to internet pornography. It highlights the principles underpinning internet governance generally, and their symmetry with neoliberal governance principles called upon in current regulatory debates to resist state media regulation. It shows how technological innovations continue to challenge the regulatory authority of states, but also how neoliberal economic and political doctrine have supported the continued failure of states to regulate in this area.

However, while states may have failed to regulate private actors, the state appears to have shifted its regulatory focus toward the disciplining of internet users. That states have not completely withdrawn from regulation to address social issues arising from the deregulated internet market cannot be explained by classic economic accounts of neoliberalism (Harvey, 2005). This chapter therefore builds a theoretical framework drawing on Wacquant’s (2010) theory of neoliberal state crafting to explain why states fail to regulate private actors. It supports the thesis that although states support the continued neoliberal preference for deregulated markets they do at the same time reorient resources to attend to the consequences of the deregulated market that it supports. It explains why the state has reoriented regulatory attention to impose sanctions against those who misuse the internet, and through expansive campaigns that obligate all internet users, including children, in the management of online media risks (and other risks) and to act responsibly online. The shift away from regulating powerful private actors to regulating powerless individual internet users bears a strong resemblance to Wacquant’s (2010) theory wherein the state, while supporting the maximisation of economic wealth accrued by powerful private actors, appears to simultaneously address civil concern, even though this continues to arise from the deregulated market.

Chapter Three: Methodology

In Chapter Three I outline the grounded theory approach used in the design, data collection and analysis of texts within this project. This included the analysis of interviews, media articles and policy related documents such as official parliamentary debate (Hansard),

3Although empirical analysis in the research is limited to Australia and the UK, the American approach to internet governance and regulation has had important influences on the approaches taken by other Western democratic states and is therefore included here.
industry and Government reports, commissioned research, media releases, and various submissions to Government. I undertook a thematic analysis using processes of iterative coding, conceptual memoing, and theoretical sampling (Holton, 2007, p. 279) from which I developed core themes and an overarching narrative. In coding media texts it was clear that while key events and claims were plentiful, the underlying motivations and strategies of state, civil and private actors were less clear. It was therefore important to conduct interviews with key stakeholders who had participated in consultations and debate about internet content regulation. In order to test the thesis that Western states fail to regulate private actors, and have turned their attention to the problems created by this lack of regulation, I chose to compare data from two Western democratic states which have had recent debates regulating harmful and illegal content. I therefore conducted 20 qualitative interviews with elite stakeholders involved in Australian and UK debates about internet content regulation. This provided rich accounts of stakeholder constructions of childhood, pornography and the internet, where news items typically did not. Further, interviews allowed me to develop an in-depth understanding of the motivations and strategies and relationships between state, civil and private actors, and their relative influence over resulting media policy.

**Chapter Four: Defending Modernity’s Child: Civil Actor Constructions of Children, Pornography and the Internet**

This chapter examines the underlying civil world view about childhood and the challenges raised by the internet, in Australia and the UK. It documents the accounts of ‘civil actors’ working to reduce societal harms with regard to internet media, and in particular to counter potential media harms to children. It presents the key themes that emerged from the analysis of interviews, media and policy documents. Five broad themes emerged as important to the issue of protecting children from media harm. First, children were constructed as being ‘at risk’ of both ‘sexual exploitation’ and being ‘in porn’. Second, the new technology of the internet was thought to present new threats to childhood as it continued to generate new sexualised behaviours among children, and exposed children in various ways to sexual media and sexual predators. The internet was also responsible for the increasingly pernicious ‘nature’ of pornography which they viewed as having become more violent, and which threatened the normalisation of non-normative and violent sexual practices among children and youth. Third, civil actors drew from modernist and developmental constructions of childhood to highlight the damaging effects of their ‘premature’ exposure to violent sexual media, and propose stronger state regulation of potentially ‘harmful’ content. Fourth, civil
sector concerns supported collective state measures to minimise risks. Fifth, the pressures of neoliberalism resulted in civil compromise. Analysis revealed that civil actors now faced considerable challenge under neoliberalism in achieving state regulation of internet media. They struggled to mount their arguments for collective measures to regulate internet content, against the continuing trend toward individualised management of internet media risks. As states remained unwilling to regulate private actors, civil actors reconstructed their modernist moral concerns about threat to children’s innocence within contemporary discourses of ‘risk’ and ‘harm’. In the absence of state regulation, civil actors turned to the family as a key site of regulation, emphasising the need for parents to take more responsibility in protecting children from the harm of media such as pornography, and their interactions with others online. However, this was problematic as parents were perceived to lack digital parenting skills. Further, civil actors looked to the classic liberal approach of regulation through education, to promote discourses of precaution and risk avoidance under the banner of internet safety education. Consequently, the strategies of civil actors appeared to be consistent with private interests as their calls for stronger filtering to address content such as pornography were not yet reflected in state policy. This chapter drew on interviews in Australia and the UK as well as news media and relevant policy documents.

Chapter Five: Contesting Modernity’s Child: Private Actor Constructions of Children, Pornography and the Internet

Where Chapter Four examined the perspectives of civil actors who sought state regulation of private actors in the internet industry, Chapter Five examines how private actors in Australia and the UK responded to the threat of regulation. Five key themes emerged from analysis of interviews, media articles and official documents: First, their constructions of the child as ‘savvy’ supported their policy position regarding content regulation. Second, pornography was constructed as ‘okay’ and ‘natural’. Third, they focused on the ‘family’ as a key site of regulation. Fourth, private actors promoted a utopian view and expressed great faith in the internet. Fifth, they had an enduring faith in the market as being able to address internet risks unaided by state intervention.

The central thesis presented in this chapter is that private actors made use of both economic neoliberal principles to reject the regulation of private actors, and called on the neoliberal rationality of individual responsibility to require individuals manage online risks themselves. The chapter shows how private actors generated very different and quite liberal
conceptions of childhood, child sexuality and internet pornography in order to allay fears about the effects of internet pornography and the need for regulation. However, private actors paradoxically called on traditional modernist notions of childhood to inflate concerns about contact risks and children’s own risky conduct. This served to reorient concerns away from fears about internet pornography to the problems of childhood and in so doing amplify parental responsibility for supervising children’s internet access and activities, thus reinforcing the family as the preferred method of regulation.

Chapter Six: The Failure of States to Regulate Private Actors: Policy Outcomes and its Beneficiaries

While Chapters Four and Five have looked in turn at the way in which civil and private actors have argued for and against media regulation, Chapter Six examines the recent regulatory efforts of the Australian and UK governments to regulate or control illegal and harmful internet content. It demonstrates that while states attempted to legislate or regulate to address civil concerns, they have generally stopped short of implementing policies that would affect private interests. It also highlights the influence of private actors in perpetuating both industry and individual self-regulation. For instance, despite the Rudd Government attempt to introduce mandatory ISP filtering to address prohibited and harmful internet content, the strategies and actions of private actors led to an industry self-regulatory model. Private actors generally expressed their mistrust of ‘big government’, and therefore set about undermining the credibility and legitimacy of the state.

This chapter finds that while under this neoliberal model state regulatory functions were theoretically delegated to non-state actors, private actors typically did not replicate traditional state media regulation in the internet environment. Instead, industry self-regulation often results in dilute and uneven policy outcomes, which often fall below national standards, and rarely result in ‘legitimate’ forms of regulation. As this chapter demonstrates, in both Australia and the UK the state-private nexus succumbed to neoliberal principles that prioritise private interests while passing responsibility for managing internet security and risk to individual internet users (consumers), a situation that does not adequately address civil concerns about protecting children when online.
Conclusion

Finally, in the Conclusion to this thesis I summarise the core findings of research. It reviews how media regulation is worked out, revealing the primacy of private actor voices in resulting policy outcomes. While civil and private sectors rely on very different notions of childhood in order to rationalise certain policy positions, it is clear that private actor notions mesh with neoliberal ideals, resulting in policies that do not meet the concerns of civil actors. It also discusses the implications of risk management discourses and the neoliberal trope of individual responsibility, in regard to children. Finally, the Conclusion argues that this state-private nexus side-lines civil concerns and that this, combined with the prioritisation of the deregulated market, results in a shortfall when it comes to regulation in the public interest, specifically children’s interests. It also addresses the key theoretical question, that of why states fail to regulate private actors. Through applying Wacquant’s (2010) theory of neoliberal state crafting we can examine how states do in fact regulate, but in a way which perpetuates market deregulation. The implication of this is that while appearing to address civil concerns arising from the deregulated internet environment, by regulating individual internet users, powerful private actors remain exempt from regulation. While the penalties for the least powerful such as children are increased, corporate private actors remain unscathed and continue to reap the benefits of a deregulated market.
Chapter One: Regulating Sexuality, Children and Media

The moral regulation of erotic and violent texts has been a recurrent theme across Western liberal democratic countries over the last few centuries, and has often been a response to new innovations of media technologies. At such times, the perceived failure of regulation to protect children from accessing pornographic and violent texts often generates renewed civil concern triggering the renegotiation of media regulation (Drotner, 1999; Sutter, 2000). However, as Buckingham has pointed out,

The question of where childhood ends and youth or adulthood begins is answered in very different ways, at different times, and for different purposes (Buckingham, 2000, pp. 62–63).

Social, economic and political forces have over the last few centuries fashioned a modernist notion of ‘childhood’. Regarded as inherently asexual, children’s ‘innocence is premised on the notion that children are ignorant of sex and do not experience sexual feelings or desire’ (Buckingham and Chronaki, 2014, p. 303). Sexuality has, therefore, been a key dimension distinguishing childhood from adulthood, making children’s premature access to sexual knowledge an ongoing concern since the 1800s, requiring its monitoring and regulation (Egan and Hawkes, 2007, 2010; Hawkes and Egan, 2008; Jackson, 1982). Historically then, the maintenance of childhood has been a central site of anxiety within many regulatory debates about media. When children’s behaviour appears to transgress social meanings of what childhood ought to be, formal or informal regulations governing their development and conduct are perceived to have failed, and childhood itself is said to be under threat. It is at these times that public debates generate competing constructions of what childhood is, and to what degree state regulation (of sexual media) can or should aid in maintaining modern notions of ‘childhood’.

The role of the state in regulating sexuality, children and media has evolved throughout history, influenced by changing political, economic and social conditions. Contemporary discussions about new internet technologies, and the danger that children’s access to online pornographic content (as well as a growing range of content considered harmful to their development) pose to traditional social norms, stimulate contested notions of what childhood is today and whether media regulation is needed. By teasing out competing constructions of childhood and examining how these are deployed by state, civil and private
stakeholders within recent media debates, we can assess whether resulting regulatory policies adequately respond to recurrent social anxieties about childhood. This chapter therefore adopts a constructionist approach to trace the history of social, political and economic forces that have impacted the moral regulation of children, sexual media and new media technologies up until the advent of the internet. This provides a background against which to later analyse the internet media policy debates in Australia and the UK. This history begins by examining pre-modern notions of sexuality, sexual regulation and childhood.

**Christianity, Romanticism and Technological Innovation**

As far back as ancient Rome it would appear that sexuality has been subject to regulation, as citizenship status, class, and gender were tightly interwoven with legal mechanisms governing sex. At this time, there was little, if any, concept of childhood as a status requiring protection from the sexual excesses of more powerful citizens. While some historians argue ‘excessive indulgence in pleasure threatened the public profile of the elite male citizen in the early first century’ (Edwards, 1997, pp. 67–68) this may well be over-stated. Adultery was common and a man ‘might take his pleasure with his servant woman, her daughter, and her son at the same time—all of whom might technically be his children’ (Berkowitz, 2013, p. 122). Where sociologists and historians have pointed to the practice of pederasty as a feature of Roman society (Calhoun, 2008; Epstein, 2003; Halperin, 1989), sexual practices had little restraint in terms of the age and gender of sexual partners, often involving both girls and boys, and so offered no noticeable protections, especially for children born into slavery. So problematic was the ratio of freeborn to non-freeborn children that Augustus in 18 BC enacted adultery laws to try and change the balance, rewarding couples having children and forbidding men from having sex with the wives and daughters of other men (Berkowitz, 2013, pp. 122-123). Although these legal measures attempted to reconstitute early Rome’s austere morality laws, in light of the subsequent excesses of Messalina, Caligula and Nero these measures would seem to have had little effect on actual sexual practices. It was not until the Catholic Church came to have increased political authority that Christian moral regulation began to target male sexual excess and in so doing circuitously provided some protections for children.4

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4Homosexuality which had been considered shameful in Roman society became viewed as pathological and deemed illegal in the Christian era, a view that endured well into the 20th century (Berkowitz,
The Roman ideal that aspired to sexual self-restraint (Langlands, 2006, pp. 134–137) was taken up by the early Christian Church (Holland, 2007, p. 67; Mottier, 2008, p. 18), rather than sexual excess merely risking one’s citizenship status, the Church denounced all sexual excess as morally sinful. Sexual practices and desire came under considerable scrutiny (Wiesner, 2010) and values of virginity and abstinence were promoted through Christian teachings for men and women (Mottier, 2008, pp. 18–19). However, given the sheer implausibility of all Christians opting for a celibate life, the compromise of monogamous sex for reproductive purposes provided a satisfactory alternative. By sanctioning sex as a reproductive duty within marriage, the Church provided an ‘ideological justification for uncontrollable male lust’ while simultaneously restricting women’s ‘sexual autonomy’ (Weeks, 1986, p. 14). Nevertheless, in strengthening the concept of marital monogamy, children were expected to remain ignorant of sexual practices until married. Additionally, in sanctioning reproductive marital sex as a natural function, there was little tolerance for pre-marital sex, so that child sexual activity came to be considered as sinful and deviant (Jenks, 2005; Seidman, 2003; Weeks, 1986).

Notions of children’s vulnerability flourished due to the ideas of Enlightenment philosophers John Locke (b. 1632 – d. 1704) and Jean Jacques Rousseau (b.1712 - d.1778). Born in the 17th century, Locke had viewed children as potentially ‘savage’ and ‘wild’, recommending that they be subject to strict monitoring and discipline to guard against their moral corruption. In the following century, Rousseau’s ideas distinguished the ‘innocent’ and ‘pure’ child from ‘corrupt’ and ‘debased’ adult society (Hendrick 1997; James, Prout, and Jenks, 1998; Jenks, 2005; Postman, 1982; Taylor, 2010). In accordance with this mistrust of the contaminating influence of adult society, Rousseau declared reading to be ‘the scourge of childhood…for books teach us to talk about things we know nothing about’ (cited in Postman, 1982, p. 130). Even today, these two constructions of children often coexist, as any suspected breach of children’s Rousseau-like innocence quickly reverts to a Lockean condemnation of the potentially delinquent child.

Such concerns were no doubt stimulated by the technological innovation of the printing press which although invented in 1440, saw an increase in the literacy of working and middle class populations and the corresponding increase the distribution of printed texts over the next few centuries. Not only did the printing press assist Martin Luther’s challenge to the hypocrisies of the Catholic Church, but it also ended the elite (and religious) monopoly over erotic texts.⁶ *Arantino’s Postures* published in 1537 became the Vatican’s first ‘forbidden book’, signalling the commodification of obscenity as a new concern by the Church (Berkowitz, 2013, pp. 210–212).⁷ Not only did the printing press threaten religious and monarchical authority, but the ability to reproduce and distribute texts across populations also caused concerns about the threat this posed to society. Along with this, the desire to protect and maintain children’s sexual innocence also strengthened, requiring the prevention of their exposure to obscene texts through the strict control of both children and potentially harmful texts.

**Industrialisation and Social Reform**

The modern social, economic and political contexts of 19th century and early 20th century industrialisation in England, Western Europe and the United States brought with it overcrowded urban living conditions that were very different from traditional rural village life, creating new social and political concerns. The consequences of rapid modernisation and industrialisation, in Victorian Britain in particular, inspired reform to counter the perceived ills of sexual libertinism, public debauchery, abortion,⁸ prostitution, homosexuality⁹ and pornography (Egan and Hawkes, 2013, p. 640) working against Christian ideals of family and

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⁶As Luther’s *Ninety-Five Theses* (1883) reached a print circulation of over 300,000.

⁷Additionally, the ideas of libertine and freethinking aristocratic elites were disseminated throughout Europe during the 18th century by writers such as, Giacomo Casanova, John Wilkes and the Marquis de Sade, who published accounts of their sexual experiences in pornographic detail (Cryle and O’Connell, 2003).

⁸With prostitution came increasing reliance on abortion as a form of birth control which by the turn of the century was thought to be out of control (Kilday, 2013, p. 81).

⁹Whereas during most of the 19th century sex between men was only ever condemned if it was flaunted publically (Hamowy, 1977), under the new scientific regime emerging during the 20th century sodomy was viewed as unnatural (Hawkes and Scott, 2005, p. 19), labelled as homosexuality and criminalised (Angelides, 2005; Foucault, 1990).
a moral society\textsuperscript{10} (Egan and Hawkes, 2013; Hunt, 1999). In an effort to create a better social and moral environment for women and children, groups such as the National Social Purity Crusade (1908, 1910) in England set out to curb sexual depravity and prostitution in the urban centres (Egan and Hawkes, 2010, p. 36). Early feminism spearheaded by the suffragette movement in the late 19th and early 20th centuries, focused on highlighting the sexual double standard that policed and regulated women’s sexuality while privileging men’s sexual freedom (Jackson and Scott, 1996, p. 3). They claimed the legal and social conventions that restrained women’s independence and bound them into the heterosexual marital contract exposed women and children to male violence (Jackson and Scott, 1996, p. 3).\textsuperscript{11} Given that women were, prior to World War I, encumbered by conservative social mores, a lack of financial independence and with no permissible means of controlling their own fertility feminists worked to bring about the moral tempering of male sexuality (Jackson and Scott, 1996, p. 3). They collaborated with religious and scientific communities in a multitude of projects producing pamphlets, journals and books, in addition to lobbying for legal reforms throughout Britain, the USA and Australasia.\textsuperscript{12} Reformers challenged the male market for prostitution. A strain of evangelical Protestantism worked to improve the ‘morality of men’ in order to address the plight of prostitutes whom they saw as ‘victims of vice’ (Butler, as cited in Hunt, 1999, p. 149).\textsuperscript{13} Additionally, the problem of soldiers contracting venereal disease\textsuperscript{14} was promoted by these reformers within a discourse of hygiene that advised against sexual promiscuity in order to support the war effort (Hamowy, 1977, p. 251). In the US the issue of social hygiene was an effective lobbying tool that brought about the criminalisation of prostitution, soliciting, pandering and pimping, and the transportation of females between states for the purpose of prostitution (Hamowy, 1977, pp. 251–252).

\textsuperscript{10}The Criminal Law Amendment Act in 1885 in England raised the age of consent from 13 to 16. Purity campaigners continued to address what they saw as the ‘white slave trade’ in which innocent girls were kidnapped for overseas brothels (Hunt, 1998, p. 581).

\textsuperscript{11}This was also linked to reform activism in the US which sought the prohibition of alcohol.

\textsuperscript{12}A number of reform groups were established, such as the Association for the Improvement of Public Morals; the Society for Friendless Girls in England; White Cross Society of Australasia; and the National Christian League for the Promotion of Purity in the United States (Egan and Hawkes, 2010, p 36).

\textsuperscript{13}In the UK, feminist Josephine Butler (b.1828 - d.1906) opposed the Contagious Diseases Act(s) that held prostitutes responsible for spreading venereal diseases to the armed forces and which subjected them to involuntary physical examinations (Hunt, 1999. p. 142-145).

\textsuperscript{14}Venereal disease was known of during the Medieval Age, but reached plague-like proportions within the European armed forces during the late 15th and 16th centuries (Hunt, 1999, p. 142-143).
Industrialists’ demand for large workforces, led to overcrowded living conditions whereby multiple families often lived together under one roof. In these conditions, ‘childhood’ was relatively short for working class children, as from an early age they too worked in service or factories alongside adults. British cities were overcrowded with working class children whose sexual knowledge was thought to threaten the innocence of middle class children (Egan and Hawkes, 2010). Middle class purity reformers feared these conditions created the potential for illegitimate and public sexual activities, and also placed children at risk of premature sexual encounters with adults sharing the same sleeping accommodation, constituting a key social problem (Hendrick, 1997, p. 43). Working class parents were increasingly seen as morally negligent. As social reformer Mary Carpenter asserted, the problem of working class juvenile crime was due to the ‘mismanagement or low moral condition of the parents, rather than from poverty’ (Report from the Select Committee on Criminal and Destitute Children 1852, 1970, p. qu. 817).

Although, it has been argued that the reform projects at this time focused on the moral purity of middle and upper class males, whom if subject to idleness would be tempted into adultery (Hunt, 1999, p.141), it was a middle class ideology that sparked these reforms aimed at the working class family, and especially the child. Romanticised notions of what childhood ought to be permeated middle class reform efforts, and were strongly opposed to the ‘unremitting debasement of children through long hours, unhealthy conditions, corporal punishment, and sexual harassment’ (Hendrick, 1997, p. 40). Purity reformers, scientists and medical practitioners engaged in political and social projects to restrict child labour15 and introduce compulsory education for children (Egan and Hawkes, 2008, 2010; Hunt, 1999; Walkerdine, 2009, p. 113)16 so that ‘childhood’ became distinct from ‘adulthood’ largely

15P. Gaskell’s (1833) text The Manufacturing Population of England: Its Moral, Social and Physical Conditions, and the Changes Which Have Arisen from the Use of Steam Machinery, With an Examination of Enfant Labor called for something to be done to improve the moral and physical lives of factory workers, and especially child workers (Fishman, 1982, p. 276). The Factory Act (1883) prohibited children under nine from working, and limited the hours for nine-thirteen year olds to eight hours a day (Pike, 1966, p. 138, cited in Hendrick, 1990, p. 41). Pressure from reformers to move children into education and for parents take more responsibility for the care and education of their children, resulted in the definitive age of childhood as ending at 13.

16Hendrick suggests that although these reforms were not universally applied to all children, they eventually championed the shift from a ‘working child’ to that of a ‘learning one’ (Hendrick, 1997, p. 41). Reformatory and Industrial Schools in the mid-19th century implemented strong middle class discipline assumed to be largely absent amongst working class parents.
through its exclusion from adult life (Buckingham, 2000, p. 8). The social and political projects of the middle class aimed to create a better childhood through its careful regulation and confinement so that age became increasingly relevant in aiding efforts to restrict child labour and shift children from workplaces and public streets, into schools and the private family sphere (Cunningham, 1995, p. 97-98; Driver, 1946, p. 244). The emergence of the child, as requiring separate attention from adults, led to children being subject to previously unknown forms of control and regulatory practices ‘through programmes of care, routines of surveillance and schemes of education and assessment’ (Jenks, 2005, p. 5).

The institutionalisation of children in compulsory education and the growing significance of the private sphere of the nuclear family in the welfare and development of children became a new occupation not only for parents and scientific experts, but also for governments. As Ariès so eloquently notes:

> Nowadays our society depends, and knows that it depends, on the success of its education system (…) new sciences such as psycho-analysis, paediatrics, and psychology devote themselves to the problems of childhood, and their findings are transmitted to parents by way of a mass of popular literature. Our world is obsessed by the physical, moral and sexual problems of children (Ariès, 1962, p. 395).

The work of two key childhood educators, Stanley Hall (b.1844 - d.1924) and Jean Piaget (b. 1896 - d. 1980) made important theoretical contributions impacting the growing industry that sought to manage childhood, remnants of which can be found in policies and childhood debates today. Stanley Hall held an elevated position in the American academy as the founder of the American Journal of Psychology and the founding president of the American Psychological Association. The importance of his work was further amplified by the social conditions of industrialising Britain, influencing educators and parents who were now attentive to ‘adolescence’ (Corteen and Scraton, 1997, p. 83). The restraint of sexual desire (abstinence) was central to Hall’s theories of adolescent care and development. Carefully structured around their emerging sexual status, Hall maintained that adolescence was ‘that period of chastity between puberty, or sexual awakening, and marriage, when the young man or woman’s sexual impulses could finally be expressed’ (Moran, 2000, p. 15).

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17Cunningham argues that it was now in the interests of the parents that children and adolescents stayed home longer as their wages contributed to the household budget, where previously many children had left home to work in service roles, sometimes as early as 10 and more regularly at 13 years of age (Cunningham, 1995, p. 97-98).

18Developmental ideas were in part due to children’s earlier onset of puberty; a prevailing climate of Social Darwinism; and rapid urbanisation (Moran, 2000).
The religious overtones of abstinence evident in Hall’s work were also augmented by the air of Social Darwinism popular among scientists at this time. Hall believed adolescence to have evolutionary value (Lehr, 2008, p. 205). Any evidence of sexuality in adolescence was likened to sexual practices observed in ‘primitive’ races, while although regarded as ‘natural’ were not considered to reflect civilised culture. If allowed to flourish, sexual behaviour in adolescence would, according to Hall, threaten the social decline of a nation (Moran, 2000, pp. 16–18). Thus, between the late 19th and mid-20th centuries the moral condition of children and adolescents became a measure of Western civilised society, and as a consequence childhood became ‘the most intensively governed sector of personal existence’ (Rose, 1989, p. 121). Rose elaborates that,

In different ways, at different times, and by many different routes varying from one section of society to another, the health, welfare, and rearing of children have been linked in thought and practice to the destiny of the nation and the responsibility of the state (Rose, 1989, p. 124).

Educationalists and parents needed to ensure that young men developed the civility and rationality desired and expected of an adult man in Western society. It could be argued that the popularity of Hall’s thesis was also due to increasing capitalist demand for rational and educated young men to supply the growing needs of industrialisation (Hendrick, 1997).

A subsequent and significant theorist was Jean Piaget who produced a linear theory of development that depicted children as developing ‘moral sensibilities’ and ‘powers of reasoning’ as they progressed toward the goal of ‘rational adult’ thought (James and James, 2012, pp. 39–40). In introducing the idea that all children developed specific cognitive competencies at certain ages, Piaget’s work reinforced scientific views of biologically determined human development. This deterministic view of children as ‘social objects, rather than as social subjects possessed of agency’ (James and James, 2012, p. 40), further strengthened the adult-child dichotomy and was a distinction that would be enforced through children’s exclusion from adult knowledge, practices and public spaces. The concept of age

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19Girls, on the other hand were not considered as ‘evolved’ as boys. Instead their future reproductive function as adults constrained their education. Hall recommended girls avoid ‘mental and physical exertions that might deplete her reproductive capacity’ and viewed education as potentially having a ‘sterilizing effect’ (Moran, 2000, p. 17).

20For Foucault (1975, 1977, 1992), these trends signified a shift toward a disciplinary society in which scientifically determined norms could be employed to ‘shape individuals into productive controllable agents’ (Walkerdine, 2009, p.114), enabling the management of urban populations to meet the needs of capitalism.
and linear development was adopted by state and educational institutions (Fishman, 1982, p. 278). The concept of ‘age appropriate’ media became institutionalised within children’s education and home life, therefore constructing adult media as inappropriate and potentially damaging. This remains entrenched within many social and legal regulatory practices across Western societies today (James and James, 2012, p. 40). The idea that childhood immaturity and dependence could be gradually overcome through a linear process of development, towards adult rationality and autonomous agency provided the basis for children’s education. However, this alone did not address social anxieties about the sexual development of children.

The Science of Sex: Regulating Sex and Sexual Media

At the same time, across industrialising Western societies, emerging scientific professions set about the medicalisation of sex creating ‘new sexual categories, vocabularies, and hierarchies, affecting an evaluative shift from ‘badness’ to ‘sickness’ (Irvine, 2005, p.6)21, in which sexual transgressions were no longer entirely subject to religious doctrine but increasingly treated as medical illnesses or criminal acts. In focusing on sexual practices, these early sexologists began to question the notion that sexuality was entirely driven by natural instinct alone. Instead, by suggesting that social forces may also affect sexual behaviour, they raised questions about the social effects or harms caused by sexual deviance, thus providing the foundation for sexual life to be regulated by law. By ‘asserting that they had uncovered the fundamental laws governing mental health and disease, physicians and psychiatrists were able to offer their moral pronouncements as objective truths and, ultimately, to force compliance with their conclusions through liberal commitment law’ (Hamowy, 1977, pp. 231–232). Hamowy notes the extent of legislative change caused by scientific doctrine:

By the end of the 19th century medical science had elaborated a comprehensive doctrine relating sexual indulgence and mental disease. As a result when, largely at the urging of physicians and moral reformers, a flood of legislation restricting sexual conduct was introduced in the period from 1880 to 1920, the theoretical foundation, scope, and direction of these new laws were provided primarily by the scientific conclusions earlier reached by physicians and psychiatrists (Hamowy, 1977, pp. 232–233).

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The scale of these reforms cannot be underestimated as, for instance, in America there were at least 40 new laws regulating sexual activity being introduced each year during this period. As Hamowy describes,

In 1915 alone – not an atypical year with respect to this kind of legislation – over 80 bills concerning the regulation of sexual behaviour were introduced into the state legislatures, of which over half were passed into law (…) between 1880 and 1920 many hundreds of statues were either passed into law or amended, to bring the states’ penal codes into line with the reforms advocated by physicians and other moral reformers. (Hamowy, 1977, p. 249)

However, science did not entirely replace religious moral codes as these practitioners ‘frequently mixed large draughts of “new morality” with their medicine’ (Fishman, 1982, p. 276) and continued to endorse Christian ideals about natural sex (Seidman, 2003). Krafft-Ebing and others simultaneously held fast to Christian heterosexual and marital norms, while recommending the prevention or treatment of other behaviours considered pathological (Burman, 2008, p. 101; Foucault, 1990; Hunt, 1998; Malón, 2010).

The moral condition of society depended on the notion of childhood as asexual. Medical and scientific experts were, therefore, especially concerned about the sexual status of children. John Harvey Kellogg (1877) advocated that sexuality should remain ‘dormant’ in children, as any evidence of sexual knowledge signified a pathological condition that would inevitably lead to pathological sexualised behaviour in adulthood (Egan and Hawkes, 2013, p. 640). Although in the mid-20th century Sigmund Freud went against earlier conventional ideas about child innocence by confirming suspicions that children were sexual (Freud, 1968), he too recommended children’s sexual development be delayed. He reasoned that child sexuality was unstable and supported the need for careful parental supervision (Seidman, 2003, pp. 6-12). Such essentialist views maintained that childhood was a dangerous and vulnerable period that required the prevention of self-abuse in children.

The idea that child masturbation, if left unchecked, would result in the moral decline of the nation, was taken up with some enthusiasm by a range of reformers, educational and medical professionals, as fervently expressed by Dr Reveille Parise in 1928:

In my opinion, neither plague, nor war, nor smallpox, nor similar disease, have produced results so disastrous to humanity as the habit of Onanism. It is the destroying element of civilized societies, which is constantly in action and gradually undermine the health of a nation (cited in Gilbert, 1980, p. 268; Malón, 2011, p. 639).
Medical practitioners and moral reformers therefore sought to curb children’s dangerous autoerotic activity (Darby, 2005, p. 60) by advising they be monitored carefully both at schools and at home. Further, children’s exposure to sexual knowledge was thought to directly impair children’s moral and cognitive development. According to Rose (1999) the modern child continues to be,

…the focus of innumerable projects that purport to safeguard it from physical, sexual, and moral danger, to ensure its ‘normal’ development, to actively promote certain capacities or attributes such as intelligence, educability and emotional stability (Rose, 1999, p. 123).

Underlying beliefs about the evils of masturbation were different for boys and girls. The Christian construction of females as naturally ‘innocent’ and sexually ‘ignorant’ (Hunt, 1999, p. 149) was a view with which the scientific community concurred. Psychiatry linked female masturbation to nymphomania, a sexual state that was diagnosed as ‘hysteria’ and was therefore considered ‘a perversion of their natural sexual condition’ (Hamowy, 1977, p. 236), so that female masturbation was considered highly problematic. For boys, however, male masturbation was considered ‘a filthiness forbidden by God’ (Paget, 1875, p. 285) and medical practitioners claimed that the practice caused illness ranging from ‘mental exhaustion, blurred vision, defective memory, blindness, rheumatism, gout, madness, gonorrhoea, epilepsy, impotence, and various sexual deviances’ (Mottier, 2008, p. 28).

Consequently, there was a proliferation of expert discourse aimed at controlling and preventing the onset of sexual interest and practice of masturbation in children. Experts among the middle class purity reform movements and scientific communities produced and distributed a range of literature, treatments and devices designed to prevent self-abuse in children (Angelides, 2005; Egan and Hawkes, 2008, 2013; Hunt, 1998, p. 598; Malón, 2010), and in so doing parents were increasingly tasked with children’s care and development. Elizabeth Blackwell, the first American woman to graduate with a medical (or any) degree, published her own advice manual titled, Counsel to Parents on the Moral Education of their Children in 1880 (Hunt, 1999, p. 151). Twenty years later, Edward Lyttleton, the Headmaster of Eton College, published works warning of the dangers of juvenile sexuality and advising parents and teachers about The Training of the Young in the Laws of Sex (1900) (Hunt, 1999, p. 22)

Two key texts commonly cited as instrumental in fuelling purity campaigns were, Onania; or, The Heinous Sin of Self-Pollution (1716); and 48 years later, Tissot, S. A. (1766). Onanism; or a Treatise upon the Disorder Produced by Masturbation.
p. 150). Children’s sexual activity was of such grave concern that an industry emerged to supply anxious parents with a range of treatments and surgical solutions to curb children’s sexual desire (Hunt, 1999; Malón, 2010). Although ‘the quacks played on the fears of dire consequences to sell their concoctions and gadgets’ and ‘purity campaigners promoted the idea of salvation through renunciation’ (Hunt, 1998, p. 579), both medical and purity reform projects had the same goal of protecting children from premature sexual activity. A proliferation of consumer products and professional services targeting parents and educators with remedies and age appropriate educational and leisure products emerged to meet children’s developmental needs. Childhood had become a profitable market for professions guiding and advising on the moral and developmental needs of children.

Children’s protection from exposure to erotic texts and images was of particular concern to reformers and medical experts who saw these as a threat to the innocence of the modern child. Reformers and educators drew on Rousseau’s ideas which distinguished between the innocent and pure child, and corrupt and debased adult society (Hendrick, 1997; James et al., 1998; Jenks, 2005; Postman, 1982; Taylor, 2010), calling for regulation that protected children from exposure to erotic texts which they believed would incite lewd behaviour (Buckingham, 2000; Taylor, 2010). Experts and reformers lobbied for new laws to prohibit and control obscene texts and images. In the United States, civil objections were actualised by the National Vigilance Association which seized pornographic images, and pursued the prosecution of those who published and distributed these texts (Hunt, 1999, pp. 141-144). Civil sentiment about pornography was eventually formalised within the Obscene Publication Act 1857. In order to protect children, the Comstock Act 1873 was introduced to restrict the distribution of ‘Obscene Literature and Articles of Immoral Use’. Equivalent laws were enacted in Britain, such as the Customs Act 1876 that criminalised the importation

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23Surgical cliterodechtomy as an official treatment for masturbation in girls and women was invented in Britain by Isaac Baker Brown in 1858 (Hamowy, 1977, p. 239).

24Rousseau’s thesis of the ‘innocent’ child had struggled alongside ‘the political economy of a growing child-labour force in factories and mines’ subsequent to the French revolution (Hendrick, 1990, p. 38), and was a precursor to Victorian industrialisation and the purity reform movement, which drew on his ideas to establish the domain of ‘childhood’. In his book Emile (Rousseau, 1762) describes childhood as ‘natural’ and information as ‘corrupting’ (cited by Postman, 1982, p. 130).

25The Comstock Law was a federal act passed by Congress on March 3, 1873. It was designed to suppress the trade and circulation of ‘Obscene Literature and Articles of Immoral Use’ but also led to confiscation of sex toys and contraceptives including any texts advertising such items.
of obscene texts; and the Post Office Act 1953 that prohibited sending obscene materials through the Royal Mail in an effort to prevent children being exposed to them (Malón, 2010).

Curiously, while there was a great deal of concern about curbing and regulating the sexual development of children, there was little acknowledgement of the abuse of power in sexual relations between adults and children (Angelides, 2005). Paedophilia, which we now acknowledge to be illegal, was of little interest during this time. In the late 1800s, Krafft-Ebing described adult sexual interest in children as a ‘psychico-moral weakness’ and ‘sexual perversion’ or as an ‘occasional luxurious specialty of a few over refined persons’ (Angelides, 2005, p. 272-274), avoiding any notion of adult exploitation or abuse of power. According to Angelides, a distinction was made between pathological and non-pathological sexual interest in children as follows:

Non-psychopathological cases were predominantly examples of various forms of moral weakness and psychical impotence (such as fear of adult females or indifference about male virility), while psychopathological cases were examples largely of ‘acquired mental weakness’ brought on by such things as chronic alcoholism, head injuries, apoplexy, syphilis, epilepsy, degenerative predisposition and hereditary constitutional neurasthenia. (Angelides, 2005, p. 274)

Much later, Sigmund Freud also supported the view that sexual interest in children was simply ‘cowardly’ and ‘impotent’ (Angelides, 2005; Freud, 1905). Unlike homosexuality which was acknowledged as a ‘personage’ and ‘species’ (Angelides, 2005, p. 273; Foucault, 1990), adult sexual relations with children still remained largely hidden and therefore thought to be uncommon. Away from public view paedophilia remained inconsequential. Early 20th century psychological theory continued to view paedophilia as inconsequential. However, evidence of children’s sexual abuse in the public eye outside the home caused public outrage when, in 1885, the Pall Mall Gazette published a story claiming that young British girls were victims of sexual exploitation in London brothels. Officials responded to public concern about underage prostitution by in 1885 introducing the Criminal Law

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26 This distinction between a rare pathological condition and a non-pathological condition has provided an ongoing epistemic framework for theorising about paedophilia which remained unchallenged until the feminist movement in the 1960s. The incoherent definition of the paedophile has, in Angelides’ view, since ‘enabled enduring possibilities for political and rhetorical manipulation’ (Angelides, 2005, p. 275).

27 Although the homosexual was acknowledged as a ‘personality’, paedophilia did not warrant the same personification (Angelides, 2005; Epstein, 2003; Foucault, 1990).

28 This view is somewhat juxtaposed to contemporary constructions of this as child sexual abuse.
Amendment Act (CLAA), which raised the age of consent from 13 to 16 years of age and increased police powers to arrest brothel owners (Hunt, 1999, p. 168; Jewkes and Wykes, 2012, p. 949). Equivalent measures were achieved by the US Social Hygiene Movement which succeeded in increasing the age of consent, although this varied between states from 14 to 21 years of age (Hamowy, 1977, p. 250).

In summarising the late 19th and early 20th centuries, Christianity, science, early feminist and middle class reform movements all contributed to shaping notions of ‘childhood’ that required children’s regulation through segregation from adult and public life. Children’s protection from exposure to sexual (knowledge) texts and images was a central objective in modern childhood. The combined efforts of medicine, biology and psychology produced a positivist scientific model of the child as a separate and ‘passive recipient of the socialisation process’ situating the child away from public life, within the private sphere of the family (James and James, 2012, p. 40). The state became increasingly interested in children’s conduct and development, and its management through education and vigilant parenting (Fishman, 1982, p. 278). Parents were increasingly targeted by reformers, medical and psychological experts as the first line of defence against childhood deviancy. Many elements of these founding developmental and biological theories remain pervasive in education and popular understandings of childhood today. However, toward the mid-20th century social, political and economic forces created new contexts for the regulation of children and media.

The Post-war Effects of Expanding Consumerism and Liberalism on Moral Regulation

By the mid-20th century, the newfound affluence of post-war conditions made youth viable consumer targets and stimulated new growth in media industries targeting children and youth. Along with this, new concerns emerged as crime comics, horror magazines and cheap sex

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29 After succeeding in raising the age of consent laws, the focus turned to the abduction of British girls to supply brothels in Europe, a phenomenon referred to as the ‘White Slave’ trade.

publications became widely available. Youth exposure to these inappropriate texts was blamed for juvenile delinquency, crime, sexual violence, and drug and alcohol abuse.

Australia was particularly concerned about the ‘flood’ of ‘salacious’ literature ‘that was said to be polluting the minds of Australian children and adolescents’ (Sullivan, 1997, p. 57). New concerns emerged about imported literature that although not legally obscene were considered ‘objectionable, and dangerous for children’ (Sullivan, 1997, p. 57). Children rather than adults were considered vulnerable to these objectionable texts, thought to cause a range of physical and psychological problems from myopia to committing sexual and violent crimes. While education and maturity was an adequate defence for adults against what was considered ‘trashy’ literature, children were considered vulnerable. States within Australia agreed to strengthen the definition of what constituted an obscene publication, largely as a result of civil interest groups lobbying state governments. New legislation was sought on the basis that this undesirable literature lacked literary quality and would result in the children’s moral development being degraded, a situation that threatened to undermine the moral condition of the nation (Sullivan, 1997, p. 26). In the early 1950s South Australia, Victoria, New South Wales and Queensland all passed new legislation targeting comics and salacious magazines. Western Australia curiously did not.

The broader social, economic and political contexts of the 1960s and 1970s proved fertile ground for ‘second wave’ feminism and the sexual revolution both of which contributed to more liberal views toward sexuality and censorship. Unlike their feminist predecessors who had fought for the middle class family ideals by focusing on improving male morality, second wave feminists saw the positivist model of the family as inherently constructed around heterosexual marital norms, and as such, a patriarchal structure working against women’s sexual liberation at a time in which new sexual rights were being won. Additionally, medical advancements improving women’s ability to control their own fertility, gave women more sexual freedom. Women’s ability to work and receive welfare also gave women more control. As divorce became more accessible, abortion was legalised and contraception and family planning services made available to all women regardless of their

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31Lobby groups included: Sydney Legacy, the Council Association, Apex Clubs, Parents and Citizens Associations, the Red Cross Society, the Returned Servicemen’s League, the Women’s Auxiliary of the Wheat Growers Union, and the Australian Labor Party (Sullivan, 1997, p. 58).
32Apart from ‘sex’ magazines several new genres of literature were also of concern: ‘sadistic literature’, ‘war, horror and crime’, as well as romance and nudist publications (Sullivan, 1997, p 60).
marital status, the perceived stability of the modern family was brought into question (Richardson, 2000). While the 1960s sexual revolution may have relaxed societal attitudes towards sex, increasing youth delinquency was attributed to a lack of parental supervision arising from an increase in broken families.

**Liberalising Sex and Pornography**

Consequently, the 1960s sexual revolution was a turning point in the role that the state had played as chief regulator over sexual conduct and media censorship. As new liberal factions emerged to promote the idea that governments should no longer intrude in the private domain, there was increased opposition to government regulation of sexuality and along with this people’s private choices to consume sexual media across Western democratic societies.

For instance, post-war social concerns about both prostitution and homosexuality led to the British Government commissioning the Wolfenden Report in 1957 (Great Britain, 1957). Essentially the Wolfenden Report argued that the conservative view of the state as upholding ‘a common, public morality’ should be replaced by more liberal views that individuals (adults) should be free to determine their own sexual conduct (Sullivan, 1994, p. 372). This was a critical point of change in the role of state as it shifted the moral decisions about sexual conduct away from public control to the private individual (Sullivan, 1994, p. 372). The Wolfenden Report generated the Obscene and Indecent Publication Act (1959), the consequence of which was a significant increase in the production and availability of commercial pornography (Sutherland, 1982, p. 9).

Anti-censorship groups increased pressures to repeal existing obscenity laws during the 1960s and 1970s (Sullivan, 1994, p. 369). Across Western democracies such as the UK, USA, Canada, Australia and New Zealand, obscenity laws were replaced by regulating the distribution and consumption of pornography, although there were local variations on this theme. Increasing opposition to the role that states played in regulating private conduct through maintaining ‘a common, public morality’ was increasingly displaced by the liberal idea that individuals should be as free as possible to determine their moral code and sexual behaviour (Sullivan, 1994, p. 372). This was however, not applicable to children.

In the USA, laws that had previously inhibited the local distribution of pornography were relaxed due to commercial challenges in the Supreme Court. The ability to interpret pornographic material in many ways other than ‘obscene’ was demonstrated in case law, the
most famous of which was the *Roth v. United States* (1957) case. This case established multiple justifications for different genres of sexualised material, resulting in a softening of censorship laws (“*Roth v. United States*”, 1957). Definitions of obscenity were further tested in the *Miller v. California* (1973) case (“*Miller v. California*”, 1973), which introduced the notion of a ‘community standard’, creating a division between ‘good constitutionally protected pornography and bad obscene pornography’ (Beattie, 2009, p. 24). In general, pornography is now considered to be protected under the First Amendment of the US Constitution whereas ‘obscenity’ is not.

The liberalisation of censorship law in Britain and the USA increased both civil and political pressure to relax Australian laws governing the importation and local censorship of obscene texts. However, while in the USA Philip Roth’s (1969) novel, *Portnoy’s Complaint* had produced constitutional protections for some pornography, its appearance within the Australian market inflamed conflicting political and ideological differences. For instance, when in 1970 the novel was printed within Australian borders to avoid customs law, its appearance on the market provoked different responses across the states and territories within Australia. In South Australia prosecution failed as the Labor Government deemed that adults should be able to read what they want, in Western Australian the courts found the book to be obscene, while in Tasmania, Queensland and Victoria prosecutions prevailed (Sullivan, 1994, p. 376). While the role of the Commonwealth (Federal) government in the censorship of erotic texts was declining, new concerns about the expanding pornography market took centre stage.

In Australia, by the 1970s debate shifted away from the censorship of literary texts to debate about pornography.33 Debate about pornography was fuelled when in 1972 sex shops opened in the larger cities across Australia, provoking conflicting reactions across the states and territories. Victoria responded by closing down shops, Western Australia again adopted the view adults should be able to access pornography so long as children were protected, and South Australia took no action to address this new retail expansion of pornography. The majority of Australian states abandoned obscenity law. The Australian High Court case *Crowe v Graham* (1968) had used criteria similar to that of the *Miller v California* (1973) case in the US, so that the notion of offences against ‘community standards’ replaced the

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33 Whereas Hugh Hefner had launched *Playboy* in 1953, its importation into Australia remained prohibited until 1967.
common law test of ‘obscenity’ (dating back to 1868) that had judged whether a publication had the ‘tendency to deprave and corrupt’ (Australian Law Reform Commission, 2012, p. 48). However, this effectively made pornography subject to classification and distribution regulation, including controls over its public exhibition, as well as measures to prevent children’s access to adult material. In Australia, at the same time that prosecutions under section 4A of the Customs and Excise Act ceased, an R classification for adult films was introduced, requiring the new restrictions to prohibit children from viewing this content (Sullivan, 1994, p. 375). However, change was not ubiquitous as ideological differences about issues of sexuality and pornography resulted in different responses across Australia’s states and territories. There were both liberal and conservative attitudes across the political landscape. The Australian Labor Party (in opposition in 1969) adopted the view that adults should be able to ‘read, hear or view’, whatever they want in either private or public. However, there were two stipulations, firstly that people should not be exposed to unsolicited offensive material and secondly, that children should be protected from such material. Labor politician Dick Klugman argued that for men consuming pornography was sexually healthy and prevented sexual crime (Sullivan, 1994; Vnuk, 2003). However, these liberal views were countered by conservative ideologies. In opposition, members of the Liberal and Country Parties thought that such ‘permissiveness’ would ‘sow the seed of [social] destruction’ and would actually result in an increase in sexual and violent crime (Sullivan, 1994, p. 375). In Queensland, conservative views meant that classification was not implemented at this time, and instead authorities continued to prohibit an increasing number of pornographic magazines during the 1970s. This example shows that although there were regional differences in regulation of pornography, in the general liberalising of pornography civil concerns looked to governments to increase regulation to protect children.

Overall, across the Western democratic states the censorship of pornography became liberalised within a classification regulatory system. A regime of industry regulatory measures34 were introduced which were designed to prevent children’s access to sexual and violent media, and better assist parents with information to guide and regulate their children’s media consumption. Ratings distinguishing between adult and child appropriate content, as well as distribution and viewing controls were applied across cinema and film, magazines, television and video industries (and computer games). However, these regulatory settlements

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34Such as point of sale controls, classification, restrictions on public exhibitions, television viewing watershed times, video classification ratings.
would become problematic once again as technological changes posed new threats to the protection and maintenance of modern childhood. New media technologies frequently stimulated new social concerns about child delinquency (Barker, 1984; Drotner, 1999, Sutter, 2000) requiring periodic re-negotiations of the lines of accountability between the state, commercial industries and civilians.

The 1980s – 1990s New Conflicts, Old Anxieties

The liberalisation of obscenity laws in the USA, UK and Australia in 1960s-70s had opened the floodgates for substantial growth in the commercial pornography industry. However, towards the end of the 1970s both the nature of pornography and technological mediums through which pornography could be distributed and consumed had changed, causing new civil and political demands on states to prohibit such material. New regulatory conflicts arose as new claims that characterised pornography as more violent toward women, and that claimed child pornography had entered the commercial market. These new issues were exacerbated by the technological innovation of video which fostered wider distribution.

Feminists were divided on the question of potential ‘harm’ caused by pornography. On the one hand, liberal feminists who had argued in defence of pornography claimed that it offered women a ‘culture of erotic choice and variation’ by allowing them to pursue sex for pleasure without needing to form romantic or monogamous attachments (Seidman, 2003, p. 99). While on the other hand, radical feminists opposed the relaxation of obscenity laws, claiming that ‘sexual liberalism was an extension of male privilege’ (Hawkes and Scott, 2005, p. 32). 1980s radical feminism was instrumental in exerting considerable political influence which argued pornography had become both derogatory and exploitative of women (MacKinnon, 1993). They lobbied governments to prohibit violence against women within pornography. Sexual violence became an established threshold whereupon the state would continue to have a part to play a part in the moral regulation of (sexual) media for the good of society. Across the Western democratic states, government responses to issues of violence and exploitation in pornography varied.

During the 1980s videos that showed the violent portrayal of murder within sexualised contexts stimulated feminists Andrea Dworkin and Catherine MacKinnon to promote an anti-pornography feminist legal paradigm (Evans, 2005; MacKinnon and Dworkin, 1998; Waltman, 2010, p. 221). Adopting a civil rights approach, they argued that
traditional legal concepts of ‘contemporary community standards’ did not take account of whether a society tolerated sexual subordination of women in pornography. They also took issue with the American approach which avoided any concern for those who they considered to have been victimised during the making of pornographic films (Bailey, 2007; Waltman, 2010). While this feminist-legal paradigm was rejected in the US on First Amendment grounds, it was more successful in Canada. Here it was measured against the Canadian Charter of Rights and Freedom. The case law, \textit{R v Butler} (1992) found that pornography contravened the Charter’s provision giving women the right of equal status (Beattie, 2009, p. 30). This decision resulted in some elements of MacKinnon and Dworkin’s argument being incorporated into Canadian obscenity law. In short, the Canadian precedent is based on the belief that ‘words and images cause deeds’ and that pornography should therefore be subject to the law (Beattie, 2009, p. 30). According to Beattie, this approach had the capacity to be applied expansively to expressions of sexually violent material (2009).

