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Gender Biases in Cyberspace: A Two-Stage Model, the New Arena of Wikipedia and Other Websites

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Gender Biases in Cyberspace: A Two-Stage Model, the New Arena of Wikipedia and Other Websites

Cover Page Footnote

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Gender Biases in Cyberspace: A Two-Stage Model, the New Arena of Wikipedia and Other Websites

Shlomit Yanisky-Ravid & Amy Mittelman*

Increasingly, there has been a focus on creating democratic standards and norms in order to best facilitate open exchange of information and communication online—a goal that fits neatly within the feminist aim to democratize content creation and community. Collaborative websites, such as blogs, social networks, and, as focused on in this Article, Wikipedia, represent both a cyberspace community entirely outside the strictures of the traditional (intellectual) proprietary paradigm and one that professes to truly embody the philosophy of a completely open, free, and democratic resource for all. In theory, collaborative websites are the solution for which social activists, intellectual property opponents, and feminist theorists have been waiting. Unfortunately, we are now realizing that this utopian dream does not exist as anticipated: the Internet is neither neutral nor open to everyone. More importantly, these websites are not egalitarian; rather, they facilitate new ways to exclude and subordinate women.

This Article innovatively argues that the virtual world excludes women in two stages: first, by controlling websites and filtering out women; and second, by exposing women who survived the first stage to a hostile environment. Wikipedia, as well as other cyberspace environments, demonstrates the execution of the model, which results in the exclusion of women from the virtual sphere with all the implications thereof.

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INTRODUCTION

This Article will focus on a single, but very important, area within the larger framework of the Internet; specifically, we will analyze gender bias as it manifests in collaborative websites with openly editable content, such as blogs, social networks, and specifically, Wikipedia. Democratic principles reinforce that the virtual world should be open to everyone; however, scholars such as Pro-

fessor Tim Wu from Columbia Law School, who coined the term “Net Neutrality,”¹ while criticizing this notion only focus on *actual* accessibility. Wu claimed that the Internet is not neutral because millions of people around the globe neither have an Internet account, nor can they afford to pay the Internet providers.² They are completely excluded from access to knowledge, education, and culture, resulting in their exclusion from modern society.³ Yet, these scholars have not addressed the rampant gender discrimination that still exists among those who *can* access the Internet. And the ones who have addressed specific offenses, such as hate crimes in cyberspace or revenge porn, have not explained the exclusion of women using any of the structured theoretical models.⁴

This Article is unique in that it argues that the virtual world systemically and systematically excludes women by using a two-

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Many thanks to Catherine MacKinnon, Sheila Foster, Jack Balkin, Vicky Schultz, Frances Radai, Joel Reidenberg, Alberto Aharonovitz, Karen Topaz Druckman, John Curran, Shir-el Nakdimon, Justice Elisheva Barak Ososkin, Rivi Cohen, Amichai Cohen, Shwartz, and Sivan Saban-Hacohen, for their encouragement, insights and important contribution along the way. Special thanks to several institutes, who gave a stage for the discussions, such as Yale Law School; ISP; Fordham University School of Law; World Intellectual Property Organization, Geneva; the Swiss Institute of Comparative Law, Lausanne; and OAC. To my research assistants and gifted editors, Laura Lagone and Elizabeth Ledkovsky, Esq., gratitude for your wonderful assistance. Last but not least, thanks to Katie Rosenberg for her outstanding work and her thoughtful comments and suggestions, as well as to the Elizabeth Walker, Editor-in-Chief, for her devoted work. Any errors are our own.

¹ Tim Wu, *Network Neutrality, Broadband Discrimination*, 2 J. TELECOMM. & HIGH TECH. L. 141, 141 (2003).

² *See id.* at 143 (discussing price discrimination by network providers).

³ *See id.*

⁴ *See generally* DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE (2014) (discussing the danger that cyberspace brings in coping with crimes such as cyberspace harassments); Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224, 224–26 (2011) (focusing on sexual harassment in cyberspace, such as revenge porn, and arguing that the unwilling avatars that exist in cyberspace make the virtual sphere even more discriminatory than the physical world).

stage model: first, by controlling websites and filtering out women; and second, by exposing women (those who survived the first stage) to a hostile environment. Apparently, even the most open and egalitarian websites are gender biased. Wikipedia serves as an excellent example to demonstrate this phenomenon. Part I will discuss the utopian features of the Internet and how open access websites can provide equal opportunities to all users in theory. Part II will analyze the reality of gender inequality in cyberspace as exemplified by Wikipedia. Part III will establish a two-stage model of discrimination against women consisting of exclusion followed by harassment, resulting in today's new virtual glass ceiling, and will also discuss some of the conclusions the discourse raises.

