

## What Is Pornography?†

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The October 1996 issue of *Life* magazine included, among other things, a photograph of Marilyn Monroe naked.<sup>1</sup> Most people will agree that had the same picture appeared in the pages of *Hustler*, it would have been pornographic. Furthermore, the picture was considered pornographic when it originally appeared in a calendar in the late 1940's, and it was banned in two states. But is it pornography in the pages of *Life*? Should *Life* have warned its readers that the October 1996 issue was an "adults only" issue, to be sold only from the top shelf of the magazine rack? Perhaps one will say that the difference is that in *Hustler* and in the calendar in which it originally appeared, but not in *Life*, the picture would have been treated primarily as a source of sexual arousal. But that can't be the whole story. It is a common joke that generations of American boys have treated the *Sears* catalog and *National Geographic* primarily as sources of sexual arousal without thereby making them pornographic. Or perhaps one will say that the difference is that the producers of the calendar and of *Hustler* but not the producers of *Life* (or of the *Sears* catalog and *National Geographic*) intend for the pictures they publish to be treated primarily as sources of arousal. But, again, this can't be the whole story. A woman who has a sexually explicit photo taken of herself for the private viewing pleasure of her husband can't reasonably be said to be a producer of pornography, despite the fact that she may intend the picture to be treated primarily as a source of arousal.

In light of these remarks, it is easy to see why it is often lamented that the definition of 'pornography' is as elusive as the referent is pervasive. Of course, the same lament could be raised with respect to almost every other philosophically interesting term. But in the literature on pornography (as opposed to the literature on knowledge, analysis, identity, art, and so on) the lament often comes as part of an excuse for setting aside the project of offering a definition, or for providing an admittedly inadequate definition and moving on to more important business—such as the question of whether it is morally wrong to produce,

sell, or use pornography, or the question of whether pornography should be censored.<sup>2</sup>

These “more important” questions really are important. Opponents of pornography blame it for, among other things, the destruction of families, the promotion of violent crime, and the continued oppression of women. Proponents of pornography, on the other hand, deny these claims and assert that the censorship of pornography would be an immoral and unconstitutional restriction of their freedom of expression and freedom of self-determination. Furthermore, as is well-known, many people have a vested financial interest in the continued production of pornography.<sup>3</sup> The stakes are high in this debate, and so it is quite reasonable that philosophers should turn serious attention toward resolving it.

But it is precisely because the stakes are high that it is so surprising that relatively little serious philosophical work has been done toward providing an adequate definition of ‘pornography’. What is truly lamentable is not the fact that ‘pornography’ is difficult to define, but that the difficulty has served in many cases as an excuse for frivolous work or for ignoring the project altogether. Granted, public policies *can* be formed and moral debates *can* proceed on the basis of purely stipulative definitions that fail to respect ordinary intuitions about what sorts of things ought to be covered by the definition. But in the case of ‘pornography’, there is reason to think that we would be better off with a non-stipulative definition that respects commonly held views and widely shared intuitions and attempts to capture these in a set of necessary and sufficient conditions. In other words, there is reason to think that we would be better off with what some call a *real* definition.<sup>4</sup>

Current public policies on pornography that employ stipulative definitions are typically interpretable only in light of a working knowledge of our ordinary concept of pornography. For example, the Dworkin/MacKinnon Minneapolis Ordinance (discussed below) holds that something is pornographic if it subjects women “by reducing them to body parts”. But only a prior working knowledge of what ordinarily counts as pornography is going to allow us to see *Life* magazine’s photo of Marilyn Monroe as pornographic in *Hustler* but not in *Life*. Even if the context makes a difference as to whether she is being “reduced to body parts”, the way in which it makes a difference won’t be transparent to someone who doesn’t already have a clear understanding of the ordinary concept of pornography. Thus, a real definition of ‘pornography’ would be of great use. At the very least it would help us to create and interpret more adequate stipulative definitions for our public policies, and (if it is not too general) it might even be able to replace those definitions entirely. Furthermore, a real definition of ‘pornography’ would help to bring clarity and focus to the moral debate. As it is, that debate has remained vexed because there is no commonly agreed upon definition (stipulative or otherwise) to guide it. Participants in the debate often talk past one another, justifying opposing claims by appeal to different overly restrictive or overly inclusive definitions. One way to remedy the problem would

be to propose a stipulative definition and urge everyone to justify their claims about pornography by appeal to *that* definition rather than by introducing another. But the fact that this remedy has not been employed seems to indicate that the participants in the debate really *don't* want to shift their attention to an artificially circumscribed subclass or superclass of the pornographic. Rather, they want to talk about *pornography itself*. Nothing would facilitate this better than a real definition.

The aim of this paper is twofold. First, I will explain why the most prominent definitions in the literature come nowhere close to being real definitions. Second, I will defend a definition of my own that avoids the problems that plague the others. The definition I will be defending has two parts:

Part 1: *x* is used (or treated) as pornography by a person S =<sub>DF</sub> (i) *x* is a token of some sort of communicative material (picture, paragraph, phone call, performance, etc.), (ii) S desires to be sexually aroused or gratified by the communicative content of *x*, (iii) if S believes that the communicative content of *x* is intended to foster intimacy between S and the subject(s) of *x*, that belief is not among S's reasons for attending to *x*'s content, and (iv) if S's desire to be sexually aroused or gratified by the communicative content of *x* were no longer among S's reasons for attending to that content, S would have at most a weak desire to attend to *x*'s content.

Part 2: *x* is pornography =<sub>DF</sub> it is reasonable to believe that *x* will be used (or treated) as pornography by most of the audience for which it was produced.

Obviously much in this definition requires comment; but I will postpone that until later on in the paper.

I will begin in Section 1 by listing some familiar examples of pornographic and non-pornographic materials, as well as by describing some fictional scenarios that I think would be widely agreed to involve either the production, sale, or use of pornography. These examples will serve as paradigms for the purpose of evaluating both my own definition and the definitions I criticize. I assume that there are commonly held views about what counts as pornography and what does not, and I assume that a good definition of 'pornography' will respect those views. I am not interested in providing a definition that *revises* our concept of pornography, and I will reject as poor any definition that seems to do so. In Section 2, I will describe and reject the six most prominent kinds of definition offered in the literature to date. In Section 3, I will discuss my own definition.

### 1. Some Paradigmatic Examples of Pornography and Non-Pornography

Perhaps the most ubiquitous examples of pornography are the sorts of pictures typically found in *Playboy*, *Playgirl*, *Penthouse*, and *Hustler*. The former two magazines are usually considered to contain "soft core" pornography, the

latter two “hard core”. Of course, the same sorts of pictures can occur non-pornographically in other contexts—say, in the portfolio of a plastic surgeon or a body-piercing specialist, or in a documentary film. But it would seem to be a minimal constraint on a definition of ‘pornography’ that it count these sorts of pictures in the context of the magazines just described as pornography. It is noteworthy that whereas the subjects in *Playboy*, *Penthouse*, and *Hustler* are typically women, the subjects in *Playgirl* are typically men (and there are hard core magazines that contain mostly or exclusively male subjects as well). Furthermore, it is noteworthy that not all of the pictures in these magazines depict sexual acts, not all of them depict human genitalia, not all of them depict violence or obvious humiliation or degradation of the subjects,<sup>5</sup> and (arguably) not all of them count as bad art or photography.

Not only pictures can be pornographic, however. Literature and performances (both live and on film) can be as well. Thus, for example, books like *Story of O* or magazines like *Penthouse Letters* count as pornography, regardless of whether they happen to include explicit pictures.<sup>6</sup> Peep show performances, strip shows, and movies like *Deep Throat* will also count. As before, some of these will have male subjects; some will fail to depict human genitalia, sexual acts, violence, or degradation of the subjects; and some may (arguably) be examples of good, or at least decent, art or literature.