In Australia, the pornography industry accounted for a quarter of the new home video market, causing new demands on states to censor pornography (Sullivan, 1994, p. 379). Pornography depicting violence against women, and child pornography entered the commercial market causing considerable conservative and Christian backlash. Unlikely bedfellows, Christian interest groups and radical feminists both lobbied against pornography in Australia. Civil concerns culminated in a new Commonwealth censorship scheme for publications and videos enforced on 1 February 1984 through the ACT Classification of Publications Ordinance 1983 (Stockbridge, 1996, p. 128). This included, …absolute prohibitions on material considered to be harmful to society, for example, child porn, bestiality, detailed and gratuitous depictions of acts of considerable violence or cruelty, explicit or gratuitous depictions of sexual violence against non-consenting persons (Klugman Report, 1988; cited in Stockbridge, 1996, p. 128).

In 1984 the X classification was revised several times. The year was marked by public campaigns, media hype about the effects of violence and sexual acts, and moral panics about ‘video nasties’ and ‘porn and violence epics’ (Stockbridge, 1996, p 128). Media reported the concerns of Film Censorship Board members, and campaigners such as ‘Fred Nile, Andrea Dworkin, an ex-Festival of Light Adelaide psychologist and the American activist Donnerstein’ (Stockbridge, 1996, p. 130).\footnote{Fred Nile was a politician and ordained Minister was a member for the New South Wales Legislative Council; Mary Whitehouse was an English social activist.} Public and regulatory debate about video was
focused on the question of ‘the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material’ (Klugman Report, 1988, p. xx). This ‘effects research’ approach remained central to regulation and censorship, with new media technologies such as computer games, continuing to ignite concerns about children and youth (OFLC Annual Report 1992-93). By December 1984, violence, coercion and non-consensual sexual activities were removed from the X classification. Pornography in Australia then could legitimately only consist of consensual sex (Stockbridge, 1996, p. 130). However, conservative opposition in most states and territories resulted in their rejection of the X classification although it became legal in the ACT and Northern Territories (and largely remains in place today) (Stockbridge, 1996, p. 130; Sullivan, 1994). Confusion about the nature of the X classification still abounds today, with some continuing to see X as including violent and extreme material. In Australia, a conservative backlash had successfully removed violent and non-consensual sex from ‘legitimate’ pornography.

Although pornography had been legalised, accompanied by the introduction of a classification system that regulated its distribution, child pornography was freely available so long as it fell within distribution guidelines (Sullivan, 1997, p. 166). Civil and third sector concern about the lack of government protections for children were exacerbated by American experts who claimed that Sydney was home to the largest child pornography industry in the world (Sullivan, 1994, p. 378-379). Despite the ideological split within feminism on the societal effects of pornography, most were opposed to child pornography. Feminist activism, in resisting the hegemony of heterosexual and gender norms had paved the way for multiple new sexual identities, this included a ‘vocal faction of the Gay Liberation movement’ which called for ‘the abolition of the nuclear family, the sexual liberation of children and for the lowering if not complete elimination of age of consent laws’ (Angelides, 2005, p. 280). However, although feminists supported the decriminalisation of homosexuality in the United States, Britain and Australia, they saw the danger of supporting a paedophile collective that wanted unrestricted access to children (Angelides, 2005). In Australia, the police responded by dismantling the Australia Man Boy Love Association (AMBLA) and the Australian Paedophile Support Group (APSG) founded in the early 1980s, while new laws prohibiting child pornography were rapidly introduced across Australia. In terms of media regulation, alongside the exclusion of non-consensual sex and sexual violence, the new criteria of the X classification now excluded child pornography, and there was a new focus on preventing the importation and distribution of child pornography.
Conflict in Constructions of Childhood – Toward the Late-modern Child?

Within this climate of concern, many states and international third sector organisations promoted a stronger stance against child sexual abuse and exploitation. Prior to the 1980s legal protections for children against sexual abuse were limited. In keeping with the liberal climate, psychiatric discourse (Graupner, 2005, p. 10-11; Grondin, 2011, p. 244) had been frequently called upon in legal cases to argue that the ‘promiscuous child’ could be held accountable (Egan and Hawkes, 2010; Jenkins, 1998; Malón, 2011; Pratt, 2005; Schultz, 2008). In order to establish stronger legal protections for children it was imperative to counter these liberal notions of children’s agency in their own sexual abuse or exploitation. Radical feminist views were taken up by medical and legal experts (Angelides, 2005; Grondin, 2011; Malón, 2010; Meyers, 2007) to ensure that psychiatric diagnoses that had previously depicted children as ‘flirtatious, precocious and even seductive’ (Angelides, 2005, p. 278) were rapidly replaced by a strong thesis of ‘child innocence’ and ‘adult culpability’. This ‘child sexual abuse’ (CSA) thesis presented an inflexible view of childhood as necessarily asexual, although this was not without criticism (Grondin, 2011, p. 244; Pratt, 2005). Nevertheless, to strengthen protections for children, advocates drew heavily on modernist constructions of children as ‘innocent’ and ‘vulnerable’.

Amid this climate of concern there was also a strong international movement to develop children’s rights to protection, welfare, education and participation on a global level, which culminated in the United Nations Convention on the Rights of the Child (UNCRC) in 1989 (United Nations, 1989). New protections, specifically those in Article 34 stipulated children’s rights to be protected from harms of sexual abuse and exploitation. However, the adoption of the universal legal definition of childhood as up to 18 years of age introduced by the Convention of the Rights of the Child (CRC) has since proved to be problematic (Gillespie, 2005). Definitions of ‘childhood’, however, vary dramatically across member States, with children’s sexual status dependent on very different cultural and legal norms

36 Child sexual relations with adults suspected that the child acted as a seducer rather than the innocent victim being seduced (Bender and Blau, 1937).

37 Strong protectionist themes were transposed into criminal law through the EU-Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography in December 2000 which required member states to implement legal protections to all persons under 18. .
(James and Prout, 1997). Nevertheless, such protections make clear the responsibility of all member states to ensure children’s protection from the harms of sexual exploitation.

Alongside strengthening protections, the CRC established a global commitment to children’s welfare and rights to participation, and in particular, their rights to access information and to freedom of expression.38 Although what is meant by ‘participation’ lacks clarity and agreement (Lansdown, 2010), it has most often been taken to mean the right to ‘express views freely and to have them taken seriously, along with other key civil rights to freedom of expression, religion, conscience, association and information, and the right to privacy’ (Lansdown, 2010, pp. 11-12).

This strengthening of children’s rights suggests a shift toward more liberal constructions of children as ‘agentic’ and ‘active social actors’ rather than passive recipients of care and protection (James and Prout, 1997). This more liberal view of children is symbolised by the well-known Gillick legal case in 1985 Britain, which ruled that a child is able to consent to medical treatment without the permission of its parents. More specifically, the House of Lords judgement supported the authority of the ‘expert’ doctor in prescribing contraception as a ‘protection’ for girls against pregnancy (Corteen and Scraton, 1997, p. 89-91), and which effectively assigned children rights of self-determination in areas of sexual knowledge and conduct. The Gillick ruling worked against strict Paigetian developmentalist notions of children’s progression toward adulthood, and parental child-rearing obligations are made more precarious as children appeared to have increasing rights to self-determination via the judgement of professional medical experts introducing more conflict around how to deal with children’s sexual choices (France, 2007, p. 22). Lord Scarman’s comments about the Gillick ruling clearly highlighted that parent’s rights would now take second place to children’s rights, should children be considered capable of making decisions on their own. The Gillick Competence standard (which has since been adopted in New Zealand, Australia and Canada) and the adoption of the CRC and subsequent protocols by the majority of UN member States over the next 30 years, suggests a shift toward ‘a new ideology of childhood based on respect for children’s dignity, which shifted the emphasis when intervening in children’s lives ‘from protection to autonomy, from nurturance to self-determination, from welfare to justice’” (Freeman, 1992, p. 3). Constructions of the child as vulnerable and passive now conflict with constructions of children as competent active social actors (James

38 Articles 12, 13, and 14 refer to these provisions.
and Prout, 1997) often generating conflicting views about what constitutes appropriate policies and regulations, not least of which, is their access to adult media.

This contested notion of children’s agency and rights is reflected in the dual conditions of the UNCRC, whereby member States are required to ensure children have ‘access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical mental health’, while also requiring States to develop ‘appropriate guidelines for the protection of the child from information and material injurious to his or her well-being’ (United Nations 1989). While parents were tasked with ensuring they prevent children’s exposure to information that could be harmful, the role of member States was to ensure institutional facilities and services addressing the care of children support parents in their job of child-rearing (Staksrud, 2013, p. 148). Rapid and unregulated commercial expansion within media industries was accompanied by the state’s diminishing role in censorship, and a focus on supporting parents who were increasingly held responsible for protecting children from exposure to potentially harmful media.

The liberal mood within Western democratic states was, by the 1980s, countered by growing civil anxiety that childhood itself might be under threat (Buckingham, 2000). The broader effects of the liberalising post-war period, in which new sexual freedoms were won by liberal feminists and pornography moguls, were viewed by many as symptomatic of the breakdown of legal and social sexual norms whose effects were threatening children’s wellbeing. Civil concerns about child abuse, pornography, unsupervised children, and youth drug culture, video nasties, child sex offences and children committing murder characterised the 1980s-90s (Thompson, 1997, p. 45). Responding to public anxiety, popular psychology argued that childhood was ending younger, that children were having sex at a younger age, becoming pregnant in their teen years, taking drugs, and much of this was attributed to their increasing access to sexual and violent media (Buckingham, 2000) and a perceived loss of parental control over children (Elkind, 1981; Winn, 1983). Where erotic texts had in the 19th and most of the 20th century been withheld from children through censorship and regulating distribution, the late-modern child now had more access to adult ‘secrets’ through a liberalised media market. The more liberal mainstream media environment and the increased sexualisation of children themselves within mainstream media were thought to promote ‘adult themes’ and encourage child delinquency. While adult freedoms may have been gained by the liberalisation of sexual media, the state’s diminishing role as censor was accompanied
by claims that the necessary regulatory mechanisms designed to preserve distinctions between adulthood and childhood were being eroded (Meyrowitz, 1985; Steinberg and Kincheloe, 1997). The shift from a censorship based model to one of regulation and user advice and choice, while empowering individuals, popularist rhetoric reflected the view that this was failing to protect children.

**Conclusion**

This chapter has outlined a historical trajectory of the social, economic and political forces that have shaped the distinct status of the modern child developed from the late-19th to mid-20th centuries within Western democratic countries such as Britain, America and Australia. The medicalisation of sexuality and the establishment of Piagetian phased developmental guidelines for what constitute children’s safe progression to adulthood have both provided the foundations for the management of childhood. Central to this status has been the maintenance of children’s sexual innocence through their exclusion from adult knowledge and practices. Under the guidance of scientific and educational experts the reforms during industrialisation urged that children’s sexual awareness be prevented and delayed, and was achieved through careful supervision and management of their care and education, and preventing their exposure to age inappropriate media.

However, by the 1950s post-war environment, sexual and violent media flourished under more liberal consumer oriented regulation. Civil concerns about the likely effects that readily available sexual and violent media might have on children’s development toward adulthood continued to re-emerge with each new media innovation (Drotner, 1999; Sutter, 2000). While, in Western democratic countries, the state’s role in outright censorship was gradually replaced in favour of a model of ‘industry regulation’ and ‘user choice’, such individual freedoms were really only considered appropriate for adults. While normative edges of censorship were limited by this more liberal approach, regulatory debates continue to employ the vulnerable child as a proxy for concerns about the moral condition of society as a whole. However, while these tensions within moral regulatory debates often seek to reaffirm normative social boundaries, the question of where responsibility lies for enforcing these boundaries remains open to renegotiation. Despite children’s rights to autonomy and self-determination (Eekelaar, 1986) appearing on the world stage in the late 1980s, media debates have, according to Oswell (2013), remained tempered by protectionist discourse. The notion of media harm, as well as children’s liberty to control their own media consumption...
remain disputed. As industry regulation and individual choice have become dominant modes of moral regulation, there is increased tension between private and civil actors. Such debates are characterised by competing constructions of childhood where states, private actors and the civil sector attempt to renegotiate lines of moral accountability for protecting children from potential media harms. Since the 1990s the effects of globalisation, the invention of the internet and neoliberal governance across Western democratic states have only heightened such tensions. This will be the focus of the following chapter.
Chapter Two: Theorising the Failure of Nation-States

Chapter One revealed that, while over the last half of the 20th century media regulation was increasingly liberalised, children’s maturity and therefore liberty to control their own media consumption was contested. Sexual and violent media remained subject to regulation designed to prevent children’s exposure to such materials. The institutional protections that prevented children’s exposure to developmentally inappropriate media have been increasingly challenged by a liberalising social and media landscapes, and children’s rights discourses during the late 20th century. Since the commercialisation of the internet in the mid-1990s conflict about the regulation of sexual and violent media, to protect children in particular, has only heightened in Western democratic countries.

This chapter focuses on the question of how states have responded to civil concerns about children’s safety with respect to the ‘new media’ of the internet starting in the mid-1990s, and the development of Web 2.0 technologies around the turn of the millennia. More specifically, this chapter attempts to theorise the apparent failure of states to regulate internet media. It does this by reviewing state attempts to regulate internet media, in particular state responses to ‘internet pornography’ and efforts to prevent children’s exposure to it. It identifies the claims and forces opposing state regulation, such as the US led global culture of internet governance, technical elite arguments, the promise of the internet as a tool for democratisation, and equalising effects of the ‘information highway’ across education, and neoliberal policies that have flourished over the last 30 years.

By reviewing state responses in the US, UK and Australia, this chapter will show how nation-states have struggled to apply traditional media prohibitions and regulation onto internet content. It will reveal that competition between state, private and civil interests have brought about a range of policies that address new media risks generated by the internet. These include: limited industry-designed filtering, industry content classification, public complaint mechanisms, awareness campaigns and self-regulation, and ad hoc court orders to block specific content (Staksrud, 2013, p. 85). However, aside from the willingness of larger corporate actors to block child sexual abuse images, filtering has rarely been extended to address internet content that falls outside of national media laws or that may be harmful to children. State regulation of private actors (such as forcing ISPs to filter content) remains
fiercely contested, especially with regard to content deemed harmful to children or to broader society.

Civil actors have sought to shift government policies around the regulation of internet media content. More specifically, there have been efforts to re-establish the legitimate boundaries of sexual media under national community norms, as well as efforts to control the distribution of media that may harm children. While some scholars have framed such concerns as merely ‘moral panic’ or ‘media panic’ (Barker and Petley, 2001; Drotner, 1999; Sutter, 2000) there continues to be concern about the lack of regulation of internet content at the civic level. Web 2.0 technology has brought about renewed regulatory interest as technological innovations continue to generate new risks to internet users. While scholars are beginning to question whether the internet has delivered on its promise of social and educational equality for children, this disillusionment is heightened by research revealing that children face new and unanticipated risks online (Livingstone, Carr and Byrne, 2015).

Research across Europe (Livingstone, Haddon and Görzig, 2012; O’Neill, Staksrud and McClaughlin, 2013; Staksrud, 2013) has focused on understanding these risks and balancing protections with children’s rights to provision and participation (United Nations, 2000a; Staksrud, 2013, p.147). The fact that children now make up one third of internet users worldwide (Livingston, Carr and Byrne, 2015) suggests there is a case to be made for rethinking regulation to better accommodate children’s specific needs as well as ensure appropriate protections.

The overall claim being advanced in this chapter is that early attempts to regulate private actors involved in the provision of internet access and content failed, but that this does not signify the diminishment of the state’s role in regulation to address issues of social order, as might be commonly assumed under neoliberal theory. Instead, there has been a proliferation of policies which do not attempt to regulate private actors, but focus on making internet users responsible for their own safety. In this sense, the state has shifted its regulatory focus from regulating markets, to regulating individuals more intensely. States have introduced laws and disciplinary measures that aim to regulate the media choices and conduct of individual internet users. Consequently, many of the current policies shift responsibility and accountability to communities, families and individuals, rather than regulating private actors in an effort to reduce risk. These arguments are broadly consistent

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39Web 2.0 introduced dynamic web pages, and user generated commentary on social media websites.
with Wacquant’s (2010, 2012) theory of the neoliberal state. After reviewing state responses to civil concerns chiefly about children’s exposure to pornography on the internet, this chapter builds a theoretical framework by extending aspects of Wacquant’s theory to explain the regulatory actions of states, and the perpetual absence of state media regulation.

The Global Culture of Internet Governance

The global culture of internet governance is key to understanding state and private sector attitudes toward media regulation. The desire for an unregulated communications network dates back to the 1960s with the invention of the Advanced Research Projects Agency Network (ARPANET), a distributed network that functioned as a high-speed electronic postal system for securely relaying information. ARPANET was a secure and closed network made up of US military and academic networks until 1983 when the US military split off from ARPANET, enabling ARPANET to operate as a non-classified research network (Curran, 2012a, p. 36-37). The decentralised design of the network ensured the delivery of data regardless of any ‘points of failure’ in the network architecture. Techno-libertarians continue to claim that the internet’s anonymous, secure and failsafe design makes the regulation of media impossible. Early information and communication technology (ICT) communities argued that state attempts to block information would fail as in the words of John Gilmore (n.d.), co-founder of the Electronic Frontiers Foundation (EFF), ‘the Net interprets censorship as damage and routes around it’. The internet’s design has led many to claim that nation-states are no longer relevant (Drezner, 2004, p. 481; Gilmore, n.d.) as, unlike previous telecommunications, regulatory attempts have failed and attempts to regulate simply encourage anarchism (Tambini, Leonardi and Marsden, 2008). On a global level international organisations seeking stronger regulation have struggled to maintain consensus, not only due to the arguments of the technical elite, but also as ‘they lack the power of nation-states to enforce compliance or punish transgression’ (Livingstone, 2011, p. 507-508).

Prior to the internet’s commercialisation, ICT communities developed applications such as Email, Newsgroups, Internet Relay Chat (IRC), Multi-User Dungeons (MUDs), and Mailing Lists, which could run on the internet, allowing different forms of communication and activity transcending national borders in cyberspace. During this time, ‘the entire realm of digital communication was developed through government-subsidized-and-directed research during the post-World War II decades, often by the military and leading research universities’ (McChesney, 2013, p. 99). However, despite the internet’s development being
primarily funded by public taxpayer money (Livingstone et al., 2015; McChesney, 2013) there were few expectations that the state would have a role in its governance (Curran, 2012a, p. 36).

In fact, many in the ICT community held strong libertarian views opposing any form of government censorship or commercial use of the internet. Early ICT communities, such as the Well\(^{40}\) were populated by libertarian idealists who regarded the internet as a tool for social justice enabling individuals to express opinions and share ideas that could not be as easily published through mainstream media channels (McChesney, 2013, p. 101). These early ‘neohippie’ communities were particularly ‘anti-government’ although their rejection of internet policy has been described as more of a lifestyle choice than reflecting any moral consideration (Borsook, 2000, p.16). Former Grateful Dead lyricist and Electronic Frontier Foundation (EFF) co-founder, John Perry Barlow (1996), inspired an anti-government movement (captured in his Declaration of Independence of Cyberspace). Although this geek community attracted a mix of left and right ideals, there was common ground in the desire to reject state control, legal systems and censorship. However, while these communities were largely advocating for adult rights to freedom of speech, few at this time anticipated that a significant proportion of internet users would in fact be children.

Some among the ICT community hoped that the internet would empower individuals and promote civil participation. For instance, creator of the WWW, Tim Berners-Lee, held the internet to be a ‘gift to the community’ (Berners-Lee, n.d.) as something that should benefit human kind over commercial interest (Curran, 2012a, p. 40-41). The ICT community was at this time opposed to any form of commercialism (McChesney, 2013, p. 101) actively promoting open-source software development supporting the view that the internet should be a medium for sharing for the common good (Curran, 2012a, p. 52; McChesney, 2013). Discussions at this time also promoted the internet’s potential to empower NGOs and activists to affect, political, social and economic change (Lipschutz, 1992; Stadler, 2008).\(^{41}\)

\(^{40}\)http://www.well.com/

\(^{41}\)On the other hand, more recent debate within the Internet Governance Forum suggests a declining confidence in the internet toolkit as enabling democratisation (Little, 2009). Some believe globalisation to be a ‘...race to the bottom in wages, regulatory standards, and social protections’ (Drezner, 2004, p. 477).
With aspirations that the internet would be a tool for the ‘greater good’, it was by the mid-1990s considered by many to be the central tool of democratisation.

However, while some cyber-libertarians staunchly rejected the idea of the internet being utilised for commercial gain, meetings at the Global Ministerial Conferences (WTO) during the 1990s placed great faith in the ability in the internet to facilitate the new ‘information society’ envisioning great benefits for education, business and society (Sutter, 2000). Silicon Valley IT entrepreneurs were excited by its commercial potential (Borsook, 2000), and small business start-ups thrived in the anarchic unregulated environment, creating new products and services for online markets (Leiner et al., 1997).

However, the US Government held a paradoxical role as, while assuming the role of chief financier of much of the internet’s development, it maintained a ‘hands-off’ approach to its governance (Borsook, 2000; McChesney, 2013). Further, while accepting that the government continue to fund the internet’s development, IT entrepreneurs remained opposed to any government interference in private commercial markets (Borsook, 2000; McChesney, 2013). McChesney makes the point that ‘had development of the internet been left up to the private sector, it may never have come into existence’ (2013, p. 99) as they rejected any form of regulation or taxation. The internet’s development was therefore funded by public money but any return on this investment ‘was effectively being negotiated (and given away) in the 1990s when the Internet was turned over to the private sector’ (McChesney, 2013, p. 100). When the commercial potential of the internet came into focus in the mid-1990s the government was not excluded from the policy making process but in McChesney’s view it did ‘severely lessen the idea of government action in the public interest’ (2013, p. 207).

Implicit in McChesney’s view is that the US Government in conjunction with private industry side-lined concerns for public welfare, so that regulation in the public interest was increasingly derided under the emerging neoliberal political climate during the 1990s (McChesney, 2013, p. 105).

Effectively, ‘the Internet was transformed from a public service to a distinct, even preeminent, capitalist sector. Thereafter market forces were to determine its course’ (McChesney, 2013, p. 104). Governments viewed the internet as a key factor in economic growth which would produce new revenues as well as opportunities for citizens, and so, were cautious about regulating in this space lest this suppress commercial opportunities (Livingstone et al., 2015). Policy goals regarding the internet were therefore focused on
promoting ‘greater access, harnessing educational opportunities, and competitive economic advantage’ (O’Neill, 2013, p. 395). Traditional institutional regulations were set aside under neoliberal doctrine that prioritised deregulated markets over social protections.

Telecommunication businesses invested heavily in expanding their reach into residential markets across Western democratic states. Buckingham (2000) has argued that residential markets flourished under a burgeoning neoliberal economic doctrine in which state investment in education was clearly being ‘rolled back’. The internet was framed as a necessary tool for children, giving them access to new digital technologies and the ‘information highway’, and with this, access to educational opportunities that would solve the concerns that parents, schools and governments had about the structural inequalities encountered across the education environment (Buckingham, 2000; Papert, 1996). Access provision came to be framed in terms of a rights discourse (Katz, 1997) until it became obvious that access alone did not iron out educational inequalities. Parents were under increasing pressure to equip their children with digital tools to access the ‘information highway’ in order to compensate for the inadequacies of public education (Buckingham, 2000, p. 54). However, while children’s use of the internet held great promise, it was not envisioned that children would have unfettered access to all that the internet offers, including harmful content.

Internet governance took a minimalist form. The Internet Corporation for Assigned Names and Numbers (ICANN),42 a non-profit organisation boasting a bottom-up, consensus-based approach to policy development, was created on September 18th, 1998 in California. While its primary function had been to maintain operational stability of the internet, its modus operandi had been to support market competition, while excluding governance questions of a social or moral nature. Its global democratic style of governance has been criticised as being overly dominated by a technical-elite and those with a financial interest in maintaining an unregulated internet, and who are reluctant to consider moral and social issues to be within the organisation’s remit (Preston, 2008). This combined with the relatively poor technological expertise of many government bodies (Livingstone et al., 2015, p. 2) has resulted in the heightened influence of private actors over policy outcomes. Despite the internet’s public funding foundations, the private sector have maintained significant influence.

42 The Internet Corporation for Assigned Names and Numbers (ICANN) is the chief regulatory body that manages the internet.
over internet governance policies. In these early days of the internet it was assumed that adults would supervise children’s internet use. From the view of policy-makers and private actors promoting the internet industry, children’s access to internet content was to be mediated through institutions of care, such as schools and family.

While the interests of capital were promoted by the American government and ICANN, the general view was that internet users should not be subject to regulation online. This view was largely based on the assumption that internet users were adults (Livingstone et al., 2015, p. 2). As a space without explicit rules or governing structures, it was a haven for sexual speech and the distribution of explicit material that was not legal offline (Ludlow, 1996). Wider society knew little about the internet or the sexualised use of this technology among early web communities (“Sex Sells”, n.d.) until evidence of explicit and illegal sexual materials were brought to the public’s attention when the internet was commercialised. The pornography industry quickly saw the potential for business growth and rapidly made use of new internet technologies.

Civil Concern about Pornography and Paedophiles Online

Public fear was ignited when, on July 3rd 1995, the lead story of the US Time magazine read ‘ONLINE EROTICA: ON A SCREEN NEAR YOU’ (Elmer-DeWitt, 1995). The media ignited widespread public reaction in reporting the presence of hard-core pornography and paedophilia within internet newsgroups (Barker and Petley, 2001; Beattie, 2009; Edwards and Waelde, 2009; Sutter, 2000). British newspapers, The Times and Sunday Times (Edwards and Waelde, 2009) and newspapers in other Western democratic countries quickly echoed concerns. Media scholars were therefore quick to label this as a ‘moral panic’ on the basis that public reaction was ‘disproportionate’ to the actual threat that internet pornography posed to children. The Time story, which had based its claims on an undergraduate research paper by Marty Rimm at Carnegie Mellon University in Pittsburgh, was held to have misrepresented the availability and severity of pornography (Post, 1995). ICT and academic experts countered that most images were not directly available to children on the internet and suggested that claims were exaggerated and therefore somewhat unfounded. Although media reports continue to report the problems of children’s exposure to pornography (Cooper, 2012; Porn Lures Children”, 2007; “Porn: The New Sex Education”, 2009; Taylor, 2009; “Third of Kids See Net Porn”, 2010) scholars continue to downplay the significance of media articles about paedophiles, internet pornography and children, claiming regulation of media to be
disproportionate to the social threats (Akdeniz, 1997, 1998, 2007, 2008; Barker and Petley, 2001; David et al., 2011). However, while scholars may continue to label civil concerns as merely ‘moral panic’, to label all evidence of civil concern as a moral panic is to potentially deny the legitimacy of public concern through the judgement that civil concerns far outweigh the actual threat to social order (Cohen, 2002; David et al., 2011) and may result in a failure to recognise a real problem. The assumed ‘irrationality’ of moral panics invites the researcher to continually sort false statements from true realities, often judging public reaction to be a moral panic, and potentially choosing only those issues that fit the moral panic paradigm (David, et al., 2011, p. 221; McRobbie and Thornton, 1995).

Increasingly, internet technologies have provided sexual predators with new tools to lure potential victims, and facilitated the emergence of global criminal paedophile networks which threatened to expand demand for child sexual abuse images and with it a global increase in child abuse (Carr, 2008; Ethel and Max, 2002; Quayle, Vaughan and Taylor, 2005). In terms of the scale and accessibility of pornography, original counter claims that children were not easily exposed to this content are now less plausible. Whereas in 1998 there were around 14 million pages of pornography on the internet, by 2005 there were over 15 billion (Preston, 2008, p. 3) and this number has continued to scale dramatically. Claims that children’s premature exposure to pornography causes sexual offending among children are typically met with scepticism by media scholars who point to the lack of empirical evidence to support the notion that media can have a direct causal relationship to deviant conduct. Yet the media industry itself works on the notion that it can change public perception (Buckingham and Strandgaard Jensen, 2012). After nearly twenty years of research, there is growing concern about children’s access and use of pornography and recognition that for some children there can be negative consequences. There is growing agreement that, while looking to enhance children’s digital experiences, policymakers should work to harder to minimise and manage online risks to better protect children (Livingstone and Smith, 2017). To do so, it may be necessary to conceptualise the issue of children and media beyond the theoretical lens of ‘moral panics’ (Buckingham, Strandgaard Jensen, 2012).

Perhaps more important, is that the moral panic concept, as a theory of social order, does not assist in explaining when states fail to regulate. Rather than focusing on regulating

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43 As a new media, the negative impacts of ICT were noted by many researchers (Eneman, 2010; Howitt and Sheldon, 2007; Quayle et al., 2005).
powerful private actors, the concept focuses on identifying and regulating powerless and marginalised individuals or groups that are perceived to pose a threat to social order (Cohen, 1972). The moral panic concept does not therefore theorise about the power dynamics within regulatory struggles, such as those between state, civil and private sectors.

While it is true that moral panics can be influential in sparking debates and may have a role in setting political and even research agendas (Livingstone and Third, 2017), the concept assumes that regulation occurs in response to the moral panic itself and does not address why there may be a failure to regulate. This thesis addresses the failure of Western democratic states to respond to civil concerns that seek the regulation of private actors who make such media accessible online. As such a new theoretical framework is needed to address the question of whose interests dominate the policy making process and outcomes. The following is a brief review of regulatory attempts and policy outcomes between the mid-1990s and early 2000s, which reveals regulation has typically operated in the interests of private actors and states.

**US failure to regulate private actors**

Any review of internet regulation must acknowledge the democratic and libertarian ideals promoted by the United States, as these are regularly exploited by civil libertarian movements and corporate elites worldwide. In the US, successive attempts to regulate both the distribution of pornography and child pornography over the internet failed. The US Constitution made attempts to censor information extremely unlikely to succeed (McIntyre and Scott, 2008). Stakeholders who stood to be affected by content regulation, such as content industries and internet service providers (ISPs), opposed efforts to censor or regulate the distribution of obscene or harmful material online (McChesney, 2013, p. 105). For instance, following the *Time* magazine claim that erotica was easily accessible online, the US Congress responded by introducing the Communications Decency Act (CDA) 1996, designed to protect children from accessing pornographic content online. The Act would have imposed penalties on those uploading ‘obscene or indecent’ content to the internet, and which could be accessed by children less than 18 years of age (Edwards and Waelde, 2009), simulating existing broadcasting legislation by making it unlawful to sell pornography to minors (Beattie, 2009, p. 29). Civil libertarian groups attacked the Act as overly broad and tantamount to criminalising adult content online, and therefore a breach of adult rights under the First Amendment of the US Constitution (Beattie, 2009; Edwards and Waelde, 2009;
O’Neill, 2013). The Act was challenged in the Supreme Court (Reno v. ACLU) which argued that such legislation reduced the internet into a ‘children’s reading room’ (Edwards and Waelde, 2009). In 2003, Congress amended the Act, removing the indecency provisions that had been struck down by the Supreme Court, stipulating that educating parents and encouraging the pornography industry to self-regulate were the preferred options. Beattie has argued that this was also due to the belief that technology could not enforce the requirements of the Act (Beattie 2009, p. 29), a view promoted by technical elites who preferred the ‘hands off’ governance model.

The CDA was soon followed by the Child Online Protection Act 1998 (COPA) that targeted the commercial pornography industry, requiring that they introduce ‘access codes’ to prevent children from accessing ‘material harmful to minors’ (Beattie, 2009). However, this new standard ‘harmful to minors’ was somewhat broader than existing ‘obscenity’ laws, and therefore more problematic for content industries. Industry argued the potential cost of self-regulation was too burdensome. This potential scope creep, along with potential jail time for commercial publishers who knowingly uploaded content, led to COPA being deemed unconstitutional and being overturned.44 The internet was upheld as a space in which the rights of adults and businesses took precedence over children’s rights to protection. Private actors were therefore not subjected to regulation.

**British responses to the issue of pornography**

In Europe the issues of both pornography and child pornography were problematised within European Commission policy documents as illegal material (which should be censored) and material that may be ‘harmful’ (and its distribution regulated). The Green Paper on the Protection of Minors and Human Dignity in Audio-visual and Information Services (European Commission, 1996) focused largely on issues of child protection online. Communication by the Commission about illegal and harmful content that could ‘affect the physical and mental development of minors’ (European Commission, 1996, p. 6) encouraged a multi-stakeholder approach (Chenou, 2014) to balance the problem of regulating content with the potential benefits that internet technology offered. The Safer Internet Action Plan set in motion greater momentum for child protection policies between stakeholders (European Commission, 1996). The Commission on Online Child Protection submitted a report in October 2000 that had researched the technical difficulties in achieving what the Act intended (Commission on Online Child Protection (US), and Internet Caucus Advisory Committee, 2000).

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44 The Commission on Online Child Protection submitted a report in October 2000 that had researched the technical difficulties in achieving what the Act intended (Commission on Online Child Protection (US), and Internet Caucus Advisory Committee, 2000).
Commission, 1999, 2004; O’Neill, 2013, p. 396). While the directives of international governance organisations such as the EU and UN steer the regulatory approaches of nation-states, local socio-political contexts have generated different regulatory responses.

Whereas in the US pornography was considered legal and protected under the First Amendment, obscenity laws still functioned in the UK, as hard-core pornography was not legalised during the 1960s-70s. While the Obscene Publication Act (1959) criminalised the distribution of obscene material it did not, however, criminalise the possession of it. The Video Recordings Act (1984) also made the sale of explicit pornography on video illegal. Consequently, unregulated access to hard-core pornography over the internet produced a serious challenge to British obscenity media laws. Police launched several operations during the 1990s but struggled to establish legitimacy when it came to enforcing ‘obscenity’ and ‘child pornography’ laws in the online space (Oswell, 1998; Petley, 2006).

A proliferation of articles within the media roused public concern about a number of issues such as growing problems of child-sex tourism, sexual predators and child pornography under the broad banner of child protection, which according to Oswell, galvanised public consent for stronger ‘regulation or legislation’ (1998, p. 274). On August 9th, 1996 the Internet Service Providers Association (ISPA), Metropolitan Police Clubs and Vice Unit, the Department of Trade and Industry, and the Home Office met to address these issues intent on avoiding legislation (Oswell, 1998). The Metropolitan Police Clubs and Vice Unit, London, issued a letter to the ISPA representing 140 Internet Service Providers (ISPs) in Britain, requesting the removal of 132 newsgroups which they believed contained ‘pornographic’ and ‘offensive’ material (Akdeniz, 1997; Oswell, 1998; Petley, 2006). The police clearly designated ISPs as responsible for policing internet content and the state threatened legislation if ISPs did not self-regulate (Oswell, 1998). The UK Government as well as the European Commission (Commission of the European Communities, 1996) viewed industry self-regulation as the most efficient option. The state clearly lacked the resources to enforce moral regulation in the new digital environment.

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45 The Obscene Publication Act 1959 was amended to require age restrictions on pornography websites accessible in the UK.

46 See the Green Paper on The Protection of Minors and Human Dignity in Audio-Visual and Information Services (European Commission, 1996), also Communication from the Commission to the European Parliament, on Illegal and Harmful Content on the Internet (European Commission, 1996).
In pursuing industry self-regulation, the issue of children’s exposure to pornography was side-lined by an intense focus on the accessibility of child pornography. I would argue that as the distribution of child pornography was clearly a criminal matter, ISPs had a vested interest in taking action to guard against liability. ISPs therefore argued that they were ‘mere conduits’ of media and should only be liable for their failure to remove content once notified of it. Industry actors established the Internet Watch Foundation, a private organisation to provide an avenue for the public to report child pornography (Oswell, 1998). By doing so they established a notice-and-take-down system whereby once ISPs within the UK were informed of illegal content on their servers they would be obligated to remove it. However, while overseas websites were reported to law enforcement in the country in question in the hope that these countries would take similar action, UK internet users were still able to access child pornography hosted in overseas countries allowing it. This example of industry self-regulation while appearing to be an act of social responsibility on the part of private actors, in fact established protections for ISPs in that they could not be held accountable for illegal content made available through their services.

Australian responses to the issue of pornography

In Australia the government responses in the 1990s were also focused on controlling offensive and illegal content rather than regulating internet users (Prunckun, 2007). The Australian response was in large part shaped by the system of government within Australia. Apart from the Commonwealth government, there are six state governments and two Territory governments. This complex system of government impacts how legislation is formed and enforced across Australia. While states might pass laws in order to maintain consistency with Commonwealth legislation this is not always the case. For instance, while the Australian Federal Office of Film and Literature Classification (OFLC) had traditionally classified content for films and magazines, it was the role of each state and territory to decide what restrictions to impose on their exhibition or display (Penfold, 2006, p. 337). In Australia, despite relaxing pornography laws at the Federal level during the 1970s-80s, ideological differences about issues of sexuality and pornography resulted in different

47The IWF predominantly identifies child sexual abuse material but the scope of their remit did become contentious when they considered extreme pornography and terrorism websites (Edwards and Waelde, 2009; Oswell, 1998; Petley, 2006).
regulatory responses across Australian states and Territories at that time. While individual states had jurisdiction over the distribution of pornography, the Federal Government had control over its classification and censorship, as well as policing border customs ports for illegal imports. When it came to content supplied over the internet, the Commonwealth’s legislative control in the area of ‘postal, telegraphy, telephonic and other like services’ was ‘interpreted as giving the Federal Government exclusive powers over broadcasting, telecommunications and, since the late 1990s, the Internet’ (Flew, 2012a, p. 7).

Whereas in Britain the focus had been on establishing industry self-regulation to address child pornography online, in Australia the Federal Government focused on two issues, content that might be offensive to adults, as well as the problem of content deemed unsuitable for children. Proponents of regulation maintained legislation was needed to address community concerns about pornography, stimulating a range of investigative measures by the Howard Government. Concerns about the growth in online Bulletin Boards where users posted pornography and violent content led to the Regulation of Computer Bulletin Boards Taskforce; a Senate Select Committee on Community Standards (SSCCS) Relevant to the Supply of Services Utilising Electronic Technologies; a Government consultation paper; and an inquiry by the Australian Broadcasting Authority (ABA) to further investigate the feasibility of regulating online content (Pyburne and Jolly, 2014, p. 11). The outcome of these investigations and consultations were twofold. First, they warned of the cost that the Federal Government would incur in trying to enforce filtering, and second, concerns emerged that regulation would inhibit the commercial viability of the internet (Frawley and Slater, 1995, cited in Pyburne and Jolly, 2014). Consequently, the coalition government led by John Howard (1996-2007) expressed a strong preference for industry self-regulation, although as in the UK, it specifically acknowledged ISPs could not be held accountable for material passing through their networks if they were not aware of it. The 1998 ABA consultation paper proposed internet regulation mirror traditional institutional controls by establishing industry self-regulation to be moderated by some legislative requirements. While on the one hand there was strong political rhetoric that viewed the internet as ‘being polluted

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48 This situation is still evident today. For instance, it is illegal to sell X rated pornography across all states, but legal in the Territories (Beattie, 2009).

by highly offensive or illegal material’, the Federal Government rejected the idea that the state should be solely responsible, saying the state could not ‘replace the guardianship role of parents’ (Alston, 1998). The strong regulatory focus was in large part driven by the Christian Senator Harradine, who supported ‘censoring and restricting internet user access to illegal or unsuitable internet content through regulating ISPs (Penfold, 2006, p. 338). Nevertheless, civil concerns were overruled by entrenched neoliberal political ideology that prioritised the market, and placed primary responsibility for children’s care with parents.

New Federal legislation to address online pornography

The Australian Federal Government introduced new legislation in the form of the Broadcasting Services Amendment (Online Services) Act 1999, which, unlike the UK or USA, established a legal precedent for an Australian internet content regulation scheme. The intent of this legislation was: (a) to provide a means for addressing complaints about certain Internet content, (b) to restrict access to certain internet content that is likely to cause offence to a reasonable adult; and (c) to protect children from exposure to internet content that is unsuitable for them (Beattie, 2009, p. 53).

Effectively, this legislation introduced internet-specific objectives with respect to the classification, prohibition and regulation of online content. The chief goals of the Act were to prohibit internet content that is Refused Classification (RC) or content classified as X, and local content R rated content which had no age verification measures. To achieve this, the Act established an obligation that ISPs ‘take reasonable efforts to prevent access to content hosted offshore’ that ‘the government deemed to be unsuitable for domestic consumption’ (Coroneos, 2008, p. 54). Regulation requiring private actors to filter content was on the table.

However, the Federal Government while seemingly wanting to censor offensive and harmful content did not wish to place ‘unnecessary financial and administrative burdens on internet content hosts (ICHs) and internet services providers (ISPs)’ that might negatively affect their ability to provide internet services without diminishing internet speeds and performance (Penfold, 2006, p. 338-339). In its final form the Act produced a dilute co-regulatory system that did not regulate private actors as such, but focused on empowering the

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The Commonwealth Government wished to create regulatory parity between offline and online media despite the criticisms of opponents who claimed that existing legislation was entirely inadequate to address the dynamic and interactive media online (Coroneos, 2008; Crawford and Lumby, 2011; Moses, 2010).
internet community through providing a public hotline and community safety education. Forcing industry to monitor content was clearly viewed as ‘antithetical to the flourishing digital economy which governments seek to support’ (O’Neill et al., 2013, p. 13). Further, while Australian law prohibited the hosting of RC, X and R rated content (without age verification) online, and could exercise take-down notices within Australia, they could not prevent the Australian pornography industry from hosting their websites on overseas servers. Many claimed that most Australian owned pornography websites simply moved to offshore internet servers to avoid the reach of Federal Government law. Executive Director of the Electronic Frontiers Australia (EFA) Irene Graham criticised the state’s attempt to regulate the pornography industry, claiming that it resulted in a loss of business revenue for the Australian ISP sector (Hayes, 2005).

This failure to regulate could be attributed to neoliberal economic doctrine where, in the post-war context, ‘an interventionist state’ which had focused on preserving the ‘social and moral economy’ was now left in the hands of markets (Harvey, 2005, p. 1). In keeping with neoliberal economic policies which support the ‘privatization and withdrawal of the state from many areas of social provision’ (Harvey, 2005, p. 1), the Australian Federal Government prioritised economic deregulation of the internet leaving the provision of social safeguards to the private sector.

**Post Web 2.0: Responses to Civil Concerns about Internet Content**

**US responses to increasing risks online**

Having failed to regulate private actors, post-web 2.0 we see increased attempts to regulate internet users, in particular to control children’s access to internet content. In the US, attempts to introduce legislation to control children’s consumption within schools produced mixed results. For instance, turning away from regulating ISPs and content industries, the US Congress focused on regulating children’s access to a range of media content, with the Children’s Internet Protecting Act 2000 (CIPA).\(^{51}\) Congress made content filtering a

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\(^{51}\)CIPA defines ‘harmful to minors’ as being: ‘Any picture, image, graphic image file, or other visual depiction that – (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks
requirement for libraries and schools accessing government grants for discounted internet access. Obscene content established by *Miller v. California* (1973),\(^{52}\) and child pornography (as defined by 18 U.S.C. 2256)\(^{53}\) as well as other content deemed ‘harmful to minors’ was to be blocked (Beattie, 2009; O’Neill, 2013). It is worth noting that this was challenged on the basis that it was unfair to users who had no other private access to the internet being forced to accept filtering through schools and libraries. As schools were not forced to filter it was not considered a breach of rights and was therefore upheld by Congress and passed into law in 2000.

Further regulatory efforts looked to broaden the restrictions to blocking children’s access to social networking sites, to protect children from sexual predators on social networking sites. Soon after CIPA, the Deleting Online Predators Act of 2006 (DOPA) was introduced into Congress but it did not receive the support of the Senate. If enacted, the bill would have required schools and libraries to protect minors from online predators lurking within commercial social networking sites and chatrooms by mandating that the institutions (schools and libraries) restrict children’s access to these types of sites. The Act, rather than legislating social networking sites to block sexual predators from using their services to exploit children, instead restricted children’s access to a wide range of websites and social networking sites. Overall, congressional attempts to remove risks to children failed, and in its place was a growing focus on regulating children.

**European and UK responses**

Across Europe, a range of regulatory responses emerged. While filtering applications to address child pornography were adopted by some European countries, there were also efforts to establish industry content classification schemes; and networks of hotlines and helplines across Western democratic countries to attend to the problem of child pornography; along with programs to raise parental awareness of content and conduct risks online (O’Neill, 2013; Staksrud, 2013). Overall, there was a strong emphasis on parents and children to ‘assume greater levels of responsibility for their own safety’ (O’Neill, 2013, p. 5). However, as many of these policy approaches are built on neoliberal agendas hoping to empower individuals to

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\(^{52}\)See [https://supreme.justia.com/cases/federal/us/413/15/](https://supreme.justia.com/cases/federal/us/413/15/)

\(^{53}\)See [https://www.law.cornell.edu/uscode/text/18/2256](https://www.law.cornell.edu/uscode/text/18/2256)
take responsibility for their own security, these cannot be regarded as having simply transferred traditional state media regulation to non-state actors. These policy outcomes are less focused on media regulation, and increasingly focused on regulating internet users.

Over the next decade, as it was becoming clear that digital technological innovations enabled children to be autonomous actors online, concerns expanded beyond issues of harmful ‘content’ to include ‘contact’ and ‘conduct’ concerns (Staksrud, 2013, p. 55). With digital technology becoming an essential aspect of children’s lives and increasing numbers of children being linked up to the internet, there was renewed interest among policymakers and academics across Europe about the growing range of risks that children were facing online (Livingstone et al., 2015; Staksrud, 2013).

**Filtering to block child pornography**

Unlike the US and Australia, the use of ISP filtering technology to address child pornography was encouraged in the UK. While illegal content hosted within British borders was removed by issuing ISPs with take-down notices, child protection advocates believed that this measure was not effective in preventing British citizens from accessing child pornography web sites because almost all of them were based overseas outside of the IWF’s remit (Carr and Hilton, 2009, p. 305). Ongoing pressure by the IWF and government resulted in the expansion of the co-regulatory notice-and-take-down regime to include ISP filtering. As a matter of ‘corporate social responsibility’ leading telecommunications provider, British Telecom (BT) voluntarily designed and launched its Cleanfeed filtering system by 2004, blocking British residential users from accessing overseas child pornography websites identified by the IWF (Brown and Marsden, 2013, p. 103; IWF, 2009). As many ISPs were resistant to the idea of filtering, not all ISPs voluntarily signed on to do the same. John Carr of the Children’s Charity Coalition on internet Safety (CCIS) continued to apply pressure to the Home Office about the incomplete number of filtered residential lines in the UK (Carr, 2008; Carr and Hilton, 2009). Despite claims that less than 10% of child pornography was available from commercial pornography websites, the threat of legislation forced cooperation between private actors and police. By 2009 around 95% of ISPs supplying residential (fixed) internet lines had followed BT’s example (Carr and Hilton, 2009). While this response by private actors could be seen as an example of what David Garland termed a ‘responsibleization strategy’ (2001, p. 124-127), whereby the state delegates the job of crime prevention to private actors, the scope of this regulatory function has not been extended to address other internet content. While admirable,
the intense focus on child pornography by fixed line ISPs drew attention away from the broader civil concerns about children’s exposure to internet pornography.

**UK Mobile access providers restrict children’s internet access.**

Industry self-regulation was also carried out by UK Mobile access providers, who focused on restricting children’s access and use of the internet. In this instance, private actors in the mobile industry introduced strict controls to prevent children under 18 from accessing adult content provided by their service. With the introduction of 3G mobile networks across Europe during 2003-2004, mobile phones now delivered rich media, streaming, video, audio and graphics. With these new technological capabilities network operators developed new business models in which they controlled the content offered via their network. As well as offering open access to the internet, mobile operators either offered their own content or allowed third parties to provide content (Ahlert, Nash and Marsden, 2005, p. 297). The design, direct marketing model and commercial potential of cell technologies introduced new risks for children. This new business model promised lucrative new marketing channels so that all ‘mobile phone users would by default have access to adult content’ (Ahlert et al., 2005, p. 300). Not only were children equipped with mobile phones giving them more private access to the internet and making parental supervision less possible, but due to the nature of the mobile business model they stood to be unwillingly exposed to adult content – now conveniently labelled ‘pocket porn’.

The likelihood of children viewing adult and a range of harmful content on these mediums was much higher given that media content would be pushed through mobile networks. Pre-empting civil concern about children’s exposure to pornography on cell phones the mobile industry placed a pornography bar on all cell phones which could only be lifted by the account holder if over 18 years of age. Unlike fixed line ISPs, all mobile operators in the UK have implemented ‘default-on’ filtering. Mobile operators sought the services of the Independent Mobile Classification Body to provide website classifications, although content providers would voluntarily rate their content to comply. This apparent hard line approach not only avoided regulatory pressure that might arise from children’s private use of the

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54 The network provider would now be driving their own or contracted third party content through commercial walled gardens ‘which effectively limits internet access to content provided by (and financially benefiting) the network operator’ (Ahlert et al., 2005, p. 300).

55 As cell phone owners usually have an individual contract with mobile network operators, mobile operators could identify account holders under 18 and apply filtering.
internet via cell phones but also safeguarded the emerging business model. While the self-
regulatory model established by mobile operators may have avoided costly top-down
regulation, some saw this as an overly stringent measure as it blocked a wide range of content
aside from pornography and also prevented access to social media websites (Ahlert et al.,
2005, p. 310). In this instance, private actors effectively wrote their own form of regulation
that was unexpectedly prohibitive, resulting in critics calling for increased state involvement
to effectively supervise industry regulation (Ahlert et al., 2005, pp. 315-316).

Voluntary industry classification fail due to lack of industry buy-in

In addressing content harms to children, the UK followed the EU which supported user self-
regulation and parental controls over industry regulation. The EU Prague Declaration in April
2009 (Council of the European Union, 2009) encouraged its member countries to pursue
initiatives which made parental control tools available, as well as the development of child
specific content (Council of the European Union, 2009). Policy makers also looked to content
industries to develop classification schemes specifically for online content. The Internet
Content Rating Association (ICRA) attempted to replicate the Pan European Game
Information system (PEGI) introduced in 2003 (which had successfully provided a European-
wide classification model for video games). However, their efforts to develop a classification
or ratings systems for online content were less successful. ICRA focused on an industry self-
regulation model to allow web content developers to apply ratings themselves. However, with
few regulatory incentives for content creators or hosts to apply ratings, the ICRA system
failed to get industry wide buy-in and has been largely ineffective. Such a poor take-up would
seem to show a disregard for civil concerns by private actors (Brown and Marsden, 2013, p.
101).

Private actors remain exempt from blocking illegal extreme violent pornography.

It would appear too, that the state also rejected the extension of industry self-regulation
beyond child pornography. The UK Government responded to increased civil concern about
violent pornography following the murder of Jane Longhurst in 2003 by a man who had a

56 The report issued by ACMA (2016) makes no mention of children or content, while the potential for
private information to be unwillingly shared with new cell technology is a key focus.
57 Having received limited support the Family Online Safety Institute (FOSI) took over the scheme in
2010. See https://www.fosi.org/
fetish for violent pornography (Summers, 2007). The government took a tough approach to online depictions of rape, strangulation, torture and necrophilia passing the Criminal Justice and Immigration Act (2008) that\textsuperscript{58} criminalised the private possession of ‘extreme pornography’ but stopped short of banning the distribution of such materials on the internet. This could be viewed as an example of moral authoritarianism (Wacquant, 2012) where the state penalises populations, while at the same time abstains from regulating private actors which make such material available.