I. THE PROMISE OF AN EGALITARIAN INTERNET: NEUTRAL, ACCESSIBLE, AND OPEN TO ALL

The allure of the Internet cannot be overstated. This virtual space provides a wealth of information that is accessible to everyone through a computer and network provider. With the advent of social media and open access websites, everyone has the ability to not only access all sorts of information, but also contribute to the substance of the material. It is a place where everyone is free to access, participate, and contribute equally, and there is the foundation for a type of digital utopia in the virtual sphere. This Part will discuss the utopian qualities of the Internet followed by three alternative perspectives on the open access virtual society by Copyleft, Access to Knowledge, and Feminist Theorists.

A. Utopian Qualities of the Virtual Space

Gender discrimination, sexual harassment, and the disparity between men and women created within the new virtual sphere are all issues that we face as our lives have increasingly migrated to the online arena. Cyberspace, and the new opportunities that have arisen as a result, has been described as “cyberspace idealism” and a “utopian realm” where “all can participate equally, free from social, historical, and physical restraints.”⁵ In addition, it has also been described as having an “avatar phenomenon”; “the opportu-

⁵ Franks, *supra* note 4, at 225.

nity to escape physical limitation, both geographic and bodily” where “free and unregulated exchange of ideas” is available and where “the only limitation is an individual imagination and creativity.”⁶ In other words, a new realm of open websites where everyone has equal access to content creates a more egalitarian community from an accessibility perspective. The virtual sphere is theoretically blind to gender, age, race, disabilities, and country of origin; content can be created by any user without limitation on the number of websites, blogs, and Facebook accounts. Even the government cannot completely control or resist the content.⁷ With the rise of the Internet, a new sphere was created: beyond borders, beyond total governmental control, beyond property limitation,⁸ beyond regulations, and beyond almost any limitation.⁹ There are almost no (or not enough) regulations (or any alternative solution) in the United States, that create barriers or block the accessibility, either explicitly or implicitly, and in its current iteration, the Internet is also completely free.¹⁰

⁶ *Id.* at 224–26.

⁷ There are, of course, some means of governmental control, either by regulation of the Internet as a whole, or via specific instances of governmental control. See, for example, the Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, 100 Stat. 3009, a United States federal law restricting child pornography on the Internet. What we mean to communicate here is that regardless of individual governmental controls, creation of content online cannot be completely and totally controlled by any one, entity or authority—it exists as a medium that can never truly be contained. See also Charles Arthur, *Internet Remains Unregulated After UN Treaty Blocked*, *GUARDIAN* (Dec. 14, 2012), <http://www.theguardian.com/technology/2012/dec/14/telecoms-treaty-internet-unregulated> [<http://perma.cc/8A56-QNHT>] (reporting that a proposed global telecoms treaty by the International Telecoms Union of the United Nations (“U.N.”) that would have given national governments greater powers to control the Internet was blocked, which safeguarded the role of the Internet as an unregulated system). *But see* Jacques Cremer, *Regulating the Internet?*, in CLAUDE HENNY ET AL., *REGULATING OF NETWORK UTILITIES: THE EUROPEAN EXPERIENCE* 335 (2001) (explaining that the governance of the Internet is extremely complex as there is no one organization responsible).

⁸ We refer here only to public websites.

⁹ See JEANNE PIA MIFSUD BONNICI, *SELF REGULATION IN CYBERSPACE* (2008) (explaining that self-regulation in cyberspace is still an indispensable part of regulating the Internet and will arguably remain so, contrary to what is often supposed in the literature, and that private regulation fills substantive gaps where state regulation is missing). Although some government-imposed limitations do exist, the virtual sphere is largely unregulated.

¹⁰ Franks, *supra* note 4, at 224–26.

The most important aspect of this research is the egalitarian nature of various websites. From an accessibility perspective, the community is open to everyone and all can equally take part by creating a blog, editing content, or opening a social network account. This new sphere can be described as a type of utopia.¹¹ It is no surprise, however, that “[f]ew would deny that cyberspace has a dark side.”¹² Before we address the negative side of open access virtual sites, it is important to summarize the utopian features of these websites. These “promised lands” share seven common utopian features: (1) free flow of information and freedom of expression; (2) egalitarian foundation; (3) physical peace; (4) freedom from government and border controls; (5) anonymity; (6) community based; and (7) unregulated or self-regulated arena.

First, the free and open flow of information is one of the foundations of this utopian society formed via a virtual sphere. Information is readily available and free, and information is accessible to everyone.¹³ The free flow of these websites not only provides a widespread ability to gain knowledge and education, but it also has become one of the main tools through which we all participate in society, culture, commercial life, progress, and innovation in the digital era. Thus, blocking accessibility to these digital spheres necessarily excludes users from both information and also from being an active participant of society.¹⁴ By creating our own content, freedom of expression is upheld and preserved.¹⁵ While open accessibility to the web provides free information and the ability to

¹¹ See *id.* at 225.

¹² *Id.* at 224.

¹³ See also *infra* text accompanying Part I.C regarding the Access to Knowledge movement.