Despite the fact that sexually explicit pictures, performances, and literature *can* be pornographic, it seems clear that not all such items *must* be. Photos of naked people—even some depicting human genitalia, sexual arousal, or violence against the subjects—can appear non-pornographically in works of art, documentary films, or reputable magazines such as *Life* or *National Geographic*. Interestingly, something might also depict pornography without itself being pornography. (For example: a picture of several paradigmatic examples of pornography displayed as evidence in a trial.) Furthermore, I take it that if a husband or wife were to have sexually explicit photos or videos taken of himself or herself for the private viewing of his or her spouse, or if he or she were to perform live in sexually explicit ways for his or her spouse, none of this would necessarily be pornographic.<sup>7</sup> Similarly, if by some strange accident a sexual encounter between two people happened to be broadcast live across the nation on network television or to be photographed and published on the internet, there would be nothing pornographic about it despite the sexually explicit nature of the “performance” or photograph, *and* despite the fact that the performance or photograph would no doubt arouse (and even be *treated as* pornography by) some of its viewers.<sup>8</sup>

In addition to these familiar examples of pornography and non-pornography, we would do well also to consider two fictional scenarios. To the extent that my remarks about these scenarios are intuitively plausible, they will help us in the following sections to identify essential and non-essential features of pornography.

*The Profit Machine.* Suppose a wealthy computer expert designs a very sophisticated computer system that is capable of taking in a great deal of information about a community and determining what sort of item would be the best,

all things considered, for a profit-seeking entrepreneur to produce and to sell. He then allows a team of anthropologists to input a great deal of data about the preferences and desires of a small island community where pornography happens to be completely unheard of. Not knowing anything about the data that have been entered, he then arranges for the computer to run a company in his name producing a product for distribution and sale in that community. As it happens, the computer goes into the business of producing a magazine very much like *Penthouse*. The magazine sells quite well and functions in precisely the same way that *Penthouse* functions in our society (most of those who buy it do so with the intention of sexually arousing and gratifying themselves) with the exception that, in the island society, nobody is offended by the sale and distribution of the magazine. Trusting his computer completely, being happy with the tremendous increase in his income, and not caring much about morality or public health and welfare, the wealthy computer expert never bothers to investigate what sort of product his computer has decided to produce in his name. Clearly both the Profit Machine and its programmer have entered the pornography business.

*The Shoe-Fetishists.* Anthropologists discover a small island where there is a group of people who are so tremendously sexually aroused by shoes that magazines containing photographs of shoes serve precisely the same function that magazines like *Penthouse* serve in our society. Most people who purchase the magazines do so with the intention of becoming sexually aroused; activists protest the magazines on the grounds that one should indulge one's shoe fetish only when doing so will promote intimacy with another human being; and many decent people, though they admit to having purchased shoe magazines on occasion, by and large consider the frequent use of such magazines to constitute a morbid and prurient obsession with sexual matters. Clearly, it seems, the shoe magazines of this society are pornographic.

Both of these scenarios might seem fantastic. But I take it that the salient features of both are well within the realm of possibility. (It is indeed possible "mechanically" to enter the pornography industry, with little or no thought about the sexual nature of what one is engaged in; it is possible for pictures like those found in *Penthouse* to function in a society as they do in ours without anybody's being offended by them; and there are in fact people who are sexually aroused by non-sentient objects, as well as people who are offended by over-indulgence of one's sexual appetite when the indulgence does not foster intimacy with another human being.) Furthermore, I suspect that most would agree that *if* the above scenarios were actual, the entrepreneur described in the Profit Machine would indeed be involved in the distribution and sale of pornography, and the shoe magazines distributed on the island of the Shoe Fetishists really would count as pornography. Thus, a good definition of 'pornography' will not only accommodate our intuitions about the familiar examples, but will also accommodate the judgments I have given about the scenarios just described. That said, I turn now to the business of presenting and rejecting the definitions extant in the current literature.

## 2. Some Definitions and Their Problems

The definitions of ‘pornography’ currently found in the literature fall roughly into six different categories: (i) those that define ‘pornography’ as the sale of sex for profit, (ii) those that define it as a form of bad art, (iii) those that define it as portraying men or women as, as only, or only as sexual beings or sexual objects, (iv) those that define it as a form of obscenity, (v) those that define it as a form of (or contributor to) oppression, and (vi) those that define it as material that is intended to produce or has the effect of producing sexual arousal. Definitions in the latter three categories are by far the most prominent. Some definitions fall under more than one of these categories; and some pornography has all of the characteristics picked out by these six categories (i.e., some pornography simultaneously involves selling sex for profit, counts as bad art, portrays its subject as only a sex object, is obscene, contributes to the oppression of somebody, and both produces and is intended to produce sexual arousal in somebody). But none of this matters for present purposes. For in the end it will become clear that there are or could be cases of pornography that do not have *any* of the characteristics picked out by these six kinds.

My main goal in this section is to show that the definitions in each of these categories fail to qualify as real definitions. For those uninterested in a detailed treatment of particular problems associated with each of the six kinds of definition, this conclusion can be established in a rather general way. As shall become clear when I discuss the six kinds of definition in detail, all of the definitions in the above categories take it for granted either that pornography is sexually explicit material of some kind or that pornography is (in some sense) material that is intended to appeal to the audience’s sexual interests. Thus, none will be able to accommodate a scenario in which magazines like those described in *The Shoe Fetishists* are produced in a manner like that described in *The Profit Machine*. But clearly such material would be pornographic—at any rate, it would if, as I have been assuming, the magazines described in *The Shoe Fetishists* and the magazines described in *The Profit Machine* are pornographic. Thus, all of the definitions in the above categories fail to provide necessary conditions for something’s being pornographic. Hence they cannot be real definitions.

Those who are persuaded by this argument and who are uninterested in the further, particular problems beleaguering each of the six kinds of definition may skip without loss to the positive part of the paper, Section 3. The unconvinced or otherwise interested should read on in this section.

### 2.1 “Sex-for-Profit” Definitions.

Not all sexually explicit art or literature counts as pornography. Michelangelo’s *David* is sexually explicit (it depicts human genitalia), and some of the ancient fertility idols displayed in museums depict human sexual arousal. But only the most prudish among us would consider these statues pornographic. The Bible is sexually explicit; but, of course, virtually no one would consider that to be

pornographic. What sets these items apart from those things that we do consider to be pornographic? One answer is that pornography (unlike these other materials) markets its sexual explicitness as such for the sake of making a profit. According to Jon Huer, for example, pornography is “[a]ny object mass produced and distributed with the purpose of marketing it for profit by appealing to our sexual interests.” (Huer 1987, p. 186) Huer holds that pornography (like some erotic art) is indeed *intended* to appeal to our sexual interests; but on his view the defining feature of pornography is not the fact that it is intended to appeal to our sexual interests, but rather the fact that it is intended to *turn a profit by so appealing*.

As it stands, Huer’s definition is far from being a real definition. It implies that lingerie, vibrators, flavored condoms, and various other sex toys or sexual aids count as pornography, whereas strip shows, peep shows, amateur stag videos, and other such non-mass-produced items do not.<sup>9</sup> But even if these problems were remedied (i.e., by requiring that the material in question be communicative and by dropping the requirement that it be mass produced), there is good reason to think that sex-for-profit definitions are generally doomed to failure. The reason is that a lot of pornography is distributed for free. Pictures of the sort found in *Penthouse* and *Hustler* are readily available free of charge on the internet from private non-profit sites; and most of these sites are ones that most people would agree contain *pornography* (i.e., they are not merely educational sites, or sites for art lovers, or any other such thing). Furthermore, though a lot of pornography isn’t distributed for free, clearly it could be. Magazines like *Hustler* and videos like *Deep Throat* don’t *have* to be produced for a profit and could be distributed free of charge if the producer were sufficiently wealthy. But distributing such things for free would not make them any less pornographic.

## 2.2 “Bad Art” Definitions.

Another way of drawing the distinction between pornography and other sexually explicit works of art or literature is to hold that pornography, unlike those other works, is *bad* art or literature. One well known definition of this sort is given by Fred Berger. According to Berger, pornography is “art or literature which explicitly depicts sexual activity or arousal in a manner having little or no artistic or literary value”. (Berger 1977, p. 184) Berger explicitly states that he does not intend to give necessary or sufficient conditions for the application of the term ‘pornography’. All he claims on behalf of his definition is that it picks out “most of what is usually regarded as pornographic”. (Berger 1977, p. 184) But, like Huer, he seems unaware of how far short of being a real definition his actually falls.