At the same time, a change in regulatory direction was brought about by the Communications Act (2003) which consolidated telecommunications and broadcasting regulators by creating the Office of Communications (Ofcom) (Lunt and Livingstone, 2012). This shifted the regulatory focus away from regulating ISPs and content providers, toward helping internet users manage online risks. Ofcom has continued to advocate risk management approaches that encourage greater restriction and moderation of children’s internet use, and also advocate parental technological tools to help with these tasks (Ofcom, 2014a, 2015a).

**Australia - The Return of the State?**

In Australia, the Howard Government had examined the efficacy of ISP-level filtering firstly in 1999, by commissioning a Commonwealth Scientific and Industrial Research Organisation (CSIRO) technical trial; reviewing the Online Content Scheme in 2003-4; and conducting further trials involving the University of Melbourne (RMIT)\textsuperscript{59} and the Australian Communications and Media Authority (ACMA). These investigations generally found significant problems with content filtering products operating at the ISP-level (Coonan, 2006). Despite the Broadcasting Services Act (Online Services) Act (1999) having created ‘a default obligation upon ISPs’ to block prohibited offshore content (Coroneos, 2008, p. 54),

\textsuperscript{58} Sections 63 to 67 of the Criminal Justice and Immigration Act 2008 make it an offence to possess pornographic images that depict acts which threaten a person’s life; acts which result in or are likely to result in serious injury to a person’s anus, breasts or genitals; bestiality; or necrophilia’. Section 71 of the Act increases the maximum penalty for publication of obscene material and for the possession of such material for gain under the Obscene Publications Act 1959\textsuperscript{59}. Retrieved from http://www.cps.gov.uk/legal/d_to_g/extreme_pornography/#an01

\textsuperscript{59}https://www.rmit.edu.au/study-with-us?gclid=EAIaIQobChMIkNSx5tbv1QIVXAQqCh0JugmnEAAAYASAAEgLTMfD_BwE
ISPs were exempt from regulation and allowed to develop their own industry Codes of Practice to address concerns about children’s exposure to pornography on the basis that ISP filtering would be a costly exercise.\textsuperscript{60}

The Internet Industry Association (IIA) managed to defer the implementation of ISP-level filtering made possible under the Act, by developing an industry Code of Practice to provide parents with ‘alternative access prevention tools’. While neoliberal ideals were evident in the Federal Government’s wish to not impede technological development or burden industry with unnecessary financial cost, in its final form the legislative framework retained the notion that the state could in the future, force private actors to filter content if and when such technology became cost effective and did not impede the delivery of ISP services. Despite the difficulties in filtering internet content there was the view among policy makers that ‘developing technologies would eventually make this easier, but for now, industry should do all that was feasible’ (Coroneos, 2008 p. 53). Policy-makers considered ISP network-level filtering to be a potential technological solution in the future should the industry be ‘unable or unwilling’ to develop suitable procedures (Explanatory Memorandum, Broadcasting Services Amendment (Online Services) Act 1999, p. 2). This expectation for state regulation of private actors, however, would be resurrected in 2008 when the Rudd Government proposed mandatory ISP network level filtering to address illegal and pornographic content. The Federal Government’s neoliberal doctrine was further reflected in their promotion of PC filtering software which placed the burden of children’s safety on parents and children rather than private actors. Also amplifying the role of parents was a growing discourse in conduct and communications online. This heightened the focus on providing free PC filters to parents and asking them to be more vigilant in supervising what their children did online.

By 2007, the appetite for a state filtering solution addressing community standards and child protection had been pushed along by The Australia Institute to address internet pornography (Flood and Hamilton, 2003a, b; The Australia Institute, 2003a, b, c, d, The Australia Institute, 2004a,b; Wilson, Marsh and Fowler, 2005). Whereas the Howard Government had pursued more liberal forms of regulation by encouraging a range of private sector ‘empowerment solutions’ to address children’s safe use of the internet, in 2007 the Rudd Government appeared to adopt a more authoritarian approach by proposing to introduce a mandatory ISP ‘cleanfeed’ that would address concerns about both illegal and harmful\textsuperscript{60}

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\textsuperscript{60}Both in terms of the cost of filtering infrastructure as well as the loss of internet performance.
content. Australian legal experts and political analysts were unsurprised at the continuing interest in using filters as they saw the proposed policy as an enforcement of already established legislation (Chen, 2000, 2003) to impose community standards, and to address the problem of supervising children’s media consumption. Essentially, this proposal promised to ‘bring the state back in’ as the chief media regulator to address internet content. The period of the Rudd Government’s proposal is a key case study within empirical Chapters Four, Five and Six.

Theoretical Framework

The role of states in media regulation has come under increasing challenge within the contexts of neoliberalism, globalisation and the convergence of media and communications through the internet. In reviewing how states and private actors have responded to civil concerns about children and internet content up until the mid-2000s, we can see a range of policy outcomes that increasingly focus on the regulation of internet users rather than private actors.

In the United States, the combination of libertarian culture of governance, private interest and Constitutional law overturned any attempts to censor online content either for the common good or to protect children. In the UK, under the threat of legislation, private actors voluntarily established industry filtering to block child pornography, while the Mobile phone industry applied excessive censorship by implementing a ‘porn-bar’ on cell phones that could only be lifted if the account holder was over 18. In Australia, the Federal Government essentially established a legal precedent for an internet content regulation scheme, but deferred the use of ISP filtering by allowing private actors to develop their own codes of practice which assigned responsibility for children’s protection to parents. Also noteworthy was that Australian ISPs did not voluntarily establish a child pornography filtering scheme despite Britain and other European countries doing so. In this review of attempts to regulate internet media we can see that, despite the range of policy outcomes, private actors have largely negotiated their own forms of regulation, most of which fall short of civil expectations. In addition, there has been a shift from formal state regulation to broader policies of self-governance obligating individual internet users in their own conduct and security. How do we explain in theoretical terms this apparent decline in state regulation that had previously regulated private actors in the public’s interest?
The internet and risk

Up until the mid-2000s, state attempts to regulate internet content have therefore largely failed. Not only has there been a growing distrust of state regulation, but risk and risk management discourses now permeate policy outcomes. These discourses of risk that accompany the new media of the internet can be broadly conceptualised using Ulrich Beck’s (1999) thesis of the ‘risk society’. Beck theorised that the process of modernisation generated new risks, and that technological innovations actually amplify risks to the point that traditional institutional protections (classification, censorship, policing) are no longer able to cope (Beck, 2000, 2005a). In the risk society, states are perceived to be less able and less trustworthy in providing institutional solutions to address risk. Today, this is reflected in rapid technological innovation of internet technologies which continue to generate new social risks. I would argue that although early concerns about internet pornography receded due to the nascent capabilities of internet technology at the time, Web 2.0 technological innovations have revitalised civil concern about children’s access to sexualised content and their vulnerability to sexual exploitation online. Where the internet had previously allowed some forms of communication and passive viewing of information, Web 2.0 technology introduced new functionalities allowing internet users to collaborate, produce and distribute content, new formats such as audio and video, as well as faster and real time interaction capabilities through social networking sites. Faster internet speeds, live video streaming and new social-networking platforms enabled both commercial and user generated content to proliferate online. The development of mobile internet enabled devices and the expansion of available internet access points made parental supervision of children’s activities more difficult, if not impossible. Traditional advice that parents monitor children’s internet use was becoming increasingly redundant in light of the proliferation of personal internet enabled mobile devices giving children increased access, privacy, autonomy and agency over their media access and communications online. Technological innovations continue to generate new risks so that the issue of children’s ‘misuse’ of digital devices and the internet has become a central concern for policymakers (O’Neill, 2013, p. 395), thus shifting the focus from regulating markets to regulating children.

For instance, as the reach of the internet expanded, early counterarguments that child pornography was merely a ‘moral panic’ and not an extensive problem have been contested (Carr, 2008; Eneman, 2010; Ethel and Max, 2002; Hecht, 2008; Howitt and Sheldon, 2007).
The end of state power?

In the past, nation-states had previously been more attentive to the ‘public interest’ which held that ‘governments have a responsibility to provide some degree of moral guidance or protection to media users’ (Flew, 2016, p. 78-79; Freedman, 2008, p. 219). Children were traditionally protected from access to adult content through both formal regulation and informal social mechanisms (Livingstone, 2011, p.514). However, whereas in the 1970s-1980s nation-states followed a Fordist approach to media regulation where ‘media policy was managed by nation-states by means of active state intervention’ (Iosifidis, 2016, p. 17), neoliberalism has generally been associated with a reduction in the regulatory power of states. Political economy and media communications scholars generally argue that in the context of globalisation, technological innovation, and neoliberalism that the state’s regulatory function has shifted, and has been outsourced to private actors and non-government organisations (Flew, 2016, p. 75).

Theorists of neoliberalism associate the decline in regulation in the public interest with a rise in neoliberal economic doctrine that trades on an ideology promoting ‘liberty of consumer choice’ and ‘ideals of individual freedom’ while opposing ‘interventionist and regulatory practices of the state’ (Harvey, 2005, p. 42). This economic conception of neoliberalism favours the self-regulating market on the one hand and the withdrawal of the state in areas of social provision on the other. This prevailing view, proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. (Harvey, 2005, p. 1)

States are therefore perceived to advance neoliberal economic policies which favour

...an array of market-friendly policies such as labor deregulation, capital mobility, privatization, a monetarist agenda of deflation and financial autonomy, trade liberalization, interplace competition, and the reduction of taxation and public expenditures. (Wacquant, 2010, pp. 212-213)

In Harvey’s (2005) account of the state, neoliberalism replaces the ‘interventionist state’ characteristic of the post-war period, so that the state no longer intervenes in matters of socio-moral regulation. Broadly speaking, the idea that neoliberalism has weakened the capacity of states to impose and enforce regulation has been a central claim among political economy, sociology, and media and communications scholars. Ulrich Beck (2005b)
attributed the diminishing role of the nation-state to the processes of globalisation, predicting that as risk became global, nation-states would outsource the management of risks to industry, NGOs and individuals (Staksrud, 2013, p. 85). Anthony Giddens has argued that nation-states have lost economic power so that many government institutions are less able to perform regulatory tasks becoming mere ‘shell institutions’ (2002, p. 19). Bob Jessop makes the argument that accompanying new technologies and the knowledge driven economy ‘there is a general trend towards the de-nationalisation of the state’ whereby the capacities of states are ‘hollowed out’ and reorganised across ‘subnational, national, supra-national, and trans-local levels’ (Jessop, 2000, p. 75). Hardt and Negri (2000, pp. 306-307) are more severe in their verdict, viewing global capitalism as shifting the authority of nation-states to transnational corporations (TNCs).

Under neoliberalism, Garland (2001) viewed the state as still central to regulation but suggested that non-state actors such as private actors and NGOs would, via a state-inspired ‘strategy of responsibilisation’ have an increasing role to play in implementing state sanctioned regulation to address issues of crime and crime prevention. Although Garland views the state as the central regulator, he sees the state as extending its reach through non-state actors outside the field of government. As the examples reviewed in this chapter show, however, there is little to suggest private actors are an extension of the state regulatory apparatus as even child pornography filtering systems often lack legal connection to the state, being instead designed and enforced by private actors and NGOs.

In addressing how social order is achieved, some theorists have emphasised a shift away from top-down measures to self-regulation. For instance, Jessop claims there has been a ‘de-statatisation of the political system’ that can be seen in a general ‘shift from government to governance’ (Jessop, 2000, p. 75), which may account for the absence of formal regulation across state and non-state actors. In addressing this perceived drift from ‘government’ to ‘governance’, Flew has argued that the state’s power is more effective, having moved away from state sanctions toward a model of ‘trust and consensus’ (Iosifidis, 2016, p. 25-26). Some also argue this has increased the effectiveness of states in addressing issues of social order. For instance, McKee (2009) has argued that despite the apparent extent to which states have ‘withdrawn’ or are reliant on non-state actors to secure their objectives, it still remains a pivotal actor in shaping both the conceptualisation of the problem and the proposed solution. However, how problems are constructed will depend on the dynamics of power between
state, civil and private actors, and should non-state actors have more influence, it is likely that they will dictate media policy outcomes.

Alongside state theorists, governmentality scholars (Rose, 1999) also argue that there has been a broader shift toward ‘softer’ policies that engage private and civil agencies to encourage individual empowerment and self-governance. Internet media regulation would seem to have followed this path with a range of ‘softer’ policies having been accomplished across a range of national and transnational non-state actors (Livingstone, 2011, p. 517), in which individuals are encouraged to be more responsible and manage risks themselves. The absence of state regulation would seem to confirm that there has been a shift away from the ‘traditional bases of power’ so that power is outsourced, being redistributed across ‘changing boundaries among state, industry, international agencies and civil society’ (Iosifidis, 2016, p. 20).

This raises an important question about the legitimacy of industry self-regulation and civil organisations promoting individual self-governance. Iosifidis has suggested that civil actors have more influence over public policies as they ‘confer legitimacy on policy decisions’ and promote new forms of governance across partnerships with industry and civil society (2016, pp. 23). However, an assumed devolution of power to non-state actors is problematic as, if there is no legal connection between the state and the non-state regulatory regime, the non-state regulatory system lacks public legitimacy (Held, 2007, p. 357). In terms of internet media regulation, it would appear that the absence of a ‘center that has the power to command and control’ (Donges, 2007, p. 326) has resulted in a ‘piecemeal policy-making’ process which is spread across ‘a heterogeneous array of organisations and alliances’ (Livingstone, 2011, p. 511). I argue that although this might imply a greater role for the civil sector, this does not necessarily guarantee that civil voices will have more equitable presence in media policies. Civil concerns may in the process become compromised by the neoliberal objectives of states which ultimately benefits private actors.

We need also to question whether the central claim that states have outsourced regulatory functions to non-state actors, has necessarily prevented states from addressing issues of social order. Garland attributed neoliberalism in the UK as coming to prominence during the Thatcher Administration and which ‘sought to move away from the classic post-war model of the risk-managing state’ and away from a ‘culture of dependency’ (2001, p. 62), to a system whereby individuals were obligated to manage their own security. However,
Garland falls short of explaining increased penalisation distinctive to the Thatcher Administration. The idea that the state still regulates is put forward by Peck (2001) who challenges the view that neoliberalism has necessarily ‘hollowed out’ state capacities for regulation in the ‘public’s interest’. Peck suggests instead that such ‘hollowing out’ simultaneously involves not just a ‘roll-back’ but also a ‘roll-out’ of new state functions, and suggests that rather than a loss of power the state has become ‘differently powerful’ (2001, p. 447). Springer (2012) extends this view that under neoliberal government, the state engages in a purposeful process, whereby the ‘rolling back’ of state capacities is accompanied by the ‘rolling out’ of more punitive measures through reconfiguring institutional arrangements and introducing ‘invasive social agendas centred on urban order, surveillance, immigration issues and policing’ (2012, p. 137). Harvey (2005) makes a similar claim in his conception of neoliberalism. While seeing neoliberalism as maximising markets through ‘deregulation, privatization, and withdrawal of the state from many areas of social provision’, Harvey maintains that ‘the state typically produces legislation and regulatory frameworks that advantage corporations’, and that ‘[If] necessary, furthermore, the neoliberal state will resort to coercive legislation and policing tactics (anti-picketing rules, for example) to disperse or repress collective forms of opposition to corporate power’ (Harvey, 2005, p. 77).

However, going against more widely accepted economic prescriptions of neoliberalism, Wacquant offers a different interpretation of the state and its regulatory power (Wacquant, 2010, 2012). He suggests that states have not abandoned their role, but instead, through Bourdieu’s concept of the bureaucratic field we can see how the limited capacity of states to ‘prevent’ social disorder and crime lead to alternative ‘adaptive strategies’ carried out by the ‘penal sector of the bureaucratic field’, and which attempt to discipline and supervise social life (Wacquant, 2012). While other theorists have been unable to reconcile neoconservative policy approaches with neoliberal doctrine (Garland, 1996, 2001, 2004; Harvey, 2005; O’Malley, 1999), Wacquant views the penalisation of those with less economic and social capital as acts of ‘moral authoritarianism’ that are integral to the functioning of the neoliberal state (2010, 2012). Bourdieu’s concept of the bureaucratic field offers a way of reconciling these chaotic and sometimes contradictory actions of the state (Wacquant, 2012, p. 73). For instance, although states have failed to regulate internet media, other ministries within government have increased punitive sanctions to address social consequences of the deregulated internet, thereby disciplining problem populations. In terms of this research, the internet user who is ignorant of online risks and their consequences must
be subject to discourses of risk management, and added layers of discipline and surveillance. These might be parents who neglect their supervisorial duties, or internet users who download child pornography, or extreme pornography, and of particular interest in this thesis, risk-taking youth who are generating sexual materials, and are thought to be prone to revenge porn and cyber bullying. This meshes well with Wacquant’s concept of neoliberalism, as we can see that while states have been unable to intervene through formal regulation of the market, they have nevertheless increased sanctions against individual internet users.

While targeting less powerful populations the state simultaneously advantages the most powerful beneficiaries of the capitalist system, private actors delivering internet access and content. In this way the state continues to support the current economic conditions such as global internet, global business and neoliberal deregulatory contexts. Wacquant proposes that the neoliberal state embraces \textit{laissez-faire} at the top but not at the bottom of society. He suggests that states simultaneously support economic deregulation aimed at promoting the market and profitability of those who benefit from the capitalist system, while increasing its commitment to penalising those who do not. Although Wacquant frames this in terms of the economic and social capital disparities in the class system, this could be extended to think about private corporations as the primary beneficiaries of neoliberal policies sustaining the deregulated internet, while individual users (especially children) could be considered symbolically equivalent to the lower class in that they have relatively little economic and social capital. For Wacquant neoliberalism does not then entail the coming of ‘small government’ through the shrinking of the Keynesian welfare state, but instead involves greater investment in civil partnerships that emphasise ‘self-reliance, commitment to paid work, and managerialism’ (Wacquant, 2010, p. 214).

Private actors such as Google, or transnational ISP networks, or social networks such as Facebook benefit from the continued absence of internet regulation, while internet users are essentially powerless individuals despite their collective value to the corporate business model (Powers and Jablonski, 2015). Many of these private actors are transnational or global organisations which see themselves as beyond the reach of sovereign rule. For instance Google has argued the borderless nature of the internet compromises the state’s ability to regulate content beyond its borders (Kumar, 2010, p. 158). Conti has suggested that these large corporates see themselves as ‘sovereign entities equivalent to a nation’ (Conti cited in Kumar, 2010, p. 159). Consequently, transnational corporate private actors are likely to have increased influence over the regulation of nation-states due to their global economic power.
Applying Wacquant’s theory, when addressing the social disorder arising from deregulated markets, we can see that the state is aggressively interventionist as it turns its regulatory focus onto those who have by comparison relatively little economic power and are therefore the least powerful. In his view,

[T]he libertarian proclivities favouring the upper class gives way to the hard edge of authoritarian oversight, as it endeavours to direct, nay dictate, the behaviour of the lower class (Wacquant, 2010, p. 214).

Although Wacquant’s theory is clearly framed as a dichotomy of class structure, the idea of how and who states regulate can be extended through perceiving this primarily as a polarisation of power. Whereas Harvey (2005) views the state’s coercive power as being redirected toward those organisations with the capacity to object to corporate dominance, Wacquant (2010) demonstrates that the state’s coercive power is aimed at those without the resources to contest corporate power. In this research project, it is clear that private actors within the internet access and content industries, many of whom are transnational and global in size and reach, stand to benefit greatly from neoliberal policies of deregulation. They are therefore powerful beneficiaries of neoliberal policies that make them exempt from regulation. On the other hand, individual internet users, and more particularly children are not part of the corporate world that remains exempt from state intervention, and as such are vulnerable to increasing regulation when it comes to media access and internet activities. We can therefore extend Wacquant’s view of the neoliberal state by observing that private actors represent the most powerful beneficiaries of the deregulated market, while individual internet users and in particular children, represent the least powerful actors who are instead, the recipients of state intervention.

This thesis argues that while there has been a shift in policies away from top-down regulation toward models of industry self-regulation and user self-regulation, the state has nevertheless increased penal sanctions and discipline to address unwanted social behaviours which could be said to arise from the lack of internet media regulation. Wacquant suggests that in the last 30 years states have responded to ‘rising social insecurity’ by increasing penalisation of ‘the lower regions of social space’ and that by enlisting the ‘cultural trope of individual responsibility’ corporate liability is avoided and the social responsibility of states reduced (2010, p. 197).

As this chapter has documented, in its early regulatory attempts the state has been powerless to intervene, while private actors appear to have been empowered to withstand
state intervention by calling on familiar discourses that claim the internet ‘cannot’ be regulated or that such regulation would conflict with adult rights to freedom of speech.

However, the outsourcing of regulatory functions to private actors has not been forthcoming. I argue that private actors have to date been accorded the freedom and right to create regulation that best suits their own interests, so that, in effect industry devised practices become the legislation. Private actors continue to be able to write their own rules through self-regulatory models. For instance, although child pornography filtering has been implemented in a number of Western democratic countries, few states have legislated that ISPs ‘must’ block access to child pornography. Instead, states rely on the voluntary good will of private actors, who work out the details of the scope and form of regulation. Additionally, private actors will not generally address broader social issues, such as children’s exposure to harmful content, if this works against their financial interests. For instance, the pornography market is not only substantial in itself, but also considerably profitable for those corporate interests such as ISPs and search engines that help to market and distribute it. Private actors are strongly disinclined to regulate content such as pornography since this may impact profits. While the neoliberal state clearly invests in measures to support the private sector it risks excluding democratic consideration of civil concerns. Although people may have rational concerns, the absence of state regulation presents a problem for those wanting better protections for children. Further, if the mutual objectives of the state-corporate nexus which consistently favour private actors continue, it is unlikely that civil interests will find adequate representation in policies.

By drawing on Wacquant’s (2010) theory of neoliberal state-crafting, we can better identify the power dynamics at play between state, private and civil sectors with regard to regulation. Rather than regulating industry to reduce or better manage the risks the internet generates, states appear to be regulating individuals who fall victim to these risks and are the target of state regulation. This allows private actors to avoid the financial burden of regulation, and the state to shrink away from the broad responsibility of reducing social risk and insecurity. At the same time as states appear to be addressing civil concern through expressions of ‘moral authoritarianism’, they continue to support the market conditions that create such problems.

The empirical Chapters Four, Five and Six in this thesis will show that efforts to regulate corporate actors continue to fail, and that states have increasing focus on the discipline of those users who, for instance, download content available as a consequence of
the deregulated internet environment. States have increased sanctions and discipline for individual internet users who make the wrong choices, such as downloading non-normative and illegal media, i.e. child pornography viewers, extreme pornography possession, under age sexting and sex offender registries, and sexual predators using digital technologies to groom children. So while private actors such as ISPs are not liable for illegal or harmful content made available through their services, increasingly, there are consequences for those who produce illegitimate or harmful content and communications as well as those who consume such content. This is consistent with Wacquant’s rejection of the thin economic conception of neoliberalism as diminishing the power of states, and his view that the state remains central to regulation as it controls when to intervene and whom it will target.

Conclusion

This chapter has examined various sociological theories about social order and the state’s role as regulator in order to explain the key problem – a paucity of regulation of private actors delivering internet content and services – and a shift toward individual responsibility for the insecurities generated by internet media and communications. There are three main propositions that this chapter makes. First the state fails to regulate powerful private actors. Second, that the state targets those less powerful – internet users – in order to address the problems arising from this lack of industry regulation. Third, that the outsourcing of traditional regulation to non-state actors has been very limited, and for the most part transmuted into projects that are designed to encourage individuals to manage risk themselves. While most Western democratic countries have implemented some form of censorship (through notice-and-take-down procedures) of content within its borders, and more rarely condoned the filtering of internationally hosted content in order to address issues in the ‘publics best interest’, these have been limited. Following rapid technological convergence and innovation, we are now witnessing renewed debate by governments, industry stakeholders and NGO’s in addressing children’s safety online (O’Neill, 2013, p. 395) and perhaps entering a new heightened regulatory phase. However, future regulatory debate may be limited by the view that, under neoliberalism, private actors and third sector organisations have taken on the state’s former regulatory responsibilities aimed at the welfare of citizens. Such a view overlooks the more punitive sanctions arising from a lack of strong state regulation in the first instance, and which, resemble an ambulance-at-the-bottom-of-the-cliff approach to issues of social disorder.
This chapter has prepared a theoretical groundwork to examine the power dynamics at play between civil, state and private actors in the debates about internet content regulation in the UK and in Australia occurring since the mid-2000s. After Chapter Three, which outlines the methodology and how the Australian and UK cases are analysed, Chapters Four, Five and Six will examine the perspectives and strategies adopted by key stakeholders to gain an understanding of whose interests are represented in policy outcomes, and to assess whether these respond adequately to civil issues and concerns.
Chapter Three: Methodology

Research Problem and Approach

The key problem being addressed in this thesis is how to explain policy outcomes in light of debates about internet content regulation in Western democratic countries. Western states have, by and large, failed to intervene with regard to regulating illegal content (such as child pornography), offensive content (under national media laws), and content that may be harmful (such as violent and derogatory pornography on the internet). Policy perspectives on whether internet content should be regulated are characteristically polarised within public debates, and accompanied by a general reluctance by states to legislate the mandatory blocking of illegal content, or to enforce national classification standards on internet media. Disagreement is generally heightened when issues of children’s safety or protection from exposure to harmful content are raised as justifications for ISP filtering. While some filtering does occur, Western governments typically do not legislate that illegal content such as child pornography be blocked by internet service providers. They also back away from proposals where filtering systems would block children’s access to pornography, i.e. default-on systems that block pornography in the first instance, but that adults could opt-out of to gain access to pornography. Instead, a range of alternative voluntary practices have been developed and managed with varying degrees of cooperation between states, private actors and third sector agencies.

In Chapter Two I reviewed state attempts to regulate internet content in the early phase of the internet, looking at Australia, the UK and the US. While the US is not included in the empirical analysis, its revision in Chapter Two provides valuable insight into the US-driven libertarian principles that have underpinned internet governance to date. However, the empirical work in this thesis focuses on comparing the approaches adopted by the Australian and UK governments to block citizen access to offensive or illegal content, or to control the distribution of age-inappropriate internet content. By comparing two Western democratic states an opportunity arises to develop a substantive theory to explain regulatory outcomes, in this case a paucity of state media regulation to maintain community media standards, or to protect children from content that may harm them.
Debates are often brought to life through the media, providing stories of public sentiment, but also a timeline of key policy moments and events, and policy perspectives of key stakeholders involved in negotiating policy outcomes. The actual narratives, motivations, strategies and actions undertaken by these stakeholders may not necessarily be evident in media articles. In order to study how policy outcomes are reached, and what interests are represented in these outcomes, the project included analysis of three data sets, interviews, media articles and documents. I conducted intensive qualitative interviews with regulatory experts across a range of civil, state and private sectors, and collated media articles from Australia and the UK that documented civil concerns about internet content, state proposals to regulate content, and the responses of private actors within internet content and service industries. In my document analysis, I drew on relevant Government discussion papers, submissions, research reports, and media releases by key organisations.

This chapter outlines the research problem and aspects of grounded theory which have guided the research process, data collection and analysis of data (Charmaz, 2014; Glaser and Strauss, 2009; Strauss and Corbin, 1990, 1998). It also discusses the ethics that shaped the interview process, and the challenges and opportunities of conducting elite interviews.

**Interviewing ‘elites’**

In order to understand how various stakeholders influenced policy outcomes, I sought first-hand accounts of the strategies and actions deployed by ‘elite’ stakeholders in the regulatory process. I conducted 20 qualitative interviews. To do this I identified key organisations across industry associations, law enforcement, child agencies, cyber safety educationalists, technology vendors, and internet service and content providers. I then sought out the most senior representatives across these organisations. Some interviewees were CEOs or senior regulatory managers, and others were business owners. All had participated in attempting to influence regulatory outcomes, and some of these professionals had worked across state, civil and private sectors.

The relations of power operating within this elite group (Harvey, 2010, 2011; Schijf, 2013; Scott, 2008) were very different to those within non-elite groups (Mullings, 1999, p. 338). Due to their seniority and public presence these participants could be viewed as ‘crystallization points for practical insider knowledge’ and ‘as surrogates or a wider circle of players’ therefore lessening time needed for collecting and analysing data (Bogner, Littig and Menz, 2009, p. 2; see also Herod, 1999; Kezar, 2003), and providing material that reflects the
wider policy culture. Interviewing senior managers who are experts in the field of regulatory policy in their respective organisations provides direct access to organisational policy positions. Their ‘insider’ knowledge is revealed through personal accounts of the social interactions between stakeholders that often happen behind closed doors and were therefore not accessible through news media analysis. The use of qualitative in-depth and unstructured interviews enables the investigation of the respondents’ ‘strategic choices, inter-relationships and trade-offs that lie behind quantifiable actions’ (Mullings, 1999, p. 338). As Meuser and Nagel suggest, ‘experts do reveal more, a lot more about relevances and maxims connected with their positions and functions: when they carry on talking about their activities, extemporize, give examples or use other forms of exploration’ (Meuser and Nagel, 2009, p. 31).

My previous experience working with ISPs and governments internationally, in the UK and Australia in particular, contributed significantly to the design and implementation of my research. Having been a part of the policy culture62 I had already been a participant observer within policy circles for a few years. To claim absolute independence in my research inquiry would therefore be incorrect. However, there were several benefits from my prior consulting work.

Having had prior interactions with private actors, government officials and third sector organisations in Australia and the UK, proved to be a significant advantage in the interview process. As Bogner et al. note,

[T]he fact that the interviewer and the interviewee share a common scientific background or relevance system can increase the level of motivation on the part of the expert to participate in an interview. A shared understanding of the social relevance of the research can then often be assumed, largely eliminating the need for further justification. (2009, p. 2)

There was a good deal of common ground as all interviewees were acutely aware of the social relevance of this research and were well versed in the contested nature of regulatory struggles concerning children’s safety while on the internet. In conducting the interviews myself, I was attentive to my own potential for bias, given my industry knowledge and any professional relationships with stakeholders or their organisations. Having an ‘insider status’ had both advantages and disadvantages which are further outlined below.

62I use the term policy culture in the sense that Oswell (1998) establishes.
Selection of participants

My research project included two case studies, Australia and the UK. In Australia, the case study was defined by the Rudd Government’s election policy (Australian Labor Party, 2007) that promised a state-run filter to protect Australian citizens from illegal content, and children from content (pornography) that may harm them. The UK case study was defined by Prime Minister Cameron’s (2010-2016) campaign for better industry self-regulation to protect children from content (pornography) that may harm them.

I adopted a purposive sampling approach (Patton, 2001, p. 230) in that I sought participants who were well versed in regulatory issues and held senior positions in organisations and could therefore contribute a deeper understanding of the issues. I drew up a list of potential participants who, as key decision makers, had extensive expert knowledge of regulatory and political issues and were therefore experientially relevant (Bogner et al. 2009; Meuser and Nagel, 2009). This list included high level managers and CEOs who were influential in Australia or the UK, and some who were also influential on the international stage. In using a purposive sampling method I was able to select persons with similar regulatory roles across the two countries to improve comparative analysis (Rudestam and Newton, 2015, p. 125). Many participants were also public figures as their perspectives were regularly published by mainstream and specialist IT media. Participants were selected from across a range of state, civil and private sectors i.e. internet service and content providers, filtering software vendors, the adult industry, child advocacy agencies, law enforcement, educational services, and Government. I approached the largest Internet Service Providers in both Australia and the UK for interviews as these organisations typically take the industry lead in negotiations with Government and have a permanent seat at the discussion table. Also, due to their size they typically have a dedicated regulatory manager whose job it is to interact with politicians, Government, civil organisations, industry organisations, the public and the media. Participants could offer historical trajectories on the ambitions of policy makers and private actor responses, having held significant roles for many years.

Recruiting high level business elites for in-depth qualitative interviews is typically more challenging than recruiting other non-elite groups or individuals. This is often due to researchers having an ‘outsider’ status, as well as the difficulty in securing interviewee participation for longer in-depth interviews due to their elite time constraints (Mullings, 1999, p. 339). Having sought and attended industry events, and attended meetings with private
actors, third sector agents and government officials I was part of the policy culture and therefore viewed as an ‘insider’ in some respects. My insider status was a contributing factor to the 100% acceptance rate, with all those solicited for interview taking part. In terms of obtaining participants for my research, a network sampling method emerged naturally (Biernacki and Waldorf 1981; Lavrakas, 2008). Having worked as a business consultant interacting with many key stakeholders, I was aware of many of the key players across the Australia and British markets. Work colleagues and interviewees also provided referrals for other key participants who would enrich the research project.

**Positionality, knowledge and power**

The adoption of filtering systems often involves complex negotiations between politicians, Government administrators, the internet industry associations, Internet Service Providers, content hosts and search engines, child advocates, educational institutions, technical software/hardware providers, content producers and civil society interest groups, and the media. My own industry experience as a consultant marketing network level ISP filtering systems provided valuable knowledge and experience that assisted in recruitment and conducting interviews. Essentially I presented myself as an ex-industry player who had interacted with others in their network and had a broad knowledge of issues within the Australian and British landscapes. Although not an IT expert, I had a working knowledge of filtering systems that was unfamiliar to many stakeholders. This and the ability to discuss political and social issues traversing public debate enabled me to establish credibility. However, there were expectations that I would have a position of my own, on the question of filtering, and around this subject I worked at remaining as neutral as possible. Mullings (1999, p. 340) suggests insiders may find it difficult to convey impartiality given their existing insider knowledge, however, as an interviewer I was able to claim impartiality by explaining the explorative nature of the research, and focusing on the importance of their views being represented in this research. At some points however, taking a position was useful in eliciting further explanation and comment from participants.

In terms of expertise, participants assumed that I had a broad knowledge of local media regulation and stakeholder policies. However, given the senior level of interviewees their expertise generally outweighed my own. This and the status of interviewees generally rendered them as having greater power over the interview process. My generalist position generated increased opportunities for verification and elaboration throughout the interviews.
Within the Internet Service Provider sector there was a sense that this was male dominated profession but this proved to be useful as interviewees would at times go to greater lengths to elaborate, further enriching their account. Interviewees were invited to outline their roles and experience within the regulatory debates, and given their expert knowledge generally led the interview process, raising topics of most relevance to them. My prior work in the industry was disclosed prior to interview.

**Recruitment**

I made phone contact with either the potential respondent or their assistant. Direct phone contact enabled me to establish my credibility, inform them about my project and gain consent to forward further information about the project. I then forwarded an official request for interview email with an attached Participant Information Sheet (PIS) (see Appendix B). In this sheet I was able to position myself with respect to the intended respondent. I made my previous involvement in the industry known. My working experience across several countries heightened stakeholder interest in taking part in the project. As stakeholders they had been directly involved in regulatory debate and were therefore interested in contributing their (organisational and personal) perspectives about internet content regulation. All participants were able to make their own decision to participate without organisational permission, since they either led their organisation or held very senior managerial positions. I travelled to both Australia and the UK and was able to secure interviews with respondents either at their place of work, or a nearby hired interview facility.

**Ethical considerations**

Gaining ‘fully informed and voluntary’ consent (Gregory, 2003, p. 37) was a consistent part of the recruitment process, whereby the terms of consent were provided up front, and again at the start of the interview where the final details of the Consent form were agreed (see Appendix B). Participants were informed that this was a doctoral research project and that some results may be published. For instance, they could if they wished, differentiate between their organisation’s perspective and their personal opinion. In presenting empirical data I made reference to participants putting forward personal opinion if they chose to distinguish this from organisational perspectives. If the participant requested that something be specifically off the record this was noted on the interview transcript and excluded. I sought these participants specifically for their contribution to public debate and policy negotiations and so participant identity and that of their respective organisation were important aspects of
Given the high public profile of the participant’s organisations and the small number of interviews conducted, anonymity could not be ensured. This difficulty was discussed and accepted at the time of interview. Overall, participants were eager that their perspectives be represented in the research.

**Data Collection**

In Australia there was an ongoing debate about the Government’s proposed mandatory filtering policy. This was a five year-long debate from 2008 to 2012 with a range of stakeholders vying for or against filtering to prevent citizen access to offensive or illegal content, or children’s access to inappropriate or harmful content. Debate about the Government’s policy was highly complex and featured a broad range of perspectives on a number of social and political issues. In the end the Government decided against introducing mandatory ISP filtering of any description. In the UK debate about internet pornography, its effects on society and children, and ISP filtering intensified between 2011 to 2014, with larger ISPs voluntarily promoting optional filtered services, and the more recent revival in forcing content industries to apply age restrictions on adult content such as internet pornography. The choice of UK as a second case study was largely due to their early establishment of a voluntary ISP filtering regime to address the issue of child pornography in 2004, a measure only recently adopted by larger ISPs in Australia in 2012 during this research, and only after a five year-long debate about the Government’s broader censorship goals.

Using three data sets, I was able to chart and compare regulatory debates identifying the social and political contexts in which regulation operates, and examine the actions and interactions, and evaluate whose interests were represented in policy outcomes. First, by examining media articles during these respective national debates, key events, claims and constructions of social issues and perspectives of regulation were identified. Second, in trying to explain policy outcomes of such debates it made sense to conduct qualitative interviews with key people who had influence over regulatory debate and policy outcomes. Third, I analysed key policy documents specific to the issues being debated in each country.

**Interview sampling and rationale**

While media was useful for identifying patterns and themes across these two national debates, qualitative interviews provided an opportunity to examine the process of debates and
the contexts, strategies and actions of key players influencing policy outcomes. I therefore conducted 20 in-depth qualitative interviews with elite stakeholders across state, civil and private sectors within Australia and the UK, who held prominent roles within public debate, advising and negotiating regulatory policies.

Given that this research seeks to explain conflicting positions, explore key events, motivations and actions of a range of stakeholders throughout the policy journey, and to explain eventual policy outcomes, it was logical to interview people who had been key influencers or negotiators during these regulatory debates. Interviews offered the opportunity to explore topics of interest with experts operating within the regulatory field and to examine in more depth, their concerns, actions and reflections (Charmaz, 2014, see Why Intensive Interview Fits Grounded Theory, paragraph 3). The setting of a face-to-face qualitative interview also allowed interviewees to reflect on issues and events and reveal, without necessarily intending to, their outlook, attitudes, and beliefs. Such representatives are not simply ‘expert members of a ‘professional functional elite’ but are ‘people actively involved in shaping public affairs’ through their membership to ‘(global) network-like negotiation processes’ (Bogner et al., 2009, p. 7).

**Preparing for qualitative interviews**

As the issues of content regulation, ISP internet filtering, pornography and children were culturally and politically sensitive topics of inquiry, face-to-face interviews permitted the opportunity to establish rapport and gain the confidence of respondents. One aspect that helped with this was my status as an insider, as having experienced the policy struggle first-hand I could relate and show empathy to their policy positions. Further, in analysing data, my insider status meant that I was ‘tuned in to, being able to pick up on relevant issues, events and happenings in data’ (Corbin and Strauss, 2008, p. 14).

The interview was semi-structured to unstructured in its approach allowing for the exploration of issues relevant to the participant’s organisation and local policy contexts, and to gain a first-hand account of the participant’s experience, knowledge, and interactions during the process of negotiation in regulatory debates. Before starting interviews I prepared a generic interview schedule/guide. However, this document was not supplied to the

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63 This is a Kindle resource, the citation format supplies heading and paragraph number after heading.
interviewee nor used as a questionnaire during the interview. This guide outlined several general areas of inquiry to be explored in the interview as follows: 

2. Views and attitudes toward regulation of internet content such as pornography and its problems and opportunities.
3. Beliefs about responsibility for the wellbeing and safety of children online.
4. Formal and informal responses, actions, strategies within their country’s regulatory debate.

The interview was an opportunity to investigate participant perspectives about childhood, the risks posed by the new media of the internet, ISP filtering, the potential and problems of media regulation, and responsibility for children’s media access.

Media data sets provided a useful resource in preparing for interviews. Prior to each interview I researched the interviewee’s organisation, examining organisational media statements, submission documents, and policies and events, and actions specific to the organisation, identifying any relevant areas that might be explored if not automatically volunteered by the participant.

**Conducting interviews**

Before beginning each interview I briefly reiterated the broad research focus of the project, and my interest in their involvement in regulatory debate. The conditions of consent were discussed, in particular their acceptance that their anonymity could not be guaranteed given their senior positions and high public profile during policy debates and the small sample size in my research. Once the consent form was agreed and signed, I began with an opening question requesting a ‘grand tour’ of the respondent’s position and experience (Lindlof and Taylor, 2002, p. 201-202). This approach put participants at ease and allowed them to develop their own account of their involvement in regulatory policy. The interview was very open if not tailored to the respondent’s personal and organisational perspectives. The open interview format allowed the respondent to elaborate on specific areas of experience which they considered to be most important. Where needed, I used qualitative interviewing techniques such as open-ended questions, active listening, silence, and neutral phrases to

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64Literature review and formative media analysis also provided historical contextual information about various economic, political and social conditions impacting the regulation of media and children in the past and in the present.
encourage respondents to speak freely. I also used semi-structured questions by employing what Schatzman and Strauss (1973) refer to as posing the ideal. I asked participants to speculate about the best or worst case regulatory scenarios with respect to their organisation. In some cases I proposed an ideal policy outcome and probed participants for their responses. While not completely open-ended, this helped to elicit richer accounts of participant’s beliefs and ideological orientations (Lindlof, and Taylor, 2002; Schatzman and Strauss, 1973).

**Interview data set**

In total, I conducted 20 interviews between 2011 and 2015. I interviewed CEOs and key executives from eight corporate internet service and content providers, three industry associations, two filtering software consultants, two cyber safety educators, three government officials, one public think-tank, and one international child protection agency. Eighteen of these interviews were Australian and UK executives with involvement in the respective countries regulatory debates. However, I also interviewed two additional executives from New Zealand who had relationships with Australian stakeholders. A fuller account of each participant’s role and organisation is in Appendix A.

Interviews were scheduled to be between 60-90 minutes. Most went for the full 90 minutes, although in two cases the interviewees fell short due to unforeseen interruptions, while several interviews went for two hours or longer. Each interview was recorded with the consent of the participant. I also made notes from time to time although I tried to keep this to a minimum in order to not disturb the momentum of conversation.

I personally transcribed all interviews verbatim soon after they were conducted to enhance my familiarisation with the data (Riessman, 1993) and to begin interpreting data (Bird, 2005, p. 227). Each interview was around 35 pages of transcribed text (1.5 line spacing size 12 font), which generated 700 pages of text for analysis. Interviews were stored securely on password protected systems. Having conducted the interviews myself I could also recall and document nonverbal gestures and accents made by the respondent as I worked through the transcription process.

**Media and document data collection**

In collating media articles, it was necessary to restrict search criteria to focus on the respective regulatory debates within Australia and the UK so that searches of Factiva databases yielded media articles relevant to their respective policy debates and outcomes.
However, the number of media articles generated by Factiva database searches was limited and did not catch all relevant media articles pertaining to key policy moments and events throughout respective country debates. As the UK was also in the midst of debate during this research project, data collection was ongoing. By alternating between analysis and data collection, specific areas for inquiry were identified and additional searches conducted to saturate (Holton, 2007) data sets on relevant events and issues.

**Australia data set**

The Rudd Labor Government’s proposed filtering policy, which was introduced in late 2007 and set aside in 2012, defined the search period for the Australian case study. There were a total of 733 articles in the Australian core media data set. Searches of Factiva for Australian media articles were carried out for the period 1 November 2007 – 31 December 2012 using the following search criteria:

(Conroy OR Rudd OR Gillard) AND (filtering OR filter OR block) AND (online OR internet) AND (pornography OR porn OR obscene OR offensive or RC OR inappropriate) AND (ISP OR internet service provider) AND (child OR children OR teenager OR teen OR adolesc* OR tween)

**United Kingdom data set**

In the United Kingdom, the regulatory debate about pornography, children and ISP filtering followed on the heels of the Australian debate, beginning in 2011 and continuing to 2016. There were key events and policy moments addressing internet pornography and child protection. Factiva searches were also supplemented with media articles about key events and policy using Google search and Google alerts during the course of this research.

An iterative sampling approach enabled a more targeted approach as the project progressed. The majority of media articles were from the period 2011–2015 (over 400) and related to issues of pornography, children, and ISP filtering. I gathered additional articles from the period 2000-2010, and 2015 to 2016, so that there was a total of 504 articles in the UK data set. Factiva searches for UK media articles used the following search criteria:

(Perry OR Cameron) AND (filtering OR filter OR block) AND (online OR internet) AND (pornography OR porn OR obscene OR offensive OR inappropriate) AND (ISP

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65In addition to this data, I gathered articles from 2000-2007 and 2012 to 2016.
Iterative sampling

I used an iterative sampling approach during the analysis processes gathering data in response to emerging themes. By adopting a Grounded Theory approach to the collection and analysis of data, research questions evolved allowing me to be more selective in my research focus, subsequent data collection and analysis (Creswell, 2014, p 141). For instance, preliminary analysis suggested that the way stakeholders constructed the social issue of children and pornography was an important aspect of debate and policy positions. Additional searches of the Factiva database therefore focused on media articles about childhood, child sexualisation and pornography. This provided additional data sets to test and validate my research questions and further analyse competing discourses of childhood. I purposefully excluded references to child pornography since media reports of police prosecutions were extensive and fairly uniform in their official narratives so that they did not add analytical value to the data set. The search criteria were as follows:

(internet OR online) AND (child OR children OR teenager OR teenagers OR youth OR adolesc*) AND (pornography OR porn) AND (sexualisation OR sexualisation OR sex) NOT (child pornography)


In Australia the main data set draws from mainstream newspapers such as *The Australian, The Age, Sydney Morning Herald*, and additional regional papers such as the *Daily Telegraph, Brisbane Courier Mail, Canberra Times, Melbourne Age, West Australian, Adelaide Advertiser*, and the *Northern Territory News*. In addition, data was gathered from a number of specialist IT news publications such as *ARN, ArsTechnica, CNET, Computerworld, DailyTech, Delimiter, Gizmodo, itNews.com, news.com.au, PCWorld, PCPro, SC Magazine, Techdirt, ZDNet*, and *Wired*, as well as some ABC televised debates.

In the UK a selection of media included *The Guardian, BBC News, Inquirer, The Observer, The Times, Daily Mail, The Register*, and *The Daily Telegraph* as well as
additional IT publications such as the *Register, ZDNet, ISP Preview, NetworkWorld, Network Wireless, Zero Paid, PCPro, and Gizmodo*.

These media articles were imported into the qualitative research software tool NVivo and a coding process applied. NVivo provided useful search and query tools allowing me to quickly locate relevant content. One particularly useful tool was the annotation and memo functions within NVivo which allowed me to document my interpretations of data throughout the process.

Throughout the analysis of both media and interviews I identified key documents such as organisational media releases, legislation, industry *Codes of Practice*, official parliamentary debate (*Hansard*), inquiries, discussion papers and submissions relating to Government inquiries and consultation about children’s safety or effects of pornography, proposed state or industry technological solutions, or alternative regulatory regimes to address user self-regulation.

**Data Analysis Procedures**

Thematic analysis primarily allows the identification, analysis and reporting of patterns within a data set (Braun and Clarke, 2006, p. 78; Patton, 1990). However, while thematic analysis is widely used and is a central methodical tool within grounded theory (Ryan and Bernard, 2000), it is often poorly defined, requiring some forethought about how it is to be applied (Boyatzis, 1998; Roulston, 2001). This project adopted a thematic approach anticipating that data would be coded in some manner to order to make sense of competing discourses across regulatory debate. The lack of agreement as to what thematic analysis is and how it is to be conducted (Boyatzis, 1998, Braun and Clarke, 2006) requires making a number of decisions about defining themes, whether prevalence within the data is required, whether the purpose of thematic analysis is to reflect the content of one’s whole data set, or if not, what it is intended to address (Braun and Clarke, 2006, p. 82). How are themes themselves to be prioritised? Should themes be developed inductively emerging from data alone, or be developed by deductive or theoretical means?

In this research project I drew on a number of Grounded Theory Methods to collate and organise data, as well as analyse it. Qualitative interviews and media data sets did not conform to any specific line of questioning or theoretical concepts. Thematic analysis of this material was therefore initially data-driven (Braun and Clarke, 2006, p. 83) adopting an
inductive thematic analysis approach (Frith and Gleeson, 2004) rather than starting out with a prescribed theoretical framework for analysis. However, both interview and media data sets produced a prolific number of concepts, requiring that there be some way of selecting those that would be most useful to the research project, i.e. helping to understand regulatory outcomes. I drew from Strauss and Corbin’s (1990) transactional analysis tool kit to do this. The following is an outline of the coding and theorising process undertaken.

**Coding Process**

I began by engaging in an open coding process, (Charmaz, 2014; Corbin and Strauss, 1990; Mills, Birks and Hoare, 2014) through which I identified numerous concepts, many similar in character. I clustered those codes which bore a strong relationship to each other under main categories.

The media data sets gathered were uploaded into NVivo software to facilitate the coding process. Media articles, unlike intensive qualitative interviews, were characterised by multiple and competing discourses that intersected with the question of regulating internet content. I reviewed each paragraph identifying key concepts within each text relating to issues about children, society, internet technology, and proposals that internet filtering be used to regulate media access.

Interviews were read through and annotated by hand before being uploaded to the NVivo qualitative research software (Bazeley, 2007; Kaefer, Roper and Sinha, 2015). Given that interviews were more focused, I approached the coding by doing a line-by-line analysis, identifying key concepts and coding these within NVivo. As more concepts emerged from the coding process, I grouped like-with-like and assigned these groupings with category labels. This generated further analysis questions which were then applied to subsequent analysis of interview data and media analysis.

NVivo enabled me to chart the frequency of data coded and to create hierarchical coding trees where concepts coded could be grouped under categories. This was a useful function during the early stage of media analysis as it could show coding hierarchies and the intensity of coding occurring within data sets. It also assisted in the quick retrieval of coded information. For instance, NVivo had useful charting features allowing the visual representation of coding within individual or a number of documents. This assisted in the comparison of concepts and categories within and between interviews. Overall the NVivo
grounded theory method software (QDA) provided the ability to code concepts and to subsequently group like-with-like to establish parent categories. During the research project I periodically re-sorted and refined data sets. Coding hierarchies were revised several times within NVivo, identifying significant categories for further analytical development (Charmaz 2014, pp. 109-137). Below is an example of the open-coding process.

Table 1: Conceptualisations of the internet among private actors

<table>
<thead>
<tr>
<th>Code</th>
<th>Category</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impervious to regulation</td>
<td>Disrupts government control</td>
<td></td>
</tr>
<tr>
<td>Failsafe design</td>
<td>Empowers individuals</td>
<td>Tool of democracy</td>
</tr>
<tr>
<td></td>
<td>A public good</td>
<td>Faith in Internet</td>
</tr>
<tr>
<td>Mistrust in Government</td>
<td>Internet exceptionalism</td>
<td></td>
</tr>
</tbody>
</table>

Concurrent analysis of media and interviews raised particular research questions that led to refinement in data collection. For instance, by comparing interviews it became apparent that discourses of ‘risk’ were an important aspect of debates and required further analytical investigation with respect to the policy positions and strategies. Risk management discourses dominated debate. This raised further questions about how risk was being deployed and by whom, and the consequences of this. Likewise, through initial interview analysis it became apparent that childhood itself was a contested concept variously used to support different policy positions. I therefore explored both risk and childhood in subsequent data collection across interviews, media and policy documents.