First, let’s look at sufficiency: A botched photo of a naked, sexually aroused man or woman printed by mistake in a medical textbook, or a technically poor and anatomically inaccurate painting of a naked, sexually aroused man or woman published deliberately in an anatomy textbook will have little or no artistic or

literary value; but neither depiction will count as pornographic. A man who paints, for his own private viewing pleasure, an artistically incompetent and un-inspired picture of himself having sex with his wife will, no doubt, be a producer of bad art; but we could hardly accuse him of producing pornography.

On the other hand (focusing now on necessity) a lot of what actually counts as pornography is not at all obviously art, much less *bad* art. Peep show performances are not clearly art; and phone sex calls are almost certainly not art. But both are widely taken to be pornographic. Moreover, though the most ubiquitous examples of pornography—pictures of the sort found in *Playboy* and *Penthouse*—seem clearly to count as art, it is far from obvious that they count as *bad* art. As Jon Huer notes (Huer 1987, p. 189) many of the photographs in such magazines are technically quite good; and some of the poses are not unreasonably construed as artistically inspired. Similar claims have been made on behalf of some pornographic literature (such as *Story of O*).<sup>10</sup> Thus, we must look elsewhere for the defining characteristic of pornography.

### 2.3 “As/As-Only/Only-As” Definitions.

It is not uncommon for people to criticize pornography on the grounds that it portrays its subjects (or, indeed, women or men generally) as mere sex objects; and some have gone so far as to define pornography as material that portrays men or women as sex objects, only as sex objects, or as only sex objects. Thus, for example, Wendy McElroy defines pornography as “the explicit artistic depiction of men and/or women *as* sexual beings.” (McElroy 1995, p. 51, emphasis mine). Margaret Smith and Barbara Waisberg define it as “sexual imagery which presents the human subjects *as only* sexual objects for the use of the viewer.” (Smith & Waisberg 1985, p. 5, emphasis mine). And David Linton seems to offer an *only-as* definition. According to Linton, “[t]he essential characteristic of pornography is the dehumanizing and degrading of sex which it produces through its separation of sex and love” (Linton 1979, p. 57). He then goes on to distinguish pornography from erotica, and the distinction drawn is that pornography “dehumanizes sex, so that human beings are treated as things and women in particular as sex objects”, whereas erotica “deals with the pleasure and art of sexuality, but always in terms of a positive emotional relationship”. (Linton 1979, p. 57)<sup>11</sup> Thus, it would appear that, on his view, the defining feature of pornography is *not* the fact that it portrays its human subjects as sexual beings or even as “sex objects”, but that it portrays them *only as* such (omitting many of their other distinctively human characteristics).

It is important to note that the above examples really are examples of different definitions. A documentary film about a steel worker who has a family may portray the protagonist *as* a steel worker but not *only as* or *as only* a steel worker (since it may also portray him as a family man). Concrete examples of *only-as* or *as-only* portrayals are harder to give because it is not at all clear what they are. The following are, I think the most natural ways to understand them:



- (i) S is portrayed *only as* F just in case there is no property G other than those entailed by being F such that S is portrayed as being G.
- (ii) S is portrayed *as only* F just in case S is portrayed as having no properties other than those entailed by being F.

But obviously if this is how we are to understand the two sorts of portrayals, then there will be no way for a photo or a video to portray a human being as only or only as a sexual being. A photo of a naked woman posing seductively will portray her as a sexual being; but it will also portray her as having properties other than those entailed by being a sexual being. (For example, it will portray her as human, and as female; if she has brown hair, it will portray her as having brown hair; if she is lying on a bed it will portray her as lying on a bed; and so on.) Perhaps there are other ways of understanding *only-as* and *as-only* portrayals, but if so, I am at a loss to see what they are.<sup>12</sup>

For now, however, let's waive these concerns and pretend that we do understand what it is to portray someone *only as* or *as only* a sexual being. Still, there are other problems with the definitions in this category. For one thing, there can be pornography that fails to portray anyone *as* a sexual being or sexual object. Thus, the definitions in this category fail to give necessary conditions for something's being pornography. Furthermore, there can be non-pornography that (on any reasonable interpretation of these terms) portrays someone *only as* or *as only* a sexual object. Hence, the definitions in this category do not give sufficient conditions either.

I'll begin with the latter sort of example. A prostitute writing in her diary might describe herself as *only* a sex object. If this is the first and only entry, the diary will portray the prostitute as *only* a sex object, but it will not be pornographic. To take another example, suppose prostitution were legalized nationwide. It is not at all unreasonable to suppose that prostitution services might spring up that resemble in some ways the various dating services already available to the general public. In particular, the service might allow the customer to express a variety of preferences about the sort of person with whom he would like to be paired and perhaps even to view photographs or short videos of prospective servers. Clearly, if anyone can be portrayed as *only* or *only as* a sex object, the prostitutes in the photos or videos would be portrayed as such. Furthermore, the photos or videos might be sexually explicit. But clearly those photos or videos might fail to count as pornography. Suppose, for example, that they were shown only in consultation with a sales representative from the service, were not at all intended to significantly arouse the customer but only to provide a basis for choosing a prospective server, and depicted men and women in states of arousal but only for informational purposes and never in a deliberately inviting or seductive way. In such a case, it is doubtful that the photos or videos in question would count as pornographic, despite being sexually explicit (perhaps also artistically well done) and portraying their subjects as *only* or *only as* sex objects.

Now for examples of the former sort: As we saw in Section 1 with the scenario of *The Shoe Fetishists*, it seems clear that there can be pornography the subjects of which are not human or even sentient. Such pornography would not present *anyone* as a sexual being or as a sex object. One might say that in such a case the non-sentient subjects are presented as sex objects. But then the above definitions would have to be modified in some way, and it is not at all clear how the modification should go. For example, Smith & Waisberg's definition would have to do away with the 'sexual imagery' qualification and the 'human subjects' qualification. Thus, the modified definition would apparently hold that pornography is any material that presents its subject as only a sex object. But now the definition is hopeless. To present an inanimate thing as a sex object is (if anything at all) simply to present it as an object to be used for one's own sexual arousal or gratification. But then advertisements for sex toys, condoms, lingerie, and the like are going to count as pornographic on this definition; and that is unacceptable. Moreover, the problem isn't peculiar to Smith & Waisberg's definition. Similar problems will plague any attempt to modify the other definitions so as to accommodate pornography involving inanimate subjects.

#### 2.4 "Obscenity" Definitions.

Many people, philosophers and non-philosophers alike, hold that the defining feature of pornography is its obscenity—its violation of community standards for what counts as offensive or not.<sup>13</sup> Obscenity (in this sense) cannot be the only defining feature of pornography, however. Extending one's middle finger is obscene in some contexts, but not pornographic. Thus, definitions that treat pornography as obscenity must be qualified in some way. They must say what *sort* of obscenity pornography is supposed to be. Naturally enough, the qualification typically holds that pornography is some sort of obscene display of human sexual organs or of human sexual behavior. Thus, George P. Elliott writes:

Pornography is the representation of directly or indirectly erotic acts with an intrusive vividness which offends decency without aesthetic justification. (Elliott 1965, pp. 74–75)

Similarly, Louis Zurcher and George Kirkpatrick open their book (Zurcher & Kirkpatrick 1976) with the following:

We begin this book...by acknowledging our assumption that the term *pornography* is a value judgment.... At the time of our study (1969–70) the legal test (determined by the Warren Supreme Court) of whether or not sexually explicit material could be prohibited constitutionally rested on four criteria, all of which reflected the centrality of value judgment. Material was pornographic or obscene if: (a) to the average person (b) the dominant theme of the material taken as a whole appealed to prurient interest in sex; (c) the material was patently offensive because it affronted contemporary community standards, relating to the description or representation of

such matters; and (d) the material was utterly without redeeming social value.... During the writing of this book (1973), the Burger Supreme Court modified the legal test for pornography...primarily by removing the 'redeeming social value' criterion and by emphasizing the determination of 'contemporary community standards'. (Zurcher & Kirkpatrick 1976, p. ix)

Legal tests are very different from real definitions and must be evaluated accordingly; but Zurcher & Kirkpatrick, like many others, seem to think that the legal tests described above are on the right track with respect to expressing the very nature of pornography. The basic idea is that what makes something pornographic isn't the fact that it is sexually explicit, but rather the fact that it is sexually explicit in a way that *offends*.<sup>14</sup>

The first and most important thing to note about definitions in this category is that they are utterly devastated by the observation that pornography need not be sexually explicit. Definitions in other categories can sometimes be modified so as to survive this observation; but I see no suitable way of modifying obscenity definitions. As I have already indicated, pornography cannot be just *anything* that is obscene. But if we are deprived of the sexual explicitness qualification, what other one can we use? I can see none that will do the job.