As interviews, media and policy documents were collected and analysed concurrently I was able to fine-tune subsequent sampling, by alternating between inductive analysis of empirical data and developing theoretical concepts (Bryant and Charmaz, 2007, pp.14-16; Charmaz, 2014, see An Invitation to Grounded Theory, paragraph 2; Corbin and Strauss, 1990). Subsequent data collection and analysis was more selective looking to disprove or validate hypotheses. Throughout the coding and analysis process I utilised the annotation and memo functions within NVivo to record analytical notes about codes and categories, and to explain or hypothesise about connections between categories (Bryant and Charmaz, 2007, p. 24; Charmaz 2014, see An Invitation to Grounded Theory, paragraph 19). This resulted in a grounded methodological approach as core categories were developed through a process of ‘iterative coding, conceptual memoing, and theoretically sampling for further data to pursue and develop conceptual leads’ (Holton, 2007, p. 279).
Initial open coding of media articles (prior to interviews) gave me a sense of the broad range of claims, events, and policy positions of interest groups and stakeholders involved in the public debate. It also revealed a prolific number of polarised views about proposed regulation of internet media through internet filtering. However, these did not explain how regulatory outcomes come about. Subsequent coding and analysis was needed to look more closely at the conditions, strategies and actions throughout policy debates in order to answer research questions such as ‘How is media regulation worked out today?’ or more specifically ‘How do we explain the lack of state regulation of internet content?’

The secondary phase of analysis employed axial coding (also called selective coding). This allowed a more focused development of categories to establish what Glaser (1978) refers to as a core variable or what Strauss and Corbin (1990, 1998) refer to as category axis. In order to develop the theoretical framework coding became more selective by restricting further data collection and coding to the core variable and its related categories (Holton, 2007, pp. 280).

**Advanced theoretical or selective coding**

To further theorise how states fail to regulate in this area (a key phenomenon of debates) I focused on actions and interactions throughout the regulatory debate and identifying whose voices and interests were represented in eventual policy outcomes. Strauss and Corbin’s paradigm model places the actor’s strategies and intentions and objectives as central to the analysis (Kelle, 2007, p. 202). It allows the researcher to focus on questions such as ‘when, where, why, who, how, and with what consequences’ (Charmaz, 2014, see *Axial Coding*, paragraph 5; Mills et al., 2014; Strauss and Corbin, 1990, 1998). Using the conditional paradigm and conditional matrix tools I was able to select the codes developed in the open-coding phase that related to phenomenon in question (i.e. civil concerns about pornography, or proposals to regulate internet content etc.), and investigate their causal conditions, contextual dimensions, the intervening conditions influencing these, and the actions and consequences of actors influential in the regulatory process. This enabled me to theorise a model of action that explains regulatory outcomes. Given that my research was looking at what contributes to and shapes policy outcomes, Strauss and Corbin’s coding paradigm was particularly appropriate as it adopts ‘a micro-sociological perspective which places actors and their actions in the focus of analysis (with categories like strategies, tactics, manoeuvrings, identity, goals, anticipated consequences and others)’ (Kelle, 2007, p. 204). Although Glaser
viewed these analytical tools as ‘forcing data and analysis into preconceived categories’ (Mills et al., 2014, p. 108), they provided the necessary structure to analyse the process through which regulation was debated and identify the interests that dominated the process and its outcomes. Using Strauss and Corbin’s conditional matrix and paradigm model (Strauss and Corbin, 1990) allowed me to identify structural conditions and contexts as well as interactions influencing policy outcomes, and to test theoretical questions about how strategies played out, and whose voices were represented within eventual policy outcomes (Charmaz, 2014; Kelle, 2007; Strauss and Corbin, 1990, 1998).

**Emerging themes**

Applying these models helped to theorise the power dynamics at play in regulatory debates about internet content. These tools also revealed that some narratives appeared to correlate to particular voices so that there were three positions emerging in the data with respect to regulation of internet media, those of civil, private, and state actors. For instance, how actors constructed children was integral to their policy positions regarding pornography and its regulation. It was therefore important to examine how children were perceived and constructed in relation to technology and pornography, so that a number of concepts about children were clustered together under categories, often overlapping between categories. For instance, concepts such as the ‘sexual child’, empowered by technology, and as discerning ‘social actors’ in the online space were placed under categories of children as competent online and risk-takers online, and constituted the theme of the ‘savvy child’. Some examples of this are shown below.
Table 2: Private actor constructions of children in relation to the internet and pornography

<table>
<thead>
<tr>
<th>Code</th>
<th>Category</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual</td>
<td>Risk takers</td>
<td>The Savvy Child</td>
</tr>
<tr>
<td></td>
<td>Empowered by technology</td>
<td>Competent social actors online</td>
</tr>
<tr>
<td></td>
<td>Discerning and intuitive</td>
<td></td>
</tr>
</tbody>
</table>

Table 3: Private actor constructions of children in relation to the internet and pornography

<table>
<thead>
<tr>
<th>Code</th>
<th>Category</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Porn inevitable</td>
<td>Part of teens sexual development</td>
<td>Porn is okay</td>
</tr>
<tr>
<td>Natural</td>
<td>Younger children resilient to</td>
<td></td>
</tr>
<tr>
<td>Not harmful</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Private actor responsibilisation of internet users

<table>
<thead>
<tr>
<th>Code</th>
<th>Category</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents ignorant of internet risks</td>
<td>Digital parenting</td>
<td>Family key site of regulation</td>
</tr>
<tr>
<td>Parents ignorant of technology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child victims and perps</td>
<td>Training digital citizens</td>
<td></td>
</tr>
<tr>
<td>Generational concerns</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

When analysing how private actors regarded children in relation to possible harms of pornography, thematic analysis revealed that private actors constructed children as both ‘resilient’ and ‘competent’ social actors online, and that pornography was considered to be a ‘normal’ and ‘healthy’ part of growing up and unlikely to harm children who have a natural curiosity about it. These actors rejected the idea that pornography should be regulated by arguing that children are not likely to be harmed by pornography being resilient and self-regulating online. Once these key themes were identified, further analysis became more focused on certain ‘categories, their properties and dimensions, and statement of relationships.
that exist in the actual data collected” (Strauss and Corbin, 1990, p. 112) which in turn helped to develop the narrative further.

Emergent summary narrative

In advancing coding to a theoretical level an emerging narrative (Mills et al., 2014, p. 115; Strauss and Corbin, 1990) revealed that discourses of risk and responsibility correlated with a broader project of the regulation of individuals, and in particular children. To develop these I drew on key sociological theories such as the ‘risk society’ (Beck, 1999; Garland, 2001, 2003; Giddens 1994), neoliberalism and ‘neoliberal state crafting’ (Wacquant, 2010), ‘individualisation’ (Beck and Beck-Gernsheim, 2002), the ‘sociology of childhood’ (Buckingham, 2000; James and Prout, 1997), and ‘governmentality’ research (Rose, 1989, 2000), to enhance the ‘explanatory power’ of my emerging narrative (Mills et al., 2014, p. 115).

A key tenet of neoliberal theory is the claim that states have less power to regulate markets, while also having withdrawn from regulation that addresses social welfare provisions. However, this research found that the state, while failing to regulate private actors, still regulates. The lead idea in this emerging theory comes from Wacquant’s (2010) notion of the neoliberal state which recognises that despite the state’s reluctance to regulate powerful market actors, state intervention is instead directed at those who occupy the lower echelons of social class. This idea can be metaphorically extended by thinking about the state as granting powerful private actors regulatory exemptions while adopting an interventionist approach to less powerful actors such as internet users, and children in particular.

Following a grounded theory process ultimately led to the argument that emerging state policies are consistent with the interests of private actors. In addition to this it also revealed that states continue to be heavily invested in addressing issues of civil disorder. Rather than the state having withdrawn from areas of social provision, it now focuses on regulating individuals. In this research project it was clear that while private actors promoted the idea that parents and children manage internet risks they also continued to benefit from the paucity of media regulation. The overarching narrative emerging from this research is that although conservative political elements may still respond to civil concerns about content, the focus of state policy has shifted away from regulating powerful private actors, to regulating the less powerful, most vulnerable, in this case children. Analysis revealed that states attempt...
to regulate through discourses of ‘digital citizenship’ and ‘media literacy’ which now colonise regulatory debates and policy outcomes.

**Limitations of data and methodological procedures**

Thematic analysis has been criticised for lacking definition, being too flexible and having a lack of clear guidelines so that an ‘anything goes’ approach may apply in some instances (Braun and Clarke, 2006, p. 78). It can also be largely descriptive if done without a theoretical framework. By using Strauss and Corbin’s (1990) coding paradigm and conditional matrix I was able to identify those discourses which were most influential in shaping eventual policy outcomes and why. One of the chief criticisms of Strauss and Corbin’s transactional tool kit is that it ‘crosses the line from theoretical exploration to forced integration with a preconceived theoretical model’ and therefore undermines the inductive character of grounded theory (Holton, 2007, p. 283; Kelle, 2007). Strauss and Corbin’s transactional tools could then be considered to undermine the open-minded, framework-free orientation that undergirds traditional grounded theory methodology. However, as Kelle (2007) has pointed out it is not possible to be purely inductive and unguided by any theoretical knowledge as this would no doubt produce incoherent and miscellaneous observations. He suggests that theoretical coding is dependent on ‘the researcher’s theoretical sensitivity, their ability to grasp empirical phenomena in theoretical terms’ (Kelle, 2007, p. 203).

These methods could also be seen as increasing the validity and reliability of the research method, since they aid in the repetition of research by increasing the likelihood that others would also generate similar themes and arrive at similar conclusions (Rudestam and Newton, 2015). Although these tools and others like them may encourage researchers to follow a set of rules to generate grounded theory, in this research project they offered the necessary guidance to bring shape and focus to the data (Bryant and Charmaz, 2007, p. 10).

While this project has a relatively small number of participants, this is compensated for by the fact that these were ‘elite’ ‘experts’ whose voices were present in public debate and at behind closed door negotiations, and were therefore highly relevant to understanding how regulation is worked out. All interview prospects agreed to participate in the research, providing a range of interviewees from different sectors from Australia and the UK. Further interviews would have increased the saturation of data within emerging themes, but not
necessarily broadened thematic findings. The analysis of media and key documents assisted in validating key themes identified in interviews and vice versa.

Both Bazeley (2007) and Creswell (2014) advocate use of software programs that enable coding and analysis of qualitative data. However, qualitative research software can be very time consuming and can result in a kind of ‘technology entrapment’ detracting from the creative processes needed in developing grounded theory (Holton, 2007, p 287). This is also an issue taken up by Glaser who pointed out that grounded theory method software ‘severely restricts sorting and its creativity’ and is labor intensive (Glaser, 2005, pp. 35-40). Holton (2007) suggests such software does not lend itself to the coding and analysis of data in classic grounded theory methodology. While software can help with managing data sources and generating visual diagrams to show patterns across data sources, ultimately the hard work of coding, conceptualising, and developing theory still has to be done by the researcher. This was achieved in this project through a process of writing and reflection, so that the use of annotations and memo writing throughout the process proved integral to developing substantive theory.

Chapter Four is the first of three empirical chapters in which I present the key themes underpinning the world view of civil actors who seek stronger regulation of internet content. How these actors constructed childhood was central to their policy positions on pornography and its regulation on the internet. Civil actors called on modernist notions of childhood as vulnerable and at risk of being exploited, but struggled to maintain protectionist discourses due to changing social, technological and political conditions impacting media regulation and childhood. Chapter Five then examines how private actors have responded to regulatory pressure and the policy outcomes of protracted debate. Private actors generally had more liberal constructions of childhood as they attempted to negate civil concerns about internet pornography. However, there were some key contradictions in their defence of the deregulated market, as they called on modern notions of childhood as a risk to themselves to suggest that parents be responsible for supervising their potential for risky conduct online. The final empirical Chapter Six shows how private actors dominate the policy process and policy outcomes that result in the perpetuation of the deregulated media landscape. It also touches on how states may have reoriented their resources to deal with the social issues arising from the lack of media regulation by emphasising the need to supervise and discipline less powerful individuals.
Chapter Four: Defending Modernity’s Child: Civil Actor Constructions of Children, Pornography and the Internet.

This chapter examines civil concerns about children’s premature and damaging exposure to internet pornography, and the increasing risks of children being in pornography. Several themes emerged as central to civil perspectives. (a) children as being ‘at risk’, (b) technology as driving deviance, (c) pornography as damaging to children’s development, (d) collective preventative strategies, and (e) neoliberalism’s compromise - education. While children were constructed as generally ‘at risk’, due to their status as children, digital and internet technologies were thought to amplify risks. The internet and related digital technologies were attributed with driving unwanted social change, and generating new crime types that both victimised children and generated deviant social behaviour among children. Additionally, discourses of risk drew on ‘civilising’ and ‘developmental’ paradigms reminiscent of 19th and early 20th century work of childhood educators Stanely Hall and Jean Piaget. Children and adolescents were viewed as requiring supervision, lacking adult-like ‘reasoning powers’ and therefore likely to take uncalculated risks that could potentially turn out badly. Children’s growing autonomy conflicted with civil actors’ Piagetian-like notions of children as ‘passive’ rather than ‘active’ or autonomous actors, and when combined with their digital skills was perceived to place children at greater risk online. While tasking parents with regulating children, this was clearly problematic due to trends of technology, individualisation and democratisation in late-modern society, which were thought to run counter to efforts to restrain children’s digital participation. This chapter draws on media articles and relevant policy documents from the UK and Australia, as well as qualitative interviews with several elite civil actors: NGO Ending Child Prostitution, Child Pornography and Child Trafficking for Sexual Purposes (ECPAT), the Australian Federal Police (AFP), filtering software vendor Watchdog International, public think tank The Australia Institute, and two cyber safety educators.
Young People as ‘At Risk’

Civil actors often viewed children as ‘innocent’ and ‘vulnerable’. This was emphasised by a senior board member of the international NGO, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), who stated that, ‘most everybody wants to protect children, most people recognize that children are vulnerable, most people recognize they do need to grow up to reach their potential because they are going to be tomorrow’s generation’ (Author’s interview with ECPAT).

As children were perceived to be passing through phases of cognitive development on their journey toward adulthood, they were considered unable to make autonomous decisions without the guidance of adults. This developmental paradigm invariably demanded that children be protected from risk (James and James, 2008, pp. 113-114). The protection of children was seen as a society-wide project as one cyber safety expert conveyed ‘as a society we have to try and protect the vulnerable, it’s not about being draconian […] it’s just protecting children because they don’t have the cognitive ability to protect themselves’ (Author’s interview with Cyber Safety Solutions).

Civil actors generally considered children to be at greater risk because of the internet. While civil actors promoted the internet as promising manifold opportunities for children’s learning and participation, the internet was also viewed as a dangerous space which generated new risks to children’s wellbeing and development. Consequently, civil actors generally premised their views with a preamble about the social and educational benefits of the internet, but quickly followed this with claims about the internet’s ‘dark side’. For instance, in Australia, Minister Stephen Conroy described the internet as ‘an essential tool for all Australian children today […] for entertainment, for undertaking school work and research, and for social networking’ but this was counter-balanced by warnings that the internet had a ‘dark side’ and was an ‘uncivilized’ space that generated new risks to society, and to children in particular (Conroy, 2008a).

This was also the view of one cyber safety expert and educator who, reflecting on her prior career as a policewoman dealing with internet crime, stressed that the internet encourages covert and deviant behaviour and was therefore a far more dangerous place than most people realise. Her approach to cyber safety education was underpinned by a belief in the internet’s potential to nurture deviancy, as she explained:
When I was in the police force I had a lot of undercover accounts on dodgy sites and all of that and I have never come across as many creepy people in my entire police career as I did online. [It] blew me away…not that I was naïve to it, I wasn’t, but the sort of people that contacted me, the sort of people that asked me to do things far outweighed the creepiness and concern that I dealt with in the physical world. (Author’s interview with Cyber Safety Solutions)

Media reports in both Australia and the UK have also regularly warned that ‘the public at large should be under no illusion about what happens in the darkest recesses of the cyber-world’ (Rennie, 2009). The internet was viewed as cultivating the sexually deviant side of humanity as adults could more easily view illegal child sexual abuse images, and paedophiles could groom children through the internet.

Although on the one hand civil actors acknowledged children as ‘youthful experts’ or ‘digital natives’ online (Livingstone, 2009), children’s ‘avid appetites for new technology’ (Perry, 2011) and expert digital skills were thought to place children at greater risk. While access to the internet and the acquisition of digital skills were considered a positive investment in children’s future adult lives, children’s autonomous access and social participation online was fraught with risk. Civil actors were concerned that children lacked the necessary ‘maturity’ and ‘reasoning powers’ to govern their own media access or manage social interactions online. These actors viewed children as impulsive and liable to make decisions that could negatively impact their future lives. One cyber safety expert asserted that,

Children that cannot foresee risk, perceive risk or understand consequences. They are not thinking before they are doing [...] they are not acting with criminal intent. They are not acting in any other way than they are a silly child. (Author’s interview with Cyber Safety Solutions)

British MP Claire Perry drew on this developmental paradigm to justify increased protections, as she claimed children were particularly vulnerable to a range of social risks and criminal activities online (Author’s interview with MP Claire Perry). Children were therefore constructed as having the potential to be both the ‘child at risk’ and the unwitting ‘risk-taking’ child (James et al., 1998). By 2007, there were a growing number of civil concerns

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66 This continues to be an issue, as expressed in the Bravehearts Submission (2012) to the Parliamentary Joint Committee on Cyber-Safety (2012) in Australia in which stated that ‘new communication technologies are becoming increasingly foreign to many parents thus ‘reducing their ability to protect their children’.

67 A global view promulgated by article 17 of the UNCRC which views the internet as a basic need. https://www.unicef.org/crc/files/Rights_overview.pdf
not only about children being at risk from the internet but also new ways in which children engaged in risky behaviour online.

The Australian Labor Party’s electoral statement claimed that children were especially vulnerable to a range of risks such as, ‘having their identities appropriated by others […]’ having photos or videos of themselves published online without their permission […] being traced by strangers from details they have entered online’ (Australian Labor Party, 2007). Children were also described as equally vulnerable to the ‘misuse’ of the internet technology, ‘suffering from computer and/or internet addiction […]’ and ‘being the subject of cyber-bullying [or] inadvertently downloading illegal content when file-sharing’ (Australian Labor Party, 2007). Minister Stephen Conroy claimed that children were less able to reap the benefits that the internet had to offer as they were vulnerable to the risks of computer and pornography addictions, anti-social behaviour, and anxiety and depression (Australian Labor Party, 2007).

Around the same time in the UK, reports commissioned by the Home Office showed concern about the sexualisation of children (Bailey, 2011; Byron, 2008; Papadopoulos, 2010). The Byron Review (2008) stated that ‘due to the nature of the internet, with its anonymity, ubiquity and communication potential’ making competent decisions about risks online was ‘more complex for children and young people’ as they ‘lack the critical evaluation skills to either be able to interpret incoming information or make appropriate judgements about how to behave online’ (Byron, 2008). Civil actors were unable to predict which children might be victimised or make poor judgements online or identify which children were more at risk than others. Universalising discourses such as the assertion that ‘all children were at risk online’ supported calls for the heightened need to supervise children when online (Author’s interview with AFP). This perception of the ‘child at risk’ was also exacerbated by the perceived absence of parental supervision. Civil actors often referred to parents as being naïve about the risks children faced online, and more so, ignorant of what children were capable of doing online. The AFP official, in reflecting on his own personal experience claimed,

I don’t know if there is a full understanding by some parents of exactly what their kids can do online. I mean obviously you and I are in a position where we have done a bit of research, or done a bit of thinking on this stuff, but I talk to some of my peers and they are a bit naïve about exactly what kids can do online these days. (Author’s interview with AFP)
This view was reinforced in frequent media articles that warned parents to supervise their children’s internet activities (Battersby, 2008; Carty, 2009; Day, 2010; Tiedman and Brouwer, 2007; Tomazin, 2009).

Civil actors viewed adult supervision as increasingly problematic since rapid technological innovations continued to diminish parents’ ability to supervise children, a point acknowledged in European research by Livingstone (2009) and Staksrud (2013). For instance, the anonymity offered by the internet, the proliferation of access points outside the home, and the multiplication of mobile internet enabled devices, along with the increasing affluence of children were thought to make it more difficult for parents to confiscate or limit children’s access. Parents’ naiveté, combined with the rapid technological innovations offering mobile and private internet access, necessitated greater parental awareness.

Following Piagetian development ideals, the AFP executive and cyber safety experts claimed that younger children did not have the required level of understanding to support any reasoned discussion about age-inappropriate content and could not therefore be entrusted with governing their own media access. While the AFP executive suggested that older children’s media access required more negotiation, he recommended that parents control younger children’s internet access by using ‘blunt’ filtering tools (Author’s interview with AFP). As teenagers generally had access to personal mobile devices and were not necessarily homebound, constraining their internet activities was more difficult requiring that parents negotiate issues of access.

These observations reflect an important dilemma for parents in the late-modern risk society. While civil sector calls for greater parental investment in mediating children’s internet use to mitigate risk (Jackson and Scott, 1999), the late-modern trends toward ever increasing individualisation (Beck and Beck-Gernsheim, 2002), and detraditionalisation of family (Giddens, 1993) make traditional authoritarian parenting methods less acceptable. In the democratising family sphere (Giddens, 1993) parents are tasked with negotiating children’s access and activities online, rather than being able to utilise more traditional disciplinary parenting approaches. For parents, parenting in the digital age is therefore much more difficult, given children’s right to digital inclusion conflicts with the notion that more time online exposes them to greater risk.

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68 Such a view would seem to conflict with educational objectives that seek to increase children’s ‘media literacy’ and by implication resilient to media harms.
Children at risk of ‘being in’ pornography

Broader social and economic conditions engendered by globalisation and the internet were attributed with heightening the risk of children ‘being in pornography’. Civil actors argued that the internet increased the accessibility and demand for child sexual abuse material, and children’s accessibility to sexual predators and child pornographers.

From the view of the CEO of ECPAT, the broader forces of globalisation and rapid technological innovation have brought new dimensions to the enduring problem of the sexual exploitation of women and children. According to this CEO children were vulnerable to commercial exploitation as ‘they lack rights’ and ‘are easier to control’ and ‘they are not capable really of speaking up’ (Author’s interview with ECPAT). He claimed that the increasing transience of populations and the economic processes of globalisation had worsened the economic wellbeing of women and children, leaving them more open to exploitation by expanding sex industries since, ‘communication, travel, and access agreements between countries allow movement of people…and create an environment where it’s easy for trafficking and for offenders to go to different places’ (Author’s interview with ECPAT).

Organisations belonging to the international ECPAT network have for many years lobbied governments around the world to adopt the United Nations Optional Protocol against the Sale of Children, Child Prostitution and Child Pornography (2000b), in order to strengthen children’s rights to protection from sexual exploitation. After a career working to eliminate such exploitation, this CEO was circumspect about whether the focus on improving children’s legal rights had been as effective as hoped. As an NGO that views prostitution and pornography as insidious by-products of poverty, the decriminalisation of prostitution in some Western democratic countries has, in his view, diminished the effectiveness of moral or economic arguments of its exploitative nature (Author’s interview with ECPAT). As a consequence ECPAT have channelled their efforts into trying to obstruct ‘illegal’ sex industries such as sex tourism, human trafficking, child sexual abuse and child pornography.

According to many across the civil sector, the distributive power of the internet has caused a dramatic expansion in the cross-border marketplace for child pornography (Author’s interview with AFP; Author’s interview with ECPAT; Doward, 2006). The AFP executive claimed that new mobile apps and live streaming technologies were generating a new pay-per-view industry in child sexual abuse in countries such as Thailand, and at the same time
the low costs of internet and digital technologies were enabling greater at-home production of child sexual abuse materials (Author’s interview with AFP; Quayle and Taylor, 2002; Wolak, Finkelhor and Mitchell, 2004).

Technology was an enabling and causal factor in the exploitation of children within Western democratic countries as well. According to one cyber safety expert, many new online communication apps exposed children to unsolicited contact, often from sexual predators (Author’s interview with Cyber Safety Lady). She claimed that even now, new apps being developed and marketed through the Apple store were exposing children to risk of direct contact by paedophiles. Further, only when victim stories appeared in the press were private actors forced to address the security of the customer’s contact information and privacy (Author’s interview with Cyber Safety Lady). As concerns about sexual predators have increased, experts and governments continue to warn parents to be more vigilant in supervising children’s use of chat based services (“Don’t Let Your Kids GNOC! Parents Warned About Teen Sexting Codes”, 2016; Morley, 2017).

Across the civil sector, actors agreed that there was a strong link between viewing child pornography and physically offending, so that increased access to child pornography threatened to desensitise internet viewers and potentially increase local child abuse (Alleyne, 2011). This view was shared by the CEO of ChildWise Australia, Bernadette McMenamin, who reported that,

Computers and the internet enable more images to be passed around faster, with quick and easy access to many more people […] they are the most horrendous images you can imagine. Two to three year old children and young babies being raped and tortured […] People are becoming desensitised; they want to see more hard-core images that will stimulate them […] There is a strong link between viewing child sex abuse images and committing contact offences. (McMenamin, cited in Karena, 2009)

On the flip side of the coin, children’s perceived ‘misuse’ of technology was a growing concern. Civil actors claimed that children’s increased exposure to pornography on the internet combined with their now pervasive ownership of smart phones generated sexual misconduct, not only putting them at risk of existing child pornography laws, but also threatening accepted social and legal norms (Author’s interview with AFP; Author’s interview with Cyber Safety Lady; Author’s interview with Cyber Safety Solutions). Police were increasingly called to sexting incidents where children had produced and distributed sexual images of themselves. The AFP official claimed that education programs had not been
implemented early enough to prevent sexting from becoming a common social practice among children, as the police were,

…still seeing young children taking selfies and uploading naked photos of themselves online, which if they are under the age of 16 is technically child pornography […] By the time law enforcement gets involved in it, it’s too late because we are looking at social issues […] I don’t think we focused enough on education. (Author’s interview with AFP)

Civil actors struggled to discourage the practice as media reported conflicting expert accounts. From the view of one cyber safety expert, claims by Australian researchers that sexting among Australian children and youth is becoming an ‘acceptable’ social norm (“ Sexting a Modern-Day Form of Courtship?”, 2014) worked against protectionist efforts to discourage the practice among children and youth. Although, due to police discretion there had been few prosecutions to date (Author’s interview with AFP; Author’s interview with Cyber Safety Solutions), she did not agree this was reason enough to advise parents that sexting was the new norm and therefore ‘okay’. However, as there had been few prosecutions it was difficult to argue that there was a ‘high risk’ to all children, requiring a greater focus on the ‘gravity of harm’ that individuals could suffer when things go wrong. Clearly it was difficult to make moral claims, and so when it came to internet ‘risks’ civil actors focused on the potential consequences for individuals should taking risks go wrong. The conflict between her professional view and the ‘expert’ advice provided by researchers highlighted the difficulties that parents faced in negotiating children’s digital participation:

That’s fine, that’s your research, present it as ‘this is what the teens have told us’, but for goodness sake make the comment that says it’s illegal! (Author’s interview with Cyber Safety Solutions)

She claimed that researchers failed to report that children’s sexting was in fact illegal and that children could face criminal charges. Instead she viewed researchers as giving parents the go-ahead to ignore the possibility that their child was ‘sexting’ saying researchers ‘glossed over’ the consequences by telling parents to ‘get a grip this is how life is’. She objected to these ‘experts’ not reporting the consequences of such actions, and maintained that researchers should provide balanced advice;

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69 The late-modern condition in which there is increasing mistrust of traditional institutions and increasing conflict between expert accounts is a symptom of the ‘risk society’ (Giddens, 1991a).
You don’t have to say right or wrong, but you have to talk about if there is a legal implication for what they are doing, you’ve got to include it. I don’t understand why you wouldn’t. (Author’s interview with Cyber Safety Solutions)

Children were still at risk of being prosecuted for producing child pornography, being placed on a sex offender register for life, and further there was growing evidence within the civil sector to suggest that many of these images end up on illegal pornography websites (“‘Sexting’ A Modern-Day Form of Courtship?”, 2014; “‘Sexting’ is the New Form of Courtship, Says La Trobe Uni Study”, 2014; Smith, 2012). Both the cyber safety expert and the AFP executive agreed that parents and children needed to be more aware of these consequences and to discourage its practice.

**Internet Technology Driving Sexual Deviance**

Civil actors were concerned about children’s access and exposure to pornography, as well as their accessibility to sexual predators online, which they deemed to be escalating due to rapid changes in internet technology and the accompanying lack of regulation of content and service providers. Civil actors also felt that with these technological advances the nature of pornography had become more extreme and that some content would not fit within national classification guidelines. Further, they maintained that the sexually aggressive, derogatory and exploitative practices in internet pornography now form the basis of children’s sexual expectations and sexual lives, and could potentially create child sex offenders having ramifications for broader society. For these reasons, civil actors problematised pornography, both in relation to broader society and to children’s sexual development.

In 2003 – 2004 The Australia Institute released a series of reports and press statements\(^70\) stating that Australian teenagers were being exposed to violent and hard-core pornography in spite of Federal Government law intended to protect them (referring to the Broadcasting Services (Online Services) Act 1999). According to their research as many as 84% of 16-17 year old boys and 60% of girls had been exposed to pornography on the internet (Flood and Hamilton, 2003a, 2003b; The Australia Institute, 2003b). The Institute also claimed that 93% of parents supported the automatic blocking of pornography to Australian homes. Access to pornography had continued to be a key concern across the civil sector. In 2012, UK politician Claire Perry led a cross parliamentary inquiry consulting a

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\(^{70}\)Flood 2003a, b; Flood, 2004; Flood and Hamilton 2003a, b; The Australia Institute, 2003a, b, c, d; 2004a, b; Rush and La Nauze, 2006a, b.
range of perspectives such as ‘open rights groups [and] internet pornographers, people representing young working people, cyber bullying, and children’s protection organisations, agony aunts, internet experts’ and academic research done across Europe (Author’s interview with MP Claire Perry). Perry claimed the research reported that ‘83% of adults said they thought easy access to pornography was a problem and damaging to children’ (Author’s interview with MP Claire Perry). Since this time, further research carried out across Europe has confirmed children’s exposure to pornography and parents’ general ignorance of this to be problematic (Hasebrink, Livingstone and Haddon, 2009). Various commissioned inquiries have addressed the question of the accessibility of internet pornography (Bailey, 2011; Commonwealth of Australia, 2016).

Civil actors claimed that while pornography may not have been so problematic in the early days of the internet, it was now one of the larger anxieties parents had today. One cyber safety expert claimed that children as young as 11 were seeing,

...bestiality, violent pornography, we are not just talking about a picture of a penis or boobs, we are talking about three on one sex, all kinds of stuff that kids as young as 11, that’s been reported to me personally, have been witness to. (Author’s interview with Cyber Safety Lady)

Whereas in the 1990s internet pornography was commonly marketed through SPAM emails, sexually explicit material is now accessible online due to innovations in business and marketing online. For instance, according to one cyber safety expert the traditional safeguards that protected children from accessing pornography have eroded with advances in online payment technologies as,

In the early days of the internet, if you were looking at pornography [...] you had to pay for it, it was there but you had to pay for it. So that was a hugely protective factor for kids because they didn’t have credit cards. There was none of those prepaid debit cards you can go and buy in Woolworths. So it was there, but by and large kids were not exposed to it, because they didn’t have the means. (Author’s interview with Cyber Safety Solutions)

More recent research has highlighted the complex ways in which children are exposed to pornography using internet enabled digital devices. A recent inquiry into pornography harms in Australia found that children were now exposed to free explicit material in multiple ways such as: ‘photo or video-sharing platforms, search engine results, advertisements, interpersonal messaging apps and services, social network sites, peer-to-peer portal sites and
torrent services for downloading films and videos, mobile and tablet apps, games, physical sharing of devices or USB sticks, and the dark web’ (Commonwealth of Australia, 2016).

According to one cyber safety expert, most children have been sent pornography or a link to pornography and are exposed through mobile devices such as cell phones and iPads which drive adult content through new apps. With a background in online technologies this cyber safety expert, claimed that technology manufacturers were failing to protect children and teenagers as new products typically lacked security and privacy settings. She maintained that children for the most part ‘just want to hang out with their friends online’ but that apps like ‘Kik Messenger’ and ‘Instagram’ were very dangerous products as they had either very poor or no privacy settings, leaving children exposed to sexual predators and unsolicited pornographic images. She claimed these businesses forward children’s contact information to other websites so that,

[O]nce kids start playing on [Kik Messenger apps] …their profile names go up on all sorts of websites […] so if you want to connect with a girl who is between 13 and 15 years old you can find them […] and kids are advertising their Kik messenger profiles on Instagram and not realising that that is being broadcast publically, so that is how complete strangers find kids. (Author’s interview with Cyber Safety Lady)

Additionally, she claimed that age ratings such as those on the iTunes store are set by the developers who despite having adult content, target kids under the age of 17 until such times as there is some bad press as in the case of Kik Messenger where,

The reason they had to change it to 17+ was because a girl over in the States met up with someone on kick messenger and was raped. That’s generally how iTunes work. They’ll let things go until something goes really bad and they get publicity about it, then they go to the developers and say you’ve’ got to change it. Same thing happened with Tinder. (Author’s interview with Cyber Safety Lady)

In her view it was no accident that the age ratings were so misleading. She claimed that large corporates benefit financially from children downloading these apps as ‘the more downloads you have the higher up the ratings you go’ (Author’s interview with Cyber Safety Lady). Zeus, although a dating app was assigned an age rating of 4+ and like many other adult apps was designed to look like a child’s toy and so targeted children under 17. Facebook has an age rating of 4+ on the iTunes store while the terms of service on Facebook are 13+. Social networking services were also presenting new risks to children since their age verification processes were ineffective in preventing children younger than 13 from registering. Overall, the view was that both state and private actors were failing to address the
channels through which children are now being exposed to unsolicited content, and industry self-regulation was clearly not working (Author’s interview with Cyber Safety Lady).

Political rhetoric in Australia had sought to eliminate pornography being so widely available to Australians claiming that it was ‘the fundamental right of all Australians to access the internet free of pornography and offensive material’ (“Internet porn filters for home computers to be subsidised”, 2006). The media increasingly reported that internet pornography had become ‘a lot more deviant and extreme, violent and showing rape and other non-consensual sex’ than material found on X-rated videos (Wallace, 2003). Psychologists began to warn of internet and porn addictions, and increasing marital breakdown due to pornography addiction and internet affairs (Jones and Cazzulino, 2003). By the new millennium, research carried out by the public think tank The Australia Institute, drew a clear distinction between pre-internet pornography and internet pornography available online. In the view of the Institute’s director, Clive Hamilton, ‘pornography today is not the pornography of the ‘60s. This isn’t just about Playboy on a computer screen, or even Hustler. This is material that society will never accept’ (Clive Hamilton, quoted in Horin, 2003). This view was echoed by British MP Claire Perry who believed that the internet encouraged exploration into the darker recesses of sexual deviancy and was therefore a key driver of sexual deviancy and crime. In her view internet pornography was problematic as it was ‘not just porn as we know it, the problem with internet porn is how quickly you can descend into sort of extremely dark and depraved roots’ (Author’s interview with MP Claire Perry).

Further, Hamilton also claimed that the nature of this new technology, with its ability to provide endless links and pages, was such that it drew internet users in to explore materials that are more violent, derogatory and extreme (Hamilton, 2009). Hamilton advocated that the internet’s ‘dark side’ should be regulated ‘for the public good’ (The Australia Institute, 2004b). The risk of internet pornography was not just limited to adults as child health professionals took the view that ‘the internet revolution is having a profound effect on our children, taking many to a dark world that is doing them untold harm’ (quoted in Henry, 2012). This view was also widely circulated within a Daily Mail campaign in the UK.

The view that the internet had changed the character of pornography was widespread across the civil sector. According to Dr Michael Flood, who had been a researcher for The Australia Institute, there had been,
… a shift to more callous representations of pornography an increase in choking, gagging, and slapping and verbally aggressive language, shifts in the kinds of practices that are in pornography, such as anal intercourse, and triple penetration, are much more routine in pornography. (Author’s interview with The Australia Institute)

The internet was also attributed with generating new types of sexual crime. Not only did digital technologies generate new crimes such as viewing and distributing child pornography, according to Dr Flood of The Australia Institute the pervasiveness of pornography and digital technologies such as miniaturised cameras ‘encourages some men to practice voyeurism in a way they would not or could not have done previously’ (Barber, 2003). He claimed these new types of non-consensual sexual acts such as, ‘rape, bestiality and “upskirts” websites’ would be banned under OFLC classification guidelines and so there was no reason this should not apply to internet content (Flood and Hamilton, 2003a). At this time, both Flood and Hamilton claimed that the violent and derogatory pornography now available online would have far reaching negative social effects (Author’s interview with The Australia Institute).

The Damaging Effects of Internet Pornography to Children’s Sexual Development

Civil actors were most concerned about the as yet unknown effects that internet pornography may have on children’s psychological development (Carr-Gregg, 2003). In an interview, British MP Claire Perry stressed that the internet could be, ‘an amazing source of information and education’ but that pornography was so pervasive that ‘it has equally got to a point where […] kids are seeing too much stuff, and they are seeing stuff that we wouldn’t find acceptable if it was any other form of media distribution’ (Author’s interview with MP Claire Perry). Pornography was deemed a threat to ‘childhood’, a view crystalized in Perry’s introductory speech delivered at the launch of the Independent Parliamentary Inquiry into Online Child Protection (2012);

Pornography is problematic, we need to preserve children’s innocence and prevent exposure to much damaging content […] teenagers are the highest consumers of internet pornography […] looking at perverted images on the internet on their laptop and on their mobile phone […] So I say, really this current generation is going through something of an experiment, they are our future, but no one knows how well they will survive this unprecedented assault on their sexual development. (Perry, 2012a)
Research now also indicated that the ‘age of first exposure’ to pornography was getting younger (Author’s interview with The Australia Institute). All civil actors interviewed made the claim that it was not only teenagers but also young primary school aged children who were being exposed to pornography. One cyber safety expert, drew from her on-the-job experience as a police woman and cyber safety educator to stress that,

Within the last ten years, the things that I dealt with sexually involving children - that I used to see 15 or 17 year olds involved in - I [now] see 11 or 12 year olds in. So I’ve seen a massive shift in ages. I am regularly called into primary schools to deal with children who are sharing naked photos regularly. (Author’s interview with Cyber Safety Solutions)

The Australia Institute research claimed that internet pornography was harmful on several levels: that it may be emotionally disturbing; that young people may be troubled or disgusted by images or accounts of non-mainstream behaviours (Flood and Hamilton, 2003a, 2003b). However, Dr Flood of The Australia Institute also claimed that internet pornography was negatively,

…shaping young men’s expectations around deep fellatio around extra vaginal ejaculation, choking and other kinds of practices that are routine in porn [and that the evidence was that] young girls don’t want to and are pressured into it. (Author’s interview with The Australia Institute)

He claimed that internet pornography was now children’s main source of sexual information,

I think that contemporary generations of young people are the first generation to have grown up to have sexual lives defined by porn […] these days the vast majority of young people have encountered pornography before they even kiss somebody and so I think that their sexual lives are structured by porn in such a way that earlier generations weren’t. (Author’s interview with The Australia Institute)

The general position of The Australia Institute was that heightened exposure to extreme and violent pornography internet pornography was damaging teenagers’ views of sex (Hamilton, 2008). According to The Australia Institute report children viewing this material were more likely to adopt non-normative sexual practices such as ‘rape, bondage, sadomasochism, transsexuality, urination, defecation and bestiality [which] are widely regarded as harmful, immoral or unethical in and of themselves’ (Flood and Hamilton, 2003a, pp. 2-3).

Civil actors were concerned that this threatened to normalise pornographic sexual practices as ‘once it is out there it becomes mainstream and it becomes the ‘norm’ if you like, and kids are accessing it’ (Author’s interview with Cyber Safety Solutions), and were more
likely to believe sexual aggression is normal (The Australia Institute, 2003d). As one cyber safety expert claimed,

> The problem is they are not watching what you would remotely call ‘normal’[…] they are watching rape, torture, bondage and violence, and of course the girl never says no, never says ouch that hurts, never says stop, always appears to like it and want more. So it’s a skewed view of normality and it’s bothering. There is an expectation that this is what you do, this is how you do it, and this is what you are meant to do. So that’s really scary. (Author’s interview with Cyber Safety Solutions)

Concerns did not end there, as exposure was also linked to sexual crime. One cyber safety expert claimed there were ‘a large number of young people exhibiting behaviours that are not linked to age and developmental stage [so] that child-on-child sexual offending was increasing’ (Author’s interview with Cyber Safety Solutions). This view was shared by other medical experts, such as child protection experts at the Child at Risk Assessment Unit based at Canberra Hospital, who claimed that internet pornography was creating a new generation of sexual predators as young as six who had engaged in ‘oral sex and forced intercourse with other children [and] animals’ (Wallace, 2003).

Reports that boys were most vulnerable to pornography were not new.71 However, males were generally more at risk of internet pornography as they would ‘develop unrealistic beliefs about sexual relationships and perverse attitudes towards girls’ (Hamilton, 2008) and that ‘regular consumption of pornography and particularly violent and extreme pornography is a risk factor for boys and young men’s perpetration of sexual assault’ (Flood and Hamilton, 2003a).

**Collective Strategies to Combat Pornography and New Internet Risks**

Civil actors recommended a range of strategies which may have appeared at times to be contradictory. For instance, although the discourses of risk and protectionism served to legitimise state authority and intervention for some, for others this justified a focus on the family to regulate children. Civil actors believed the state had an ‘overall responsibility for the wellbeing of society’ (Author’s interview with AFP) and as such, has a responsibility to address issues affecting the wellbeing and development of children. They supported the idea

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71 In the absence of industry self-regulation Senator Harradine lobbied for regulation to prevent boys from accessing phone line and internet sex services (Grattan, 1999; Hannon, 1999). Media articles reported that teenage boys were vulnerable to internet pornography (Barker, 1999, 2003; Wakelin, 2000).
that there should be some parity between regulation of offline and online content, and that it was the state’s role to minimise access to some types of content if feasible. Stakeholders also supported the filtering of extreme and illegal materials in the public’s interest, and especially to protect children, although opinions differed as to how and by whom this should be executed, e.g. whether it should be state-run or alternatively a voluntary industry-led solution.

However, in the absence of filtering measures stakeholders placed considerable responsibility on parents to ensure children did not expose themselves to risk or make risky decisions online. Civil actors problematised social ambivalence that led to the acceptance of male sexual aggression, and the sexual exploitation of children. In failing to effect top-down regulation of content and exploitative industries, they looked to create widespread social change through supporting remedial education aimed at changing social attitudes and encouraging better self-governance.

**The role of states**

Civil actors generally agreed that the state has a role to play in maintaining social order through defining normative boundaries for social behaviour. As internet pornography was deemed to be a causal factor behind violence toward women and children, these actors argued for stronger state regulation of extreme materials as being in the best interests of society and particularly children. One cyber safety expert stated that, ‘we have to put the mainstream good in a society ahead of an individual’s right to watch the pantyhose fetish thing’ as when adult freedoms begin to ‘impact on society as a whole […] the minute it starts to impact negatively […] someone has got to try to protect’ (Author’s interview with Cyber Safety Solutions). She advocated that state intervention was needed rather than simply relying on parents to regulate their children’s media exposure.

The state’s overall role in defining normative boundaries was expressed by Minister Conroy who held that some censorship was ‘a modest measure that reflects long held community standards about the type of content that is unacceptable in a civilized society’ (Conroy, 2010a\(^2\)) and that ‘it is important that all Australians, particularly young children, are protected from this material’ (Conroy, 2009a). Nationalistic rhetoric from the UK claimed that ‘the true measure of a nation’s standing is how well it attends to its children’ (UNICEF, 2007) and ‘that society is ultimately judged by how it treats its weakest and its most

\(^2\)See also, Conroy, 2008a, b and c.
vulnerable members’ (Perry, 2012a). Civil actors therefore held that the management of childhood was an important national project whereby the ‘destiny of the nation’ depended on children’s wellbeing. Pornography was the single largest threat to children’s wellbeing and to tomorrow’s generation73, as Perry claimed, ‘In many respects they are guinea pigs for future generations. This is a great challenge to us as a nation and I believe that if we get it right it will help other nations around the world’ (Perry, 2012a).

However, while discourses of risk and protection colonised civil society concerns, the ability of states to intervene was complicated within the context of neoliberal governance. For instance, in a speech to the Sydney Institute, Minister Stephen Conroy claimed the Federal Government had a role in shaping social norms, but this appeared to conflict with the state’s (neoliberal) economic goals. On the one hand, he stressed the economic obligations of government to build and promote digital infrastructure which thrived from open unregulated markets,

As we move to the Digital Age, governments have a responsibility to drive and shape this transformation of the economy and society. The Rudd Government has been bold in pushing ahead with necessary reforms, and policies, to put Australia at the forefront of the communications revolution. (Conroy, 2010a)

On the other hand, however, he also made clear the view that the responsibility for addressing social concerns about internet content through regulation, should fall to the government,

While the internet is poised to become even more central to our lives, and much more accessible – can it remain largely unregulated? With great opportunity, comes even greater responsibility and having sensible, appropriate protections in place is also the role of government. (Conroy, 2010a)

**Filtering strategy one: Preventing harms of pornography**

PC filtering had been a key strategy and recommendation to protect children from pornography during the Howard Government in Australia which placed the responsibility on parents to purchase and install filtering software on the home computer. However, the take up of PC filtering was poor even when offered free to families. Civil actors were concerned that parents were either negligent, ignorant or did not have the digital skills to utilise filtering software. Meanwhile, the problem of preventing children’s access continued to escalate alongside the multiplication of personalised and mobile internet enabled devices that families

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73 As Rose has pointed out, the moralization of children is linked to the ‘destiny of the nation’ (1989, p. 124).
now owned. Not all products had filtering options, and it was not only time consuming but costly to install filtering on devices within the home.

For this reason, ISP network filtering has been a key recommendation by civil actors, both to stop the illegal access to child pornography, and to protect children from content such as pornography. The key question has been how and who should implement this. In 2003, The Australia Institute criticised the Howard Government saying that ‘Australian regulatory authorities have manifestly failed and in fact appear to have lost sight of their function’ and that the existing legal and industry measures to protect children from internet pornography was ‘next to useless’ (The Australia Institute, 2003a) and ‘failing miserably’ (The Australia Institute, 2003b). They also claimed that 93% of parents were ‘in favour of a system that automatically filtered out Internet pornography going into homes unless adult users asked otherwise’ (Flood and Hamilton, 2003a).

At the time the Institute published their findings both Hamilton and Flood advocated for ISP network level filtering to block overseas hosted pornographic content. They claimed parents could not effectively prevent children from seeing this material and that ‘expecting parents to police the Internet is, however, unrealistic, impractical and in fact a cop-out’ (The Australia Institute, 2003a). The Institute challenged the government’s bias toward private interests, claiming that,

The Internet industry has convinced the Government that there is little that can be done to prevent pornography coming in from overseas. But this is false. Mandatory filtering by Internet Service Providers would severely restrict the availability of pornography. (The Australia Institute, 2003a)

They recommended that all ISPs be required to provide a filtered porn-free service and that those wanting access to pornography would have to request to ‘opt out of filtering to view R- and X-rated content’ (Flood and Hamilton, 2003a). However, the Howard Government chose to offer PC filtering software to families, as the economic impact of ISP filtering was considered to outweigh the costs to industry at that time.

In subsequent debates in both Australia and the UK, civil actors have attempted to introduce ‘whole home’ filtered services. While in Australia the Rudd Government attempted to establish a state-run filter (to censor illegal and extreme content that might be refused classification) (Colvin, 2009; Conroy, 2007), in the UK the Government has pursued an industry-led filtering model to provide families with the option of ISP filtering (“MPs call for
better porn filters to protect children”, 2012). As a child pornography filter had been established by industry in 2003, MP Claire Perry argued that the British were more attuned to the idea of filtering. She asserted that while they argued over who should take responsibility, people in Britain were more ‘disposed to filtering to protect kids’ than other countries. For Perry, the voluntary cooperation between state, private and civil sectors had worked in the past and provided a model through which Britain could take the lead in setting a world standard in child protection. She reiterated that,

If British ISPs introduced ‘opt-in’, we would be the first country in the world to have such a system. We lead the world on blocking child abuse imagery – the industry acted extremely responsibly in setting up the Internet Watch foundation, which works with the industry, police and government. We’ve done it before. We can do it again, and what a wonderful legacy to give to our children. (Perry, 2012b)

The government’s preference was that industry self-regulate by providing pornography ISP filtering services. In a neoliberal vein she claimed that private actors were better equipped than the government to do so;

...an industry model not a government model, because I think the government is really clunky at regulating this space, and we had always pushed and pushed the industry to say you should self-regulate […] the six largest ISPs have 93% market share and make 3 billion a year in access revenue. (Author’s interview with MP Claire Perry)

Citing the mobile phone industry that had voluntarily placed a default-on porn bar on all smart phones (which could only be removed by an account holder over 18), she insisted that ISPs could, and therefore should, do as much to stop children’s exposure to pornography. Additionally, she argued that the actions of TalkTalk, a large ISP which already offered an ISP network level filtering service to families, eliminated arguments that this could not technically be done.

In a broad sense, the promotion of whole home filtering resembles the purity reform movement during Victorian industrialisation that focused on creating the wholesome and pure family environment for children (Hamowy, 1977; Hendrick, 1997; Hunt, 1998). However, despite improved ‘whole home’ filtering provided by the four largest ISPs, civil actors remained concerned that many families were not taking up the filtering services. Claims that husbands would wish to retain access to pornography were believed to be mitigating efforts to ‘purify’ the family home. Prime Minister Cameron made reference to this when he said ‘husbands andwives would need to have difficult conversations about
whether or not they want to block adult content’ and that ‘those with children should opt to block adult material’ (Chapman, 2013).

In Australia, despite the Rudd Government’s failure to implement mandatory filtering, many across the civil sector still continue to call for ISP level filtering of pornography.74

**Filtering strategy two: Stopping ‘crime on kids’**

The issue of filtering child pornography was somewhat different. While in Australia private actors managed to defer filtering even child pornography under the Howard Government, the numbers now viewing child pornography were overwhelming police to the point where the AFP official claimed that,

> There are literally thousands of people out there looking at this stuff online [like] the guy in his garage who is not probably ever going to move to an abuser. It’s like shooting a fish in a barrel. (Author’s interview with AFP)

While private actors and civil libertarians claimed that filtering would not stop hardened paedophiles, the CEOs of ECPAT and Childwise viewed filtering as stopping the everyday ‘opportunistic’ internet user from accessing this material and therefore prevent its normalisation within broader society (Author’s interview with ECPAT; McMenamin, 2008, 2009). According to the ECPAT CEO, hardened paedophiles do not make up the bulk of offenders, but the opportunist does. For instance, he claimed that men might travel to Thailand and,

> …take advantage of a situation if it is presented to them. Back home they’re probably reasonable decent people but put them in an environment where for instance children are made available to them for sex, they will take that opportunity. (Author’s interview with ECPAT)

The AFP official questioned whether prosecuting them was ever going to solve the problem. Like other civil actors, he viewed blocking access to this material as a way of stopping the average person from committing the crime of viewing child pornography on the internet, which it was hoped would lessen its normalisation in society. The use of filtering technology to abate access and demand was an attractive option as prosecutions were thought to barely

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74Many submissions to the Senate inquiry into *Harm Being Done to Australian Children through Access to Pornography on the Internet* (Commonwealth of Australia, 2016) still recommend ISP filtering.
touch the surface, and education was a costly venture with unknown results. Blocking those who try to access child pornography has quantifiable results (Colley, 2012).

Across Western democratic states, these filtering systems have generally worked on the voluntary cooperation of private actors. The AFP official claimed that most citizens in Australia thought filtering child pornography was in the public’s best interest, but that the Government’s ‘vague’ and ‘poorly worded policy’ worked against a co-regulatory system being developed between third sector, government and private actors such as had been the case in the UK (Author’s interview with AFP). Despite private actor reluctance, a child pornography filter was eventually established by industry, the reasons for which are outlined in Chapter Six.

**Compromised by Neoliberalism: Educating for Social Change**

As prosecution efforts had not slowed demand for child pornography, the AFP official thought that extensive public education was needed to increase public awareness that viewing child pornography is a serious crime. In a similar vein to the AFP official the ECPAT CEO thought efforts should focus on trying to change social attitudes. After a long career working to strengthen women and children’s rights and legal protections he believed that ‘laws don’t change people’s behaviour’ (Author’s interview with ECPAT). As policing had not resulted in wide scale reduction of commercial sexual exploitation, this NGO turned to a broader project of creating social change through education in schools. Their research had shown that children ‘know a lot about sex because they get bombarded with it from every which way’ and so were already sexually knowledgeable, but that on the other hand, they were ignorant of unethical and exploitative sexual practices. Consequently, teaching children about sexual exploitation was still a protectionist discourse but one it was hoped would create a new generation of ambassadors to combat sexual exploitation. This he hoped would ‘get into people’s attitudes […] to create a people movement, a social movement’ (Author’s interview with ECPAT) for positive change. Civil actors now sought change on an individual level.

Traditional institutions of school and family draw on the Piagetian developmental paradigm (Piaget and Inhelder, 1969) that views children as progressing through stages of cognitive development, and which dictate guidelines for age-appropriate media. However, both educators and parents were viewed as struggling to control or delay children’s sexual development in light of the sexualised media now available on the internet.
While civil actors generally acknowledged that children are sexually aware, they differed as to how children’s sexual development should be managed. One cyber safety expert took the view that children’s sexual interest should be discouraged and maintained that education should be age-appropriate. She stated that,

If it is age and developmentally appropriate, it will work, but if it is [education that promotes the view that] “we need to understand that children are sexual beings and they should be able to do all their own thing”, that’s like saying children are sensible beings and they should be able to […] wander aimlessly around the city at two in the morning. (Author’s interview with Cyber Safety Solutions)

She was adamant that children were ‘not fully cognitively developed’ and the need to ‘have processes in place to protect’ them. She believed children were best protected by delaying children’s sexual awareness as long as possible,

For every child that sits there and understands their own sexuality and goes on to make good healthy decisions there are 50 that don’t. So what happens to them? [...] Do we just go “Oh it’s too bad, we’ve educated them it’s not my fault they made a silly mistake” or do we say “Well children are not capable of making these decisions and as an adult we need to make on them on their behalf”, not in a draconian way but in a protective way. (Author’s interview with Cyber Safety Solutions)

Other civil actors were concerned that the sexual development of children had already been appropriated by the pornography industry, and believed that some control over it may be regained through remedial education that encouraged critical discussion about the gendered violence in mainstream pornography. Rather than attempting to delay children’s sexual knowledge and awareness, The Australia Institute argued for sex education that explicitly addresses pornography (Author’s interview with The Australia Institute). To counter the effects of exposure to internet pornography, The Australia Institute recommended that state education should work to increase children’s critical media literacy so when confronted with internet pornography they would ‘reject the violence and aggression in pornography’ and distinguish between ‘representations of bodies and sex that are legitimate and those representations of bodies and sex that are illegitimate’, thereby inoculating them against its negative effects (Author’s interview with The Australia Institute). The Institute recommended that parents and educators needed better information about how to counter the negative effects of internet pornography. Alongside technological filtering strategies, it recommended providing parents, teachers and children with ‘good’ and ‘ethical’ sexual information, although still within age-appropriate guidelines (Author’s interview with The Australia Institute).
The Australia Institute also recommended community education to increase individual literacy about the broader social problem of male sexual aggression. The Institute believed the Government had a role to play in funding education to ‘mobilise communities and prompt awareness […] about the social norms in communities around Australia that make sexual aggression attractive or normative’ (Author’s interview with The Australia Institute).

**Responsibilising the family**

Given the absence of media regulation, civil actors generally recommended increased controls by parents. While the AFP official believed that the state had a role in ensuring the ‘overall wellbeing of society’, he also thought that parents should be responsible for the day to day management of children’s online activities. He claimed that,

> Society obviously does have a part to play and so does Government, because Government has a role in the overall wellbeing of society and how we are looked after through education, health and all those things. So government does have a role, but the day to day responsibility has to rest with the parent. (Author’s interview with AFP)

This emphasis on the family as a key regulator of ‘childhood’ is in keeping with James and James’s (2008) claim that policies in the UK have returned to focus on adult controls over children. The responsibilising of parents was however, highly problematic, as civil actors claimed parents not only failed to protect children from internet media risks, but also failed to control their activities online. Civil actors agreed that the more time children spent unsupervised online the more likely they were to be ‘at risk’. They disapproved of what they perceived to be the absence of parental discipline over children’s internet use. One school filtering vendor maintained that while parents expressed that they were worried about their children’s computer activities and exposure to pornography and violence, they were reluctant to ‘turn the power switch off’ (Author’s interview with Watchdog International). In the personal view of the AFP official, leaving young people to manage their own communications at night only heightened the risk of social interactions that could cause reputational damage, and so recommended confiscating children’s cell phones after 10pm (Author’s interview with AFP).

Both cyber safety experts argued that parents were reticent about imposing rules and restricting children’s access in light of the importance of digital learning and their social inclusion with peers online. The fact that the majority of children sign up to Social Networking Sites (SNS) such as Facebook well before the recommended age (Author’s
interview with Cyber Safety Solutions) highlighted the dilemma that parents now face in striking the balance between protecting children and yet encouraging their participation online to get the full social and educational benefits the internet has to offer. For one cyber safety expert, parents’ lack of discipline was putting children at unnecessary risk of being victimised by older persons online. Once again, adult mediation of children’s activities was deemed essential to prevent harm.

However, the extent to which the internet is now embedded in children’s education and daily lives has no doubt given them more negotiating power to counter parental attempts to restrict their access and time on the internet. Democratising family contexts (Giddens, 1993) and rights based arguments (United Nations, 1989)\textsuperscript{75} that drive children’s engagement and participation online appear to conflict with more disciplinary parenting styles advocated by many civil actors.

**Conclusion**

In the absence of top-down solutions, children continue to encounter internet risks (pornography, sexual harassment, sexual predators, sexting) as many in this research conveyed. These are perceived to be serious risks that are increasing despite an expanding industry in online child protection. While the internet offers inestimable opportunities for children, there is significant evidence that risks children face are expanding (Hasebrink et al. 2009; Internet Safety Technical Task Force, 2008). Such risks have expanded to include ‘cyber bullying, sexual harassment, pornography, privacy invasion, race hate, self-harm, physical or symbolic abuse’ (Livingstone, 2009, p. 31). Additionally, children and youth are highly lucrative and sexualised markets (Buckingham, 2014; Kenway and Bullen, 2001) and have increased autonomy over their leisure, consumption choices, sexuality as well as their increased rights to digital inclusion (Osgerby, 1998), all of which present additional challenges to protecting children, and preserving modern notions of childhood.

Sociologists (Beck and Beck-Gernsheim, 2002; Rose, 1989) claim a general shift away from state mechanisms maintaining social order, to social order being achieved through responsibilising individuals with their own conduct and safety. But this is problematic, to

\textsuperscript{75}Articles 12, 13, and 14 of the UNCRC refer to children’s rights to ‘participation’, and in particular, their rights to access information and to freedom of expression.
both families and children. Many of the accounts of civil actors pointed to the difficulties of implementing protections in late-modern society.

The declining role of traditional government institutions which previously regulated media to protect children is perhaps best conceptualised within the processes of institutionalised individualisation (Beck and Beck-Gernsheim, 2002). It is indicative of the risk society that both ‘technological developments and institutional change’ within media industries have resulted in protections traditionally provided by the state, being handed over to parents, teachers and children (Staksrud, 2013, p. 3).

In the absence of state content regulation, civil actors observed that parents were struggling to regulate children’s access, and so they sought a return to more authoritarian parental discipline. As parent-child relations are being reformulated, new problems arise in ensuring the protection of children. As Giddens (1993) has argued, we are now witnessing ‘a democratization of the private sphere’ where children have increasing rights to ‘determine and regulate the conditions of their association’, so that parenting is ‘reflexively organized, in an open fashion, and on a continuous basis’ (Giddens, 1991b, p. 91). Increasingly, individualisation and detraditionalisation amplify conditions whereby parents are required to invest more in children’s childhood in what is an increasingly risky and unsafe world (Jackson and Scott, 1999, p. 89). The democratisation of the private sphere presents ongoing change in parent-child relations where children have more rights, independence and autonomy, and parents less disciplinary authority. Today the democratic family sphere (Giddens, 1993) or negotiated family (Beck, 1997; Beck and Beck-Gernsheim, 2002) revere ‘authenticity, intimacy, trust, reciprocity, recognition and role flexibility in support of a culture of self-fulfilment and individual rights’ (Livingstone, 2009, p. 7). The dilemma for parents today is that while they are increasingly responsibilised with the protection of children, they have less ‘moral right to impose rules and sanctions without democratic consultation’ (Livingstone, 2009, p. 7) and are therefore less likely to use traditional disciplinary parenting methods.

The lack of top-down media regulation, has forced the civil sector to adopt new strategies. Across the civil sector the desire to preserve children’s innocence was tainted by the realisation that children were now social actors in a global internet context that did not effectively separate children from adult knowledge or media. Civil actors had a range of views on how to handle children’s premature exposure to sexual knowledge. Protectionist
strategies generally attempted to prevent, restrict and constrain children’s internet use. Educational strategies focused largely on raising parent’s and children’s awareness of media risks and sexual exploitation, as well as discouraging behaviour that falls outside accepted legal and social norms. While some emphasised developmental ideals originating with Piaget and Hall that construct children as lacking the cognitive maturity to evaluate media harm or know the consequences of making risky decisions, others were invested in the idea that educational programs could increase children’s cognitive reasoning by developing children’s critical literacies when dealing with pornography and social interactions online. In some respects the strategies of civil actors appeared to be consistent with private actor interests, as the desire to filter content such as pornography was not yet reflected in media policy. At the same time, the ability of states to follow through with top-down moral regulation has become more difficult against neoliberal governance and liberalising political and social contexts, leading to a stronger emphasis on responsibilising parents, and educators to inoculate children against the harms of internet pornography. Having examined the perspectives and ideologies underpinning the civil sector concerned with children’s safety online, the following chapter will address the perspectives and interests of private actors when addressing these civil claims.
Chapter Five: Contesting Modernity’s Child: Private Actor Constructions of Children, Pornography and the Internet

Chapter Four examined the perspectives of civil actors who sought to regulate internet content to enforce national community standards and to protect children from harmful content (such as pornography). This chapter examines private actors’ perspectives, highlighting their key claims and strategies supporting their opposition to internet content regulation. This chapter reveals that private actors conceptualised childhood, and children’s relation to internet pornography and the internet very differently from civil actors. They did this by challenging modernist notions of children as innocent, vulnerable and asexual, which ultimately supported their policy position vis-à-vis internet content regulation. Paradoxically, however, they called on modernist notions of the ‘delinquent child’ amplifying concern about unsolicited communications and children’s own ‘risky’ conduct online, shifting the focus away from regulating internet content to issues of parenting and regulating children’s behaviour. While acknowledging the internet presented new risks, they invoked discourses of individual responsibility to obligate all internet users in the management of online media risk and self-governance. A key strategy was assigning the family as the key site of regulation for children’s media access and internet activities.

The central thesis of this chapter is that private actors make use of both economic neoliberal principles protecting the free market, and the neoliberal rationality of individual responsibility that requires individuals manage online risks themselves. Several key themes emerged from a thematic analysis of interviews, media articles and official documents: (a) they constructed the child as ‘savvy’ social actors when online; (b) pornography was constructed as ‘okay’ and ‘natural’ and ‘inevitable’; (c) they focused on the family as a key site of moral regulation; (d) Private actors had enduring ‘faith in the internet’; (e) they also held ‘faith in the market’ as being able to address internet risk unaided by state intervention; and (f) they drew heavily on discourses of ‘risk and responsibilisation’ to deflect formal content regulation.

This chapter draws on interviews with several key private actors across the internet industry in Australia and the UK: a senior executive from a global search engine (SE), several
Private actors painted a very different picture of today’s children, constructing them as very ‘savvy’ when it came to their being online. They amplified children’s digital skills as civil actors had, but instead of viewing this as putting children at more risk they claimed that children’s digital capabilities made them more ‘discerning’ and ‘critical’ of media and social interactions than adults in the online space. When addressing issues such as internet pornography and unwanted communications, private actors constructed the late-modern child as ‘impervious’ and ‘resilient’. They called on a generational paradigm to normalise children’s ‘risky’ conduct and communications online, and suggested that this anxiety was the inevitable consequence of rapid technological innovation that would resolve itself as the next generation of parents would be ‘digital parents’ who would be familiar with online risks and not be as concerned.

Private actors therefore took a notably different approach to children’s use of the internet, drawing on positive attributes of the digital generation to assuage civil concerns about children as vulnerable to internet risks. For instance, drawing on the notion of the ‘digital native’ (Palfrey and Gasser 2013; Prensky, 2001; Tapscott, 1999, 2009), private actors claimed that today’s children were ‘very net-savvy’ and were generally more digitally literate than their parents (Author’s interview with Cable & Wireless).

The EROS president argued that civil concerns about children and the internet were unnecessarily alarmist and that with ‘every media invention we get the same thing [media panic], it’s been happening for hundreds of years’ (Author’s interview with EROS), and that contemporary political and policy responses to civil concerns about children and the internet were therefore unwarranted. She downplayed the nature of content harm by claiming that children’s digital skills gave them the capability and critical literacies needed to navigate the internet safely, stating that they were,
…incredibly media savvy, and they understand stuff, and [...] they can see [and] they can understand shit on the net far better than we can, and [...] they can discern that far better than we can. They know when someone is yanking their chain online much more easily than we do. (Author’s interview with EROS)

Children’s status as digital natives meant that they were more discerning and better able to detect foul play or deception online. Where civil sector representations of children’s digital skills posed a problem (in Chapter Four), for the EROS president their digital skills enabled children to better calculate online risks.76

Australian and UK ISPs also maintained that children were empowered by internet technology. The Cable & Wireless executive viewed children as ‘active social actors’ (James and Prout, 1997; James et al., 1998) that sought to make new friends online rather than follow traditional advice given to them such as ‘not talking to strangers’ (Author’s interview with Cable & Wireless). Although a critic of filtering, the executive of ISP London Internet Exchange (LINX) and European Internet Service Providers Association (EuroISPA) believed that some degree of censorship administered by parents might be acceptable for younger children, but that there were other issues such as cyber bullying, the effects of which he believed were more visible than harms that might result from their exposure to pornography, and therefore more worrying for parents. Children’s contact with others online was highlighted as more problematic and risky than the risks of media harm.

The EROS president raised the generational paradigm (James and James, 2008, p. 113-114) as the reason for parental concern about children’s use of digital technologies. She suggested that although technology was a driving force behind children’s apparent risky and sexualised behaviour online, such conduct was not necessarily a new thing. She drew a generational distinction saying,

Our kids’ notion of privacy is quite different from mine you know [...] the information that they share with their peers is quite different to what we would share, although if we had had the technology we may have shared the same things. (Author’s interview with EROS)

76This is reminiscent of early notions of the internet as empowering the younger generation (Don Tapscott, 1999), competencies online than adults, and the familiar well known notion of children as ‘digital natives’ (Prensky, 2001) who possess a natural digital fluency making them competent social actors online.
The Telstra executive also questioned official responses that sought to introduce stronger media regulation. He claimed that internet technologies had spawned a new generation of children who were less concerned about privacy than their parents. He stressed that children were, unlike his own generation, social actors with large ‘risk appetites’ evidenced by a disregard for privacy when online. While he agreed that children needed to be aware of the risks, he stressed that children’s risk-taking behaviour had become normalised online and did not justify new legislation or regulation of the internet. Although he thought children could be better informed about risks, he thought children’s risky conduct constituted a new norm. He claimed that children,

…have a different risk appetite. Your risk appetite around privacy is [gesturing small] that big. The risk appetite of a 13 year old around privacy is well [gesturing large] that big […] because they are not very well informed and they are willing to take more risk, which I think is an issue, education and awareness is incredibly important. But I also think there has been a drifting or a normalization of risk, generation to generation, because of technology. (Author’s interview with Telstra)

The Telstra and EROS executives both believed that while today’s parents worried about issues of privacy, future generations of ‘digitally savvy parents’ would not be worried about internet risks or risky conduct by children.

Obviously we need to be educating parents as well but the next generation of parents are people who were kids when the internet was invented. You know the people who are now becoming parents today were sort of…they only vaguely remember the world before the internet you know [laughing]. (Author’s interview with EROS)

…what we consider a great risk [they] just don’t see, and it is not until those kids are going to be 30, 35, 40 and have their own kids that they will actually say “I don’t know what mum and dad was worried about, I don’t care what my kids do online”, because they have never cared. (Author’s interview with Telstra)

The Telstra executive questioned whether current state and civil sector sentiments that wished to regulate internet media would necessarily be in harmony with the perspectives of the next generation. He stated that,

…governments, NGOs and others that are preparing, positioning cyber safety messaging, regulations, and legislation around this issue are trying to apply our risk appetite and understanding of what is going on today to future laws. I don’t reckon it is right. (Author’s interview with Telstra)

While private actors such as Telstra and Google were involved in initiatives with the civil sector that support ‘cyber safety, increasing digital literacy and reducing cyber bullying’ (Alannah and Madeline Foundation, n.d.) education, these initiatives generally address issues
of children’s safety and self-governance online. Private actors generally frowned upon regulation that would limit internet users’ activities online.
**Pornography is ‘Okay’, ‘Inevitable’ and ‘Natural’**

When it came to the issue of children’s exposure to internet pornography, private actors constructed pornography as a legitimate commodity that did not threaten childhood. They viewed pornography as part of children’s sexual development, and as leading to healthier attitudes toward sex. Younger children were constructed as disinterested and therefore ‘resilient’ to pornography, while teenagers’ curiosity about pornography was viewed as an ‘inevitable’ and ‘natural’ rite of passage to adulthood.

The president of EROS believed that civil concerns about internet content echoed previous moral panics about new media rendering current concerns as unfounded:

Look we are going through a technical, a technological and an information revolution and there is no doubt of that, and we do need to prepare our kids for it, we need to prepare ourselves for it, but I really don’t think it’s as bad as a lot of people are making out. (Author’s interview with EROS)

Once again, she focused on the overall benefits that access to pornography on the internet offered. She claimed that the majority of people consuming internet pornography were not looking at violent and derogatory pornography, as claimed by anti-pornography campaigners, but were in fact looking at websites that displayed pleasurable and ‘legitimate’ sexual material and services. She described popular sites like Jasminelivedotcom as,

It’s a live cam site and its people … you know…doing what they do. And there is interaction, so you can interact, you can pay…but it’s almost all real-time and it’s the most popular site by far! So all this stuff about Gail Dines and Abigail Bray saying that it’s this “anal pounding violent degrading content” is actually not what people are looking at, what people are looking at is young women or young couples doing stuff and pretty much looking like they enjoy it. They are not crying, gagging, vomiting, you know. She is just looking bizarre now. (Author’s interview with EROS)

From her perspective, radical feminist claims about the negative social effects of pornography such as those made by Abigail Bray and Melinda Tankhard-Rice were ill-founded:

…they make claims like “our children are being drowned in porn, and boys are behaving badly now because they have seen porn” and you know “they don’t know how to have a relationship with a real woman” and all of this kind of hysteria. That’s really getting a lot of oxygen at the moment. (Author’s interview with EROS)

When talking about children’s sexual decisions the EROS president argued that ‘we don’t give children credit a lot of the time’, thereby elevating children’s competency. She countered the claim that children’s exposure to pornography was necessarily harmful. In her
view, children were self-regulating when it came to pornography, as those who were not ready for it would reject it, so that their ‘lack of interest’ acted as a form of ‘resilience’. She stated:

I also think kids are actually a lot more resilient and a lot more discerning than we give them credit for. Kids might go out there and look for porn, [but] for the most part, if they are not that ready for it they are not that interested in it. (Author’s interview with EROS)

Private actors generally shared this view that children’s ‘curiosity’ about sex was a ‘natural’ driver of children’s healthy sexual development. They generally supported the view that concerns about internet pornography harms were inflated, maintaining that younger children were ‘self-regulating’ and ‘resilient’ as they generally ‘don’t want to look at it’, while teenagers were on the other hand more curious and ‘into porn’ (Author’s interview with LINX).

Like the EROS and Telstra executives, the IIA executive claimed that, for boys especially, the consumption of pornography was merely an indicator of their natural curiosity and healthy sexual development. He was critical of claims that pornography was necessarily damaging to children and suggested that there was no evidence ‘that children exposed to pornography go on to become sex offenders or form certain views that are antisocial’ (Author’s interview with IIA). The IIA executive did not consider that internet pornography represented new risks to children; instead he believed pornography had been a natural and healthy part of boys’ development for generations. In reflecting on this he stated,

I am sure that this is true of most males you know, the idea of Playboy magazines is really…I’ll probably get into hot water here…you would think that adolescents have a natural curiosity around sex and that is not necessarily an unhealthy thing, it is part of their development, and if you can’t access that in socially permitted ways you will do it through subterfuge you know. Now they use the internet, the phenomenon is actually the same phenomena. (Author’s interview with IIA)

Private actors generally took it for granted that teenagers would seek out pornography, and for boys especially, inferred this as a rite of passage.

While acknowledging children on a developmental path toward adulthood, private actors tended to pay less attention to ‘age’ as a relevant criteria for guiding children’s media exposure. Although the United Nations Convention on the Rights of the Child (United Nations, 1989) establishes childhood as being up to the age of 18, private actors frequently accepted that children under 13 may be vulnerable, but that children between 13 and 18 were
capable social actors, whose interest in sexual media was an acceptable part of their journey toward adulthood.

The EROS president, along with other private actors, promoted the idea that if enough parents were indeed that concerned about content, that the private sector would meet demand by producing improved ISP filtering products and services. However, like the Telstra executive, she claimed parents’ anxieties about children and the internet would be resolved in time, in that the ‘next generation of parents are [going to be] people who were kids when the internet was invented’ and having ‘grown up online’ would not be concerned about children’s media access and activities online (Author’s interview with EROS). To combat generational anxieties that looked nostalgically on childhoods past, private actors looked to the future generation who would be digital parents to suggest that current regulatory approaches were an overreaction.

The EROS president strengthened her claim that pornography was ‘okay’ by asserting that today’s young adults were less worried about their sexuality than previous generations. Talking of persons in their twenties as ‘kids’ she claimed that their attitudes to sex were very different from this current generation of parents:

Overall I think they have better attitudes around sex and sexuality than we give them credit for. And this fear that our kids are being corrupted and all these terrible things are happening to them? I am actually seeing some fairly well adjusted kids come through. (Author’s interview with EROS)

She downsized concerns about children’s sexual activities such as sexting, suggesting that most children emerged from today’s sexualised childhood psychologically unscathed;

I feel a lot of the kids that I speak to, they’re kids in their twenties, and they are bemused, for want of a better word, by the fuss. [They say] “Really? He was my boyfriend…it was just for fun”. Their attitudes are quite different from ours. (Author’s interview with EROS)

Pornography was considered, if anything, to facilitate the development of children’s sexual subjectivity. Having constructed younger children as resilient to pornography, and pornography as a healthy part of teenager’s sexual development, pornography was not framed as a risk. As such private actors did not see a case for censorship of pornography and resigned the moral authority as to whether children could access pornography, to parents.
Responsibilising Family: Moral Authority and the Management of Risk

Private actors exploited the neoliberal rationalities of ‘risk’ and ‘responsibility’ (Springer, 2012) that obligated individuals in the management of their own security while also endorsing state discipline and punishment of internet users who used the internet for illegal or socially deviant purposes. However, the responsibilisation of children was problematic. Private actors endorsed the family as a key site of ‘moral’ regulation, responsibilising parents with supervising and regulating children’s internet access and activities. They shifted attention away from regulating content toward regulating internet users, and in particular regulating children to guard against their potential to misuse internet technologies.

Private actors generally shied away from discussing the moral implications of pornography and other content online. While the Google executive carefully avoided any reference to children and pornography, other private actors were strongly opposed to the state or private actors censoring pornographic content, and clearly stated that parents had the moral authority to decide what media children had access to. For ISP executives the moral issue was a volatile subject;

What’s in? What’s out? What’s right for you to teach your child about or what is not right for my child to be seeing, you know too hard. Don’t get me sucked into that [debate]. (Author’s interview with Telstra)

…it’s a moral judgment we are not going to get into that. (Author’s interview with BSkyB)

It is the role of the parents and education systems to inculcate values. (Author’s interview with IIA)

Parents are the best people to decide on what content is appropriate for their children and it is industry’s job to equip parents with the tools to help them make these choices. (ISPA representative cited in Fiveash, 2012)

Despite having constructed children as competent and resilient social actors who were capable of navigating adult media and communications online, private actors described the internet as a place of adult freedoms. For instance, the Google executive viewed the internet as providing “…access to information, freedom of speech in society and what, at the very least, adults should be able to access” (Author’s interview with Google). The EROS president also prioritised the rights of adults to access adult commodities online, while arguing that children would eventually become adults and then be able to reap these benefits. She claimed
that protecting the deregulated market would, ‘protect their [children’s] fundamental rights, and that will allow them as adults to behave in certain ways and to access certain material’ (Author’s interview with EROS). Children were constructed as in the process of ‘becoming adults’ (James and Prout, 1997) and as such not yet entitled to adult freedoms, avoiding debate about children’s already extensive exposure to adult material. By constructing the internet as an adult space private actors could pursue the laissez-faire approach to regulation. However, in doing so they contradicted earlier constructions of children as resilient and competent social actors for whom pornography was an inevitable and natural part of their path to adulthood.

While having supported the idea that children were competent social actors who were better equipped than their parents to deal with internet risks, private actors paradoxically went along with civil protectionist ideals. For instance the EROS president yielded to developmental ideals by assigning parents the responsibility for the safety of younger children when online, stating that,

If you are looking at protecting kids you give them a playground and you say “that’s where you can play”. You set up playgrounds. [...] when you are giving a kid a mobile phone or an iPad or whatever, you set up, you give them a safe place in which to roam. You don’t necessarily give them the whole world and say “don’t go on the freeway”. (Author’s interview with EROS)

This reinforced the notion of the family as the key site of regulation and care for children, effectively reproducing the adult-child dichotomy characteristic of modernist sociology (James and Prout, 1997; James et al., 1998; Prout, 2011). Although private actors promoted the notion of children as ‘savvy’ and self-governing, they appeared to echo the modernist notions by responsibilising the family as a pure space in which parents provided children with the necessary moral guidance (Hendrick, 1997; Hunt, 1999. However, the diverse forms of family characteristic in late-modern society suggest that such universalising discourses that place a heavy burden on parents may be overly optimistic.77

Private actors also shifted the focus away from regulating content, toward issues of internet users’, and in particular children’s conduct and communications online. By focusing on the issues of childhood, they maintained that parents were more worried about contact harms (i.e. cyber bullying or self-harm sites, and children’s exposure to strangers over social

77Lee (1999) has pointed out that the child/adult dichotomy is no longer sustainable given the diverse forms of family.
media networks) (Author’s interview with EROS; Author’s interview with Cable & Wireless; Author’s interview with LINX; Author’s interview with BSkyB). Private actors heightened public attention to issues such as stranger danger and peer bullying online:

To provide a safer environment for children online we need to focus on areas posing a real threat to young Australians like cyber-bullying, identity theft and online predators. Filtering does nothing to reduce these risks. Just like we educate children about staying safe outside, we need to educate them about staying safe online. Walk them through it just like we’d walk them to the park. If that means educating parents unfamiliar with the Internet as well, then let’s do it (Meloni, 2008).

Unsurprisingly, they maintained that parents were the best mediators of children’s day-to-day behaviour and social activities and supported education initiatives aimed at helping parents to understand the risks of new technology, and in particular to anticipate children’s potential ‘misuse’ of technology. Parental responsibility for children’s safety and safe conduct online was a consistent theme across Australian and British media (Beckford, 2012; Holehouse, 2012; Johnson, 2012; Lee, 2012; Richmond, 2012). The idea ‘that parents accepted that they should take responsibility and act as the regulator of their own children’s internet use’ continues to surface within public documents and submissions appealing against increased regulation of private actors (Google, 2011). The responsibilisation of parents was well-established discourse under the neoliberal governance of the Australian and UK governments from the mid-1990s. Up until the mid-2000s, corporate ISPs had promoted that parents protect their children by using PC (device level) filtering software on the market, in order to avoid mandatory ISP filtering. The key strategy was to,

…empower families to take control over what they are accessing without the ISPs having to go and block the content for them. (Author’s interview with IIA)

and to,

…make it as easy as possible for parents that want to use the controls, to use them. (Author’s interview with BSkyB)

Like other corporate ISPs, the Google executive believed the role of private actors was to ‘help parents to understand what is going on and give them a greater understanding of that so that they can protect their children as they need to’ (Author’s interview with Google; Johnson, 2012). This was evident in their civil partnerships sponsoring educational programs aimed at raising the risk awareness of parents and children (Google, 2012).

As new risks generated by technological innovations outpaced efforts to deal with the perceived social consequences of illegal and violent pornography, civil interest in collective
solutions such as ISP network level filtering was rekindled in public debate. However, private actors were quick to reject state efforts to legislate or force default-on ISP filtering into residential homes, framing this as an intrusion into the private sphere. In the UK, the BskyB executive framed mandatory or default-on filtering as stripping parents of their democratic right to address children and internet risks as they saw fit;

It’s not for me to say how many of our customers should be using parental controls. It’s entirely down to them to decide how they want to protect their children. If it is putting the PC in the same room, if it is making sure that their children do not have a mobile phone that has access to the internet, if it is having parental conversations with older children and saying this is what is out there and welcome to the real world, this is how you deal with it, you know all those things are valid and we are not going to tell parents how to parent. But we think that parental [technical] controls is one tool and we want to make it easy for them to use it in an informed way, in simple language, and that’s as far as it goes. (Author’s interview with BSkyB)

He stressed that filtering software tools were just one of the many ways in which parents might choose to deal with issues such as internet pornography. Drawing on qualitative research commissioned by their corporation, the BSkyB executive also claimed that parents wanted to retain the right and responsibility of how to deal with issues relating to their children’s use of the internet (Author’s interview with BSkyB).

This raises an important point, in that private actors expect families will be better able to manage online risks themselves, but do not necessarily consider that the institution of the ‘family’ is changing and variable. The shift toward individualisation (and in particular the responsibilisation of parents and children) is increasingly problematic given a number of structural changes that are characteristic of the risk society. Along with increasing uncertainty, risk and insecurity (Beck, 1999; Giddens, 2002), traditional family ties have given way to increasingly pluralised forms of family life (Prout, 2011). Where traditional discipline may have involved limiting children’s social participation, this is more difficult to achieve with the increasingly mobile, personalised and private digital technologies now used by children.

In the UK, the BskyB executive believed that efforts to purge the family home of pornography and other potentially harmful media through offering families ‘whole home’ ISP network level filtering was likely to fail, largely due to the conflicting needs of individual family members. The individual needs of family members were prioritised over the notion that the home be filtered to create a pure and protected space. So while in the UK, the regulatory manager of ISP TalkTalk, promoted their ‘whole home’ filtering service Homesafe
as a ‘one-stop-shop’ for parents that made protecting children far less complicated, as it provided a pure feed to all internet devices in the home, other ISPs doubted its commercial viability (Author’s interview with TalkTalk). For instance, while the TalkTalk executive claimed that there was a demand for family filtering services, the regulatory executives of both BSkyB and Cable & Wireless claimed that the ‘one-size-fits-all’ filtering approach failed to address the individual needs of family members. The Cable & Wireless executive claimed that,

…what works for one family probably doesn’t work for another for whatever reason, be it daddy wanting to look at porn at a certain time of the day or an expectation that you don’t think your children would want to look at these things and therefore you don’t need to worry about it; or the government wanting you to do these things that you don’t think are right. (Author’s interview with Cable & Wireless)

ISP’s predicted that the ‘one-size-fits-all’ filtering which aimed to purify the home internet connection would fail due to the male parent’s desire for pornography. This particular gender tension was highlighted in media articles in the UK in which the Prime Minister asserted parents would need to have that uncomfortable conversation and would hopefully make the active choice to have a filtered service (Chapman, 2013).

In addition to claims that parents did not want to filter the ‘whole home’, private actors suggested parents were unaware of the privacy and autonomy that technology offered. Parental ‘ignorance’ of technology and of how children use internet technologies, when taken in concert with their construction of children as autonomous, digitally savvy social actors in the online space was potentially problematic, but this strategy also served to focus attention on the problems of parental risk awareness and their management of risk. One cyber safety educator claimed that,

Some parents I have spoken to are so…I don’t like to say ignorant cause that sounds really bad, but they are so inexperienced that they haven’t got any idea of how to open a program up, let alone use a web browser. I have actually had parents come to me who don’t know that an iPad is connected to the internet. They don’t know what it is, they don’t know how to delete programs and they are completely helpless because they have got these young kids looking at porn, or downloading dangerous apps and using them to talk to complete strangers or whatever, and the parents have got no awareness of what’s happening. (Author’s interview with Cyber Safety Lady)

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Bennett, Maton, Kervin (2008) provided a review of the ‘digital natives’ debate bringing some doubt to the authenticity of children’s ability to understand and protect themselves online.
Parents’ technological ignorance was put down to the rapid technological innovation that brought multiple mobile devices into the home. For instance, in Australia, children’s access to the internet had been driven through the ‘one laptop per child’ programs in schools, but these laptops had been heavily filtered and so did not require parental supervision. However, with the multiplication of internet enabled devices in the home parental digital ignorance had according to this expert, become more problematic requiring that they upskill their digital knowledge. She claimed that,

The problem is that for the first time in many families the child has their own internet connected device with no filters on it, no restrictions on it whatsoever. (Author’s interview with Cyber Safety Lady)

Parents lacked knowledge of how to use safety settings on digital devices and software and of how to limit children’s access and activities online,

Some parents out there that have absolutely no understanding of how to protect kids from seeing stuff that they shouldn’t be or doing stuff on the computer that they shouldn’t be doing. (Author’s interview with Cyber Safety Lady)

The general view was that parents and children must be digitally literate to manage online risks:

One of the most effective ways to be cyber safe is to be digitally literate. Digital literacy enables us to navigate technology and adjust privacy settings, judge the quality and reliability of online information, and understand the social norms that apply in online settings. (Telstra, 2014, p. 3)

In order to support the preferred laissez faire policy approach, the family has, and continues to be, designated as the primary site of regulation, in which children’s activities online are to be mediated by parental supervision and discipline. However, children were also tasked with keeping themselves safe online. Thus, supporting education initiatives designed to increase parents and children’s awareness of risks was a key strategy among private actors.

Another key plank of our approach is education ensuring that users, including parents and children, acquire the digital literacy skills that enable them to navigate the internet safely. Educational initiatives include the YouTube Safety Centre (providing information and tools for parents), and partnering with child safety organisations to raise awareness through YouTube channels such as the ACMA YouTube channel for CyberSmart and the Australian Federal Police channel for ThinkUKnow. (Google, 2011, p. 2)

They also supported parents choosing to use device level filtering software available on the market along with additional features that now enable parents to restrict children’s access and
internet activities.\textsuperscript{79} In sum, although private actors had, on the one hand, constructed children as ‘savvy’ social actors who were more competent than adults when online, they paradoxically drew on notions of the ‘risky’ child to shift the emphasis away from content regulation to the regulation of children. While they suggested that concerned parents could use filtering to limit children’s exposure to pornography, they also emphasised the use of tools and discipline to constrain and mediate children’s activities online. This supported their policy position regarding internet regulation.

**Enduring ‘Faith in the Internet’ and ‘Mistrust in Government’**

Private actors held strong views that states ought not to attempt to regulate markets, and in particular internet content. Key among their arguments was a belief that the internet offered unbounded social and economic opportunities, and that any proposed regulation is against the public’s best interest (McChesney, 2003; 2013). At the same time there was an enduring faith in the internet as being impervious to attempts to regulate it and that this would diminish the sovereignty of nation-states to regulate internet media. Their enduring faith in the internet was underpinned by long held principles of ‘internet exceptionalism’ and ‘multi-stakeholderism’ that reject government intervention, and support neoliberal *laissez faire* doctrine that leave issues of governance largely in the hands of markets.

The view that internet markets be free from government intervention dominated private actor perspectives both in the UK and Australia. This view was underpinned by the principles of ‘multi-stakeholderism’ and ‘internet exceptionalism’ that date back to prior to the internet’s commercialisation in the mid-1990s (Chenou, 2014; Wu, 2010). Internet governance has since this time been modelled on a multi-stakeholder approach including both a ‘technical elite’ loyal to principles held by those who designed and managed the internet prior to its commercialisation (Borsook, 2000, p. 3\textsuperscript{80}; Chenou, 2014, p. 215); and a ‘corporate elite’ made up of large telecommunication corporations and computer manufacturers, who profit by defending ‘an unregulated and private-sector-led market creation process’ (Chenou, 2014, p. 215).

\textsuperscript{79} Take for instance Vodafone’s more recent product promotion of its software product *Guardian* [https://www.vodafone.co.nz/help/mobile-safety/](https://www.vodafone.co.nz/help/mobile-safety/)

\textsuperscript{80}Paulina Borsook referred to this as techno-libertarianism (2000, p. 4). Overall, this early IT industry promoted free-market economics, and anarchic-capitalism that lacked a philanthropic element according to Borsook (2000, p.3). This is concerning because the question of content regulation ineluctibly involves decisions about social content, human behaviour and consumption necessitating a philanthropic dimension.
2014, p. 210). However, these early principles that remain active in debates today exclude ‘sovereignist and anti-marketisation perspectives on Internet governance’ (Chenou, 2014, p. 206). Essentially, the basic premise of internet exceptionalism is its rejection of government regulation and vision of a new space in which individuals would be able to freely exchange information (Barlow, 1996; Postel 1996; Thierer and Szoka, 2009). These principles have and continue to have a hegemonic quality (Gramsci, 2001) in regulatory debates as the broader public have generally accepted them since the internet was commercialised (Chenou, 2014, p. 206). Private actors in this research drew extensively on these beliefs to argue for the continuation of a liberalised self-regulatory system of governance in keeping with neoliberal economic doctrine (Simpson, 2004).

The hegemonic discourse of internet exceptionalism

Such principles were especially prevalent in Australia where the Rudd Government (2007-2012) was proposing that mandatory internet filtering be carried out by ISPs. Media articles and interviews were saturated with these technological and libertarian objections, and were especially prevalent among the corporate elite involved in supplying internet access, services or content. Other opponents (academic, civil libertarian interest groups) also tirelessly repeated these claims in order to add strength to their counterarguments (Stilgherrian, 2010).81

ISPs and ICT communities in Australia considered that they were better qualified than Government officials to assess, and reject, proposals that internet content be subject to filtering due to their expert technical knowledge. ISPs in Australia felt that the Government ignored the advice of technical experts. This tension came to a head when the Government attempted to silence a member of the IIA by writing to the association expressing concern about that member’s public statements about the Government’s filtering plan (Moses, 2008a, b, c).

The internet was attributed a near-mythical status amongst private actors and IT communities, who claimed that any technological attempt to control the information passing through its networks was easily circumvented, and therefore in vain. To accentuate the point, private actors sometimes conceptualised the internet in biological terms, as a self-healing organism or a natural eco-system that was able to regenerate itself by re-routing information

around attempts to block content. For instance, the Google executive emphasised the failsafe
design of the internet:

[The internet] was set up as a robust and damage-proof network. It was originally
conceived by the US government to withstand nuclear war [as a] communications
network that would work if various important nodes were knocked out. And so the
internet will if you like ‘self-correct’ ‘self-regenerate’ and the information will find a
way through. That’s the way it works. (Author’s interview with Google)

This technological argument underpinned the claim that the internet’s design prohibited
traditional models of control as,

Targeting a particular website and trying to block that, may work in the short term but
it is very easy to set up another website with the same material or a hundred other
websites. So technically it can be more difficult to restrict things on the internet and
that is as true for Google as for anybody else. (Author’s interview with Google)

Australian ISPs continued to put forward technological arguments to counter the
Government’s filtering policy, with claims that filtering would,

…negatively impact user access speeds and could not be applied to high-volume sites
such as Wikipedia, YouTube, Facebook, and Twitter. (Google, 2010, p. 2)

…the filtering system would not work, would be patently simple to bypass, would not
filter peer-to-peer traffic and would significantly degrade network speeds. (Moses,
2008d)

The CEO of the IIA claimed that the fact that the internet challenged traditional
national regulatory structures created ongoing tension between the Federal Government and
ISPs. While he acknowledged that the internet was ‘disruptive’ as it was ‘breaking down the
structures of civilisation’, he believed that governments were failing ‘to grapple with the
anarchic nature of the net’, signalling their being ‘in denial’ about their inability to regulate
content (Author’s interview with IIA). In a similar vein to the Google executive, he claimed
that the internet was forcing a social revolution with irreversible social impacts,

…it’s like the law of thermodynamics, things tend to go from order to chaos that’s the
order of the universe. I am not trying to labour the point, but I think there are elements
of the way in which the internet has been deliberately developed that are predicated
on breaking down existing structures (Author’s interview with IIA).

These private actors therefore promoted the notion that the internet challenged the
sovereignty of states (Hardt and Negri, 2000). Both the IIA and Google executives celebrated
the internet as ‘disruptive’, a view resembling early ICT community cyber-libertarian ideals
that were largely anti-Government. These executives maintained that Government
sovereignty over the individual freedoms of their citizens would diminish as more users became global citizens in a borderless world. The IIA executive stressed that,

…what we have now is an empowered user base like never before and we are just going to keep seeing a re-manifestation of this sort of tension between the role of the state and how the state sees itself, versus what the end user sees as their democratic freedom. You know it all manifests in many ways but in the end there will be a new equilibrium established. But I just don’t see the control paradigm surviving. (Author’s interview with IIA)

This account reveals that private actors’ faith in technology positioned them as simply conduits for democracy, in which states are engaged in a power struggle directly with citizens. Overall, private actors did not trust that governments understood internet technology.

**Challenging the sovereignty of states**

Private actors believed the internet was a powerful democratising tool that challenged the sovereignty of states. The Google executive constructed the internet as a global tool for social justice that acted against political tyranny and human rights abuses. He likened the impacts of internet and computing science to the ‘revolutionary…impact of the printing press’ as it allowed internet users to ‘have greater access to information’ (Author’s interview with Google). From Google’s stance, individual access to information made ‘scrutiny and debate all the more possible, and should be protected’ (Google, 2010, p. 8).

Private actors repeatedly emphasised that the benefits of access to information far outweighed any negatives. They frequently conceptualised the internet in positive terms by referring to the infinite scale of content presenting positive opportunities that more than compensated for potential content harms:

…that by and large the benefits outweigh the negatives by numbers. (Author’s interview with Cyber Safety Solutions)

…more information means more power for individuals and we think that is a good thing. (Author’s interview with Google)

…the benefits of the internet hopefully will far outweigh any of the disadvantages of it. (Author’s interview with EROS)

Thus, while private actors acknowledged that the internet presented new risks these were framed as an acceptable consequence in light of the benefits that the internet offered.
For instance, Google’s business vision repeatedly promotes civil libertarian notions by prioritising individual empowerment and freedom from state control as a ‘global good’:

Google’s mission is to organise the world’s information and make it universally accessible and useful. This means giving our users around the world access to the information they want, from the widest variety of sources, wherever they are. We believe this brings people greater choices, new freedoms, and ultimately more power. (Google, 2010, p. 3)

…we believe that more information generally means more choice, more freedom and ultimately more power for the individual. (Google, 2010, p. 2)

…to organise the world’s information and make it universally accessible and useful. (Author’s interview with Google)

…more information means more power for individuals and we think that is a good thing. (Author’s interview with Google)

Google media and official communications consistently convey the company as a global and ‘centreless’ enterprise and, as such, working independently of nation-states (Kumar, 2010, p. 154). Evidence of this is seen in their frequent rejection of Government requests to block internet content (Kumar, 2010), and the view that they are part of an overarching global governance regime. The Google executive reinforced this approach;

The other thing I would say about the internet for Google is that this is very much a global platform and there are global debates, obviously different countries take very differing views on particular issues, but we also view what any particular country does in that global context. (Author’s interview with Google)

While positioning Google as a separate entity challenging the sovereignty of states, it is clear that Google’s philosophical arguments about defending the global good mapped neatly onto their business interests (Kumar, 2010, p. 154). Paradoxically, while believing the internet was ungovernable, the Google executive seemed concerned that states were developing new regulatory abilities, and expressed concern that,

…there is unfortunately a growing trend whereby, a few years back it was a handful of governments who were in the business of active censorship of the internet, and today it’s dozens of governments developing new laws and policies, and new technology to enable them to do that. (Author’s interview with Google)

The IIA executive also claimed that these democratic ideals were ‘not translating very well’ since the response of other countries had ‘been to really crack down on it’ (Author’s interview with IIA). The Google executive feared debates such as those happening in Australia would increase the momentum of state censorship,
…when we see Western open societies going down the road of restricting access to information, or you could call it censorship in certain circumstances, we are very interested and concerned about that, both for the impact it will have in that country, but also for the way it will impact on the global debate about access to information over the internet. (Author’s interview with Google)

These private actors countered the role of states by emphasising the global context, in which regulatory standards among states were considered to vary too widely to culminate in a single global standard. Although the IIA and iGEA executives conceded that there was a case for states to apply classification law to media within their geographical borders, they maintained that media hosted overseas was beyond the reach of Australian regulators. Google’s official view went so far as to suggest that national concepts of community standards were no longer applicable in the global online context. Drawing on academic research (Lumby, Green, and Hartley, 2009) Google have argued that as ‘diverse communities of interest’ now populate the internet, ‘traditional rationales for government regulation of content that is legal, but likely to be offensive to some, have less widespread relevance’ (Google, 2011, p. 4). Rather than states regulating internet media, Google’s official position advocated user self-regulation as,

…for other types of content which is not illegal but may be contrary to some community standards, we submit that self-regulation is effective and in many (if not most) circumstances, more efficient than regulation (Google, 2011).

The overall position of these corporate elites reflected both a ‘commitment to economic laissez-faire’, freeing markets from regulation which would allow their company to operate unhindered across state borders, and a strong preference for individual freedoms implicit within neoliberal doctrine (Chenou, 2014, p. 213) that endorse the dissolution of national community standards and the adoption of models of individual self-governance and choice.

The State-Private Nexus and the ‘Enduring Faith in the Market’

Private actors rejected state intervention in the market, and promoted the ability of markets to respond to the security needs of individuals through commoditising safety should demand arise. They believed the benefits and opportunities of the global internet far outweighed any considerations of regulation. Corporate elites were accustomed to neoliberal doctrine that facilitated industry self-regulation. They put forward economic arguments that warned of state paternalism and unnecessary cost. To counter proposals that states regulate internet
content, private actors invoked neoliberal discourses of individual risk and responsibility, which they held to be a necessary consequence of technological innovation.

Private actors in Australia conveyed mistrust in the Government’s ability to actually address risks through regulation. For instance, the IIA executive was of the view that Government intervention would not achieve the perceived objectives:

… we think that wise governments will wait to allow society to develop solutions to these things without stepping in an attempting to do the impossible to try and regulate because that in the end just gives people a false sense of security that you have made something safer than it actually is and I think it also removes the role of parents. (Author’s interview with IIA)

The Government’s ability to articulate a clear policy was also in question:

Exactly and that [lack of Government clarity] has been part of the problem, it took from the announcement of the policy in 2007 until really only about 12 months ago, because the Government was talking about doing trials and pilot studies and tests and different thresholds of content we never really had a clear fix on the nature and extent of content that the Government was seeking to legislate. […] So it’s been very I think poorly executed as Government policy, even though it hasn’t been implemented even the articulation of what the ‘harm’ that was going to be prevented through the introduction of this has never really been clearly put […]. (Author’s interview with IIA)

Other corporate elites were frequently quoted in the media as attacking the Government’s secrecy over what would be on the Government’s filtering blacklist. Google was of course a key protagonist in this public debate that condemned the state’s policy on the grounds that without transparency it would simply be a tool for political censorship (Sharp, 2010).

To exploit neoliberal ideals, many corporate elites extended technical claims about the internet’s design to make economic claims to justify their opposition to ISP network level filtering. They also made economic arguments that state intervention was not economically viable and therefore contrary to neoliberal economic goals, and that state regulation would also interfere with the market’s ability to commoditise, and profit from, social anxieties about children’s safety online. For instance, the IIA executive viewed mandatory filtering as not only an unnecessary restriction on free markets, but as also interfering with the market’s ability to respond to market demands for increased security. Although he sanctioned state penal and disciplinary actions of criminal activities online, the IIA executive believed that the market was better placed to address broader social issues should demand warrant it;
I mean the more enlightened governments that we see around the world, they certainly have very strong laws around the highly criminal content, as they should, but for the rest of it, they work on the concept of allowing the market to develop solutions. (Author’s interview with IIA)

Corporate elites also extended the argument that the costs of content regulation could undermine the ‘commercial viability of providing Internet access to end users’ by introducing unwanted compliance costs (Paterson, 2002). Unsurprisingly, a central claim in the Australian debate was that the Government’s filter was not economically viable. Technical elites argued zealously that filtering would affect the ability of ISPs to deliver viable internet services:

…would inevitably result in significant false positives and degrade internet speeds tremendously. (Moses, 2008a)

…current filters are of varying accuracy and severely affect internet performance (Meloni, 2008)

And that larger scale filtering would severely impact the ability of ISPs to offer a high quality competitive service:

The evidence is that, the greater the range of content that you’re trying to block on the Internet, the greater the negative affect you will have on the performance of the Internet. […]

It is a direct relationship between volume and speed. The greater the volume you are attempting to filter against, the greater the effect. […]

It’s like putting a filter on your home plumbing system. The more the filtering...the smaller the granularity of the filter, the smaller the particles that it’s trapping, the slower the volume of water that will flow through it (Coroneos cited in Bannerman, 2008).