But even if we ignore this problem, there are other difficulties. Notice that there are two ways of taking obscenity definitions. We can take them as normative: pornography is whatever sexually explicit material a person *should be offended by*, whether she is in fact offended by it or not. Or we can take them as descriptive: pornography is whatever *in fact* offends those people in our society who are considered "average" or "decent". Elliott's definition appears to be of the former kind; a definition based on the legal tests described by Zurcher & Kirkpatrick would appear to be of the latter kind. Both are problematic.

Normative definitions are problematic because they are uninformative. Suppose I look at a sexually explicit picture and am unoffended. Should I infer that the picture is non-pornographic, or that I am indecent (i.e., not being offended by what *should* offend me)? Suppose that society evolves to the point where no one happens to be offended by magazines like *Penthouse*. Should we conclude that the people of that society are indecent, or that those magazines are no longer pornographic? There will be no way of telling what we should conclude absent a description of what sorts of things should offend a decent person. But that is precisely what our obscenity definitions don't give us. One could try to provide such a description. For example, one might argue that sexually explicit material should be offensive when it is marketed to turn a profit off of our sexual interests. But then, if we're interested in providing a truly informative definition of 'pornography', what we should say is that pornography is sexually explicit material that is intended to turn a profit off of our sexual interests, not that it is sexually explicit material that offends decency. In short, a definition that tells us that pornography is what *should* offend us is completely useless. Either we will have no idea what ought to offend us (and hence will have no idea whether anything counts as pornography), or else we will have an idea of

what should offend us and thus will have a purely descriptive definition of ‘pornography’ available to replace the normative one.

Descriptive obscenity definitions, on the other hand, are problematic because they have obvious counterexamples. Suppose we define pornography as whatever sexually explicit material *in fact offends* people who are considered decent or average. The definition is clearly informative. To find out what counts as pornography, we need only survey the members of our society to find out who is considered decent or average and then survey those who are considered decent or average to find out what sorts of sexually explicit materials offend them. The problem, however, is that there is no reason to expect that such a process would reliably separate pornography from non-pornography. Advertisements for vibrators or flavored condoms together with explicit descriptions of how most effectively to use them would certainly offend most of those who are considered decent or average if they appeared in *Highlights for Children*; but almost nobody, I think, would call such advertisements pornographic. More importantly, if people stopped being offended by magazines like *Penthouse* and *Hustler*, those magazines would not necessarily cease to be pornographic. If this were not the case, one way to rid the world of pornography would be to destroy or “re-educate” everybody who was offended by such magazines. Indeed, in a society like ours where tolerance and open-mindedness are considered to be among the highest moral virtues, it is quite reasonable to think that (some-day, anyway) those who are considered most decent will be just those people who aren’t offended by much of anything, except maybe intolerance. But there could still be pornography in such a society, as *The Profit Machine* example (Section 1 above) clearly shows.

### 2.5 “Oppression” Definitions.

There are various definitions falling in this category, some more plausible than others. The basic idea underlying all of them is that the defining feature of pornography is the fact that it subordinates, degrades, or oppresses its subjects or women generally or women and men generally.<sup>15</sup> Again, qualification is in order: A written edict from a ruler commanding the death penalty for all who fail to endorse her political views is certainly oppressive, but hardly pornographic. So pornography must involve a certain kind of oppression, and typically it is held that pornography is just the sort of oppression that can or does result from a certain kind of display of human sexual organs or sexual behavior. Thus, for example, Catharine MacKinnon, describing a definition which she co-authored with Andrea Dworkin for the purpose of anti-pornography legislation writes:

We define pornography as the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities; enjoying pain or humiliation or rape; being tied up, cut up, mutilated, bruised, or physically hurt; in postures of sexual submission or servility or display; reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture; shown as filthy or inferior; bleed-

ing, bruised or hurt in a context which makes these conditions sexual. Erotica, defined by distinction as not this, might be sexually explicit materials premised on equality. We also provide that the use of men, children, or transsexuals in the place of women is pornography. (MacKinnon 1984, p. 176)<sup>16</sup>

Dworkin and MacKinnon are motivated by concern about the harms to women that they think directly result from pornography; and so they are interested in providing a definition that will be clear enough and specific enough to support legislation against pornography. As Catherine Itzin rightly notes,<sup>17</sup> the trouble with many definitions of ‘pornography’ is that they are too vague to be useful in a court of law. Itzin then defends the Dworkin/MacKinnon definition on the grounds that it does not suffer from that sort of problem. And in one sense she is correct: Dworkin and MacKinnon do indeed give a very specific list of the sorts of depictions their definition is intended to cover. But that is not sufficient to eliminate the vagueness. One major problem with the Dworkin/MacKinnon definition is that something counts as pornography on that definition only if it is a depiction that *subordinates* somebody. But it is not at all clear what it takes for a depiction to do this. The problem isn’t that there are borderline cases where we can’t tell whether a depiction is subordinating someone. That sort of vagueness would be tolerable. Rather, the problem is that there don’t even seem to be clear cases. One might well doubt whether it is even *possible* for a mere depiction to subordinate someone.

Consider, for example, a typical photo of the sort found in *Penthouse* magazine: one in which the subject is a single woman displaying her genital area. This sort of photo (at least as it occurs in *Penthouse*) is a paradigmatic example of pornography. But it is not at all clear whether the Dworkin/MacKinnon definition will count it as such. The subject of the photo is in a “posture of sexual display”; but the photo will count as pornographic according to Dworkin and MacKinnon only if it subordinates the woman (or women in general). But why should we think that it does that? One might think that any kind of non-educational display of another person’s sexual organs subordinates (or, at least degrades) that person or their gender. But Dworkin and MacKinnon will not accept this response, for they grant that some sexually explicit material (material that is “premised on equality”) does not subordinate anyone.

Another response might be that the photo of the woman subordinates women simply because it occurs in *Penthouse*, a magazine wherein (according to many feminists) women are often portrayed as mere objects for the sexual pleasure of men. But it is not at all clear that the photos in *Penthouse* do portray women as mere objects.<sup>18</sup> Indeed, it is not at all clear that the photos in *Penthouse* typically make any statement at all about women generally. The only human male appearing as a character in Edgar Rice Burroughs’s *A Princess of Mars* is muscle-bound, clever, a fantastic sword fighter, protective of women, and a sympathizer with the Confederacy. Are we to infer, then, that Burroughs’s novel depicts men, or human beings generally, as any or all of these things? Clearly not. What Burroughs depicts is *one man* or *one human being*, who is all of these things.

So, too, the producers of *Penthouse* might well argue that their pictures do not say anything about women generally. At most, they say of *particular* women that they are mere objects. But even this is a stretch; for the photos in pornographic magazines are often accompanied by biographical information about the women depicted, thus communicating that they are more than mere sex objects, but rather ordinary people with ordinary interests, hobbies, goals, fantasies, and so on.

Moreover, even absent the biographical information, it is far from clear that pictures in *Penthouse* or anywhere else would, of necessity, *say* anything at all about the women depicted therein. After all, nobody took the film *Silence of the Lambs* as depicting Anthony Hopkins as a bloodthirsty cannibal, even though Hopkins portrayed one in the film. Hopkins was merely *playing the role* of a bloodthirsty cannibal for the entertainment of the audience. So too, one might think, when women (or men) appear as subjects in paradigmatically pornographic magazines, they do not portray themselves or anybody else as mere sex objects; rather, they play the role of a sex object for the entertainment of the magazine's consumer.<sup>19</sup>

But even if pornographic magazines *did* portray women as mere sex objects, or as inferior beings who deserve poor treatment from men, that would not obviously imply that women are subordinated by *Penthouse* or by any picture therein. Lies, even vicious lies, are impotent unless there is somebody who will believe and act upon them. Of course, Dworkin and MacKinnon may well point out that there *are* people—plenty of them—who will believe and act upon the lies ostensibly told by magazines such as *Penthouse*. But still, it is those people and not the photos appearing in *Penthouse* who do the subordinating. The photos themselves are just contributing causes.