The ISP industry made further appeals to the public and the Government, that additional technological and staffing infrastructure would be needed, and that such costs would ultimately be passed on to consumers (Meloni, 2008). Further, this would introduce financial burdens which would unfairly impact smaller ISPs, and innocent businesses could also be accidentally blocked by the filter, causing significant loss of revenues to their enterprises:

Large operators may be able to absorb these costs, but small ISPs risk going under and consumer choice becoming limited. As a matter of fact, all businesses risk losing out under the Government’s plan. Given the rate the tested filters block innocent websites, a whopping 10,000 out of every one million at best, it won’t take long for sites belonging to the local plumber or GP to be mistaken and banned. Any loss of income due to website downtime is inexcusable and it’s still not clear if or how we’ll be able to appeal a decision. (Meloni, 2008)
Corporate elites and the state-private nexus

Some ‘technical elites’ across the broader ISP community claimed that any significant gains in internet performance from the roll out of the National Broadband Network would be lost by the government’s mandatory filter (Meloni, 2008; Newton, 2008; Sharma and Koh, 2009). Network engineer Mark Newton’s views were widely publicised:

The most recent trials, conducted in Tasmania by Enex Testlab earlier this year, found that the most accurate product [...] incurred a “slowdown” performance penalty in excess of 70% […] It stuns disbelief that the Minister for Broadband would be interested in pursuing these systems whilst at the very same time advocating for a $20b National Broadband Network (NBN) intended to increase Internet speeds. […] Furthermore, advances in technology because Internet speeds to increase faster than censorship systems’ speeds, meaning that as time passes the performance penalty caused by these systems becomes worse. (Newton, 2008)  

However, the largest corporate elites were accustomed to having close working relationships with Government which they generally held to be integral to their economic interests. While larger corporate ISPs abstained from participating in the Government’s filtering trial (Tindal, 2008), they did make a commitment to supporting a voluntary filtering proposal to address the issue of child pornography (LeMay, 2011a). For instance, the roll out of the National Broadband Network provided business opportunities for Telstra making a good relationship with the government a priority (O’Sullivan, 2009). For instance, the Telstra executive stressed the importance of good governmental relations stating that,

We buy a licence off the Government, they rule us through regulatory and legislative regimes, and we have got to have good Government relations because it is good for business. You know we will work with the Government. […] we have said we are going to do it [filter] if the government says it should be done. (Author’s interview with Telstra)

Overall, larger corporate ISPs were keen to maintain good relations with the government and did so by promising to work towards a ‘limited voluntary filtering initiative’ to address the issue of child pornography for which there was considerable public support (LeMay, 2010, 2011a).

In the UK, the BskyB executive also stressed the importance of working closely with Government. He claimed that as one of the largest ISPs they were perhaps more cooperative than other ISPs when it came to state pressure to regulate content. British Telecom as the

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82ISPs were critical of the effectiveness of filtering (Hutchinson, 2010; Lui, 2010a, b and c)
largest corporate had already demonstrated a commitment to self-regulation by establishing a child pornography filter early on. The BSkyB executive claimed they were more likely to block other illegal websites (such as Pirate Bay) if asked to by the Government, than other ISPs who might object on libertarian grounds. This raises the issue of the practice of industry volunteerism or self-regulation, which appears confined to larger corporate players who reap benefits from a close working relationship with Government. Smaller private actors however, appear uncommitted to self-regulation. Further, it suggests that a close relationship between corporate private actors and Government, may in fact exclude civil voices from negotiations. Harvey (2005, p. 77-78) has suggested such exclusive relations between corporates and states risk excluding civil sector concerns thereby eroding the democratic process. This state-private nexus goes some way to explaining the influence that private actors have and the perpetuation of industry self-regulation.

Under neoliberal governments since the 1990s, industry self-regulation had been an established practice supported by the state-private nexus in both Australia and the UK. In Australia however, not only was the established mode of industry self-regulation threatened by the Rudd Government’s filtering policy (Australian Labor Party, 2007), but the impending state-run filtering regime threatened to leave private actors with little or no influence over the scope of future media policy. A central concern for private actors was that their exclusion from negotiations could potentially expose the policy process to a range of civil interest groups which they saw as holding ‘specific agendas’ regarding content (i.e. feminist, Christian, scientific claims forcing increased censorship), and as threatening to successfully bring about mandatory filter, and further broaden the scope of what would be censored. Further, once a state filtering regime was established, there would be few legislative protections to limit the scope of censorship executed by future governments. As the IIA executive explained, once ISPs were forced to install the technological infrastructure for government filtering there was little to stop governments from expanding their censorship objectives.83 For the CEO of the IIA there was considerable concern about the lack of legal protections on the freedom of information;

Today it might be RC but there is no constitutional limit in Australia under our laws on freedom of information and freedom of communication. We don’t have a First Amendment, so it means from a constitutional standpoint no one can challenge future Governments, even if this Government was genuine in their promise not to extend it

83This point was highlighted by a range of private actors and legal scholars in Australia (Arthur, 2010)
beyond *Refused Classification* they can’t bind any future parliament and once the infrastructure for state control is in place there are people that say there is no end point to this potentially. The Government is saying “well trust us” but umm… you know I mean that is where the parallels with China start to get drawn. (Author’s interview with IIA)

In the UK, the model of industry self-regulation was an established model promoted by both state and private actors. For the larger corporate ISPs there were material benefits in continuing to maintain a close working relationship with the Government as this allowed them to develop industry practices to minimise costs. For the Government this avoided polarising public debate about the state’s role in internet media regulation, given the broader legislative environment. For instance, the BSkyB executive claimed that for states to regulate was ‘difficult and subject to review either because people have ideology and religion on this stuff or because there is a European framework’. This view was also promoted by the LINX executive who claimed that the UK Government was heavily curtailed by civil libertarian interest groups and the European Union support of net neutrality. In sum, although ISPs in both countries had different concerns about the scope of Government power in legislation, the larger corporate actors in both countries clearly prioritised close working relationships with their Governments as this allowed them greater influence over the policy process, and to effectively perpetuate the model whereby they remained exempt from state regulation, specifically regulation that would force the use of ISP level filtering to address issues of illegal content or content that does not comply with national media regulations.

**Selling Risk in the Risk Society**

The conflict of interests between civil and private sectors was highlighted by the personal reflections of the Telstra executive who had transitioned from a former career in the police (the bureaucratic field of the state addressing civil concerns about children and pornography) to become an executive within one of Australia’s largest corporate ISPs. In his new role as the security officer for Telstra, he had attended various international workshops and conferences as part of the network concerned about the sexual exploitation of children, which included the Australian Federal Police (AFP) and international child protection agencies such as the Child Exploitation and Online Protection Centre (CEOP) and the Virtual Global Task

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84He cited the UK’s effort to legislate blocking file sharing sites in the Digital Economy Act 2010 which was later repealed due to libertarian challenge.
force (VGT). He acknowledged his former career in the police had initially conflicted with his role in the private sector saying,

…I realised just what heinous risks there were for children online and how children were being abused and exploited online by the digital world. I came back with my law enforcement hat on which was “hey we have got to save the world and everyone in it”, and I sat down with [my boss] and said I have seen some horrific kids, the self-harm sites, the abuse sites and the kids you know they are all at risk we have to do something about it (Author’s interview with Telstra).

However, in transitioning to private industry where the business objective was to sell internet access, the Telstra executive acknowledged that he had had to adjust his perspective. While the organisation agreed they should the issue of child pornography was a shared responsibility, and that as a large organisation they had a responsibility to make some efforts to address it, they were reluctant to highlight the issue.

Emphasising the threats that children faced online was clearly inimical to the company’s main business objective - selling internet services to residential homes. The Telstra executive explained that taking a role in the private sector had required that he adjust his perspective of internet risk. In doing so he highlighted the positive attributes that the internet had to offer recounting that he has become,

…a committed and passionate believer in the value and wonders of technology and the convenience they have given the modern day world. Not because I am ignorant to all of the bad things that have happened because of technology, simply because from that day forward I have actually looked at it as a glass half full perspective, not a glass half empty. (Author’s interview with Telstra)

Despite knowledge of the various risks to children online, private actors tended to downplay these by suggesting that only a very few fell victim to media or contact harms. Further, they diluted concerns about children’s media access and communications online by suggesting ‘all internet users’ faced online risks. In order to avoid discouraging internet users from using the internet, they claimed that the opportunities outweighed the risks. Risk was just a consequence of the ‘risk society’.

Private actors acknowledged that there were new risks generated by the internet but regarded these as the unintended consequence of rapid technological innovation, a view which was indicative of the ‘risk society’ (Beck, 1999, p. 5). Private actors discouraged collective regulatory approaches to protect internet users, by claiming that the ‘online world is moving at incredible speeds’ making it difficult for traditional institutions to minimise risks.
with either legislative or technological measures. Thus, private actors claimed that the speed with which the internet generated new risks made the internet ungovernable as technological and legal measures were likely to lag behind the social effects created by new technologies.

While acknowledging content presented some risks to children, the Telstra executive suggested that technological innovations such as social networking sites (SNS) had very quickly introduced new contact risks stating that,

As the [technological] evolution takes place so do the threats and risks. I can’t tell you whether what I saw in Belfast is still as significant a risk back in 2005, but if you think back to 2005 Facebook hadn’t been invented. (Author’s interview with Telstra)\(^5\)

These rapidly evolving risks generated by internet technologies were considered too difficult to regulate through traditional institutional means, resembling symptoms of Beck’s (1992) ‘risk society’ and Giddens’ (2002) thesis of the increasing inefficiency of state institutions. Private actors therefore called on discourses of risk and responsibility to shift the regulatory focus onto individual internet users. However, the Telstra executive, while acknowledging that children faced evolving online risks, ‘distributed risk’ across all internet users. He claimed that,

…all users regardless of age are at risk [from threats such as] cyber bullying, sexting, phishing, and fraudulent identity theft, online crime, other different crime types that are facilitated through technology, cyber warfare. These are all significant risks impacting the experience of the user. So yes things have shifted considerably. This whole space has just developed into its own unique crime types and safety security concerns…so I don’t try to say that the most vulnerable members of the society at risk are children who are online. (Author’s interview with Telstra)

This approach minimised concerns about threats to children, and reframed internet risk as a consequence that all beneficiaries of internet technology will need to manage. However, in addressing concerns about children, the Telstra executive promoted a multi-stakeholder approach stating that children’s safety was a responsibility that should be shared between the state, industry, parents and children. Thus risk management was a shared responsibility.

\(^5\)The Telstra executive was approached by representatives of the AFP to get involved the Virtual Global Taskforce, a concept to have a one-stop online shop for children at risk in each of the five continents across the five time zones, UK through Canada, the US and across into Australia (Author’s interview with Telstra).
Again this is on the record, but my opinion not that of Telstra. […] I believe that the risks exist and there is a shared responsibility between government, law enforcement, ISPs, parent, teacher, guardian, child and user. (Author’s interview with Telstra)

However, he maintained that a lack of digital knowledge was a key problem across different groups of internet users, and that once internet users actually understood how internet technology worked they would be better able to manage risks and, of course, its opportunities. Private actors therefore saw it as the responsibility of all internet users to educate themselves, as the Telstra executive explained,

So we actually say at Telstra ‘all users regardless of age are at risk’ because of their lack of understanding and knowledge of some of the risks that exist […] and people should be more aware of how it works so they can get better value from it. And once they actually understand how it works they are better informed about the risks. (Author’s interview with Telstra)

Telstra has continued to advocate a range of risks that all users potentially face online among which were risks that children pose to themselves and to others;

Cyber safety is not limited to preventing cyber bullying or protecting children from online predators. Cyber safety includes minimising the risks of everyone’s exposure to: fraud, privacy breaches in credentialing, identity theft, malware, phishing and scams through to internet and device addiction, violent and sexually explicit content, security-compromised online gaming activities and ‘sextortion’ (extortion involving digital sexual imagery and distribution). (Telstra, 2014)

The Google Corporation have also advocated that internet users need to manage these risks themselves (Google, 2011, Appendix 2, p. 3) in light of the failure of traditional regulatory institutions to provide citizens with protections. The Google executive maintained that as ‘there is no one tool or technology that will deal with every area of risk’ in the new internet environment, the only option was ‘educating and empowering the individual to understand what is going on so they know what the risks are and they know how to avoid them’ (Author’s interview with Google). However, it was notable that during the interview, the Google executive avoided any detailed reference to any social harm, with the exception of child pornography. He conceded that there ought to be some ‘boundaries to the kind of information that people can access’ such as ‘child abuse material’ since ‘at a societal level and at a legal level in most countries around the world there is kind of material is seen as totally unacceptable’ (Author’s interview with Google). However, Google submissions promote their view that this should be dealt with ‘via policing initiatives and the criminal law’ rather than through forcing internet service providers to police content distributed through or hosted on their networks (Google, 2011, p. 2). Rather than regulating media and
its distribution, the Google executive focused on regulating end users suggesting that the object of regulation should be to ‘stop people from uploading bad stuff [and doing] bad things to each other’ (Author’s interview with Google). The IIA executive also conveyed concerns that the focus on internet pornography was unnecessary and less urgent than the contact risks that children may face online. He claimed that,

The other dimension of this problem and why we thought the Government’s policy was misplaced was because it was putting all the emphasis on the content, which when you think about it, putting child porn to one side, sexually explicit content has been around since man drew on the walls of the caves and there has always been that desire to depict it. […] So I think that there is then a preponderance of attention and focus on the content whereas I think the much more pernicious issues are the contact issues, and I am concerned that to the extent that the Government is putting resources into content regulation they are missing the bigger point that is the interaction between adults and children in inappropriate ways online that is potentially being missed there. (Author’s interview with IIA)

The focus on individual end users’ conduct strategically diverted attention away from issues of commercial content (and its distribution via ISPs and search engines such as Google) to issues of individual contact and conduct harms, and in particular emphasizes the potential of the ‘delinquent’ or ‘risk taking’ child and the need for parental supervision.

**Concluding Thoughts: Preserving the Neoliberal Status Quo**

Defending individual rights to access information independent of moral or legal consideration was an essential strategy to ward off censorship since regulating content interfered with the central business model – making information available to all individuals irrespective of national borders. Private actors argued that state attempts to articulate policy were incoherent and prone to future political manipulation and that states could not therefore be trusted. They also rejected state intervention on the grounds that the cost of this would run counter to neoliberal principles of ‘small government’. To support this neoliberal principle, they argued that the market (internet users) would eventually find its own equilibrium as it became familiar with risks of the internet. That is, internet users would come to know risks and be able to manage these.

Private actors accepted that the internet generated new risks but they considered these as the natural, albeit the unintended consequence of technological innovation in the risk society (Beck, 1992) or network society (Castells, 2000). They argued that the internet is impervious to efforts to control content, and that individual internet users (rather than private
actors or states) should therefore be responsible for managing content risks. Risks were
distributed across all internet users regardless of age, in keeping with Beck’s (1992) assertion
that risks become global and work independently of class and social status, private actors
generalised internet risks as a fact of life.

These actors generally sanctioned state discipline of those individual internet users
who did not conform to acceptable social norms online, seeing the apprehension of those
engaging in illegal activities such as producing child pornography, as a legitimate state
function. They continued to advocate a deregulated environment, in which individuals were
obligated in their own self-governance, and security. However, this was problematic when it
came to addressing civil concerns about children and the internet. As Staksrud (2013) has
pointed out, the individualisation thesis put forward by Beck and Beck-Gernsheim (2002) did
not address the complexities that might arise if children were required to manage such risks,
leaving the question of children’s safety to the institution of family. An ‘age-generic’ or ‘age-
blind’ approach is evident in the way that private actors in constructed children and risk,
which ‘tends to blind them to the specific needs of children, and to normalise an overly adult-
centric approach to internet governance’ (Livingstone, 2015, p. 16).

Paradoxically, while private actors had refuted the need for censorship by arguing
children were competent social actors who were resilient in the online environment, they
nevertheless yielded to civil anxieties about cyber bullying among children. They emphasised
that children could be victimised by others (sexual predators and peers) but could also just as
easily engage in bullying others online. So while appearing to contradict Rousseau-like
notions of children as innocent and vulnerable, they nevertheless went along with Lockean
condemnation of the potentially ‘delinquent child’ supporting the notion that children require
regulation and discipline.

Private actors authorised the family as the key site of regulation but this was
problematic for a number of reasons. First, they acknowledged that parents were
technologically deficient which made them ignorant of the risks to children, and the risks
children may take when online. Second, the traditional modernist notion of the family as a
safe space with disciplinary modes of parenting, are increasingly incompatible with the late-
modern family. The democratisation of family life not only requires more negotiation than
regulation between parents and children (Giddens, 1998, 2002), but individual media
preferences within the family were likely to take precedence over efforts to purge the ‘whole home’ of adult content by enforcing ISP filtering.

Beck proposed that ‘reflexive modernisation dissolves the traditional parameters of industrial society, such as class culture and consciousness, gender and family roles’ (Staksrud, 2013, p. 17) and as such, requires that the individual become the central orchestrator of one’s life. As Beck and Beck-Gernsheim (2002) have argued, in modern Western societies individuals determine their biographies (Staksrud, 2013, p. 19), but when it comes to children’s reflexivity and agency, this remains somewhat problematic.

Technological innovation, and increasing individual agency and self-determination challenge the functioning of family, often causing increasing instability in traditional gendered or age-related norms (Beck, 1992, pp. 87-90; Staksrud, 2013, p. 17; Valentine, 2011). Given that the detraditionalisation of the family has led to the breakdown of disciplinary modes of parenting (regulating children), reliance on parental regulation becomes unsound. As this analysis has shown, private actors constructed children as self-governing online as if autonomous orchestrators of their life, but on the other hand, conceded that parents held the ultimate responsibility for regulating their children’s media and communications online.

The responsibilisation of parents was problematic. Not only were parents thought to lack digital parenting skills, but the democratisation of family contexts along with individualising trends that appeared to extend to both adults and children, worked against efforts to purify family internet feeds. Given these contradictions, it becomes difficult to accept the policy position and argument that all parents can effectively manage children’s media and communications by supervision and the use of technological means.

Overall this chapter has shown that private actors had an almost complete mistrust of the Government’s intrusion into the market. However, civil libertarian arguments that supported the liberty of individuals to seek information unhindered by national regulations, clearly underpinned global corporate business models. Private actors typically made use of neoliberal economic arguments to argue against Government intervention in regulating internet media. While they conceded that the internet generated new risks, they did not see the resulting social changes as warranting collective regulation and instead called on neoliberal discourses of risk and responsibility that obligated individuals in their own self-governance. By defending the neoliberal status quo private actors pursued industry self-regulation, and ultimately individual user self-governance.
While expecting all internet users to become technologically proficient and understand online risks, children were a less powerful group of social actors whose rights of access were precarious due to their lack of citizenship status (accorded to adults). Having painted a somewhat liberal and post-modernist view of childhood to deflect claims about children’s vulnerability to adult content online, private actors paradoxically called on more punitive modernist notions of childhood to divert attention away from content regulation, and to require parental regulation of children’s internet use, thus supporting their policy position. In addressing the potential for ‘delinquent’ conduct on the part of children, they assigned overall responsibility to parents, making raising parental awareness and technological proficiency online a key industry strategy. However, late-modern structural changes in both childhood and family alongside rapid technological innovation raised a number of problems, rendering this policy position somewhat problematic. The instability inherent in the designation of the family as the key site of (moral) regulation, that makes digitally challenged parents and ‘savvy’ ‘risk-taking’ children responsible for managing internet risks, would seem to detract from the viability of the policy position of private actors.

The strong state-private nexus in which private actors have considerable influence over policy outcomes, in this case an absence of state regulation to protect children from media harms, would seem to echo what Wacquant (2010, 2012) suggests is a disassociation between citizens and Government. Extending Wacquant’s (2010, 2012) notion of the neoliberal state that differentially distributes wealth and penal sanctions we might metaphorically view private actors in this research as the prosperous beneficiaries of a deregulated market who consequently remain largely exempt from costly regulation, while internet users and in particular children could, on the other hand, be regarded as the least powerful, and therefore most easily targeted through regimes of increased punishment, supervision and discipline. In this scenario, the voices of civil actors representing children and who seek more collective state regulation, remain largely excluded from resulting policies.

The following chapter looks at the recent efforts of Australian and UK governments to regulate or control illegal and harmful internet content, and the strategies, actions and interactions of private and state actors that resulted in the general failure of states to regulate.
Chapter Six: The Failure of States to Regulate Private Actors: Policy Outcomes and its Beneficiaries

The growth and accessibility of online pornography, along with content that would be classified illegal under Australian and UK media law, have only increased civil concern about its social effects, and in particular its effects on children. This chapter traces state policy approaches to internet content regulation in Australia and the UK, focusing mostly on events occurring during the Rudd-Gillard (2007-2013), Brown (2007-2010) and Cameron (2010-2016) Governments respectively. It examines some key policy attempts responding to civil discourses about pornography, the internet and children, and the influence that private actors have had on these policy outcomes. It does this by examining state proposals that address content regulation, and the corresponding strategies and actions of internet access and content providers, and eventual policy outcomes.

My contention is that the economic interests of private actors remain superior to those of the public interest and that this is perpetuated by neoliberal government doctrine. This risks a decline in democratic process whereby states may sideline civil concerns about pornography and its effects on childhood, and broader society. While states make some effort to address civil concerns, these stop short of implementing policies that would affect private interests. While there may be local contexts that shape national responses to civil concerns about pornography, children and internet regulation, policy outcomes in both Australia and the UK tend to acquiesce to general neoliberal principles whereby private interests are prioritised, and regulatory responsibility, bypassing the private sector, is delegated to the individual. In doing so, states pass responsibility for managing security and risks to individual internet users. However, concerns about the social effects of some commercial content are transmuted to a more punitive focus on individual conduct and harmful behaviour.

The central thesis is that although states appear to have abandoned issues of social security by failing to introduce strong regulation leaving individuals to manage online risks, they have not completely abandoned issues of social order. Instead, they have redistributed their focus to increase penal and disciplinary sanctions for those who breach expected social norms online. While this situation is largely beneficial to the private sector, states fail to
adequately respond to ongoing civil demands to prohibit offensive content online, and in particular to protect children from harmful content i.e. pornography. The particular approaches in Australia and the UK reveal that although governments have taken various steps to try and address the problem, they continue to support neoliberal economic and political principles. As a result, across both Australia and the UK, a range of state, industry and third sector user-facing initiatives\textsuperscript{86} scatter the policy landscape.

This chapter draws on empirical data from interviews with key stakeholders in Australia and the UK. Their testimonies provide a history of the local political and economic influences that have shaped internet media policies, revealing their views about the role of states, non-state organisations and internet users in ensuring the safety and wellbeing of internet users, particularly children. All respondents had considerable experience in the field of media and regulation and held leadership positions within their organisations. As such they were able to offer valuable insights into the motives and failures of states, and share their objectives and strategies. In addition to analysing interviews, this chapter also draws on media and official documents, to shed further light on key policy moments and outcomes.

This analysis examines what states are trying to do and whose interests are reflected in the policy outcomes. The first section of this chapter examines how the Australian Federal Government responded to these issues, and the strategies of private actors opposing the government’s efforts. After a short review of the Howard Government neoliberal approach, I examine the seemingly welfarist policy proposal put forward by the Rudd Government. The second section examines corresponding state-private struggles over content regulation in the UK.

**Early Attempts to Regulate Internet Pornography in Australia**

The CEO of the Internet Industry Association (IIA) claimed that the Australian Federal Government was concerned about two issues in the mid-1990s, ‘sex and tax’ (Author’s interview with IIA), as the Howard Government realised that the internet could bring economic opportunities for Australian businesses but could also compromise their tax base. According to him the Government ‘were concerned about revenue loss from e-commerce. How do you tax within jurisdiction when people can buy and sell anywhere?’ The Federal

\textsuperscript{86} By this I mean measures that address the individual internet user’s conduct.
Government department87 was worried about how they were going to preserve the traditional tax base’ (Author’s interview with IIA) and regarded ISPs as the natural gateway to and from Australian businesses. He claimed that the Government,

…couldn’t find any other stationary target, any other taxing point, they were actually looking towards ISPs to effectively become filtering points or at least de facto tax collectors on behalf of the government for the economic activity that they presumed was going to occur on the ISPs network. (Author’s interview with IIA)

At the same time, the political landscape looked to ISPs as filtering points whereby Australians’ access to internet pornography could be prevented or restricted.

In the lead up to new legislation addressing internet media, political forces wished to ban the Australian pornography industry from going online in Australia. The founder and president of the Adults Only Industry Association - EROS, had a long history of lobbying against political efforts to heavily regulate the pornography industry. According to her, the proposed legislation had a clause that basically said, ‘forget about hosting in Australia, if you are an Australian company you are now not to post any adult content’ (Author’s interview with EROS). Minister for Communications and the Arts, Richard Alston88 had famously declared that ‘the Australian internet would be porn free’ as he believed that ‘if you didn’t have explicit material on Australian ISPs, Australian’s wouldn’t see explicit material’ (Author’s interview with EROS). It followed that, under the Howard Government, legislative amendments, which would prohibit Australian ISPs from hosting pornographic content and require Australian pornography sites to be removed from Australian ISP servers, were rapidly proposed. If such a proposal had been enacted it would have severely impacted the commercial viability of the Australian pornography industry. The EROS president recalled that they, acting on behalf of the adult industry sector, were able to secure the exclusion of this clause from the final legislation by threatening industry-wide opposition against the Liberal Party in the forthcoming election:

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87The Department of Communications, Information Technology and the Arts, was formed in October 1998 and dissolved in December 2007. This replaced the Australian Department of Broadband, Communications and the Digital Economy (DBCDE), formed in 2007 and dissolved in 2013.

88Richard Alston from the mid 1990’s has held several key portfolios in which classification and censorship fell under his remit: Minister for Communications and the Arts 1996–97; Minister for Communications, the Information Economy and the Arts 1997–98; Minister for Communications, Information Technology and the Arts 1998–2003; he was also the Deputy Leader of the government within the Senate from 1996–2003.
We managed to circumvent that, because fortunately there was an election coming on and we were able to convince the Liberal Party that this was a really dumb idea, and that [they] were about the kill the adult industry in this legislation and if you did that well, the adult industry would campaign every which way and would spend millions and millions of dollars to ensure that the Government didn’t get re-elected. (Author’s interview with EROS)

The economic weight of the adult industry had a powerful effect in that she claimed, 'they quietly removed that bit from the Broadcasting Services Act’ (Author’s interview with EROS).

Nevertheless, the Federal Government had, according to the EROS and IIA executives, wished to prohibit pornography online, and at the very least apply a ‘lower threshold’ to internet pornography to ensure children were protected, despite trespassing on the rights of adults to view material that would be legally available offline. According to the IIA executive,

In the first iterations of the BSA I remember Richard Alston saying “we are not seeking to prevent adults from viewing adult content that is legally available in Australia, but we want to prevent children from accessing that”. Interestingly they used the accessibility argument to justify imposing a lower threshold to the internet than would apply to offline [...] because it is more readily available, we would have to adopt a more interventionist approach than we would apply to other media. (Author’s interview with IIA)

Implicit within the final Act was the state’s view that censorship would need to be more stringent to protect children online, as the IIA executive pointed out,

The provisions were higher, they acknowledged that because of the volume of sexually explicit material on the web, they weren’t going to try and enforce limits to access of R-rated content that was hosted off shore, but certainly if it was X-rated or Refused Classification an ‘access and prevention’ notice could be issued in respect of that content. (Author’s interview with IIA)

The final version of the Broadcasting Services Amendment (Online Services) Act 1999 therefore established a legal precedent for an Australian internet content regulation scheme. It introduced ‘internet-specific’ objectives to existing broadcasting regulations (Beattie, 2009) which were intended to,

‘provide a means for addressing complaints about certain Internet content; restrict access to certain Internet content that is likely to cause offence to a reasonable adult; protect children from exposure to internet content that is unsuitable for them’. (Beattie, 2009, p. 53)
However, the IIA negotiated a notice-and-take-down regime whereby content hosted in Australia above a certain threshold within the classification hierarchy would be susceptible to notice-and-take-down. This meant that ‘you could lawfully run R-rated content services in Australia or host that content without the risk of take-down as long as you had a means by which you could prevent people from under the age of 18 from accessing that content’ (Author’s interview with IIA). However, prohibited content that was subject to notice-and-take-down was defined as content that was classified Refused Classification, X-rated content, or R-rated content without age-verification system in front of it. There was little resistance against the notice-and-take-down regime for content physically hosted within Australia. The IIA executive conceded that,

…if you are going to host within jurisdiction then there is an argument that you should comply with the laws of the jurisdiction and you could educate the market as to where the standards should be, and you could put protections like age restrictions in front of content. (Author’s interview with IIA)

The IIA executive was, however, very sceptical of the Government’s attempts to exert regulatory control over offshore content.

Although not well understood, the Act actually made provisions that obliged all Australian ISPs ‘to use all reasonable efforts to prevent access to prohibited content hosted offshore’ that the Government determined ‘unsuitable for domestic consumption’ and that ‘absent an alternative industry standard being in place ISPs in those circumstances would have a legal obligation to block access to those sites that had been notified’ (Author’s interview with IIA). ISP network-level filtering was, at this time, considered a potential technological solution by which ISPs could prevent Australians from accessing ‘unsuitable’ overseas content (Author’s interview with IIA; Montgomery, 1999). Despite the expectation that industry would eventually employ filtering to address the Government’s concerns about unsuitable content hosted offshore, ISP network-level filtering did not eventuate.

The Explanatory Memorandum to the Broadcasting Services Amendment Act 1999 (Explanatory Memorandum, Broadcasting Services Amendment (Online Services) Act, 1999) also acknowledged that any such measures should not, however, inflict ‘onerous or unjustifiable burdens on industry’ or that such access prevention must not cause ‘unnecessary financial and administrative burdens on Internet content hosts and Internet service providers’ (Broadcasting Services Amendment (Online Services) Act 1999, Subsection 4 (3)). According to Pyburne and Jolly (2014) the Memorandum acknowledged that blocking would
be difficult, leaving an opening for private actors to pursue ‘alternative access prevention arrangements, to be used until such times that developing technologies made the regulation of online content more feasible’ (Author’s interview with IIA). Private interests across internet service and content industries successfully argued that ISP filtering would run counter to their economic interests and ability to compete in the global marketplace. As such, despite the provisions of the new law, the state failed to block prohibited or unsuitable overseas hosted content, and the responsibility of preventing children’s access to this was delegated to parents, although this was strategically termed by the IIA as providing parents with ‘empowerment solutions’ (Author’s interview with IIA; Coroneos, 2008).

The principal ‘empowerment solution’ developed by the IIA was the Family Friendly Filtering Scheme introduced in 2002 (Communications Alliance, n.d.), under which ISPs were required to inform parents about PC filtering software available on the market. The new legislation required the Australian Communications and Media Authority (ACMA) provide filtering vendors with a list of prohibited websites to add to their product blacklists, and that ISPs provide information or a web link to commercially available PC filtering software deemed acceptable under the IIA’s Family Friendly Filtering Scheme (Internet Industry Association, 2005). It also worked under the assumption that children’s access was manageable through a single home PC, a situation that has rapidly changed, making this approach somewhat outdated. In developing this industry Code of Practice, the IIA had successfully deferred the implementation of ISP network-level filtering made possible under the Act, and at the same time reinforced the view that parents purchase PC filtering software to manage their children’s media access as they saw fit.

The eventual Code of Practice established by the IIA determined that Australian ISPs could not host content classified Refused Classification (RC) or X-rated, or R-rated without an age-verification system in place. The IIA had argued that age-verification systems would be effective in denying children access to adult websites. However, both the IIA and EROS executives admitted during interviews that these were never implemented by the Australian pornography industry. According to the EROS president, the pornography industry viewed the age-verification as quite ‘onerous’ and that finding an off-shore host was more cost-effective. The EROS president recalled that at this time ‘the adult industry online was making zillions of dollars’ and that ‘it took everyone all of five minutes to move [to] an offshore server in New Zealand [laughing]’ (Author’s interview with EROS). While these industry Codes of Practice clearly benefited ISPs and the pornography industry (Coroneos, 2008),
Civil concerns about children’s exposure to internet pornography remained largely unresolved.

**Renewed calls for filtering of pornography**

Civil actors were aware of this strategy and dissatisfied that regulatory measures introduced by the passing of the Broadcasting Services Amendment (Online Services) Act 1999 did not effectively restrict access to pornography online. The Christian consensus conveyed that it was now time ‘for the government to regulate the Internet for the common good of all Australians’ (Wilson, et al., 2005). According to Simpson (2008), initial calls for government action by Christian groups were based on a desire to prohibit Australian adults from viewing online pornography, since they held pornography accountable for family breakdown, sexual assault, and paedophile activity.\(^89\) These were later reframed within a more secular discourse of child protection (Simpson 2008). Not wishing to leave the task of controlling children’s media in the hands of parents, Christian groups such as the Australian Christian Lobby (ACL), Family First Party, Australian Family Association and the Catholic Church began to question the effectiveness of the industry’s Code of Practice which ultimately promoted user self-regulation.

In the new millennium, psychology and gender study researchers weighed into public debate as well. Research conducted by The Australia Institute, a prominent public think tank amplified public and political pressure to do something about children’s access to internet pornography. The Institute’s research was underpinned by broader concerns about sexual violence now colonising mainstream internet pornography, and the long term consequences of children’s exposure to such material. These reports claimed that mainstream pornography had become more violent and derogatory toward women and now included a range of non-normative sexual acts. The Institute’s reports and press releases issued between 2003-2007 made strong claims that pornography was causing serious negative effects on children’s sexual development and called for the Government to enforce ‘opt-out’ ISP network-level filtering (Author’s interview with The Australia Institute; Flood and Hamilton, 2003a).\(^90\)

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\(^{89}\) This was the position of the Integrity Alliance that consisted of groups such as Advocacy, Relief for Children, the Fatherhood Foundation and the Australian Family Association.

\(^{90}\) The claims of The Australia Institute are examined in Chapter Five of this thesis.
Opposition Minister Senator Stephen Conroy\textsuperscript{91} believed that the Government should introduce mandatory ISP network-level filtering.


At the 2007 election the Rudd Labor Party defeated the coalition led by Prime Minister Howard, leader of the Liberal Party, which had been in power since the internet was commercialised in the mid-1990s. Despite this change in political leadership, the issues of regulating offensive content and protecting children from content such as pornography continued to be a political challenge.

During the Howard Government there was a focus on heightening parental awareness, providing free PC filters to parents and educating them to be more vigilant in censoring their kids online. Although this neoliberal approach had deferred ISP filtering on the basis that this would be too costly for industry, this left the task of regulating children’s media to parents, in 2007 the Rudd Government adopted a more paternalistic approach by proposing a mandatory state-run filtering regime (“Conroy Announces Mandatory Internet Filters to Protect Children”, 2007; “No Safety Net,” 2007). This appeared to be a retraction of existing neoliberal principles, which generated significant resistance from a range of private actors and civil libertarian interest groups.

The initial iterations of the Rudd Government policy appeared to have a dual purpose, of dealing with issues of ‘offensive’ content, and of also addressing concerns about children’s access to pornography online. In 2008, the Rudd Government ‘announced plans for a layered filtering scheme, proposing a mandatory filter to block pornographic and illegal content, as well as an opt-out filter that would block even more content’ (OpenNet Initiative, n.d.). Although this was initially referred to as a ‘cleanfeed’ (Conroy, 2007), causing some confusion with the British Telecom’s child pornography filter implemented in the UK in 2004 (Richardson, 2006), at this time the Rudd Government’s filtering proposal was exploring a much broader scope of content to be filtered (Author’s interview with Watchdog

\textsuperscript{91} When the Rudd Government came into office Stephen Conroy became the Minister for Broadband, Communications and the Digital Economy, and held the role from 3 December 2007 - 1 July 2013.
Filtering regimes in other Western democratic countries had predominantly addressed illegal content such as child pornography. However, in Australia the issue of child pornography was often conflated in public debate with the broader objective of applying existing national community standards onto internet content, and in particular protecting children from exposure to pornography or content that may harm them. In its initial iterations, the Rudd Government’s policy rhetoric was prone to being vague and of conflating issues of child protection with broader issues of national obscenity laws. For instance, Minister Stephen Conroy (“Conroy Announces Mandatory Internet Filters to Protect Children,” 2007) was quoted as promising that mandatory filtering would, ‘better protect children from pornography and violent websites’ while also implying it would block child pornography. This conflated the two issues; that of preventing children from accessing pornography, with that of blocking all internet users from accessing child pornography (for which there was strong public support). The Government exploited this approach by claiming that those who argued against the filter on civil liberties grounds were supportive of child sexual abuse (“Conroy Announces Mandatory Internet Filters to Protect Children,” 2007). The proposed policy was a stark departure from neoliberal doctrine that had, under the Howard Government, favoured a deregulated model.

To a large degree the Federal Government’s objectives were not yet translated into a technological regime, causing much speculation about what would be blocked. Many in the internet industry were frustrated with the vague and conflated policy rhetoric, stating that,

…from the announcement of the policy in 2006 we never really had a clear fix on the nature and extent of content that the Government was seeking to legislate, so that gave rise to a lot of unnecessary speculation. (Author’s interview with IIA)

And that Conroy constantly changed his language, vacillating between,

…anything offensive…anything illegal…illegal and offensive …anything abhorrent …anything that is Refused Classification. (Author’s interview with iGEA)

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92 Both the IIA and EROS executives thought the Rudd Government was unaware of the existing precedent within the Broadcasting Services Amendment (Online Services) Act 1999 that made ISP filtering a potential method of enforcement.

93 In some cases states had addressed content of specific national concern such as the German government requesting ISPs block access to US hosted Nazi web sites (Kleinschmidt, 2010).
For the iGEA and IIA executives the Government appeared to introduce new definitions exposing them to speculation and demands for evidence-based policy rather than moralistic rhetoric (Author’s interview with IIA).

The Rudd Government’s claim that they had a mandate to impose state filtering was heavily criticised by private actors and political opponents (Moses, 2008d). The IIA executive claimed the Federal Government’s policy lacked true legitimacy owing to its relatively concealed status during the election. He stated,

It was not well articulated as an election policy prior to the 2007 election. Many people were saying it was a pretty questionable mandate even though it was like a statement on the website it was not something that was actually front and centre in the campaign - not like broadband was. There were lots of people that felt that the policy did not have the legitimacy that it should have, given the potential impact of its implementation. (Author’s interview with IIA)

From the industry’s view the Australian Government had excluded them from the negotiation table, greatly reducing their influence to shape the policy. He stated that ISPs would have preferred to,

…see a coherent statement of policy intent developed in consultation with the community and industry, I mean that is the way I think that good policy is developed but it certainly hasn’t happened here, it happened in a vacuum by edict. (Author’s interview with IIA)

He continued to argue on economic grounds, claiming that the Government’s ‘cleanfeed’ policy would have to be balanced against both compliance costs and the effects on internet performance (Foo, 2008). In the ACMA’s first annual report to Senator Conroy, the cost to families of upgrading a home computer was deemed modest, whereas ‘for ISPs the cost of upgrading or augmenting the expensive hardware that they typically deploy may be substantial, particularly for small providers’ (Foo, 2008).

**Federal Government filtering trials and ISP scepticism**

By early 2009, the Government’s proposal had taken shape in the form of a two tiered filtering system that would provide for, (a) a limited list of websites that will be mandatory for ISPs to block for all users, and (b) and a more comprehensive, optional filtering level allowing for the filtering of a greater breadth of unwanted content (Pillion, 2009).\(^{94}\)

Essentially, the mandatory filter would ‘outlaw access to sites featuring material such as rape,

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\(^{94}\)This emerged from a better understanding of the available filtering technologies.
drug use, bestiality and child sex abuse’ (“Australia Defends Controversial Web Filter”, 2009), while concerns around pornography and content that may harm children would fall to the second tier filter that adults could opt-out of if they wished. The Government’s live filtering trial aimed to provide an up to date account of the capabilities of filtering technologies, and test industry claims that filtering would impair internet performance, and introduce an unfair compliance costs for industry. The trial also excluded testing for mobile browsing or premium mobile content services (Browne, 2008). However, results confirmed that there was ‘negligible impact on internet speed’ and using a defined set of URLs could be 100% accurate (Enex Testlab, 2009).

All but a handful of ISPs rejected taking part in the Government’s filtering trials. The animosity of many ISPs in Australia could hardly be exaggerated. Mark Newton, network engineer for Internode, frequented debates and media, arguing that filtering was not sophisticated enough to avoid serious over blocking and slower internet speeds invalidating efforts to upgrade the National Broadband Network (Newton, 2009). The perception that ISPs held the relevant expertise and knowledge about filtering technology and its potential efficacy or drawbacks was promoted by IT communities and ISPs themselves. However, for ISP Webshiel, which already provided network level filtering services, the arguments of many self-professed IT experts were no longer sustainable (Pillion, 2009). Filtering vendors worked hard to get ISPs on board, offering to provide them with the necessary equipment to take part in the Federal Government’s filtering trial (Author’s interview with Watchdog International; Moses, 2009a). The responses of larger ISPs reflected their opposition to filtering. Telstra (Australia’s largest ISP), along with Internode, declared they would not take part; Optus agreed to trial the first tier filtering technology, while iiNet, the third biggest provider declared it would take part only to expose the futility of filtering technology (Author’s interview with Watchdog International; Bingemann, 2009a; Moses, 2009a). The Government was consequently careful in its selection of trial applicants and, in the end, only six small ISPs were selected to take part in the first round of testing.96

The findings of the Government’s filtering trial confirmed that blacklist filtering typically used for blocking child pornography would not in fact slow the delivery of ISP

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95 Civil libertarians objected to the concept of adults having to request to opt-into pornography claiming this breached privacy of individuals (Emanuelle, 2013).

96 Participating ISPs were: Primus Telecommunications, Tech 2U, Webshield, OMNiconnect, Netforce and Highway 1 (Jacobs, 2009).
services, and that there had been significant improvements in broad scale filtering to block pornography, so that private actor technological counterarguments could no longer stand, particularly in the case of blacklist filtering of child pornography (Bingemann, 2009b; Enex Testlab, 2009; Ramli, 2010). The IIA executive felt that the public debate had increased public receptiveness toward a child pornography filter in Australia and attempted to moderate the Government’s policy position by offering a self-regulated solution whereby industry would follow other countries and voluntarily filter child pornography. However, the idea that Government drop it’s proposed ‘two-tiered mandatory filtering policy’ for a voluntary child pornography filter was apparently not palatable to Minister Conroy who wanted to continue to develop the RC blacklist, as the IIA executive explained,

We approached the Government on a number of occasions to see whether we could moderate their position on this by settling on a child pornography threshold, and really we were rebuffed on that. They said they had made a political commitment which they intended to honour and it was going to be RC, and they would legislate it. (Author’s interview with IIA)

The Government’s intention to legislate mandatory filtering of a revised RC category of content was of particular concern as there was no constitutional restraint to prevent future governments from expanding the scope of filtering for political purposes. He captured the general mistrust of Government;

Even if this Government was genuine in their promise not to extend it beyond Refused Classification they can’t bind any future parliament and once the infrastructure for state control is in place there are people that say there is no end point to this potentially. The government is saying “well trust us”. (Author’s interview with IIA)

This view was also held by global corporates Microsoft and Google (Author’s interview with Google; Sharp, 2010), who believed that a mandatory Government filtering regime would lead to censorship without public or constitutional oversight.

**State credibility questioned and private actor counter-offensives**

As the debate moved forward opponents set about discrediting the Government’s legal expertise and their competency in matters of censorship law and enforcement. According to the EROS executive, Conroy did not fully understand existing pornography laws and so she challenged Conroy on a TV broadcast by pointing out that his policy would outlaw legal pornography in the online space, and specifically material that already appeared in magazines in most states in Australia (Author’s interview with EROS). She recalled that during a televised debate she effectively discredited Conroy by pointing out that, ‘a magazine that
could be sold at a petrol station in Marrickville…would be illegal online’. In a somewhat jubilant manner she recounted that,

Minister Conroy also misunderstood it [the pornography laws] and I think that was a turning point for him. He was very cross after the Insight program and just swore black and blue at me after, the cameras were still rolling. I would love one day to get the clip because it was fantastic, he was frothing! (Author’s interview with EROS)

Although at the time he was annoyed at being challenged on live TV, the EROS executive claimed that Conroy subsequently changed the scope of the policy to filter anything Refused Classification.

The Government was further discredited in a media storm when the ACMA blacklist was leaked to the public, and it was discovered that the list contained legitimate websites (Bingemann, 2009a, c, d; Harrison, 2009; MacBean, 2009; Moses, 2009b, c and d; Pauli, 2009; Salna, 2009; Tindall, 2009; Tung, 2009). The blacklist became a global embarrassment to the Federal Government as material currently being censored (albeit through commercial channels) did not relate to classification rules as it contained legitimate sites including a dental practice, gambling sites and some mainstream legitimate pornographic material. The media reported that,

…about half of the sites on the list are not related to child porn and include a slew of online poker sites, YouTube links, regular gay and straight porn sites, Wikipedia entries, euthanasia sites, websites of fringe religions such as satanic sites, fetish sites, Christian sites, the website of a tour operator and even a Queensland dentist. (Moses, 2009c)

The leaked blacklist heightened industry and public mistrust in the government’s ability to run and effective censorship scheme, and concerns grew about the lack of transparency that a secret state-run blacklist implied. With ongoing controversy around the nature and scope of what the Government might censor, the Federal Government, while not backing down on their promise of a Government filter, deferred its execution until the Australian Law Reform Commission (2011a, b, 2012) could review the National Classification System with a view to agreeing an RC category that might be applied to internet content. Conroy envisioned the filter scheme would be put in place in 2012 pending legislation (Foo, 2010).

The policy ambitions to protect children from age-inappropriate content were largely set aside when Minister Conroy announced in late 2009 that filtering to help parents protect children from content they deem ‘as offensive or inappropriate’ such as ‘X18+ and gambling sites’ would be supplied by private industry not the Government, although he pledged to
encourage ISPs to provide filtering services through a grants program (Conroy, 2009a, p. 3). The policy now focused on what would be *Refused Classification (RC)* content not hosted in Australia, which would include ‘child sex abuse content, bestiality, sexual violence including rape and the detailed instruction of crime or drug use’ (Conroy, 2009a, p. 2). Although the new policy did not attempt to prevent children from seeing pornography, the policy was still justified as a protective measure to prevent children from seeing illegal content, which was nevertheless deemed to fall outside acceptable community standards for all Australians.

A new strategy was adopted by Telstra and the IIA, despite continued widespread opposition among the ISP community. The debate having continued for five years, the IIA executive claimed that some form of ‘circuit breaker’ was needed to topple the Government’s proposal. He felt that an opportunity existed ‘to remove and deal with that which is most serious’ and so isolate the issue of child sexual abuse from other categories of content (Author’s interview with IIA). The issue of child pornography had the potential to ‘take the heat out of this debate’ (Author’s interview with IIA). He explained that,

> There are as least two, probably three drivers. The first is that we need a circuit breaker in this debate it has been going on forever and ever and we think that if we can address that category of content that I think most reasonable people would find unacceptable and for which there is criminal law…then I think we may be able to take a lot of the heat out of this debate, so part of it is *an isolation strategy* [my emphasis] to remove and deal with that which is most serious. (Author’s interview with IIA)

Although debate was focused on what content categories might be assumed under the banner of *Refused Classification*, there was also some disagreement over what constituted ‘child pornography’. As the definition of a ‘child’ varies across international and within national legal regimes, being up to 18 under the UNCRC, or where the age of consent might be 16, what constitutes ‘child pornography’ was contested. For instance, not everyone agreed that animated or morphed images of children, or adults dressed as children (fetish material) should be filtered (Author’s interview with EROS). A growing problem with teen sexting and revenge porn signified a proliferation of sexualised images of children and young people finding their way on to the internet as well.
Although ISPs in Australia had strongly opposed any form of ISP level filtering\footnote{Australia was over eight years behind the UK in developing an industry measure to filter child pornography.} the Telstra, IIA and AFP executives\footnote{As mentioned in Chapter Five the police were under pressure dealing with child pornography access crimes and they believed that the filter would significantly reduce the number of investigations they currently had to address.} all believed that there was growing public support for a child pornography filter. But more than this, these executives considered that focusing on content that most people found unacceptable and which was illegal would ‘play well politically’ being viewed by the public ‘as a positive contribution’ on the part of ISPs (Author’s interview with IIA). However, the IIA and Telstra executives both stressed that public support was on its own merits not enough to secure the voluntary cooperation of the larger corporate ISPs as they did not wish to be seen policing the internet on behalf of the Government. The majority of ISPs were still vehemently against filtering the internet, and claimed that many of their customers were of the same opinion. According to the IIA executive the voluntary cooperation by ISPs was out of the question due to libertarian public sentiment, as he claimed that ‘there are constituents or customers that have pretty strongly held views about the role of ISPs in intermediating what people can see online’ (Author’s interview with IIA).\footnote{This view was also evident in the UK as the long tail of mid and small sized ISPs were likely to be more libertarian in their beliefs (Author’s interview with BSkyB).} ISPs would only implement a child pornography filter if legally obliged to do so, fearing that any voluntary action on their part would attract reprisals from hackers, customers, and shareholders.\footnote{Hackers have been problematic, see Colley (2011).} The Telstra executive reinforced this reluctance by saying that ‘cyber security experts in Telstra feel that our attempts to filter or block parts of the internet may make us target of hacktivism’ (Author’s interview with Telstra). The havoc that hackers would wreak posed serious risks not only to the company’s ability to deliver internet access, and ultimately to the corporation’s bottom line. ISPs Internode, TPG and iiNet all stated that they would not voluntarily filter, but would if the law ‘required’ them to (LeMay, 2011a). Caution would need to be taken to avoid costly attacks by hackers. ISPs were also unwilling to cooperate unless there was some form of safe harbour protecting them from liability for any breaches of access. For instance, iiNet insisted that a legislative mechanism would be required to convince their shareholders that they had no other choice, before they could participate in a voluntary filtering scheme (Author’s interview with AFP).
The larger ISPs, Optus, Vodafone, Telstra and iiNet therefore agreed to filter at the request of the AFP, who called on section 313 of the Telecommunications Act (1997) to require ISPs cooperate with police efforts to address illegal internet content (Author’s interview with AFP).\textsuperscript{101} They recognised that new legislation was not in fact needed for illegal content of this kind. Instead the Telecommunications Act (1997) that had in the past been used to remove Australian pornography sites from Australian ISP servers, could also be used to require ISP assistance with blocking illegal child pornography sites. The AFP executive explained:

\begin{quote}
Very early on we used Section 313 (of the Telecom Act) to block things, to block websites for instance, like if we knew there was a pornography website on the internet, we would use a Section 313 notice and get through ACMA the relevant Telco to take it down. So that was already a tool that we used. (Author’s interview with AFP)
\end{quote}

To overcome the resistance of ISPs, Telstra in conjunction with the Internet Industry Association and the Australian Federal Police, devised a system whereby industry could filter child pornography independently of the Australian Government and avoid debate about Government credibility and debate about what defined child pornography.\textsuperscript{102} In order to avoid Government control of the blacklist, the industry sought to align with ‘already established international precedents’ and ‘international best practice’ (Author’s interview with IIA). Although the Australian Federal Police could also have produced a list of their own, the AFP executive pointed out that an overseas list could act as an independent arbiter of the scope of the filter providing much needed legitimacy after the ACMA blacklist leak had intensified public and industry mistrust of the Government’s agenda (Author’s interview with AFP). He explained,

\begin{quote}
We felt to get buy-in from the ISPs it was important that there was seen to be some level of independence from Australia in relation to determining what abhorrent material was and what it wasn’t. That was our rationale. We sold it [a child pornography filtering regime] on the fact that to get on that list in the first place it had to be reviewed by two officers from two different countries, and deemed to be child pornography looking at this set of criteria which is the modified code point scale basically. That was pretty much able to be very easily sold to all the ISPs because it
\end{quote}

\textsuperscript{101}iiNet was a consistent opponent to any regulation of the internet (Moses, 2009a; Newton, 2008, 2009).

\textsuperscript{102}Whereas some state prosecutions include animated or fetish material designed to look like children, the filtering system now in place defines child pornography very differently, excluding animated materials and only including materials up the age of 13.
w asn’t the AFP making the decision, it wasn’t the Australian government making the decision, it was INTERPOL. So that was the rationale behind that. Now we could have done it, I mean there was no problem, we had a list, every police force has a list. (Author’s interview with AFP)

The INTERPOL blacklist provided a minimum threshold that avoided the contested terrain of teenage sexuality, computer generated images (morphed or animated) or illegal fetish material such as models dressed to look like school children. According to the IIA executive, the INTERPOL blacklist included ‘actual depictions of children under the age of 13 being sexually assaulted’ (Author’s interview with IIA), and did not include images of children aged between 13 to 18 due to the difficulty in getting broad global agreement about what constituted ‘childhood’ sexual exploitation or abuse. With a lower age criterion the INTERPOL blacklist was more conservative than would be the case under the Federal Government’s proposed mandatory filter. According to the Telstra executive,

The URL blacklist that might be proposed by ACMA here in Australia might number two or three thousand, whereas the domain “worst of” list that INTERPOL [...] is about 400 odd sites. (Author’s interview with Telstra)

Fears of the unknown scope of the Federal Government’s RC category were bypassed by aligning with international standards, as the IIA CEO explained,

We have sought to rebalance the political debate around distinguishing between illegal content that should be illegal to possess such as child pornography on the one hand, and offensive content which is a much broader category of content. And I think the Government really made things much harder for themselves in starting to talk about Refused Classification as the threshold that they would impose through a mandatory filtering scheme, but the problem with that is that it doesn’t map neatly with any other international standard, it includes a degree of subjectivity around suitability, whereas I think with child pornography there is a universal objective standard. (Author’s interview with IIA)

103 Additionally, the INTERPOL list identified Domain Names rather than specific URL (page) addresses. DNS filtering is a coarser and less complicated system of blocking that may block innocent content along with illegal content (Author’s interview with Watchdog).

104 Although DNS blocking tends to block not just the offending URLs, but all sites associated under the Domain Name, this issue of potentially blocking innocent webpages is dealt with by INTERPOL who claim the severity of sexual abuse outweighs any consideration of blocking innocent sites. At the same time, the Government’s blacklist would potentially use URLs in order to prevent overblocking, but in doing so the number of web pages being blocked may number in the thousands. Additionally, the Government’s goal of blocking a range of content outside of child sexual abuse images would potentially expand well beyond a few thousand URLs.
The broader scope of the Government’s filtering policy was effectively sidestepped, having been reduced to the ‘the worst of the worst’ child sexual abuse images of children under the age of 13 (“The INTERPOL ‘Worst of’ List”, 2015). Additionally, since INTERPOL would deal with all public complaints there would be no investment required on the part of Australian ISPs.

The decision to voluntarily filter child pornography could have been used as a branding tool to promote a sense of corporate responsibility. However, participating ISPs opted to keep it low-key for fear of reprisals from hackers defending libertarian ideals. Evidence of ISP cooperation was countered by press coverage organised by the IIA and Telstra, despite the likelihood that most Australians would view the filter positively (Author’s interview with IIA; Author’s interview with Telstra). The Telstra executive highlighted the role of the IIA as an important part of the PR process, in that, despite his key role in gaining the agreement of the other large ISPs, Telstra like other ISPs did not wish to draw attention to their willingness to filter. He claimed that the IIA took the lead in promoting the filter as this drew less attention to participating ISPs. He stressed,

…we allowed that to happen because we didn’t want to look as though we were taking opportunities to promote our brand around this issue, point one. Point two is the hacktivism issue. (Author’s interview with Telstra)

After Telstra established the filter, it was reported that the technology did not impair internet service speeds, and the news that Telstra’s system had blocked 84,000 requests for child pornography in its first three months reinforced its success in protecting internet users from accessing illegal child pornography (Braue, 2011; LeMay, 2011c).

By requiring ISPs under Section 313 of the Telecommunications Act to block a blacklist of child pornography issued by the Australian Federal Police, filtering was contextualised as a method to address illegal content, which it was felt lessened the likelihood of hackers attacking ISP networks. However, the AFP did not (and continues not to) automatically make this request, proceeding only if an ISP shows an interest in participating in the IIA voluntary Code of Practice (Australian Law Reform Commission, 2012, p. 297). The Telstra executive, who was a key instigator behind adopting the INTERPOL list, was adamant that the industry solution did not equate to issues of censorship or freedom of speech.

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105 For an explanation of the problems of DNS filtering see “The Perils of Using the Doman Name System to Address Unlawful Internet Content” (2011).
but was one of fighting ‘crime on kids’, which he was very passionate about, no doubt, due to his policing background (Author’s interview with Telstra). In planning to disrupt the Government’s filtering policy, the AFP, Telstra and the IIA coordinated a new rhetoric of ‘crime prevention’ to depoliticise and distance debate from the Government’s original censorship goals. The function of the filter was carefully publicised as ‘blocking notified sites’, rather than ‘filtering a blacklist’, and contextualised as a law enforcement issue to be carried out using the existing Section 313 of the Telecommunications Act (Author’s interviews with Telstra and the IIA).

Even more interesting is that these negotiations were conducted between private actors behind closed doors. Minister Conroy himself was unaware of the industry’s plan to exclude Government from any control over the content to be filtered. The media was also in the dark, reporting that ISPs would use a blacklist provided by the ACMA (Foo, 2010; LeMay, 2011a). When the media reported that Conroy was unaware of the industry’s intention he was clearly embarrassed and fearful that this move by the industry would further deflate support for his broader filtering goals. The Telstra executive explained;

Conroy fronted me about it because he felt we were undermining his RC blacklist. I said Nah! This is good. I’ve seen this stuff we need to stop it. And to his credit he said “okay but it doesn’t stop us from going forward with the RC list”. (Author’s interview with Telstra)

Once the three larger ISPs, Telstra, Optus and Primus had begun to filter there was little Minister Conroy could object to, especially in light of Telstra’s promise to further cooperate, should he manage to legislate for filtering of a revised RC classification (Author’s interview with Telstra; Foo, 2010). While effectively implementing the ‘circuit breaker’ to defeat the government’s filtering plans (Author’s interview with IIA), the Telstra executive alluded to the commercial significance of maintaining good relations with Government and so assured the Government they would comply with future legislative requirements should these eventuate:

So the point is that when the RC list comes through […] we have committed to Conroy […] don’t forget that relationships with the government during this National Broadband Network period were incredibly important to Telstra because we’ve have got ourselves in this hole, we are getting rid of our copper and replacing it with fibre

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106 As a voluntary scheme the larger corporate ISPs have implemented child pornography filtering systems, but getting all ISPs to do so remains problematic.
…we have committed to doing it, we won’t go back on our commitment. (Author’s interview with Telstra)

Telstra’s commercial involvement with the government’s roll out of a National Broadband Network was an obvious incentive for corporate ISPs to devise a form of industry self-regulation (Conroy, 2010b). According to the Telstra executive, Telstra’s eventual choice of filtering software took into account the possibility that Federal Government may eventually legislate for the filtering of RC material, in that it had the capacity to extend from the domain level needed to filter the INTERPOL blacklist, to filter a larger scale of content at the URL level (Author’s interview with Telstra).

Telstra and Optus introduced filtering systems, followed by Vodafone a year or so later (Curry, 2011). Overall, the strategies of private actors left the government with a much-diminished argument for introducing a Government filter. Conroy had announced the delay of the Government’s filtering plan until a review of the RC category and revised transparency and accountability measures could be carried out by the Australian Law Reform Commission (ALRC). Should they win the upcoming election he envisioned that the RC mandatory filter would be in place by 2012 (Kelly and Foo, 2010). However, on November 8, 2012 Minister Conroy formally abandoned the Government filtering policy stating that the Government did not need to proceed with mandatory filtering legislation given the success of the voluntary measures adopted by ISPs (Conroy, 2012a and b; Coorey, 2012; Grattan, 2012; Moses, 2012; Packham, 2012).

In summarising the strategies of these private actors, the introduction of child pornography filtering was a deliberate strategy by elite private actors within the ISP industry that ensured the cooperation of a reluctant private sector, while putting an end to the Government’s broader filtering policy ambitions. By utilising the INTERPOL blacklist, industry was able to claim a commitment to ‘global best practice’ in child protection while also ensuring the state could not control the blacklist. Further, private actors effectively avoided the potential costs and business risks that would have resulted from a state-run filtering scheme. Minister Conroy’s attempt to develop a Refused Classification category of content, while confirming his support for filtering child pornography and other illegal content, actually reassigned the issue of children’s exposure to pornography to market processes, as his policy announcement indicated intended filtering would just attend to RC-rated content, while ‘optional ISP–level filtering’ would be available to families through normal market processes (Conroy, 2009b). Essentially the state’s policy goal of providing an
optional ‘cleanfeed’ to protect children from internet pornography and other illegal and harmful content was set aside.

A key problem with this result is that the resulting filtering regime has no real connection with the state and therefore lacks legitimacy or transparency. For instance, while section 313 of the Telecommunications Act had historically been used to remove prohibited material found on Australian servers, the industry model that called in section 313 to require ISPs to block child pornography was framed as a matter of blocking ‘illegal activity’, which had the effect of opening the door for other Government agencies to request ISPs to block content. Its secret use by the Australian Securities and Investments Commission was brought to public attention in early 2013, when it was discovered that it had resulted in over blocking, raising alarm about the Government’s ability to target other online activities without public debate, scrutiny or oversight. This has since led to an Inquiry into the use of subsection 313(3) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services (Commonwealth of Australia, 2015). Effectively the ISP industry, while succeeding in setting up a voluntary industry filtering system, paved the way for other government agencies to use the same legal mechanism behind closed doors without any public or regulatory oversight (Pearce, 2014).

Policy Shift toward Cyber Security, Crime and Individual Self-Regulation

The Australian Law Reform Commission review was aimed at ‘balancing individual rights with community standards and protection of children’ (Australian Law Reform Commission, 2011b, p. 43) while also insisting that such a solution should not introduce unnecessary regulatory costs that would impede the ability of Australian digital service and content industries to compete in the global media environment. Several inquiries and reviews fed into the inquiry in order to consider both private and civil interests while assessing what the RC category might involve. Two particular inquiries are of interest here as they indicate a shift away from state regulation, to a focus on regulating the conduct of children. The report by the Senate Standing Committee on Environment, Communications and the Arts,

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Sexualisation of Children in the Contemporary Media (2008), declared that civil concern about children’s ‘inappropriate sexualisation’ was increasing. However the Inquiry into Cyber-Safety Entitled High-Wire Act: Cyber-Safety and the Young (2011) by the Joint Select Committee on Cyber-Safety, suggests a shift in focus as it reported that ‘young people’s use of the internet and possible cyber-safety threats, including cyber-bullying, exposure to illegal and inappropriate content, inappropriate social and health behaviour in an online environment (technology addiction, online promotion of anorexia, drug usage, underage drinking and smoking), identity theft, and breaches of privacy’ were now a major concern.

In February 2012 the results of the Australian Law Reform Commission review outlining a proposed new RC (prohibited) category recommended that:

– The existing RC category be replaced by a narrower category
– That the Classification Board would determine prohibited content
– That ISPs only be required to filter prohibited content, not broader categories of content deemed harmful to children, and
– That it was unrealistic to expect that the state solution would filter all the prohibited content available on the internet so that only subcategories would be filtered by ISPs. (Australian Law Reform Commission, 2012)

Overall these recommendations amounted to a downsizing of state obligations to enforce national media standards in the converged media environment.

Pyburne and Jolly have argued that there was a shifting in priorities not only due to a decline in political support for the filter, but due to the increasing international discourse of ‘internet safety’ which shifted attention away from the notion of ‘family safety’ to a ‘broader notion represented by the idea of cyber security’ (2014, p. 28). This was also the assessment of OpenNet Initiative (n.d.) which identified that states now took more interest in regulating cyberspace using ‘the convenient rubric of terrorism, child pornography and cyber security’ (Deibert and Rohozinski, 2010, p. 4).

While Minister Conroy’s Department pursued formal media regulation and enforcement, a different arm of Government focused on the regulation of internet users. The Australian Communications and Media Authority (ACMA) increasingly focused on children’s misuse of Web 2.0 technology (Foo, 2008) and increasing public awareness of online safety and digital citizenship norms through established programs run by the ACMA and Cyber-Safety Online. The ALRC recommendations appeared to reinforce a neoliberal
preference for individual user self-regulation by recommending that children’s exposure to adult content be dealt with by:

- Public education about the use of parental locks and other technical means to protect children from exposure to inappropriate media content
- Digital literacy and education programs
- The use of PC-based dynamic content filters, and
- User reporting – or ‘flagging’ – of inappropriate content. (Flew, 2012b, p. 12)

Essentially this made no reference to ISP network level filtering (either voluntary or mandatory), and instead suggested that PC filtering would suffice, disregarding the now extensive problem of the multiple devices and access points through which children used the internet. The anticipated regulatory regime recommended by the ALRC signified a return to a neoliberal model whereby the classification work to be done would be delegated increasingly to ‘authorised industry classifiers’ while being ‘subject to regulatory oversight and review’ by a yet to be established ‘single regulator’ (Flew, 2012b, p. 12). In looking to adult industries to improve age-verification and warning mechanisms, these recommendations failed to account for the fact that many Australian pornography businesses were hosted offshore and would therefore be beyond Australian regulation.

A concurrent Government review of age-verification processes was carried out by the ACMA (2007-2014), proposed a new framework for content regulation (to take into account mobile and streaming online content). The 2007 Restricted Access System Declaration (RAS Declaration) (Australian Communications and Media Authority, 2014a) prohibited all R18+ and some MA15+ content online, unless content was behind a restricted access system to prevent children viewing this material (Australian Communications and Media Authority, 2014b). The ACMA were required to ‘develop a restricted access system declaration (RAS Declaration) to regulate access to MA15+ content and R18+ content including content with an Australian connection that is delivered via the internet and via mobile networks, and also both stored and live streamed content’ (Australian Communications and Media Authority, 2014b). The RAS Declaration 2007 stated that ‘it requires online content services providers to take reasonable steps to restrict access to such content, while also allowing them the flexibility to choose a system that best accords with their business practice’ (Australian Communications and Media Authority, 2014b). Further, it was resolved that content providers would not be required to keep records or their processes be subject to review thus, ‘providing industry providers with a greater level of flexibility in designing compliant access restriction systems’ (Australian Communications and Media, 2014a). This regulation
appeared to address Australian content providers only, and appears weighted toward the interests of private actors, especially when compared to the UK’s approach to age-verification (discussed later in this chapter).

While the focus was to improve age-verification processes within Australia, internet service and content providers have opposed the proposal that there be formal regulatory review processes to assess industry compliance (iGEA, 2014; Little, 2014; Patten and Murray, 2014). A Telstra submission captured this industry resistance to formal regulatory review:

Industry should not be required to retain records or be capable of providing an audit trail to prove that the age verification step has been performed. The fact that the process is in place and is subject to internal reviews and assurance activity should be sufficient. Also, industry should not be required to provide a risk analysis around the method used to prove age, given the additional cost and obligation this will impose on industry (Little, 2014).

Once again it appears that private actors did not want to be accountable by formal review of their age verification processes arguing this would introduce burdensome compliance costs.

By 2014, the Federal Government paid increased attention to children’s antisocial and risky behaviour by focusing on the regulation of individuals through discourses of individual self-governance (Rose, 2000; Wacquant, 2010). Government press releases often addressed individual online conduct through discourses of ‘digital citizenship’, and issues of harmful content through discourses of ‘internet safety’ (Conroy, 2008d, 2010c). More recently, the Abbott Government\textsuperscript{108} established the Office of the eSafety Commissioner,\textsuperscript{109} whose remit was to address online content and online behaviour. The Office of the Children’s eSafety Commissioner promotes awareness about a range of products available on the market, and tools provided by search engines, social media platforms such as YouTube Kids and Google Safe Search, as well as parental control options provided by iTunes, the App Store and the Google Play Store (Office of the Children’s eSafety Commissioner, 2016, p.6).

However, in addressing content, the powers of the Office refer back to the Broadcasting Services Act 1992 - Schedule 5 (n.d.) which allows private actors to administer their own industry standards. There is no mandatory blocking of \textit{RC} content hosted overseas.

\textsuperscript{108}Prime Minister Tony Abbott came into office on the 18 September 2013.

On the other hand, there are new legislative provisions that deal with user generated content with the office administering a cyber bullying complaints scheme that works with victims of cyber bullying who have had little success in getting social media companies to remove damaging content. Aside from the power to issue individuals with take down requests, the Office works on a case-by-case basis to negotiate the removal of such content with global social media companies. The issue of commercial content regulation has been sidestepped by a focus on internet users and their generation of harmful content. The powers of the eSafety Commissioner do extend to issues of sexual violence against women through the eSafetyWoman campaign to help women manage the risks of cyber stalking and precautionary advice to limit harmful communications with children during domestic violence. Overall, while many of these educational initiatives may be useful, the overall focus adopted is consistent with neoliberal political rationale of responsibility that obligates individuals in their own security (Wacquant, 2010).

**Reviewing ISP filtering in Australia**

Despite the failure of the Rudd Government to introduce a mandatory filter or self-regulatory industry practice to offer network level filtering, calls for ISP network level filtering to protect children resurfaced in the recent Senate inquiry into pornography in Australia titled *Harm Being Done to Australian Children through Access to Pornography on the Internet* (Commonwealth of Australia, 2016). Quite a number of civil sector organisations have voiced their concerns through submissions, among them were Catholic, Anglican and Presbyterian groups, the ACL, and child, youth and family agencies such as Gold Coast Centre Against Sexual Violence, The Alannah and Madeline Foundation, Family Council of WA, Bravehearts, and the Australian Council on Children and the Media (Commonwealth of Australia, 2016, p. 38).

While reviewing filtering efforts in other countries, the Senate inquiry did not review how many ISPs in Australia provide network level filtering services, nor how many family households have taken up these services making it difficult to assess the industry self-regulatory scheme. The industry Code of Practice requiring ISPs ‘to make available an accredited internet content filter (Family Friendly Filter) at or below cost price’ (Communications Alliance, 2016, p. 6) has remained basically unchanged since it was
established by the IIA in 2002. Corporate private actors such as Telstra have launched Telstra Broadband Protect (not branded as a pornography filter but as an internet security suite) which offers ‘parental controls with website filtering, antivirus and social network protection’ (Turner, 2015). In the case of Telstra’s Broadband Protect, filtering is bundled with other security features and sold for an additional fee of $9.95 AU per month, effectively commoditising security concerns. It would seem to muddy the waters in terms of the industry Code of Practice that requires ISPs to offer filtering services at or below cost. New functions give parents the ability to monitor children’s social interactions and video consumption on YouTube, Facebook and Twitter (Turner, 2015) allowing, and advocating that parents more intensively regulate their children’s internet activities.

Nevertheless, as the Senate inquiry has pointed out, there is still considerable interest in both commercial and default-on internet filtering at the ISP level (Commonwealth of Australia, 2016, pp. 37-43). The idea of ISP filtering continues to have some traction in Australia as the Senate inquiry into the Harm Being Done to Australian Children through Access to Pornography on the Internet (Commonwealth of Australia, 2016, pp. 37-43) reported that filtering advocates now support the adoption of industry self-regulatory policy developed in the UK, as the following section outlines. However, at the time of writing this thesis, the Australian Government had no plans to pressure private actors into voluntarily providing improved ‘whole home’ filtering services (Gorey, 2017), effectively leaving this to market mechanisms.

**Industry Self-Regulation in the UK**

Given that the boundaries between legal and illegal pornography were somewhat muddied in the new internet environment, in the UK removing pornography to prevent children’s exposure was highly contentious. During the early phase of the internet ISPs fought proposed regulation which would have made them liable for content hosted on their networks. This was in part due to the perceived economic consequences should ISPs be liable. ISPs in Europe and the UK argued, as had Australian ISPs, that burdening them with liability for content produced by others would seriously affect their emerging businesses to the degree that ‘the ISP industry might be rendered uneconomic’ (Edwards, 2011, p. 6) and therefore not

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considered to be in the consumer’s best interest. In the UK and across Europe (as in Australia), there was ‘strong state interest in ISPs, as the only effective gatekeepers, taking up the role of cleaning up the Internet, i.e., ridding it of pornography, spam, libel and other forms of undesirable content’ (Edwards, 2011, p. 6). However, by the turn of the millennium ISPs were given ‘safe harbour’ in that they were not to be held responsible for third party content, providing they removed content identified as illegal, on request. European law has prevented steps to make filtering mandatory among its member states.\textsuperscript{111} In the UK, given that the safe harbour provision rested on ISP cooperation, it was in the interests of large ISPs to do something. Private actors limited their response to focus solely on the issue of commercial trade in child pornography. In 1996 the ISP industry founded the Internet Watch Foundation (IWF), a private charity that worked with police, government, internet industry and the public with the aim of combating the illegal commercial trade in child pornography and reducing the sexual abuse of children. In the first instance, this organisation established a system of notice-and-take-down whereby ISPs would voluntarily remove the content once made aware of it. However, civil concerns continued to escalate. John Carr (of the UK Children’s Charities’ Coalition on Internet Safety) maintained a media presence reporting that child pornography crime was growing rather than declining (“Net Blamed for Rise in Child Porn”, 2004). Ultimately, the notice-and-take-down regime did not address child pornography hosted overseas.

To address this, the largest ISP British Telecom (BT) launched in 2004 a filtering system that it called Cleanfeed, which blocked known overseas child porn websites identified by the IWF (“BT Puts Block on Child Porn Sites”, 2004). However, while viewed as an exemplary model of industry self-regulation in Western democratic countries, such filtering was not universally implemented across all British ISPs. Although the Government had requested that all ISPs should filter child pornography by 2007, smaller ISPs did not comply. The National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo organisations claimed that over 700,000 homes could still access child abuse websites due to their noncompliance (Williams, 2009), and the Children’s Charities Coalition on Internet

\textsuperscript{111}A draft EC Directive in 2011 proposed that all EU member states should use filtering to block child pornography, but the European Parliament did not let this pass. See the directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (29.03.2010) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0094:FI.
Safety (CCCIS) maintained that ‘self-regulation on this issue is obviously failing - and in a seriously damaging way for children’ (“Online Child Abuse Images Warning”, 2009).

Nevertheless, smaller ISPs continued to object on economic and principle grounds (Williams, 2009). The regulatory executive of the London Internet Exchange (LINX) voiced his objection to the use of filters to solve what he saw as a responsibility for state law enforcement (Author’s interview with LINX and EuroISPA). He was reported as claiming that small ISPs reject calls to filter out child pornography as ‘it would mean spending a lot of money on something that simply does not work’ (Williams, 2009). While the IWF promoted filtering as a protective measure stopping accidental exposure by the average internet user, he maintained filtering was ineffective since, even if all ISPs filtered this content it could be circumvented by determined paedophiles, challenging the view that the industry’s full cooperation would be necessarily effective (Author’s interview with LINX and EuroISPA; Williams, 2009). The LINX executive held the view that it was the state’s job to stop the production of child pornography at source (Author’s interview with LINX and EuroISPA). Industry self-regulation presented disproportionate and unwelcome costs to smaller companies, not only in the form of IWF membership fees, but also the cost of filtering technology. Even though new low cost filtering solutions had emerged (Williams, 2009) this made little difference to the attitude of smaller ISPs (Author’s interview with Watchdog International). Without Government legislation requiring ISPs to block illegal child pornography, the implementation of filtering in the UK remains incomplete, due to the ongoing resistance from smaller ISPs.

In imposing an industry self-regulatory model a lower threshold was applied, as the IWF took a minimalist approach to defining child pornography which might not have been the case should the state have enforced its own filter following established child sexual abuse laws. As the LINX executive explained,

The UK law has defined a child for these purposes being 18 but the IWF doesn’t really operate 18 and certainly doesn’t not operate 18 for level one images. They

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112 INX represents member ISPs with regard to public policy and claim that they ‘are not only working for the benefit of our members, but also for the Good of the Internet as a whole’ (LINX, n.d.) Retrieved from https://www.linx.net/about.

113 It is also worth noting that the government’s campaign for ISPs to filter the IWF blacklist was aimed largely at ‘residential lines’. The resistance from ISPs servicing business clients was, according to the regulatory executive of LINX, likely due to the risk of losing high value of customers should there be technical failure due to the filter (Author’s interview with LINX and EuroISPA).
consciously apply a relatively conservative approach to interpretation of the law particularly at the age boundary and at the level standard. So if the assessor thinks this is probably a 17 year old and it’s clearly no more than a level one image then it’s probably not going to get a notice-and-take-down or go on a blacklist. (Author’s interview with LINX and EuroISPA)

In light of their status as a private charity rather than a public authority with legislative underpinnings, taking a minimalist approach enabled the IWF to maintain widespread support among ISPs and the public. He claimed that it has been important for the IWF to prevent controversy in order to ‘maintain universal support for its approach’ and ‘that maintaining essentially near universal support’ has been quite an achievement (Author’s interview with LINX and EuroISPA). However, in taking a minimalist stance with regards to defining child sexual abuse this self-regulatory model falls short of reflecting state laws defining child sexual abuse.

The limits of self-regulation: The IWF and ‘extreme pornography’

Following the murder of Jane Longhurst by a man who consumed extreme media such as necrophilia, rape and female asphyxiation (“Ban on Violent Net Porn Planned”, 2005; “Victory for Victim’s Mum in Crackdown on Web Sex Violence”, 2006), the British Government introduced a new law criminalising ‘extreme pornography’ (Section 63 of the Criminal Justice and Immigration Act 2008 (n.d.), enacted on 26 January 2009). This made it an ‘offence to possess pornographic images that depict acts which threaten a person’s life; acts which result in or are likely to result in serious injury to a person’s anus, breasts or genitals; bestiality; or necrophilia’ (Extreme Pornography, n.d.). However, it did not insist that ISPs block this content but did exert pressure for industry to self-regulate, as the regulatory manager of Cable & Wireless commented,

All things considered the government aren’t certainly going “oh my god we need to legislate against this [extreme pornography]”, but what they are saying is “we could legislate if we wanted to but you ought to do it under self-regulatory approaches”. (Author’s interview with Cable & Wireless)

The IWF did explore whether it could extend its remit to include extreme pornography materials given that these were now illegal to possess. In the LINX executive’s view, the IWF could in principle have extended its remit to include this now illegal material, but clearly did not want to overreach for fear that without a clear definition as to what was illegal, their decisions would become controversial. Unlike child pornography, extreme pornography did not have ‘an objective predictable standard’ and so the IWF decided against it. In this case,
the state failed to come up with well-defined categories to identify extreme pornography so that this content evaded ISP filtering, demonstrating the limitations of industry self-regulation.

In terms of the issue of children’s exposure to internet pornography, fixed line ISPs did not pursue filtering this content. However, industry self-regulation did occur within the UK mobile operator industry in 2004 (Independent Mobile Classification Body, 2005). The video and streaming technologies of cell phones enabled new business models whereby mobile operators could profit by driving third party content to customers. Typically termed premium content services, adult content presented a lucrative market opportunity. Due to the emerging mobile business model, mobile operators had prior knowledge as to what content they would be putting on their networks so that the safe harbour provisions would not apply. Mobile operators needed to circumvent liability and the easiest way to do this was to voluntarily impose censorship and restrictions (Independent Mobile Classification Body, 2005). In order to pre-empt public concern about adult content being marketed through new cell technologies (Independent Mobile Classification Body, 2005, p.3), and to ensure that the industry could fully maximise this new business model, the industry introduced its own filtering system. The LINX executive explained,

> As far as images that are not suitable for children, there is a definite division between fixed and mobile in the UK. The mobile industry took the view that they were going to have aggressive filtering of everything. They were going to filter out whole categories of services that had the potential to be harmful to children, and then lift the filter on request, on proof that the account holder giving that instruction was over 18. (Author’s interview with LINX and EuroISPA)

Although the porn block could be lifted at the request of the account holder if over 18, the LINX executive emphasised that the Code was still overly prohibitive, as according to him,

> They don’t just filter stuff that is deemed harmful to children; they filter services that have the potential to do that, so for example you can’t access chat rooms at all. Things like Yahoo chat, real time chat, anything like that will be classified as 18 material. They are not just blocking stuff of prurient interest, they are blocking stuff that many people would want to have access to, which arguably makes it less of a precedent [for fixed line ISPs to filter] yeah? (Author’s interview with LINX and EuroISPA)

It is also interesting to note that while claiming to have imposed an industry-wide Code of Practice, some mobile network operators could not easily comply given their distinct operating platforms did not allow it. Blackberry is the obvious example as the BSkyB executive noted,
We do need to talk to Blackberry because they are outside the tent. That was a surprise to everybody. Everyone thought that they were like every other network then it transpired that if you were using a Blackberry…you won’t be filtered at all. It is because of the way they have their servers separately. (Author’s interview with BSkyB)

Once again, gaining the full industry compliance under a self-regulatory model was not entirely achievable. The net result is that children and youth using Blackberry phones were exposed to adult content being purposefully marketed as ‘premium services’ through mobile phones (Carr, 2012; Kinchen and Mill, 2011; Millward, 2011). The industry-run regime continued until 2013, when the British Board of Film Classification (BBFC) was asked to oversee the classification work from the Independent Mobile Classification Board (IMCB) (“BBFC Replaces the Independent Mobile Classification Board”, 2013). This is interesting as the mobile industry while self-regulatory between 2004 and 2013, only recently turned to the BBFC to oversee their system bringing them into line with statutory classification.

**State Pressure for Default-on Pornography Filtering Between 2011-2014**

In the UK support for filtering pornography was not forthcoming among fixed line ISPs. Their focus had remained on child pornography, but there was increasing civil and state pressure to address the issue of children’s exposure to pornography although the state continued to pursue a model of industry self-regulation. In 2010 Prime Minister Cameron launched an inquiry into the premature sexualisation of children (Bailey, 2011). According to the regulatory manager of BSkyB, the Government was saying to ISPs ‘look this is an issue what can you do about it?’, and so they and other large corporate ISPs were discussing possible industry solutions with the Department for Culture, Media and Sport and Ofcom (Author’s interview with BSkyB). The Bailey Review (2011) published in 2011 made several recommendations. It stressed that parents needed to make an ‘active choice’ in protecting their children from pornography exposure. The larger ISPs latched on to this term, and devised a response which they felt would ‘make it easier for parents’ but would preserve the right of parents to choose whether to use filtering (Author’s interview with BSkyB). In this way the larger corporates appeared to make progress toward providing better filtering services, while at the same time subtly opposing state market intervention. According to the BSkyB executive, this term Active Choice served to distract from the heated public debate about whether the state should legislate for ISPs to provide a ‘default-on’ filtering service to
family homes that some claimed to be censorship by design (but that would allow adult internet account holders to ‘opt-out’ if they so wished). The BSkyB executive summarised the negotiations:

So where we got to was you need to present people with a choice, yes or no. And then you get away from is it ‘default-on’ or is it ‘default off’. In fact you could probably argue that it is either of those two things, you can’t go any further until you have pressed one button. We said as ISPs we can deliver a practice that we can all buy into rather than arguing default-on or default-off, opt-in or opt-out which gets really emotive, really emotive. (Author’s interview with BSkyB)

From his point of view, BSkyB and the other large ISPs put considerable time and money into developing an industry Code of Practice around the principles of Active Choice. He stated that, ‘we started thinking about this in the summer and it took us nearly a year just to do that. And that is not a lack of wanting to do something, not a lack of will, we have wanted to do it, it just takes time, you know’ (Author’s interview, BSkyB).

However, according to the BSkyB executive, maintaining influence over policy was difficult due to back bench MPs having a different agenda from other ministries within Government. While the Bailey Review had prompted ISPs to discuss how parents might make an active choice about using a range of available filtering products, Conservative MP Claire Perry led an Independent Parliamentary Inquiry on Online Child Protection (2012) and launched a campaign urging ISPs to employ ISP network level filtering to provide a pornography-free service. She stated that it was ‘time that Britain’s internet service providers, who make more than £3bn a year from selling internet access services, took on more of the responsibility to keep children safe, and the government needs to send a strong message that this is what we all expect’ (“MPs Call For Better Porn Filters to Protect Children”, 2012). The BSkyB executive maintained that ISP network level filtering was not a formal Government objective at this time, and Perry’s demands for default-on ISP network level filtering went further than the policy being developed through formal dialogue between private actors and the Government’s Department for Culture, Media and Sport, and Ofcom.114 He stressed that for industry to self-regulate in this way would require an awful lot of time and negotiation;

114 Claire Perry led an Independent Parliamentary Inquiry into Online Child Protection (2012) that was particularly concerned about online pornography. Prime Minister David Cameron then appointed her as an advisor on preventing the sexualisation and commercialisation of children.
so whilst it may be a suggestion that the regulation of this gets harmonised, there is a lot in that, trying to work out how that would work, who would do it, you know how do you police this sort of thing, who is responsible? Is it the government or a third party? It’s pretty challenging. (Author’s interview with BSkyB)

Further, working with the Government in maintaining an industry self-regulatory approach had its challenges since, according to him, the Government lacked the technical expertise to articulate policy. He claimed that,

When we originally did the [industry] code and we said to ministers “what do you actually want? What are your objectives?” But they didn’t ever articulate it to us. (Author’s interview with BSkyB)

Although self-regulation was the preferred model, the threat of Government legislation meant that agreements between private and state actors were unstable;

Self-regulation is better because we can achieve some things, but the point for us is that, you know you keep on giving and you have certain elements who just keep on wanting more, who keep changing the goal posts. So that is the risk with the self-regulatory approach, you never know when you have ticked the box, it just keeps carrying on, and you know if these investments that we are having to make are in the millions and tens of millions, you can’t keep doing that. (Author’s interview with BSkyB)

One key element of the Active Choice approach developed by ISPs was that they would ask customers if they wanted a filtered service, thus giving parents a choice. However, ISPs did not want to be judged as to how many parents did or did not make the choice to use filters. The industry did not want to be in the position where it had to achieve high take-up levels through selling this idea to parents. ISPs argued that as parents may opt to use other strategies ISPs should not be judged on the percentage of their customers taking up filtering. Adopting a neoliberal market-based view, the BSkyB executive stated, ‘we are not going to say if we don’t get 80% of our parents using parental controls it’s failed. That’s not our view at all’ (Author’s interview with BSkyB).

While ISPs pursued developing the Active Choice Code of Practice that would focus on giving parents homogenised advice about internet risks, safety measures, and inform them about filtering tools available on the market, Prime Minister Cameron and MP Claire Perry pursued a more rigorous goal of establishing ISP network level filtering across the four largest ISPs (Fiveash, 2013). TalkTalk’s existing Homesafe filtering service destabilised industry claims that there was insufficient market demand for filtering. TalkTalk’s Homesafe filtering service began in May 2011 due to their commercial decision to develop a filtering
service, and according to the regulatory manager of TalkTalk their product was well-received;

We have about four million customers. Over the first year we had about 300,000 people sign up you know, which at about 8% isn’t huge. But now when we offer it at point of sale, we find that about a third of our customers take it up, which is not far off the proportion of our customers that are families with children. So it’s probably the majority of families with children who sign up with us choose to turn it on. (Author’s interview with TalkTalk)

UK ISP filtering review

Since these interviews were conducted in 2012, the BT Sky and Virgin have voluntarily implemented some form of network level filtering service and offered this under the Active Choice industry Code of Practice. This took effect from an agreement made between the UK government and the four largest ISPs BT, Sky, TalkTalk and Virgin Media in July of 2013 (Miller, 2014). However, the regulatory body Ofcom reported variable results in the implementation of the Active Choice scheme.\textsuperscript{115} The initial percentages of customers opting for filtering varied noticeably between TalkTalk (36%) and Virgin Media (4%), BT (5%); and Sky (8%) (Miller, 2014; Ofcom, 2014b). BT and Sky launched filtering services toward the end of 2013, but Virgin Media apparently launched their service after the deadline set by the UK Government (Ofcom, 2014b). An Ofcom report noted that the process through which Virgin carried out the Active Choice campaign typically ‘bypasses or ignores the filtering choice’ (Miller, 2014). In other words, Virgin was found to be failing in its execution of the Active Choice program. Clearly, different marketing processes between companies produced different results. In 2015 the regulator Ofcom reported that ‘fewer than one in seven households installed the feature, which is offered by BT, Sky, TalkTalk and Virgin Media’ (Miller, 2014; Ofcom, 2015b. p.4).

The commodification of security

TalkTalk had commodified public anxiety about content risks to children by launching their commercial Homesafe filtering service well before the Active Choice scheme was established;

\textsuperscript{115}The filters block pornographic websites, as well as pages promoting self-harm or drug taking (Miller, 2014). The Active Choice Code of Practice involved the ISP actively asking new clients if they wanted a filtered connection.
From our perspective it’s been great because the Westminster political scene has kind of taken hold of it [filtering pornography] and at the moment they are probably the best source of free marketing that you can possibly get … we did it because commercially we thought it was the right thing to do for our customers etc. and suddenly there is this wild fire going on in Parliament, admittedly we stoked it a little bit and encouraged it. (Author’s interview with TalkTalk)

The TalkTalk executive claimed that parental awareness of the service was key and that if parents were ‘given a real choice, they take that choice, if alternatively they have to do something proactively to actually act it to turn it on, then the opt-in is lower and slower basically’ (Author’s interview with TalkTalk). However, the BSkyB executive was more critical of whether the ‘whole home’ filtering solution would be accepted by households, and claimed that it would not meet the various ‘risk needs’116 of different members of the household (Author’s interview with BSkyB).

The industry-led filtering scheme has since, however, inched closer to being a default-on service with BSkyB making new connections filtered automatically if the account holders do not make the choice. This default-on approach was then adopted by other large ISPs (Barnet, 2015; Vincent, 2013). Unexpectedly, during the developments over the last four years BSkyB appear to have led the way in being proactive in increasing the number of homes with filtered services. By 2014 Sky had increased the uptake of filtering from 3% to above 60% (Ofcom, 2015b). They did so by applying the ‘default-on’ concept117 whereby filtering was automatically turned on for those customers who did not make a choice (Ofcom, 2015b).118 For Sky in particular, the default-on approach reflects a change of heart that could perhaps, be put down to increased public awareness and demand for filtered services and a wish to maintain its family-oriented brand.

Nevertheless, despite companies asking internet account holders if they wanted filtering, a significant number of families have not opted to use these filtering services.119 Variable results across the four larger ISPs demonstrate the difficulties in gaining a consistent delivery of ISP network level filtering services under a self-regulatory model. Certainly, from

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116 Although this was a backhanded way of referring to adult expectations that they should be free to access what they wanted.
117 This was promoted by Prime Minister Cameron and MP Claire Perry (Jones, 2012).
118 This appears to have put Sky (62%) at a significant lead, while TalkTalk (14%) are on a par with Virgin media (12.4%), and BT are lagging behind (at 6%).
119 With only two in five parents opting to use them (Jackson, 2017).
the state’s perspective, the objective of protecting children from pornography remained hampered by the industry self-regulatory model. Each ISP has used third party companies to provide content classification which raises two further questions. Firstly, that filtering does not necessarily reflect national classification standards, and secondly, that the service varies across providers because they have sourced different filtering technologies and blacklists. While this industry model sounds like a universal solution to the problems of content, it is far from uniform.

**EU move to outlaw ‘opt-in’ systems to protect consumer access**

Although by no means universal, the British Government had made considerable progress toward filtering family home connections. However, despite the Active Choice industry code which gave internet account holders the ability to choose whether to ‘view pornographic material or content showing gratuitous violence’ (Buchanan, 2015), the European Parliament vetoed the industry default-on filtering Code of Practice, as it viewed the automatic blocking of content (pornography) as discriminating and interfering with free market competition (Buchanan, 2015). Following this the British Government had to move quickly to establish new legislation to replace the voluntary agreement between the Government and ISPs or face losing filtering altogether (Riley-Smith, 2015). The media reported the worrying tension between the EU and the British Government as even if they did legislate that ISPs must provide default-on filtering to family homes, this could face further challenge by the European Court of Justice (Doyle, Slack and Robinson, 2015). Media highlighted civil concerns that the EU ruling threatened to leave children at serious risk, and that this signalled a loss of the state’s sovereignty over responding to civil concerns. Tory MP Steve Baker, co-chairman of Conservatives for Britain was quoted as saying,

> Time and again we are finding we can’t govern our own country as we see fit. This appears to be yet one more example. It would be deeply worrying if children were left at risk as a result. (Doyle and Slack, 2015)

Equally, private actors may also seek to utilise the EU ruling to oppose Government legislation, which for global or transnational corporations is valuable leverage.

Given the problems created by the EU ruling against default-on filtering (which achieves the highest penetration of filtering in residential homes), the British Government
introduced the Digital Economy Act 2017 (n.d.)\textsuperscript{120} to ‘enshrine the rights of internet providers to block pornography websites’, giving ISPs the power to voluntarily adopt the Active Choice Code of Practice and block access to adult websites (Hall, 2016; McGoogan, 2017). Passed into law in April 2017, the Act also made provision for a new age-verification regulator (the BBFC) to publish guidelines about how pornographic websites were to prevent children from accessing their sites, and fines for those that don’t comply. However, at the time of writing this thesis, the Government intended to amend the bill and make it a mandatory requirement that ISPs block websites that do not comply (Notices of Amendments, 2016). Essentially the bill could mandate that ISPs block sites with ‘content that would not be certified for commercial DVD sale by the British Board of Film Classification (BBFC)’ and sites not enforcing ‘strict age verification checks to stop children accessing adult websites’ (Gayle, 2016). The state is endeavouring to bring in the BBFC to oversee determinations of noncompliant websites and in this way endeavour to establish a stronger co-regulatory approach between state and private actors.

Looked at in a different light this may in fact benefit the UK pornography industry by reducing competition with overseas companies within the UK market. In Germany, the pornography industry demanded that the site YouPorn be blocked on the grounds that it did not comply with local age verification rules, a move that would certainly increase the profits of German pornography businesses. Further, Arcor, a German Internet service provider, blocked access to many pornography sites on the same grounds (Popa, 2007). In the UK, the Government appears to have taken up this idea, which may get little objection from local pornography producers, but which inches closer to a mandatory requirement aimed at protecting children from exposure to pornography. In order for the enforcement of strict age-verification laid out in the Digital Economy Act 2017 to occur, the UK Government will have to amend the Act in order to provide a mechanism (ISP blocking) that forces British ISPs to block noncompliant websites beyond the regulatory reach of the British Government. Although those internet users who were determined enough could circumvent filters, blocking non-compliant companies could severely impact pornography businesses. It would, however, provide a mechanism to encourage stronger safeguards against underage access to commercial adult content. It remains to be seen however, whether the UK Government will, as it has done in the past, defer to the preferred industry self-regulatory model despite it

\textsuperscript{120} Retrieved from UK Parliament website http://services.parliament.uk/bills/2016-17/digitaleconomy.html
generating inconsistent and incomplete results. While the state-private nexus continues to uphold a neoliberal regulatory stance which maintains industry self-regulation as the preferred regulatory model, this chapter has shown that the details of how filtering is executed are guarded by competitive market processes, are often inconsistent and variable and do not allow effective regulatory oversight and assessment.

**Concluding Thoughts: A Return of the State?**

By examining Australia and UK policy development, this chapter has sought to demonstrate that, despite the efforts of states to regulate internet content, a neoliberal world view continues to influence policy outcomes. It has shown that the emancipatory language of individual user empowerment that characterised private actor discourse in early debates about internet content is now utilised to further the state’s neoliberal agenda that favours market deregulation. These two case studies show that the attempts by states to regulate the access and distribution of internet pornography (and a growing range of content causing civil concern) have consistently given way to the voices of private actors which typically dominate the policy shaping process. Many scholars have viewed the neoliberal agenda of market deregulation in which states and private actors seek to minimise financial regulatory burdens on markets as signifying the ‘roll back’ of state regulatory functions previously committed under Keynesian governments to protect the welfare and security of its citizens (Flew, 2016; Harvey, 2005; Hardt and Negri, 2000; Mansell, 2011; McChesney, 2013). However, it would be incorrect to assume that states have withdrawn from the regulatory landscape that addresses issues of social order. While state and private actors call on neoliberal economic principles to justify little or no regulation, the state has nevertheless invested in other disciplinary measures aimed at individual internet users in order to address the social consequences of the deregulated internet.

By charting state and private actor claims and strategies during policy debates about internet content and children, this chapter has shown that private actors continue to successfully perpetuate a model of industry self-regulation, establishing voluntary industry codes of practice as an alternative to formal state regulation. That private actors negotiate their own regulatory conditions is problematic for a number of reasons. Voluntary industry self-regulation, while appearing to address social issues, typically generates inconsistent and often incomplete results as only larger corporate players take part, and enforcement systems vary between them. Further, the self-regulatory initiatives voluntarily produced by private
actors appear motivated by profit objectives, rather than issues of civil concern. The obvious outcome of a self-regulatory approach is that policies do not always reflect (and usually fall short of) the formal regulatory ideals or national community standards. For instance, as the UK mobile industry example demonstrated, industry self-regulation can be overly prohibitive, and in the case of child pornography filtering systems, can in fact conform to minimum thresholds that fall short of national laws. Further, while states have made efforts to oversee industry codes of practice, these typically lack transparency, formal review and public oversight. While regulatory bodies such as the Office of the eSafety Commissioner in Australia, and Ofcom in the UK have attended to illegal and harmful commercial content that is hosted within their geographical borders, they struggle to find ways to prohibit content that is hosted offshore as they typically lack definitive powers with regard to global internet content (Harvey, 2006, p. 93). Instead, policies are worked out within a state-private nexus that tends to prioritise market deregulation over civil sector demands. As a result, corporate interests are the primary beneficiaries of industry self-regulation, a situation which appears to largely exclude civil sector concerns. Individualisation of risk and responsibilisation

Regulatory bodies in Australia and the UK appear to have taken the view that control over internet media content is increasingly beyond the reach of state regulation. While in both the UK and Australia states continue to prioritise industry self-regulation, this has occurred in conjunction with a progressively larger focus on individual internet users managing their own security and conduct online. Exploitative user-generated content has become a serious social issue which states now address through formalised penal sanctions. For internet users who access illegal content, engage in unsolicited or underage sexual communication, publish sexual images of adults without their consent, or publish sexual images of minors there can be serious consequences (ranging from the removal of digital access, fines, surveillance, lifelong registration on sex offender lists, and jail time). However, states also appear to have extended the ‘cultural trope’ of ‘individual responsibility’ (Wacquant, 2010, p. 197) to all
internet users, through discourses of ‘media literacy’\textsuperscript{121} and ‘digital citizenship’\textsuperscript{122} which now pervade contemporary policy approaches (Ofcom, 2008; 2015c; 2017a, b; n.d; Office of the Children’s eSafety Commissioner, 2016).

In the UK, the regulatory body Ofcom having ‘a statutory duty to promote media literacy under the Communications Act 2003’ intentionally oriented the states focus toward the agency of internet users (Lunt and Livingstone, 2012, p. 128). Ofcom’s focus has been to enable audiences to ‘exercise choice and adopt a critical stance on media content’ (Lunt and Livingstone 2012, p. 208) a strategy justified as being beneficial to consumers through allowing freedom to choose from a more diverse media landscape. However, as Harvey (2006) has pointed out, whether these policies also work to provide citizens with protection is in dispute. In this light, the motives behind media literacy strategies are questionable since, once again, these perpetuate the deregulated market a condition which largely benefits corporate private actors (Lunt and Livingstone, 2012). Of course the concept of media literacy would appear to have gone viral across Western democratic states, as well as being the object of academic inquiry (Buckingham, 2009), although Lunt and Livingstone (2012, p. 119) suggest the academic enthusiasm is likely due to more participatory objectives than protectionist ones. Overall, however, the media literacy and digital citizenship discourses promoted through educational programs demand that all internet users engage in managing online risks themselves while also increasing their accountability for their decisions and communications online. It should be acknowledged that although initial aspirations for ‘media literacy’ aimed to teach children much needed critical skills when interacting with media, over time these have been reduced to more protectionist goals of teaching safety online (Wallis and Buckingham, 2016).

In Australia, the Enhancing Online Safety for Children Act (2015) established the Australian Office of the eSafety Commissioner and its statutory powers to investigate cases

\textsuperscript{121} The various policies, programs and campaigns which have taken place in the UK for instance, tended to focus on raising awareness ‘of how to use web browsers, electronic programme guides and other tools in order to navigate safely and effectively’ (Lunt and Livingstone, 2012, p. 128) across all internet users. In terms of how it ‘media literacy’ has been defined and used within school education, it would appear to have been pared back to discourses of of children’s ‘safety’ and inclusion so that broader meanings of developing individual critical media competencies have largely disappeared (Wallis and Buckingham, 2016). https://www.ofcom.org.uk/research-and-data/media-literacy-research

\textsuperscript{122} Of course eSafety has even become a brand for educational programs and even government organisations such as the ‘Office of the eSafety Commissioner’ in Australia. See https://www.esafety.gov.au/education-resources/classroom-resources/digital-citizenship
of user generated harmful communications termed cyber bullying and discipline perpetrators while negotiating with private actors to remove user generated content. The increased responsibilisation of individual internet users (Beck and Beck-Gernsheim, 2002; Rose, 2000), through the notion of ‘media literacy’ requires that individuals protect themselves against content harm and thereby reduces the pressure on states to regulate content (Buckingham, 2009; Livingstone, 2004; Lunt and Livingstone, 2012; Wallis and Buckingham, 2013, 2016).

However, while these policies are seemingly set within a broader context of educating all internet users, they are heavily oriented toward ensuring that children develop awareness of internet risks; become literate media consumers; and learn the normative boundaries of conduct online. In Australia the Government’s regulatory focus appears to have utilised the problems of childhood to engage in increased surveillance and discipline of internet users’ misuse of the internet. Parents are increasingly conscripted to increase surveillance of their children (both physically and by using technological tools); private actors profit from marketing software products as parental aids, and the state engages in education programs and resources enlisting the help of multiple non-state stakeholders, often from the civil sector. Such resources inform children of the consequences of poor decisions and poor conduct, and place an obligation on children for their own security and self-governance. As discussed in preceding chapters the responsibilisation of parents and children in managing internet risks is problematic.