Because of the problems associated with saying that pornography is a “practice of subordination or oppression”, many feminists prefer definitions according to which pornography is merely the approving representation of subordination or oppression or degradation.<sup>20</sup> One widely cited definition of this sort is the following from Helen Longino:

Pornography...is verbal or pictorial material which represents or describes sexual behavior that is degrading or abusive to one or more of the participants in such a way as to endorse the degradation.... Behavior that is degrading or abusive includes physical harm or abuse and physical or psychological coercion. In addition, behavior that ignores or devalues the real interests, desires, and experiences of one or more participants in any way is degrading. Finally, that a person has chosen or consented to be harmed, abused, or subjected to coercion does not alter the degrading character of such behavior.” (1980, p. 43)

Longino agrees with Dworkin and MacKinnon that pornography does at least contribute to the oppression of women. She lists as one of the harms of pornography that it “lies explicitly about women's sexuality” and that the lies help to promote violent and abusive behavior toward women. (Longino 1980, p. 46) However, Longino wisely avoids building any of this into her definition of ‘pornography’.<sup>21</sup>

Still, Longino's definition is not without its problems. It is noteworthy that Longino takes as a paradigm example of pornography a magazine cover "displaying a woman's genital area being spread open to the viewer by her own fingers." (Longino 1980, p. 46) This is puzzling; for, though it certainly does seem right to consider such a picture pornographic, it is not at all clear how this sort of picture satisfies Longino's definition. If the supposition is that the picture "ignores or devalues the real interests and desires of the subject", just imagine a case where the same sort of picture is accompanied by a caption truthfully reporting the subject's real interest and desire to display herself in the way depicted for the enjoyment of male viewers. (That there are people with such real desires can hardly be denied, even if one finds that fact objectionable.) Surely this sort of picture would be pornographic as well (assuming it occurred in roughly the same context), despite the fact that it would fail to satisfy Longino's definition.<sup>22</sup>

The main problem, then, with the oppression definitions is that they seem to be unable to count as pornography many of the pictures that most of us think of as paradigmatic instances of pornography. Or, at any rate, they are unable to count these pictures as pornography without very controversial assumptions about what counts as subordinating, degrading, or oppressing somebody, or about what counts as depicting the subordination, degradation, or oppression of somebody. Photos of the sort standardly seen in *Penthouse* are pornographic, despite the fact that for many of them there is no obvious sense in which they subordinate, degrade, oppress, or depict the subordination, degradation, or oppression of anyone.

Moreover (and just as importantly) the oppression definitions completely fail to take account of the fact that pornographic materials can have non-sentient subjects. The magazines described in the *Shoe Fetishists* scenario seem clearly to be pornographic despite the fact that nobody is oppressed, subordinated, or degraded by them. Hence the *defining* characteristic of pornography must be sought elsewhere.

### 2.6 Intention/Effect Definitions.

Though definitions in the previous two categories are quite common, by far the most pervasive definitions in the literature on pornography are those that hold that the defining feature of pornography is that it is *intended* to produce sexual arousal or in fact has the *effect* of producing such arousal. Thus, for example, Jan Narveson writes:

Pornography is the depiction by visual, literary, or aural means, of subject-matter intended to be sexually stimulating, when that depiction is for the *purpose* of such stimulation. (1993, p. 226; emphasis in original)

Here, the focus is on intention alone. Alan Soble, on the other hand, focuses on both intention and effect:

For my purposes, the subject of our discussion can be defined as follows: *pornography* refers to any literature or film (or other art-technological form) that describes or depicts sexual organs, preludes to sexual activity, or sexual activity (or related organs and activities) in such a way as to produce sexual arousal in the user or viewer; and this effect in the viewer is either the effect intended by both producer and consumer or a very likely effect in the absence of direct intentions.

Finally, in a familiar text on contemporary moral problems, Jeffrey Olen and Vincent Barry write that pornography is “erotic material that is *intended* primarily to cause sexual arousal in its audience or in fact *does* have that primary effect.” (1992, p. 115–116, emphasis in original.) Whereas for Soble it is (roughly) intention *and* effect that counts, for Olen & Barry, it is intention *or* effect that counts. This is important since, as they point out, some pornography isn’t intended to arouse but succeeds in arousing and some pornography is intended to arouse but doesn’t succeed in arousing. (Soble’s definition can accommodate the former because of his “absence of direct intentions” clause; but it cannot accommodate the latter.)<sup>23</sup>

What we have, then, are (effectively) three subclasses of definitions in this category: those that take pornography to be those materials that are intended to arouse (whether or not they in fact arouse), those that take pornography to be those materials that both are intended to arouse and in fact arouse, and those that take pornography to be *either* those materials that are intended to arouse or those materials that in fact arouse. There is also a fourth possibility—definitions that take pornography to be those materials that in fact arouse or are very likely to arouse, whether or not they are intended to do so. I found no clear examples of this sort of definition, but Soble at any rate takes the likelihood of producing arousal in the absence of direct intentions as a (roughly) sufficient condition for something’s counting as pornography. However, none of the definitions in these subclasses will do.

Consider first the *Profit Machine*. By hypothesis, the producer described in this scenario does not *intend* for his materials to arouse anyone. His only intention is to turn a profit. But clearly the materials he produces count as pornography. So (contra Narveson) there could be cases of pornography that are not produced with the intention of arousing anybody.

On the other hand, something could easily have the effect of arousing without being pornographic. As Anthony Burgess colorfully puts it, “Women cannot help moving, and men cannot help being moved.” (Burgess 1968, p. 5) But obviously no one would want to say that the ordinary movement of a woman, live or on film, counts as pornographic. Hence, definitions of the sort offered by Olen & Barry won’t do either.<sup>24</sup> Furthermore, this casts doubt on the last clause of Soble’s definition as well.

Finally, as noted earlier, sexually explicit photos of a person taken for the private viewing pleasure of his or her spouse will normally not be pornographic, despite the fact that such photos or videos in all likelihood will be *primarily*



*intended* to cause sexual arousal in their audience and will (one would hope) have the effect of causing such arousal. Indeed, just about any form of sexually explicit artistic expression can (and probably often does) occur between a husband and wife. An erotic dancer can dance for his or her spouse; a painter can paint explicit pictures of his or her spouse; and so on. And none of these things, if kept private, will count as pornography—even if they are intended to arouse and do in fact arouse. Thus, there can be instances of non-pornography that nonetheless both are intended to arouse and have the effect of arousing. Hence, definitions of the sort offered by Soble will fail.

### 2.7. Summary.

All of the above definitions fail to count as real definitions. Pornography need not offend anyone (hence it need not be obscene); it need not be bad art; it need not subordinate, degrade, or oppress anyone (at least not in the sense usually had in mind by proponents of oppression definitions); it need not be intended to produce a profit or to arouse anyone; and it need not have the effect of producing a profit or arousing anyone. None of these conditions are necessary for something to count as pornography; nor, as we have seen, are they sufficient.

## 3. The Proposed Definition

So what is pornography? As I said earlier, the definition I propose comes in two parts, one stating what it is for something to be *used* or *treated* as pornography and the other stating what it is for something to *be* pornography:

Part 1: *x is used (or treated) as pornography* by a person S =<sub>DF</sub> (i) *x* is a token of some sort of communicative material (picture, paragraph, phone call, performance, etc.), (ii) S desires to be sexually aroused or gratified by the communicative content of *x*, (iii) if S believes that the communicative content of *x* is intended to foster intimacy between S and the subject(s) of *x*, that belief is not among S's reasons for attending to *x*'s content, and (iv) if S's desire to be sexually aroused or gratified by the communicative content of *x* were no longer among S's reasons for attending to that content, S would have at most a weak desire to attend to *x*'s content.

Part 2: *x is pornography* =<sub>DF</sub> it is reasonable to believe that *x* will be used (or treated) as pornography by most of the audience for which it was produced.

In the remainder of this section I will comment on the various components of the definition, address what appear to be some of its disadvantages or weaknesses, and highlight what I take to be its main advantages.

I'll begin with a comment about the form of the definition. One might think it odd that I define what it is to *be* pornography in terms of what it is to be *used*

or *treated as* pornography, instead of the other way around. But in fact this is exactly the way we should expect the definition to go. The property *being pornography* isn't an intrinsic property of anything, and it does not supervene on the intrinsic properties of anything. Otherwise, the same item could not count as pornography in one context but not another. In this respect, the property *being pornography* is more like the property, *being a work of art* or *being money* or *being an English word* than the property *being a person*. Whether something has the property depends importantly on how it is or can reasonably be expected to be used or treated by some group of rational agents. (Note too that, at least in the case of money and words, the *expectation* is what is really relevant. There are words of English that hardly ever get used; and \$2 bills and Susan B. Anthony dollars still count as money despite the fact that they are probably more often treated as collectors items than as currency.) But then the concept of what it is to treat something as pornography turns out to be the basic concept, and the concept of what it is to be pornography is derived from that, as my definition has it.

One consequence of this is that there is some reason to reject the view that the term 'pornography' refers to a genuine or ontologically basic kind. But I am content with that consequence.<sup>25</sup> All of the serious moral and legal issues revolve around questions about whether it is morally appropriate to treat something as pornography or to allow the production and sale of materials that are likely to be used as pornography by large classes of people; thus, in principle anyway, the concept of what it is to be pornography could be eliminated without serious loss.

Condition (i) of Part 1 has it that *tokens* and not *types* are the objects of pornographic use or treatment. This is important since tokens of the same type of material might appear in different contexts and be treated differently by the same person in those different contexts. For example, tokens of the photograph of Marilyn Monroe mentioned at the outset of this paper appeared in various contexts. Some appeared in calendars in the late 1940's, others appeared in *Life* in 1996. And one might easily imagine one and the same person treating a calendar-token of that photograph as pornography but not treating a *Life*-token of that photograph as pornography. One consequence of making tokens and not types the objects of pornographic treatment is that if (in the late 1940's) it was reasonable to expect that most of the tokens of the photograph appearing in copies of the calendar would be treated as pornography by the audiences for which they were produced, then it follows that those tokens of the photograph *were* (in the late 1940's) pornography, whereas the tokens of the photograph appearing in the various copies of *Life* magazine are not (assuming, anyway, that it is not reasonable to expect that most of the tokens in *Life* would be treated as pornography by their audiences). But, as I have earlier indicated, this is a consequence that I think we should expect from a good definition of pornography.

Condition (ii) requires that a person desire to be sexually aroused or gratified by the *communicative content* of the material in order to count as treating

it as pornography. Someone who desires (and attempts) to be aroused by a magazine simply by rubbing up against it, and not by viewing or otherwise attending to its content, is not treating the magazine as pornography even if it is in fact pornography. Note too that there are various ways of attending to something's communicative content. Magazines are viewed; phone calls are heard; other pornographic materials might be touched, tasted, or smelled. (Though, as far as I know, there is *in fact* no such thing as pornography for the blind and deaf, it is hard to see why there couldn't be.) Furthermore, one might attend to the communicative content of some material simply by thinking about that content after having perceived it in some way.

Condition (iii) imposes a "no intimacy" requirement. The reason, of course, is to rule out such items as the videos and pictures that a man or woman might produce for the private viewing pleasure of his or her spouse. I should note that my definition leaves open the *possibility* that such items be treated as and indeed qualify as pornography. But I assume that in ordinary cases satisfying this description—if there is such a thing as an 'ordinary' case satisfying this description—the materials produced will violate condition (iii). Furthermore, I should also note that I do not mean to restrict the scope of the term 'intimacy' to the sort of intimacy one finds in a good (or even a bad) marriage relationship. Rather, by 'intimacy' I mean to include even the most shallow sort of interpersonal connection—the sort one shares even with mere acquaintances. Any attempt to interact with someone in a friendly way (i.e., not simply for profit, not simply for the sake of doing the person harm, etc.) counts as an attempt to foster intimacy. Thus, someone who sends a complete stranger a nude photo of himself or herself with the aim of initiating a purely sexual relationship (and with the reasonable belief that this aim will be recognized and will be among the reasons for viewing the photo) does *not* send a *pornographic* photo, even if the photo is in fact viewed primarily as a source of arousal by the target audience.<sup>26</sup> Furthermore, a man who looks through a copy of *Playboy* because he believes (falsely) that the models therein secretly admire him and are posing with the aim of pleasing *him* in particular does not *treat* those pictures as pornography (though he might nonetheless treat them primarily as sources of sexual arousal). On the other hand, a peep show or a lap dancer's performance or a private strip show performed by a prostitute will count as pornography because in such cases there is typically little question in the customer's mind that the person performing is doing so simply for the sake of profit.

Of some interest in this connection would be a case in which a narcissistic person performed an erotic dance in front of a mirror or produced sexually explicit pictures of himself or herself for the sake of his or her own arousal. Plausibly, one might argue that there is no such thing as fostering intimacy with oneself; but if this is correct then, perhaps implausibly, my definition will count both the dance and the pictures as pornography. My inclination in this case is to deny that there is no such thing as fostering intimacy with oneself (at least in

the very liberal sense described above). Intuitively, a narcissistic mirror dance doesn't count as pornography for the same reason a stripper's erotic dance for his or her spouse does not count as pornography: dancer and audience love one another and the dance is taking place at least in part as an expression of that love. The difference is just that, in the case of the narcissist, dancer and audience are identical and the love in question is reflexive. For this reason, I am not so inclined to balk at the suggestion that a narcissist might desire to be aroused by himself or herself in order to foster intimacy with himself or herself. On the other hand, if the scenario were described in such a way as to remove the element of self-love—i.e., if the mirror dance were performed by someone who hated herself but had somehow managed to dissociate herself from her own image so that she could still be aroused by that image in a mirror—I would not be nearly so inclined to balk at the suggestion that the performance was pornographic.

Condition (iv) of Part 1 expresses what I think many people have in mind when they talk about treating something “primarily as a source of sexual arousal”. (Thus, Part 1 may be abbreviated as follows: something is treated as pornography just in case it is communicative material that the user treats primarily as a source of sexual arousal and does not use because of any belief that the material was intended to foster intimacy between himself/herself and the subject(s).) I take it that the distinction between *weak* and *strong* desires that the condition appeals to is fairly intuitive, but perhaps it will help to offer an example. On a full stomach, I typically have a very weak (if any) desire to eat, and little or no reason to do so. On an empty stomach (usually) I have a strong desire to eat and strong reason to do so. Furthermore, if I am being forced at gunpoint to eat a leg of lamb that I already have a strong hunger-related desire to eat, it may well be that, despite my hunger-related desire to eat the leg of lamb, that desire is not among my reasons for eating it. Applying all of this to the case of pornography, I take it that if the typical *Playboy* subscriber's desire to be aroused by the pictures in that magazine were no longer a reason for viewing those pictures (i.e., if he lost the desire to be aroused by them, or if he retained the desire but came no longer to find them arousing), then that subscriber would have at best a weak desire to view those pictures (though perhaps he would be interested in the magazine itself for the articles or cartoons). On the other hand, I take it that in the case of (say) a non-pornographic erotic painting, the typical viewer may well have significant desire to view the painting (simply for its aesthetic qualities) even in the absence of any desire to be aroused by it.