Of course the removal of user generated media and or communications from a social network site does little to impact the economic objectives of large global corporate actors. While shifting attention away from the issues of commercial content and the deregulated market, the regulatory focus of the state is reoriented toward the conduct of less powerful internet users. This resonates with Wacquant’s theory of neoliberal state-crafting in which he points out that rather than regulate markets to prevent social issues from occurring, the state turns its focus to ‘handling the social turbulence generated by deregulation’ and in so doing the state ‘reveals itself to be fiercely interventionist, bossy, and pricey’ (Wacquant, 2010, p. 214). It is important to point out that policies, such as those now administered by the eSafety Office that serve as a vehicle for the state to liaise, on a case-by-case basis, with private actors to remove user generated content, (while a necessary action in light of the lack of regulation of private actors such as social network providers), has diverted attention and economic resources away from the problems generated by commercial content. It rarely leads to the removal of commercially valuable content and does not therefore significantly affect
the profit of private corporations. In this way, while the state has on the one hand withdrawn support for social functions that attend to the protection of citizens, it has on the other hand inflated penal and disciplinary functions while at the same time perpetuated neoliberal policies that ultimately favour corporate private actors.
Conclusion

This study has explored the significance of debates around internet content regulation in Australia and in the UK. It focused on emerging state policies surrounding the regulation of child pornography and internet pornography. It did this by examining debates in Australia and the UK concerning the use of ISP filtering as a way to block internet users’ access to content hosted beyond the regulatory reach of the state. These debates considered the use of ISP network level filtering as a method of blocking access to illegal child pornography, to enforce national media regulations and, in some instances, a method to protect children from exposure to harmful content such as internet pornography. As the issue of blocking citizens’ access to content on the global internet, whether deemed offensive or harmful or which may even be illegal, has been a highly contentious issue across Western democratic states, these cases provided an opportunity to examine how states and private actors responded to civil calls to regulate internet content and to examine whose interests were represented in eventual policy outcomes.

This was done by using a grounded theory methodology for the collection and analysis of data across Australia and the UK. I incorporated qualitative in-depth interviews and a document analysis of both media articles and relevant policy documents. Relations of power between state, civil and private actors are best understood through interviews where respondents can speak more freely about their policy perspectives, strategies and actions, and share accounts that are not necessarily evident in news media articles. I therefore interviewed 20 ‘elite’ stakeholders across civil, state and private sectors in both the UK and Australia. These interviewees were selected because they were key stakeholders in their respective national debates and played a significant role in influencing government responses to civil concerns around internet content, children and digital technologies. I conducted a thematic analysis (Braun and Clarke, 2006; Charmaz, 2014) across these datasets, applying coding procedures to identify core themes, and transactional analysis to further analyse the positioning and actions of various actors during debate and policy development. While conducting analysis it was clear that there were competing discourses of risk and responsibility shaping debates and which influenced eventual policy decisions. The key theoretical narrative emerging from this research was that states have not withdrawn from regulation to address issues of social order, but have instead, shifted their focus away from
regulating the market toward imposing stronger regulation and discipline onto individual internet users and that this presents some problems when considering both the safety and participation of children online. The core argument presented in this thesis is that the voices of economic actors overwhelmingly dominate policy outcomes around regulating internet content but that this, however, does not necessarily result in a social good and can be problematic.

‘Childhood’ in the Civil Sphere

Several major findings came out of this analysis. One of the key findings was that actors across civil and private sectors rely on very different notions of childhood in order to rationalise certain policy positions, but in doing so are ultimately pursuing specific interests. The construction of childhood therefore varies depending on whose interests are being articulated.

Civil actors typically constructed children as vulnerable and at risk due to their status as children, a perspective that invariably summoned protectionist discourses. As they were not yet adult citizens, children were considered to lack the cognitive reasoning or moral understanding to protect themselves online, or to reasonably govern their own media access. Modern childhood was constructed as a time of innocence in which children’s development needed to follow established guidelines and their sexual awareness delayed as long as possible. They attributed the internet with generating new risks to children, and with amplifying their chances of being both ‘at risk’ and ‘risky’. Civil actors felt that most children lacked the cognitive capability to stay safe or act responsibly online. Additionally, civil actors were adamant that children’s status as ‘digital natives’, combined with their growing autonomy, placed them at greater risk online. In this view, the current plight of children in the online world is further compounded by parents who lack awareness of the risks generated by new internet technologies. Civil actors advocated that there should be some parity between traditional film and literature media regulation and internet content regulation, but their views were not represented in state policies. However, they acknowledged that parents were less able to supervise children’s internet access and activities due to the increasing mobility of many internet devices. In the absence of regulation, they recommended that parents take a more disciplinary approach by mediating and constraining children’s internet access and activities.
Analysing civil discourses made transparent that there is inconsistency across the regulation of traditional media formats of pornography such as film, video and magazines, and the regulation of internet pornography. While states continue to have in place, and enforce regulations that govern the importation, exhibition, distribution and sale of media that are physically located within its geographical borders, they have struggled to enforce such national regulation onto internet content hosted elsewhere, but which remains accessible to its citizens, including children. For instance, the use of ISP network filtering technologies (where notice-and-take-down processes do not apply) has been sporadic and most often limited to child sexual abuse materials or in some cases content that is highly culturally sensitive (Brown and Marsden, 2013). Further, Western democratic states have typically not legislated that private actors must block illegal content such as child pornography, and continue to depend on the voluntary cooperation of non-state actors such as ISPs, transnational policing and non-government agencies concerned with child protection to establish filtering regimes. As this thesis has shown, private actors in the internet service and content industries continue to establish their own Codes of Practice to address contentious content such as illegal child pornography, or internet pornography. For instance, in the UK the government has continued to pursue a model of industry self-regulation whereby the four largest corporate ISPs now voluntarily adopt the practice of offering a ‘whole home’ network filtering service to parents through a program called Active Choice. Meanwhile in Australia, despite the Rudd Government’s five year-long struggle to ‘bring the state back in’ as chief media regulator, the neoliberal model whereby private actors fashion their own policies (which responsibilise individuals, families and children) to avoid state regulation prevailed.

As states have been unsuccessful in regulating access to online content that may be harmful to children, protections applied to traditional mediums such as film and literature have not been applied to internet content. One prime concern among civil actors was that the internet has increased children’s exposure to pornography and in doing so heightened their vulnerability to ‘being in’ pornography. Civil actors argued that without state enforcement of age verification rules and the blocking of illegal content, laws regulating individual conduct were not enough to prevent social problems from developing. For instance, laws prohibiting the viewing and possession of child pornography have not been enough to prevent such

123 In the case in Germany legislative attempts to force all ISPs to filter child pornography were eventually repealed in 2011 (EDRi, 2011; “Major German Online Companies Agree to Block Child Porn Websites”, 2009).
images becoming widely accessed within Western democratic countries. Neither have child pornography laws been able to prevent children from producing and sharing their own sexual images. Civil actors were also concerned that children’s exposure to internet pornography was damaging to their sexual development. They claimed that non-normative, violent and derogatory sexual practices were now common within mainstream pornography, and that children’s exposure to it threatened to increase male sexual aggression, and risky sexual practices among children and youth, sometimes even leading to child on child sexual offending. Civil actors were also concerned that the pornography industry had appropriated children’s sexual development, resulting in parents and educators having less control over children’s sexual education and behaviour. This led to educational approaches that attempted to encourage ethics and harm based critical thinking to reject sexual violence in pornography. For some civil actors, however, children lacked the necessary cognitive maturity, preventing them from adopting a critical stance toward more violent and derogatory representations within internet pornography. Civil actors generally recognised children as already sexually knowledgeable but were inclined to reject more liberal sex education, preferring instead to promote protectionist discourses that focus on raising awareness of sexual exploitation and internet safety.

However, civil concerns about child pornography and children’s exposure to pornography and other potentially harmful content are not reducible to a moral panic. In light of the fact that one in three internet users are children (Livingstone et al., 2015),¹²⁴ civil concerns about children’s exposure to pornography and other harmful content on the internet cannot be dismissed out of hand. There seems to be a growing agreement that while there is no clear evidence that pornographic media directly ‘impairs the development of minors’ (Buckingham, 2014; Ofcom 2005, 2011) or directly ‘causes’ sexual offending, children’s use of digital technologies exposes them to a range of age inappropriate and unsolicited media and communications that many adults may not be aware of (Livingstone, 2009; Livingstone et al. 2012). As children are now social actors in a networked environment that exposes them to media and communications no longer contained by traditional institutional protections, there may well be some validity to civil concerns.

¹²⁴The homepage of the Children’s Commissioner in the UK also refers to one in three internet users being under 18 years old. https://www.childrenscommissioner.gov.uk/our-work/digital/
‘Childhood’ in the Private Sphere

As this research found, however, the voices of civil actors were very rarely embodied in state policies (at least in the Australian and British contexts). This can be attributed to (a) the very different way in which private actors constructed childhood to support their policy positions, and (b) the close relationship and access that private actors held with government, and which prioritised private interests in the policy making process. There were a variety of ideas and claims that private actors made to ensure their interests dominated policy decisions.

The way that private actors constructed children and their relationship to digital technology and media was very different from civil actor constructions. Private actors constructed children as ‘savvy’ social actors who were more discriminating and sophisticated consumers than adults when online. They drew extensively on the notion of children as digital natives, to claim that they possessed the necessary ‘critical’ and ‘social competencies’ to identify and manage online risks. By constructing children as competent and self-regulating online, private actors negated the need for formal media regulation. Private actors countered civil concerns about children’s exposure to pornography by claiming that children were ‘sexual beings’ with a ‘natural curiosity’ about sex and pornography. They believed that pornography was part of teenagers’, and particularly boys’, sexual development, and indirectly subscribed to the claim that pornography can be educational. They described teenagers as being ‘into porn’ while younger children were ‘resilient’ and ‘self-regulating’ as they were considered to be less interested in sex and therefore more likely to reject pornographic media. Although conceding that pornography was now more accessible to children, they sidestepped civil concern that pornography had become more violent, derogatory or was potentially harmful to children.

Private actors challenged civil concerns about children’s risky sexualised conduct, as the product of a generational divide in which policy-makers were applying their own generation’s precautionary logic, and claimed that this was at odds with the views of young people today. This view was especially apparent in the Australian context where private actors presented a highly romanticised view of children and young persons as having the ‘critical intelligence’ needed to protect themselves online and that was at odds with the accounts put forward by civil actors (Buckingham, 2008, p. 14). However, while civil actors thought children’s status as digital natives placed them at more risk, private actors believed their digital skills empowered children, giving them the necessary skills to navigate the
internet safely. This overly competent view of children’s status as digital natives (Palfrey and Gasser, 2013; Prensky, 2001) is perhaps a bit impulsive, as although many children may navigate digital technologies fluently, some research suggests they often do not understand the commercial risks or consequences of their activities online (Bennett et al., 2008; Facer, 2014; Helsper and Eynon, 2010). Although private actors conceded that technological innovations were driving new socio-sexual norms, they questioned current policy responses such as ‘cyber safety messaging’, ‘regulation’ and ‘legislation’ viewing these as no longer applicable to today’s generation. Such policies tended to work against the interests of private actors who sought to promote internet use rather than restrict it. Overall, private actors refuted the need for content regulation by promoting a more liberal and capable construction of children.

Private actors called on discourses of risk and responsibility to obligate individual internet users in the management of their own security and conduct online, a strategy that clearly supported their laissez-faire policy position. When asked about the potential harms to children, private actors accepted that the internet generated new risks but viewed these as an acceptable consequence of technological innovation in the risk society (Beck, 1992, 1999), and reinforced this view by claiming that the benefits of the internet far outweighed any risks it generated. Further, they distributed risk across all internet users regardless of age, location or class (Beck, 1992), seeing this as a globalisation of risk (Giddens, 2002) in which internet users would in time come to know and manage. By generalising internet risk as ‘a fact of life’ for all internet users regardless of age, they depreciated civil actor notions that children were especially at risk. Organisational discourses tended to reinforce the view that all internet users were expected to manage online risks; a view that went hand-in-hand with discourses that promoted access and the use of the internet. The notion of globalised risk, combined with constructions of children as savvy, worked effectively to counter civil demands for content regulation, thereby allowing ‘age-blind’ policies supporting user self-regulation to prevail.

**The delegation of responsibility and policing the end-user**

Another key finding was that responsibility for online activity was delegated to individuals. Further, when it came to the question of children’s safety and online activities responsibility was delegated to parents and children themselves. However, this delegation of responsibility led to policing strategies of adults and children who watch pornography online, while there was no regulation for private actors who make it possible for it to be online or accessible in
the first place. We can see this in the way that the state has introduced stronger regulation targeting those who consume or generate illegal content. For instance, heavy penalties have been introduced for those caught viewing child pornography or extreme pornography, but these have not been extended to regulating private actors that make the distribution of this content possible. It is also evident at the other end of the penal spectrum, in the way that states have invested heavily in policy agendas that drive individual accountability through discourses of ‘media literacy’ and ‘digital citizenship’, and that obligates all internet users in their own safety and conduct. States also appear to have adopted disciplinary approaches that focus on internet user generated media, and have in particular focused on children’s potential to generate harmful media and communications. For instance, the Australian Federal Government’s appointment of an eSafety Commissioner and Office to inform and discipline internet users about unacceptable online activities, can be seen as a ‘disciplinary’ measure, effectively making those less powerful subject to regulation.

Paradoxically, although private actors had painted a liberal view of childhood to negate calls to regulate pornography, they nevertheless went along with modernist notions of childhood that prioritised the supervision and discipline of children. For instance, they emphasised that children could just as easily engage in risky and harmful communication online as be victims of online bullying and abuse. This had the effect of steering policy debate away from the question of regulating content, to regulating children (such as the misuse of technology, cyberbullying, revenge porn, sexting). Private actors therefore designated the family as the key site of regulation, shifting attention toward issues of parenting in the online space. However, while they, like civil actors, highlighted that some parents lacked awareness of both technology and internet risks (or unawareness [Beck, 2005b, p. 217]), they tempered risk claims specific to children by claiming this was temporary, as the next generation of parents, having grown up online, would be less concerned that the internet posed serious risks to their children. While private actors believed parents should be responsible for their children’s internet use, they felt it was important to leave the form and degree of regulation up to parents while they and other stakeholders could assist by providing safety advice and information about filtering tools.

Several implications arise from this responsibilisation of the family in addressing children’s safety online. While the risks generated by the internet appear to have amplified the need for parental supervision, structural changes in both childhood and family within late-modernity raise a number of difficulties. For instance, both civil and private actors recognised
that the democratising family context (Beck, 1997; Giddens, 1993) and individualisation (Beck and Beck-Gernsheim, 2002) along with the increasing autonomy afforded to children in the digital environment, all worked against parental regulation and discipline of children’s internet access and activities. For civil actors these difficulties supported their argument for a return to collective interventionist regulatory measures, rather than pursuing industry or user self-regulation. For private actors this served to reinforce discourses of individual self-governance.

Arguably a more serious concern, not only were parents considered naïve but they were constructed as resistant to the idea of constraining children’s internet access and participation online, since this was thought to lessen their children’s access to educational and social opportunities. Increasingly democratic parent-child relations are now characterised by an emphasis on children’s rights to increased independence and autonomy and this was reflected in both civil and private actor accounts of the internal conflict parents now experienced about whether to constrain and monitor children’s media and internet activities. The modernist notion of the family as a separate and protected space where children are subject to traditional modes of parental discipline, is increasingly out of reach given the democratisation of family life (Giddens, 1998, 2002) and requires more trust and negotiation between parents and children, which in turn, is increasingly mediated by the discourse of rights, including children’s rights’ (Livingstone and Bober, 2006). This is heightened by rapid technological innovation which seeks to meet individual needs to personal, private and mobile internet access and use. Civil actors continue to call for state regulation, knowing that parents are left with the dilemma of being increasingly responsible for supervising children’s internet access and activities while having less ‘moral right to impose rules and sanctions without democratic consultation’ (Livingstone, 2009, p. 7). Given the democratisation of the family and the consequential decline of disciplinary modes of parenting, and increasing discourse of children’s rights, the responsibilisation of parents becomes somewhat specious.

The Regulatory Frameworks of Private Actors

The emphasis accorded to ‘individual responsibility’ greatly influences the specific nature of regulatory frameworks. In the UK, the state appears to have taken the view that as technology converges and media choices become more diverse, ‘people will have to take more responsibility for what they and their children see and hear on screen and online’ (Lunt and Livingstone, 2012, p. 127). Further, obligating internet users in their own safety and conduct
requires that they act responsibly and become educated about internet risks. Rather than being emancipatory this can be viewed as an added burden (Beck and Beck-Gernsheim, 2002) for parents and children, since they are required to choose between conflicting ‘expert’ accounts about what constitute internet risks and how to manage them. Further, for those who ‘do not become dutiful and sensible consumers – it is unclear who will bear the responsibility for any adverse consequences’ (Lunt and Livingstone, 2012, p. 128).

This research found that civil concerns were rarely reflected in state regulation and that private interests dominated regulatory outcomes. Insofar as private actors do self-regulate, this will most likely occur because it is in some way beneficial to private businesses. For UK ISP TalkTalk, establishing network level filtering services to homes was a commercial venture, and one that clearly benefited from the political debate and pressure on ISPs to do more to protect children from pornography. While companies such as TalkTalk may present the service as providing a social or moral good, it is unlikely that they would have pursued the service had it not been consistent with their business objectives. As the executive at TalkTalk reiterated, they received valuable press coverage that heightened the company’s brand awareness and promoted its Homesafe filtering service. However, other ISPs still resisted the idea claiming such filtering was not achievable. When interviewed in 2012, the BSkyB executive did not predict that his organisation would in just a few years be delivering default-on ‘whole home’ filtering services as an industry’s Code of Practice i.e. Active Choice. However, by mid-2013 The Register quoted the same regulatory manager as saying that BSkyB would now be launching its own ‘whole home’ filtering service because, as a matter of public policy ‘it feels like the right thing to do now’ (Fiveash, 2013). Soon after this, other large private actors followed suit. I would argue that the political-public climate evolved to the point that corporate ISPs could successfully commoditise the issue of protecting children from pornography and other harmful content (whether beneficial to the company image, or its sales). Although presented as a ‘public good’, Active Choice was not without a very thick silver lining for BSkyB and other corporate ISPs, as this self-regulatory measure also shielded industry from the costs and liability that formal market regulation would have incurred.

Analysis also revealed that ‘large corporate actors’ in both countries clearly valued having strong relationships with their respective governments as this had economic benefits and allowed them to have a dominant voice in policy negotiations. When close ties with government were threatened, private actors felt powerless to influence policy outcomes. This
was most evident in Australia when the Rudd Government took a paternalistic turn by proposing to enforce media regulation through state-run filtering, a move that was interpreted as excluding key stakeholders from negotiations and going against the established neoliberal model of industry self-regulation. Although the state called for industry to be involved in filtering trials, industry actors decided not to participate as they felt excluded from the policy negotiations. An eventual policy outcome was secretly engineered by the private sector, using international agencies to ensure the Federal Government could not intervene and expand the scope of filtering. At the same time it was also disguised as a co-regulatory initiative with obvious benefits to the Government as it achieved the government’s core goal of blocking child pornography without needing the Government to legislate. While private actors realised that the filter would be received as a ‘social good’ by the public, it was a private actor driven initiative that effectively enabled the industry to craft their own limited form of voluntary self-regulation. In this case the policy process was clearly not driven by broader civil concerns, but was instead driven by private actors who reached an unspoken compromise with the state.

A key tenet of neoliberalism has been that states outsource their regulatory functions. Under neoliberal government states are perceived to have ‘rolled back’ their investment in social protections while promoting economic neoliberal principles to protect and perpetuate deregulated markets (Flew et al., 2016). Certainly, in this research economic neoliberal arguments appear to have dominated private and state discourses within the policy making process. For instance, private actors have successfully prevented the regulation of internet content, pursuing this only when it is of benefit, and often to suppress more expansive state regulation. Attempts made by the Australian Federal Government to establish top-down regulation that would have filtered a broad range of content, for example, eventually failed due to the strategic actions of private actors. Likewise, in the UK the quasi-governmental regulator Ofcom, created under the Communications Act 2003, has sought to reduce the regulatory burden on private actors (Lunt and Livingstone, 2012, p. 216) and has little if no power to regulate internet content. As Lunt and Livingstone (2012) have indicated, Ofcom has worked within a neoliberal context aiming to ‘roll back interventionist market regulation’ to free the market from constraints and thus stimulate creative industries, a strategy that was also underpinned by hegemonic discourses of technical elites that claim ‘the global internet is certainly hard to regulate at a national level’ (Lunt and Livingstone, 2012, p. 127).
Private actors drew heavily from techno-libertarian discourses reminiscent of early ICT communities which foreshadowed the internet as a democratic tool that would empower individuals against political and social injustice (McChesney, 2013, p. 101) and which offered unbounded social and economic benefits to individuals everywhere. Drawing on globalisation rhetoric, they claimed that national media standards were increasingly irrelevant in the global context, as the internet was colonised by a range of communities too diverse to justify a normative standard. Private actors strongly advocated that internet users should be free to manage their own media choices and activities online, a position that meshed well with their global business plans. While some industry representatives agreed that the state had a role in ‘censoring at the margins’ (Author’s interview with iGEA) and enforcing national community standards within geographical borders (Author’s interview with IIA), they argued that the state’s desire to control information hosted beyond their physical borders was unrealistic due to the internet’s design. Despite this supposed belief, however, they were concerned that more and more states were in fact finding new ways to block content. It is perhaps pertinent to point out that states have more recently ordered ISPs to use filtering to protect the profits of large corporate actors in the entertainment industry, as ISPs in the UK and Australia have been instructed to block pirate file sharing websites (“UK ISPs Block Pirate Bay Proxy Sites”, 2015; Whitbourn, 2017). It would seem that as states now regularly order the blocking of websites to support the financial interests of private actors, debate about the technical efficacy of filtering technologies is becoming redundant.

Internet Regulation as a Manifestation of Neoliberal State-Crafting

The arguments presented in this research are broadly consistent with Wacquant’s framework for state regulation. Rather than acquiesce to broad definitions of economic neoliberalism that imply the state’s diminished regulatory power, Wacquant (2010) continues to view regulation as the preserve of states, and maintains that the state still plays a strong role in regulation to address issues of social disorder within its borders.

In this context, we can see a variation of Wacquant’s state-crafting thesis (2010). Central to Wacquant’s conception of neoliberalism is that the state’s regulatory approach to issues of social order accords freedom to those who benefit most from the neoliberal order and capitalist economies, while regulation is applied to the least powerful (Wacquant, 2010, 2012). What we ultimately see is that there is relative freedom or laissez faire attitudes accorded to those who wield the most power in this situation, and a shifting of responsibility
and penal intervention into the lives of those who are relatively powerless. In Wacquant’s view, the state’s new regulatory focus has the effect of benefiting those with economic capital while being ‘castigatory and restrictive’ to those who do not (Wacquant, 2012, p. 74).

This thesis has shown that, in the field of internet content regulation, states have not simply ‘rolled back’ their regulatory focus, but have in fact shifted regulatory attention by enlisting the neoliberal logic of self-governance and responsibility in order to maintain a deregulated market. As Wacquant suggests,

[T]he state actively re-regulates – rather than “deregulates” – the economy in favour of corporations (Vogel 1996) and engages in extensive “corrective” and “constructive” measures to support and extend markets (Wacquant, 2012, p. 72).

By extending Wacquant’s theory of state-crafting, powerful private actors across internet content and service industries can be conceived of as the primary beneficiaries of the ‘deregulated’ market, while individual internet users can be viewed as analogous to those who are the least powerful, and are therefore targets of paternalistic state intervention, surveillance and sanctions. As this research has shown, individualising discourses of risk and responsibility abound. Wacquant (2010) suggests that instead of pursuing collectivising forms of social protection, such as might be achieved through regulating private actors, states now engage with individualising and disciplinary discourses. Overall, Wacquant’s conception of state regulation explains why the implementation of ISP filtering, as a collective solution to enforce national media regulation, has been largely unsuccessful while discourses of risk and responsibility aimed at individual internet users and children in particular have flourished. While civil pressure has continued to call for internet filtering as a collective measure of enforcement to address socially concerning content, states (supported by private actors) promote the notion that individuals must be more accountable for their media choices and conduct online. This research showed that when addressing social issues, both the UK and Australian governments invested in discourses that oblige internet users in the management of risks, and which, further to this, seek to reform conduct through advancing the notion and obligation of the responsible ‘digital citizen’.

Also consistent with Wacquant’s theory of state regulation is that the state has not simply ‘rolled back’ its regulatory function but is instead selective in who it seeks to control and how this is enforced. While states have failed to regulate corporate actors they have increased their focus on the discipline and punishment of individual internet users. Policy outcomes typically show the regulation of the internet users (as both consumers and
producers of media). For instance, states have sought to address issues of social disorder arising from the internet by criminalising the viewing or possession of illegal content, as well as by disciplining those individuals who generate content or communications that are harmful to others. While the consumption of child pornography and extreme pornography are serious offences, states have generally not formally regulated the filtering of this content. This project has demonstrated that rather than regulating this content, states appear to have shifted their focus to targeting ‘harmful’ user generated content, most often distributed via social networks. For instance, new laws and regulatory bodies have quickly emerged to address issues such as revenge porn, cyberbullying and incitement to self-harm or suicide.

Another broad theme within Wacquant’s (2010, 2012) work is that there is a disassociation between citizens and government. Civil interests are rarely represented in state policies which can in large part be put down to the close relationship between state and private actors who prioritise the deregulated market. This does not mean they are excluded from policy implementation. While private actors successfully reject regulation, they also often fund community and educational projects in line with their overall policy position. In this process, civil actors may risk being ‘co-opted’ by a neoliberal agenda (Haufer, 2003), in which they ‘may find themselves supporting a deregulatory policy that, in turn, individualises risk’ (Lunt and Livingstone, 2012, pp. 130-131). In the field of internet media regulation there is a strong state-private nexus in which policy is worked out, but which may either exclude civil voices, or find civil actors supporting individualising regulatory agendas. We might therefore question whether the advances of private actors risk the distortion of civil policy objectives.

Extending Wacquant’s (2010) theory on power and regulation, this research showed that responsibility for managing internet risks was delegated to the least powerful, notably individual internet users, families and children. Children were subjects of ongoing campaigns and educational programs that focused on their conduct and media choices, and which advocated the supervision and control of children’s digital participation. This has obvious implications for children. Discourses of risk and responsibilisation have increased pressure for parents to regulate children’s media and communications more intensely, but this is increasingly difficult to achieve in a technological environment that works to individualise internet access and participation. The intense regulation of children is, however, problematic not only in its enforcement but within the broader context of democritisation and child rights discourses. While states appear to be addressing social concerns about children, pornography
and the internet through obligating individuals, and specifically responsibilising parents and children in managing online risks, they are at the same time perpetuating the deregulated market (Wacquant, 2010) which ultimately continues to generate new risks.

**Limitations and Future Policy Research**

While this project has addressed the regulatory role of governments at a federal level, it has not examined inconsistencies that may exist within countries, such as those between the Australian states and Territories and which might impact agreement about regulating sexually explicit materials and sanctions against internet users. The relationships that state governments have or don’t have with global corporate actors may differentially impact policy and enforcement at local levels. Additionally, this study has been based on two nation-states, so that an important way to extend this research would be to expand the study to include other Western democratic countries. The US is arguably the biggest consumer of internet services, and would be an opportunity to examine variation both between and within nation-states. Another implication of this work that could be further researched is the role that global corporates may have in influencing policies, and challenging the sovereignty of states. The concentration of power accrued to global elites may well be another inhibiting factor for states attempting to regulate internet content, since internet governance continues to be facilitated by a neoliberal policy culture that is largely dominated by private interests.

While drawing from the sociology of childhood to contextualise debates, this thesis has not researched children’s engagement with internet pornography and other content, or considered how well children may respond to the challenge of self-governance in the now very different social landscape generated by the internet. While civil actors aimed to preserve modern notions of the ideal childhood as innocent and sexually unaware such ambitions are increasingly difficult given the shift to user self-regulation and choice, and the pervasiveness of sexual representations now present across different media. For civil actors, the lack of institutionalised protections has forced new strategies involving education, but this is problematic since it presupposes children have the ‘cognitive ability’ to develop critical media skills, a view that contradicted their construction of childhood. Private actors on the other hand, were guilty of blurring issues of children’s development, and overstating children’s competencies to cope in this new deregulated global environment. They tended toward essentialising constructions of children as resilient and savvy actors, who were empowered through technology. There can be no doubt that childhood itself is challenged,
changing and variable within the context of the internet which now constitutes a very
different social and informational environment for children. Although beyond the scope of
this research, how the deregulated internet landscape facilitates new and diverse subjectivities
across children is an important area of inquiry that needs more research and consideration in
the policy making process.

It is not necessarily clear what the policy outcomes of this work might be.
Governments still regulate media within nation-states but have not effectively addressed
content hosted beyond national borders. The question of state regulation of internet content
remains a difficult problem to which there is no straightforward solution. It is difficult to
conceive what kind of policy could be implemented in a context in which there is a strong
mistrust of governments. Equally, libertarian discourses that have been co-opted to serve the
interests of private corporations can lead to policies that do not necessarily support the public
interest or welfare of children. Libertarian discourse has infiltrated and produced new forms
of subjectivity that are empowered by the deregulated internet. Such a context presents strong
opposition to state regulation.

The idea that states outsource their regulatory functions is problematic since
outsourcing has not transitioned traditional collectivised forms of regulation favoured by civil
actors, while policies that do eventuate typically benefit private interests. Further, the current
state of internet content regulation suggests that the application of ISP filtering is haphazard
and inconsistent within and across states, occurring through ad hoc court orders, voluntary
private actor schemes, and undisclosed government requests. Coming to an agreeable method
of defining the scope and enforcement of blocking would be beneficial as it would increase
transparency, scrutiny and legitimacy. However, it remains that while in Australia and the
UK pornographic films and DVDs require classification, and measures to restrict children’s
access to it, the same is not true of ‘internet pornography’ (Australian Law Reform
Commission, 2012). National laws that ban the possession of content such as ‘extreme
pornography’, or depictions of rape, necrophilia, and bestiality, cannot be enforced without
some form of filtering regime. At present, policies continue to rely on voluntary filtering in
schools and homes, and industry Codes of Practice favouring user self-regulation, and
voluntary industry self-regulation to apply age-verification to pornography but which are
generally not subject to regulatory evaluation.
State filtering of content that is deemed *prohibited* by the nation-state is an effort to translate existing national laws to protect all citizens regardless of age. The Australian Law Reform Commission (2012) review of the National Classification Scheme, appeared to suggest a compromise. In the event that the Australian Federal Government had succeeded in establishing a filtering regime to block *Refused Classification* content, the Review recommended that the Government would need to narrow its definition of what constituted *prohibited* media, as well as select only sub-categories of *prohibited* content to be addressed through filtering. This would seem to be a possible compromise and alternative to the current somewhat messy policy landscape, and one which might be more realistic in terms of the filtering technology and administration required. Nevertheless, this may not have addressed civil concerns about children’s exposure to violent pornography. As it stands, both Australia and the UK rely on private actors to block only child pornography content, and even this remains a largely voluntary process.

In conclusion, this research has suggested that although civil actors viewed the regulation of private actors as in the public’s best interest, this was not represented in policy. Instead, internet users, and children in particular, are increasingly subject to regulation through sanctions, supervision and the neoliberal logic of responsibilisation, a situation that is still highly problematic as the deregulated market continues to generate adverse consequences for some. Arguments that presuppose children’s access can be mediated and restricted through family and schools are less feasible and suggest that change is required within the policy making process. How will states address civil concerns about children and internet media harms in the future? With children constituting a third of internet users, Livingstone has suggested that future policy will need to satisfy ‘reasonable expectations of safety for all’ (2011, pp.1-2), requiring perhaps that states play a larger role in bringing about stronger regulation to ensure better social protections in the online space.
Appendix A: Interview Participants
Australian Actors

Head of Public Policy and Government Affairs, Google, Australia/NZ

This senior executive was at the time of interview Head of Public Policy and Government Affairs with Google for Australia and New Zealand. He managed technology policy issues such as content regulation, privacy and security. In 2014 he took up the equivalent role for Northern Europe.

Officer of Internet Trust and Safety, Telstra, Australia

This safety executive was responsible for coordinating the company’s commitment to cyber-safety for Telstra’s customers. He was on the Federal Government’s Consultative Working Group on Cyber-safety. Prior to joining Telstra he had worked for the Australian Federal Police and the Australian Security Investments Commission. He was an integral part of the establishment of child pornography filtering in Australia in 2012.

Head of High Tech Crime Operations in the Australian Federal Police and Chair of the Virtual Global Taskforce, Australia.

This interviewee was a senior law enforcement official, who formerly headed the national child pornography and exploitation taskforce within the AFP. He worked for the AFP since 1984 in investigative policing roles in the ACT and AFP National Operations. He has worked for the High Tech Crime Operations (HTCO) working on technical interception and surveillance, as well as cyber-crime and online child exploitation investigations. He was the Chair of the Virtual Global Taskforce (between 2009-2012) promoting a global partnership between law enforcement agencies, NGOs and industry focused on preventing the sexual exploitation of children before becoming the AFP National Manager for Counter-Terrorism within the AFP in 2013. He was a key stakeholder involved in regulatory debate about filtering and worked closely with the ISP industry to eventually establish a child pornography filtering regime in Australia. The work of the AFP focused largely on the dangers of child sexual abuse and child pornography online.
**President of the Australian Adult Industry Association EROS, and Founder of the Australian Sex Party (ASP)**

This civil liberties entrepreneur founded the Australia’s adult industry association (EROS) in 1992 and has a long history of lobbying on behalf of the adult entertainment industry, and for the rights of sex-workers. While President of EROS, she founded the Australian Sex Party (ASP) in opposition to the Rudd Government’s (2008) proposal for mandatory state internet filtering and has since become a member of the Victorian Legislative Council.

**CEO of the Interactive Games and Entertainment Association (iGEA), Australia/NZ**

This interviewee was the CEO of the Interactive Games and Entertainment Association (iGEA) which represents video and game industry businesses and distributors on issues of policy with respect to both Government and public concerns. The iGEA has been a key stakeholder lobbying the Australian Federal Government for better classification of internet based games and on issues of regulating in the new internet environment. The Interactive Entertainment Association of Australia (IEAA) and its New Zealand counterpart the Interactive Software Association of New Zealand (ISANZ) were combined to form the iGEA over a decade ago, so that the iGEA is the central organisation representing both Australia and New Zealand gaming and entertainment industries.

**CEO of the Internet Industry Association of Australia (IIA)**

This executive joined the IIA as its CEO in the mid-1990s when the internet was fast becoming the focus of regulators. He remained as CEO until 2012, around the time of this interview. In this role he was the chief point of contact between ISPs and the Federal Government, consulting on regulatory matters, and designing and negotiating industry Codes of Practices responding to the issues of protecting children from exposure to internet pornography. He played a major role in influencing Australian policy outcomes pertaining to internet content and was a key public figure in regulatory debates since the 1990s.
**CEO of Cyber Safety Lady, Australia**

Known as the Cyber Safety Lady this owner-operator provides cyber-safety workshops to schools, parents and businesses with a particular focus on online privacy and social media. She has 19 years’ experience with marketing and moderating communities online. This CEO was a Stay Smart Online Ambassador for the 2013 Australian National Cyber Security Awareness Week and is the author of two advice books, *Keeping Our Kids Safe Online and Keeping You Safe Online*. She works with Northern Beaches police in Sydney, providing education for parents and children about protecting themselves online.

**CEO of Cyber Safety Solutions, Australia.**

This business owner is a prominent cyber safety expert and former police officer. Her policing career has given her considerable first-hand experience of the dangers children face in the new internet environment. As part of her consultancy work, she regularly advises children and schools across Australia on cyber safety, as well as providing advice to a range of state and non-state organisations. As a leading expert in cyber safety she featured in an Australian documentary on the dangers of sexual predators and sexting. She is a key public figure in regulatory debates, and has appeared on various television programs such as *Insight, Four Corners, Sunrise, State Focus* and *Today Tonight*, as well as being a guest speaker on radio. At the time of this interview, in late 2014, she was a member of the Australian Government Online Safety Consultative Working Group (CWG).

**The Australia Institute (Dr Michael Flood, of Wollongong University)**

Michael Flood is a sociologist currently working at the University of Wollongong. While working in gender studies at the Australian National University, Canberra, he was approached by Clive Hamilton to work on the research project looking at Australian children and pornography. These reports and multiple media releases from The Australia Institute generated a media firestorm during the remaining term of the Howard Government, and provide a background (leading up to the Rudd Government in 2008) to public concern and debate about children, and their relationship to the internet and online pornography. Flood and Hamilton responded jointly and separately in the media. Both wrote ‘op eds’ for the national daily’s and presented at a variety of forums. Their work led to discussions with
policy makers, technologists, as well as civil libertarian groups such as the EFA and STOP Censorship email list. I interviewed Michael Flood regarding the research he and Clive Hamilton carried out at The Australia Institute and his perspectives on children, the internet and pornography and regulation.

UK Actors

*Director of Policy, BskyB, London, UK*

This participant held a number of relevant roles as the Director of Policy for BSkyB, a Council Member of the Internet Service Providers Association (ISPA) and executive Board Member of the UK Council for Child Internet Safety (UKCCIS). He was responsible for Sky business including TV, digital satellite, telephone and broadband businesses in both the UK and the EU. This manager was very involved in negotiations between the Home Office, the Department for Education, and the Department of Culture, Media and Sport and ISPs, to develop a new industry Code of Practice called Active Choice.

*Regulatory Executive for the London Internet Exchange (LINX) and the European Internet Service Provider Association (EuroISPA)*

This regulatory manager dealt with regulatory issues on behalf of the London Internet Exchange (LINX) members, representing member concerns to Government, and briefing members on regulatory issues. He was a Director of European Internet Service Providers Association (EuroISPA), and a Director of the Internet Watch Foundation (IWF) among many other roles impacting internet regulation.

*Regulatory Manager, Cable & Wireless August*

This regulatory manager was at the time of interview the lead regulatory manager for Cable & Wireless In this role he dealt with regulatory issues such as ISP content liability. He was a member of the Internet Service Providers Association (ISPA) Council in the UK.
Executive Director, Strategy and Regulation, TalkTalk

TalkTalk were the first to develop a commercial ISP network level filtering service for families - Homesafe. This senior manager was responsible for addressing regulatory issues for TalkTalk and had launched the Homesafe service benefiting from the political debate raised by MP Claire Perry’s campaign for better ISP filtering services to address children’s exposure to pornography and Prime Minister Cameron’s calls for ISPs to provide better tools to protect children from pornography.

Legal Consultant in UK

This professional was a high profile legal consultant and business consultant within the IT industry dealing with issues of filtering and child protection online. This consultant worked closely with the Internet Watch Foundation, ISPs and filtering vendors in the UK. He was active during 2008-2012 negotiating with ISPs on behalf of Watchdog International, to encourage smaller ISPs in the UK to sign up to a shared child pornography filtering service.

MP for Devizes in England, Claire Perry

Claire Perry entered British politics as in 2010 as the Conservative Member of Parliament for Devizes, England. She led the Independent Parliamentary Inquiry into Online Child Protection, which focused on online pornography. Following this, she was appointed by Prime Minister, David Cameron, as an adviser on the prevention of the sexualisation and commercialisation of children. Like The Australia Institute, Perry lobbied for ISP filtering of pornography for all internet users, unless they opted out of it, citing the need to protect children. Larger ISPs in the UK have since the time of this interview offered ISP filtering services. I obtained an interview with Claire during a visit to the UK, and attended her launch of the Independent Parliamentary Inquiry into Online Child Protection.
Transnational Actors

CEO of ECPAT NZ and Board Member ECPAT International

At the time of this interview this executive was the CEO of ChildALERT (ECPAT) in NZ as well as a board member of ECPAT International which works through a network of around 90 civil society organisations in 82 countries. As such he had a strong relationship with Childwise, the ECPAT affiliated organisation in Australia. He also was integral in the establishment of the New Zealand ‘child exploitation filter’. ECPAT and its affiliated organisations work to raise public awareness about issues such as the global explosion of child pornography, and work with police and government to address these problems. Childwise lobbied for the prosecution of Australians having sex with children under 16 while overseas, in the form of the Child Sex Tourism Amendment Act which came about in 1994 (Lunn, 2012).

CEO of Watchdog International

This CEO developed a filtering software business, marketing filtering technology to homes and schools, but in 2004 began working with NGO ECPAT on the specific issue of ISP level filtering to block access to child pornography. In 2007 Watchdog began marketing internet filtering solutions to governments and to large telecommunications carriers internationally. In 2008 Watchdog International provided filtering software and hardware technologies for the Rudd Government’s live filtering trial. They also supplied filtering technology into a range of Western democratic countries including the UK where they worked closely with the Internet Watch Foundation (IWF). I interviewed this CEO as he had a good knowledge of filtering systems, their various applications ranging from specialist child pornography filtering software to larger scale filtering products that categorise and block a wide range of potentially harmful content. He had worked extensively within both Australian and British markets.

Cyber security Manager, Telecom, NZ

This executive was in charge of cyber security in the New Zealand context. Telecom was a key player in the establishment of a child pornography filter in New Zealand. Interviewing a
New Zealand ISP executive provided insight into how child pornography filtering systems can be established with the voluntary cooperation of ISPs, while also revealing the influence that ISPs have over the limits of co-regulatory schemes within the neoliberal context that supports voluntary rather than legislative solutions.

**Deputy Chief Censor of the NZ Office of Film and Literature and Classification (OFLC)**

This was an organisation that paralleled in many respects the Australian Office of Film and Literature Classification. The New Zealand OFLC often piggyback off the Australian classification of films, games and texts.

**CEO of InternetNZ**

InternetNZ is a non-profit organisation that promotes the internet purporting to represent all internet users in New Zealand. They manage the .nz internet domain and represent New Zealand in world governance forums. The organisation promotes an open internet and providing research funding into technological developments. They were opposed to the co-regulatory scheme developed between the New Zealand Government, ISPs and NGO ECPAT. This organisation did not function in the same way as the IIA, and held more libertarian views about the internet as an open and deregulated space.
Appendix B: Interview Information and Consent Forms
PARTICIPANT INFORMATION SHEET AUSTRALIA

Project: The changing nature of Western censorship and scope of Internet filtering.

Researcher: Caroline Keen

I am currently a full time PhD student within the Department of Film, Television and Media Studies at the University of Auckland. Previously a business consultant working within the ISP industry, I am currently conducting PhD research examining internet filtering debates in Western countries, with specific interest in the debate around Australia’s proposals for a mandatory government filtering policy. I have no working affiliation with filtering vendors and am working independently on this research project.

Project Description and Invitation

Whilst the censorship of media by government legislation is not a new concept, the internet environment has raised new challenges. Since the discovery of pornography and paedophiles on the internet in the 1990s, the issue of controlling web content has been ever-present. The increasing availability of conflicting social and cultural content challenges traditional roles of government, industry and community in regulating and censoring access to ‘inappropriate’ or ‘illegal’ media content. Due to its open nature the internet has been increasingly portrayed as posing serious risks to society and specifically children.

Most Western governments have avoided implementing mandatory internet filtering, and the few that have, have restricted the scope of censorship to child pornography. This has resulted in a growing number of Internet Service Providers (ISPs) in the UK, Europe, Canada and NZ voluntarily filtering known child pornography websites. The issue of paedophilia and child sexual exploitation has most often been at the nexus of these debates. Filtering technologies are increasingly considered as a way of enforcing local censorship standards on web content. This desire is most evident in the Australian context where the government’s proposed filtering policy clearly diverges from existing western filtering models, attempting to address broader social concerns, and especially the protection of children. If successful, Australia will be the first in the Western world to technically enforce a broadcast media regulatory model of censorship to all web content. Because it is such a contentious issue, all eyes are focused on Australia, eagerly awaiting the outcome of the Australian Government’s Filtering Policy. The debates influencing the shape of the Australian policy will affect future filtering models in the West. My research will compare the Australian case for filtering with other Western countries.

I would like the opportunity to interview you as a key person in the debate around internet filtering.

Project Procedures

The interview would be approximately one hour in length, and no longer than 90 minutes. If you cannot commit to this duration but can offer a shorter interview, I would still be very grateful for your participation. Given the length of the interview, it will be digitally recorded. The interview will be largely a qualitative exercise so that we may explore the issues that you feel are most important in this filtering debate.

The interview will generally explore the following issues: your perspectives on the problems being addressed by the Australian Federal Government filtering policy, New Zealand’s and other Western internet censorship policies; your perceptions of the dangers of unfiltered internet to society and especially children; the use of technology as a solution; your beliefs and expectations about filtering; the possible problems and/or benefits of government filtering; your role in and contribution to the public debate; your views on the local conditions and global interests shaping the debate; your views on other stakeholder opinions; your influence on policy either directly or indirectly. It will explore your opinions on and aspirations for the future of filtering policy in Australia and internationally.
Data storage/retention/destruction/future use

The digital files and transcripts will be stored electronically on a secure server within the University of Auckland and will be destroyed six years after the completion of the doctorate.

Producing transcripts of the interview will not involve any third party.

Transcripts and digital recordings of interviews will be accessible to both the researcher and her supervisor for the purposes of this Doctoral research.

The interview transcripts may be used by the researcher in future academic research and publication.

Right to Withdraw from Participation

You will, of course, be free to decline to answer any questions or terminate the interview at any stage. As is standard procedure, all respondents have the ability to withdraw within a two week period after the interview by requesting in writing that their interview be removed from the research archive.

Anonymity and Confidentiality

You may request that any or all of your responses must be reported anonymously. However, given the already public profile of many respondents, it is not possible to guarantee that your identity will not be inferred by readers of the research.

Participation/Non-participation Statement

You may distinguish between personal opinion and the views of your organisation. You may also wish to distinguish, during the interview, information which you wish to be ‘off the record’. A transcript of the interview can be provided at your request within two weeks of the interview. You are able to submit amendments within two weeks of receiving the transcript. All respondents will be provided with a consent form at the time of interview.

Contact details:

Researcher: Caroline Keen, PhD student, ckee001@aucklanduni.ac.nz (027 275 8585)

Supervisor: Prof Alan France +64 9 a.france@auckland.ac.nz 64 9 373 7599 ext. 84507
Head of Department: s.matthewman@auckland.ac.nz +64 9 923 8616

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Office of the Vice Chancellor, Private Bag 92019, Auckland 1142. +64 9 373-7599 (Ext. 83711)

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 2/03/2011 for (3) years, Reference Number 2011 / 061.
PARTICIPANT INFORMATION SHEET UK

Project: The changing nature of Western censorship and scope of Internet filtering

Researcher: Caroline Keen

I am currently a full time PhD student within the Department of Film, Television and Media Studies at the University of Auckland. Previously a business consultant working within the ISP industry, I am currently conducting PhD research examining internet filtering debates in Western countries, with specific interest in the debate around Australia’s proposals for a mandatory government filtering policy. I have no working affiliation with filtering vendors and am working independently on this research project.

Project Description and Invitation

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Most Western governments have avoided implementing mandatory internet filtering, and the few that have, have restricted the scope of censorship to child pornography. This has resulted in a growing number of Internet Service Providers (ISPs) in the UK, Europe, Canada and NZ voluntarily filtering known child pornography websites. The issue of paedophilia and child sexual exploitation has most often been at the nexus of these debates. Filtering technologies are increasingly considered as a way of enforcing local censorship standards on web content. This desire is most evident in the Australian context where the government’s proposed filtering policy clearly diverges from existing western filtering models, attempting to address broader social concerns, and especially the protection of children. If successful, Australia will be the first in the Western world to technically enforce a broadcast media regulatory model of censorship to all web content.

Because it is such a contentious issue, all eyes are focused on Australia, eagerly awaiting the outcome of the Australian Government’s Filtering Policy. The debates influencing the shape of the Australian policy will affect future filtering models in the West. My research will compare the Australian case for filtering with New Zealand and other Western countries.

I would like the opportunity to interview you as a key person in the debate around internet filtering.

Project Procedures

The interview would be approximately one hour in length, and no longer than 90 minutes. If you cannot commit to this duration but can offer a shorter interview, I would still be very grateful for your participation. Given the length of the interview, it will be digitally recorded. The interview will be largely a qualitative exercise so that we may explore the issues that you feel are most important in this filtering debate.

The interview will explore the following issues: your perspectives on the nature of the problem being addressed by the Australian Federal Government filtering policy and / or other Western internet censorship policies; your perceptions of the dangers of unfiltered internet to society and especially children; the use of technology as a solution; your beliefs and expectations about filtering; the possible problems and/or benefits of government filtering; your role in and contribution to the public debate; your views on the local conditions and global interests shaping the debate; your views on other stakeholder opinions; your influence on policy either directly or indirectly. It will explore your opinions on and aspirations for the future of filtering policy in Australia and / or internationally.
Data storage/retention/destruction/future use

The digital files and transcripts will be stored electronically on a secure server within the University of Auckland and will be destroyed six years after the completion of the doctorate.

Producing transcripts of the interview will not involve any third party.

Transcripts and digital recordings of interviews will be accessible to both the researcher and her supervisor for the purposes of this Doctoral research.

The interview transcripts may be used by the researcher in future academic research and publication.

Right to Withdraw from Participation

You will, of course, be free to decline to answer any questions or terminate the interview at any stage. As is standard procedure, all respondents have the ability to withdraw within a two week period after the interview by requesting in writing that their interview be removed from the research archive.

Anonymity and Confidentiality

You may request that any or all of your responses must be reported anonymously. However, given the already public profile of many respondents, it is not possible to guarantee that your identity will not be inferred by readers of the research.

Participation/Non-participation Statement

You may distinguish between personal opinion and the views of your organisation. You may also wish to distinguish, during the interview, information which you wish to be ‘off the record’. A transcript of the interview can be provided at your request within two weeks of the interview. You are able to submit amendments within two weeks of receiving the transcript. All respondents will be provided with a consent form at the time of interview.

Contact details:

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APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON ……… for (3) years, Reference Number 2011 / 061.
CONSENT FORM

This form will be held for a period of 6 years

Project Title: The changing nature of Western censorship and scope of Internet filtering

Researcher: Caroline Keen

I have read the Participant Information Sheet and have understood the nature of the research and why I have been selected. I have had the opportunity to ask questions and have them answered to my satisfaction.
I agree to take part in this research.
I agree / do not agree to be audio taped. [delete as applicable]
I wish / do not wish to receive a digital copy of the interview. [delete as applicable]
I would / would not like to receive a copy of the transcript of the interview. [delete as applicable]
I agree not to disclose anything discussed in the interview.
I understand that I am free to withdraw my participation at any time during the interview or within a two week period after the interview, by requesting in writing that my interview be removed from the research archive.

Data storage/retention/destruction/future use

I understand that;
Producing transcripts of the interview will not involve any third party and will therefore remain in the possession of the researcher and her supervisor.
The digital recordings of interviews will be accessible to both the researcher and her supervisor for the purposes of this Doctoral research.
The interview transcripts may be used by the researcher for use in future academic research and publication.
The digital files and transcripts will be stored electronically on a secure server and will be destroyed six years after the completion of the doctorate.

Participation Statement

I understand that;
I am able to distinguish during the interview, between views that I hold to be specifically my own and those of my employer.
I am entitled to request a transcript of the interview within a two week period of the interview taking place, and to submit any requests for changes within two weeks of receiving the transcript.

Confidentiality

I understand that respondent (or organizational) identity is an important aspect of this research, and that confidentiality may be difficult to guarantee given the already public profile of many respondents.

Name ___________________________ Signature ___________________________ Date
Organizational CEO or Manager (if required)

Name ___________________________ Signature ___________________________ Date

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 2/03/2011 for (3) years, Reference Number 2011 / 061
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