Part 2 defines pornography in terms of what is reasonable to believe about the audience for which the material was produced. I have not built any analysis of reasonability into the definition because I think it obvious that a definition of ‘pornography’ should not carry substantial epistemological baggage. However, some clarifying remarks are in order. First, it should be evident that in saying that it is reasonable to believe that *p*, one rarely means that *everyone*

has evidence for  $p$ . Rather, in saying (without qualification) that it is reasonable to believe that  $p$ , one usually means something like this: evidence that would warrant the belief that  $p$  is readily available (e.g., the fact that  $p$  is obvious to the causal observer, scientific methods have already provided substantial confirmation for  $p$ , the relevant calculations have been or easily could be performed, knowledgeable authorities are accessible for consultation, etc.). So, for example, I take it that evidence is readily available that would warrant the belief that most of the target audiences of *Hustler*, *Deep Throat*, *Story of O*, and other paradigmatically pornographic works will treat those works as pornography. If it were not, it is hard to see why those works would be pornographic whereas other materials like the *Sears* catalog which are sometimes treated as pornography would not.

Admittedly, there are some cases where it is hard to tell what is reasonable to believe. For example, what should we believe about the target audience of a movie like *Showgirls* (a movie with an NC-17 rating for nudity and sexuality, but widely shown in theaters that do not typically show paradigmatically pornographic films)? Given the rating of that movie and the reasons for the rating—“nudity and erotic sexuality throughout” and “graphic language and sexual violence” (Ebert 1995)—one *might* expect an audience largely composed of people who would treat it as pornography. On the other hand, when the movie was released it was advertised as something other than a mere “sex film”, thus apparently indicating some sort of (reasonable?) expectation that viewers would have reason to watch the film that went beyond the mere desire to be aroused by it. It would be convenient if my definition did not have the consequence that there are cases where it is hard (or perhaps even impossible) to determine whether something is pornographic. But the problem with trying to avoid the difficulty is that the avoidance may come at the price of inaccuracy. Sometimes we just don’t have enough information to make a judgment. *Showgirls* seems to be just such a case, and it is so because it is not clear what can reasonably be believed about the target audience. My definition respects this and tells us what additional information we need to obtain in such problematic cases before we can make an accurate judgment.

One might object that because the ‘reasonable belief’ criterion yields the result that we can’t tell in some cases whether a given item is pornographic, any definition (like mine) that incorporates such a criterion will be useless for the purposes of public policy. But this objection is misguided. Reasonability criteria pervade the U.S. legal system. Definitions of obscenity and libel employ them; liability is often determined partly in accord with them; and the standard for determining guilt or innocence is a reasonability criterion. Furthermore, the notion of reasonable belief is a perfectly respectable philosophical notion. It admits of analysis in terms of reasons and evidence and it plays a vital role in a wide variety of important philosophical debates. If the notion of reasonable belief were overly problematic, it would not be able to play this sort of central role in philosophical discourse, and would long since have been weeded out of our legal system.

One additional concern about defining pornography in terms of what is reasonable to believe about the target audience is that it casts the net rather widely with respect to what it determines to be pornography. A more restrictive definition might define pornography in terms of what is *unreasonable to doubt* about the target audience. In other words, such a definition might replace Part 2 with something like this: “It is *beyond reasonable doubt* that  $x$  will be treated as pornography by most of the audience for which it was produced.” In my view, this sort of replacement may be appropriate for a legal test modeled on my definition; but it seems too restrictive to do justice to what I think are common intuitions about pornography. Case in point: *Story of O* has been mentioned several times in this paper as a paradigmatic example of pornography; but, though it certainly seems *reasonable* to believe that it would be treated as pornography by most of its target audience, in light of the book’s widely acknowledged literary merit, I do not think it is *beyond reasonable doubt* that it would be so treated.

A different sort of concern about Part 2 focuses on the fact that it is vague. I define pornography in terms of how *most* of its target audience can reasonably be expected to treat it. But there are no clear criteria for what counts as *most* of an audience. 51% of an audience is probably not most of the audience; 99% surely is. But there is a modest range of borderline cases in between. But I do not see this as a significant problem. In my view, the predicate ‘is pornography’ is vague; thus, as I see it, to precisify the definition (say, by replacing ‘most’ with ‘68%’) would be arbitrary and probably inaccurate.<sup>27</sup> Furthermore, the vagueness seems to be manageable given that we understand perfectly well various other definitions incorporating the term ‘most’. A man is bald just in case most of his head is hairless. An object is abnormal just in case it is different in some salient respect from most of the other objects of its kind. A cognitive faculty is reliable just in case it produces mostly true beliefs. Each of these definitions is vague; but none is so vague as to be useless or unintelligible, and each is such that if it were made more precise, the precision would be achieved only at the price of arbitrariness or inaccuracy. So too with my definition.

A final concern about Part 2 of the definition focuses on the idea that something counts as pornography by virtue of how we reasonably believe the *target audience* will treat it rather than by virtue of how the *actual* audience in fact treats it. Consider the following cases:

- (i) A man charges friends and neighbors a fee for viewing sexually explicit photos of his wife that were produced and intended only for his private viewing pleasure.
- (ii) A person distributes American shoe catalogs on the island of the Shoe Fetishists.
- (iii) A person living in the United States (foolishly) produces magazines like *Playboy* for distribution on an island of homosexual eunuchs. But the magazines are stolen and instead distributed in the U.S. to the usual consumers of *Playboy*.

One might think that in all of these cases, the materials in question are pornographic despite not being produced for the right sort of audience. But as I see it, this is a mistake. The fact that most of something's actual audience treats it as pornography (as might be expected in each of the cases above) is not sufficient to make it pornography since just about anything, no matter how innocently produced, *can* (by various accidents) be treated as pornography by most of its actual audience. Furthermore, the fact that something resembles actual pornography (as in case (iii)) is not sufficient to make it pornography since, as we have already seen, exact duplicates of the same photo can count as pornography in one context but not in another. Thus, whether material is treated as pornography by any or all of its *actual* audience is largely irrelevant to whether it counts as pornography. What matters is just the way we can reasonably expect the *target audience* to treat the material.

At this stage, one might suggest that, given the fact that something can be treated as pornography by one person but not by another, the best thing to say is that there are no objective facts about whether something counts as pornography. Shoe catalogs are pornography on the island of the Shoe Fetishists; they aren't pornography in the United States. But (as with any sort of relativism) it seems that the only way to make clear sense of this sort of claim is to take its proponents as recommending that we eliminate the property *being pornography* from our strict ontology. As I have already indicated, I do not think that this would be any great loss. But still, I am inclined to think that eliminating the property altogether would be revisionary. As most people's intuitions seem to have it, there really is such a property; it is just not an intrinsic property of anything. But then if one wants to preserve this intuition as well as our intuitions about what sorts of things have that property, it seems that the best thing to do is to endorse Part 2 of my definition.

Up to this point, I have focused primarily on clarifying and defending various terms and restrictions in my definition. I will conclude with a discussion of what I take to be the definition's virtues. The strongest point in favor of my definition (and also the virtue most to be expected of it) is that it accommodates all of the intuitions described in Section 1 about what counts as pornography and what doesn't. Paradigmatic examples such as the pictures found in *Penthouse*, as well as peep show performances, strip shows, "adult" videos, and various sorts of sexually explicit pictures distributed for free on the internet will all count as pornographic. Furthermore, the materials described in the two fictional scenarios (*The Profit Machine* and *The Shoe Fetishists*) all count as pornographic as well. Finally, what goes on between lovers (be it one-time performances or the production of videos or photographs for private viewing pleasure) will not count as pornographic because of the "no intimacy" requirement.

Furthermore, the proposed definition allows that some pornography might not be sexually arousing and that some erotic art might be very arousing (and, indeed, intended to arouse) without being pornographic. *The Piano* (which won three Academy Awards and was nominated for five others) was sexually explicit and widely regarded to be a very erotic film. Furthermore, the protago-

nist of the film was sexually exploited by her lover. By many accounts, this movie would count as pornography; but my definition yields what seems to be the correct result—that (whatever objectionable features it might have included) it is not pornographic. On the other hand, consider the movie *Showgirls*. In his review of that film, Roger Ebert criticized it on the grounds that, though it was intended to be erotic, it fell far short of its goal.<sup>28</sup> Not everyone will agree with Ebert; and (as we have already seen) one might have doubts about whether the movie should count as pornographic. But, objections to the example aside, the main lesson to draw from Ebert's review is that some pornography might well have the same sexual effect on its target audience that *Showgirls* apparently had on Ebert—namely, little or none at all.

Two additional virtues of my definition are that it allows that pornographic material might have serious artistic or literary value, and it explains why material can be described as pornographic even when it is no longer treated by its actual audience primarily as a source of sexual arousal. Regarding the first point, tokens of the very same type of explicit photograph may be pornographic when displayed in the pages of *Hustler* but not when displayed in textbooks as examples of good art or artistic technique. Regarding the second point, we all know that some materials now treated primarily as examples of good art were, at one time, rightly regarded as pornographic. Some of the writings of D.H. Lawrence, for example, may fall into this category, as might some of the pinup art from the early part of this century. How could it be pornographic at one time but not at another? The answer is simple: at one time but not at the other it was reasonable to believe that most of the target audience would treat it as pornography.

## Notes

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<sup>1</sup>*Life*, October 1996, p. 116.

<sup>2</sup>For just a few examples, see Willis 1997, Itzin 1992, and Soble 1986. (Itzin does not think that the definition she discusses is inadequate for legal purposes; but she does seem to recognize that it fails to cover all of what most people would call pornography.)

<sup>3</sup>According to the Pornography Resource Center (1984), the pornography industry brings in \$8 billion per year. No doubt that figure has only increased in the 16 years since that report was made.

<sup>4</sup>According to the Cambridge Dictionary of Philosophy (Audi 1999) a *real* definition is a “specification of the metaphysically necessary and sufficient condition for being the kind of thing a noun (usually a common noun) designates...” (214) In other words, a real definition aims to capture the real essence of a thing. I assume that the property of being pornography *has* a real essence; but it is important to note that I do not assume that that property *is* a real essence of anything. I also do not assume that the property of being pornography is non-vague or non-relational.

<sup>5</sup>Some will hold that merely displaying oneself naked for public enjoyment is degrading. However, the irrelevance of this objection will become apparent in Section 2.

<sup>6</sup>Though *Story of O* is arguably of higher literary quality than *Penthouse Letters*, it is nonetheless widely regarded as pornographic. (See, for example, Michelson 1966, van den Haag 1967, and



Sontag 1966.) I should note too that, though Pauline Réage claims that she wrote the book as “an extended love letter to [Jean] Paulhan”, (de St. Jorre 1994) the fact that she allowed it to be published shows that in some sense the “target audience” includes more people than just her lover. This is important, since otherwise my definition would not count the book as pornographic.

<sup>7</sup>Some of this might count as pornographic under my definition if the subject is coerced or not of sound mind, or if the marriage relationship is dysfunctional in various ways; but obviously not every example of the sort just described will involve coercion, psychological disorder, or marital dysfunction.

<sup>8</sup>More on the distinction between what *is* pornography and what is *used* as pornography below.

<sup>9</sup>If you think that a strip show is mass produced simply because it is repeated night after night, keep in mind that (a) it is controversial whether events (and hence performances) are repeatable items and (b) it is surely possible for one to take a job as a stripper and then to quit after one’s first performance.

<sup>10</sup>See, for example, Michelson 1966 and Sontag 1966.

<sup>11</sup>The phrases I have quoted from Linton are themselves quoted by Linton from *Pornography: The Longford Report* (London: Coronet Books, 1972).

<sup>12</sup>It was Christopher Boorse’s unpublished essay, “Two Only As/As Only Fallacies” that helped me to see the distinction between only-as and as-only definitions. Boorse credits Judith Hill (1987) with being the first to state in print the only-as/as-only distinction. It is noteworthy that Hill is concerned with distinguishing between treating someone only as a means versus treating her as only a means. Roughly, to do the former is to treat a person as a means without treating her as if she is not an end in herself, whereas to do the latter is to treat her as a means and, furthermore, to treat her as if she is not an end in herself. But notice that, here, to treat someone only as F seems just to involve treating her as F without treating her as G (for some salient G), and to treat her as only F is to treat her as being F but not G (again, for some salient G). But where F is the property of being a sexual being, or a sex object, what is the salient G supposed to be? Those offering only as-and as-only definitions don’t tell us—or else they give obviously implausible suggestions such as ‘the property of being a person’ or ‘the property of being a human being’.

<sup>13</sup>There are various definitions of ‘obscenity’, some crafted for legal purposes, others aimed at expressing the ordinary sense of the term. The definition I have given here is a rough approximation of the overlap between what I take to be the ordinary sense and the most widely accepted legal definition. Further precision in the matter would only add unnecessary length to the paper; it would not improve the prospects of obscenity definitions of ‘pornography’.

<sup>14</sup>For other examples of definitions in this category, see Kronhausen & Kronhausen 1959, Moroz 1979, and Sagarin 1969. Both in and outside of the literature on legal definitions of ‘pornography’ and ‘obscenity’, the two terms are often used interchangeably. (See, for example, Clor 1969, Manning 1988, Moretti 1984, and especially Osanka & Johnson 1989).

<sup>15</sup>Though there are distinctions to be made between subordination, degradation, and oppression, such distinctions are not made sharply in the literature on pornography. Strictly speaking, one can subordinate someone (i.e., treat her as inferior in some respect) without oppressing her (i.e., subordinating her cruelly) or degrading her (i.e., causing her to be disgraced in some way). I shall not attempt to preserve these distinctions in the discussion that follows. But even having acknowledged them, in light of the views held by the proponents of these sorts of definitions about what *sort* of degradation and subordination results from or is embodied in pornography, it still seems reasonable to characterize all of the definitions in this category roughly as “oppression” definitions.

<sup>16</sup>See also Dworkin 1985, pp. 522ff and Burstyn 1985, “Appendix II: Excerpts from the Minneapolis Ordinance.”

<sup>17</sup>Itzin 1992, pp. 435–38.

<sup>18</sup>Again, as in Section 2.3, there is difficulty making sense of what it means to portray someone *as a mere sex object* or *merely as a sex object*. But I am for now pretending that there is some way around these difficulties.

<sup>19</sup>I owe many of these points (though not the examples that make the points) about whether pictures can portray women as mere sex objects to Boorse (unpublished).

<sup>20</sup>But many are not dissuaded from accepting the Dworkin/MacKinnon definition. Among those who endorse it, defend it, or both are Carse (1989), Cole (1989), Langton (1993), and Vadas (1987). For objections to Vadas's defense, see Parent 1990.

<sup>21</sup>Other examples of definitions in this category can be found in Brownmiller 1975, Dworkin 1981, Kramarae & Treichler 1985, Osanka & Johnson 1989, and Steinem 1978. For additional counterexamples and objections to these sorts of definitions, see Gracyk 1987 and Soble 1985.

<sup>22</sup>I have ignored questions about whether it makes sense to speak of pictures as "endorsing" degradation. For a discussion of this and other related issues, see Soble 1985.

<sup>23</sup>Other examples of definitions in this category can be found in Beis 1987, Burgess 1968, Garry 1977, Gebhard et al. 1965, Gould 1991, Nalezinski 1996, Orser 1994, Scoccia 1996, Tynan 1968, van den Haag 1967, and Zillman 1989.

<sup>24</sup>One might respond on behalf of Olen & Barry that in neither of these two cases is the sexually arousing effect the *primary* effect. But I see no way of defending this response. First, it is not at all clear how we are to distinguish between primary and secondary effects. But even if we could, it is very clear that, though the sexual effects (if any) of the two examples would not be the primary effects on *most* people, they could be the primary effects (simply by virtue of being the only noticeable effects) on some people; and this is all that is required for something to count as pornographic under the definition offered by Olen & Barry.

<sup>25</sup>Elsewhere (Rea 2000) I reject the view that *work of art* is a genuine kind.

<sup>26</sup>Though if the person were later to publish the photo, as Pauline Réage did with *Story of O* (see note 6), the published copies of the photo probably would be pornographic.

<sup>27</sup>I will not take a stand on the question whether the vagueness is linguistic, epistemic, or metaphysical. Thus, I say only that the *predicate* is vague, leaving open the question whether the *property* of being pornography is vague.

<sup>28</sup>Ebert 1995. Ebert ends his review by saying "Showgirls is...a waste of a perfectly good NC-17 rating."

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