¹⁴ See Sherif Elsayed-Ali, *Internet Access Is Integral to Human Rights*, EGYPT INDEP. (Jan. 15, 2012), <http://www.egyptindependent.com//opinion/internet-access-integral-human-rights> [<http://perma.cc/K9S5-MU4E>] (explaining that people denied access to the Internet would “be cut off from the outside world”); David Kravets, *U.N. Declares Internet Access a Human Right*, WIRED (June 3, 2011), <http://www.wired.com/2011/06/internet-a-human-right> [<http://perma.cc/2E2R-6XEK>] (discussing a U.N. Human Rights Council report which protests blocking Internet access to quell political unrest as a violation of human rights).

¹⁵ See Nicola Lucchi, *Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, 19 CARDOZO J. INT’L & COMP. L. 646, 654 (2011) (noting that freedom of expression finds “one of its fullest realizations in the Internet”).

exchange ideas, it also provides us with the ability to create our own content by posting on blogs, social networking websites, and uploading and editing values on Wikipedia. It allows us all to upload information and share our collective knowledge, and it also enables us all to individually describe our activities and contributions to society at-large.

Second, one of the hallmarks of a utopian society is its egalitarian nature, which also characterizes the Internet in that everyone can participate equally.¹⁶ The restraints of gender, race, disabilities, and other excluded groups are irrelevant in the virtual sphere. Users can create their own identities and participate equally. In other words, open websites provide equal opportunities to all users.

Third, the virtual sphere is essentially a peaceful environment lacking violence because there is no physical vulnerability.¹⁷ One can avoid violence, such as bodily injury through rape or other physical means of attack, by staying within this world of interaction that is one step removed.¹⁸ This is not to say that there is not violence or vulnerability, which will be discussed in greater depth below, but rather that it takes a different form.

Fourth, the virtual sphere evades geographical borders and complete governmental control.¹⁹ While there may be some restric-

¹⁶ See Franks, *supra* note 4, at 225 (“[T]he view of cyberspace as a utopian realm of the mind where all can participate equally, free from social, historical, and physical restraints.”).

¹⁷ But see Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008). The vulnerability approach focuses on privilege and favor conferred on limited segments of the population by the state and broader society through their institutions. As such, vulnerability analysis concentrates on the institutions and structures our society has and will establish to manage our common vulnerabilities. This approach has the potential to move us beyond the stifling confines of current discrimination-based models toward a more substantive vision of equality. *Id.*

¹⁸ See Franks, *supra* note 4, at 226 (noting that cyberspace harms are not physical by nature).

¹⁹ See, e.g., Alberto Dainotti et al., *Analysis of Country-Wide Internet Outages Caused by Censorship*, INTERNET MEASUREMENT CONF. (Nov. 2011), http://www.caida.org/publications/papers/2011/outages_censorship/outages_censorship.pdf [<http://perma.cc/SE49-QVDX>] (discussing the civil unrest in Egypt during what has been called the “Arab Spring” and noting that “[t]he heavy-handed attempt to block communications in the country did not quell the protests, and may have even increased the number of people in the streets; protests intensified and continued even after Internet connectivity was restored five days later.”); Gilad Lotan et al., *The Revolutions Were Tweeted: Information*

tions imposed by the governments of certain countries,²⁰ the Internet is so vast that it is impossible to completely control. Providing one with a sphere free from outsiders' control contributes to its utopian nature.

Fifth, the virtual sphere provides one with the opportunity to escape oneself either by acting anonymously (to a certain degree), by using pseudonyms, or by creating a totally new identity through virtual reality, second world, or any other virtual site.²¹ This freedom to act without restraints is another fundamental virtue of a utopian society.

Sixth, cyberspace is community-based, where content is created collectively by collaboration of different and diverse users and by the wisdom of the crowd.²² Wikipedia is one example of this phenomenon.²³

Seventh, and finally, cyberspace is an unregulated or self-regulated arena with few limitations.²⁴

Flows During the 2011 Tunisian and Egyptian Revolutions, 5 INT'L J. COMM. 1375, 1380 (2011) (discussing Twitter's role in critical world events).

²⁰ See Lucchi, *supra* note 15, at 654.

²¹ See Franks, *supra* note 4, at 226 (“[C]yberspace facilitates a wall between a person's ‘real’ identity and their virtual one.” According to this view, cyberspace provides a “powerful counter to the real world” with no “physical limitations” and free from prejudice.)

²² See generally Yochai Benkler, *Coase's Penguin, or, Linux and the Nature of the Firm*, 112 YALE L.J. 371 (2002).

²³ See James S.H. Kwok & S. Gao, *Knowledge Sharing Community in P2P Network: A Study of Motivational Perspective*, J. KNOWLEDGE MGMT. 94, 94-102 (2004) (“The study proposes the idea of a virtual knowledge sharing community that is based on decentralized P2P technology. In the community, each member plays an equal role of knowledge producing, receiving, and coordinating.”); see also Barry Wellman et al., *Computer Networks as Social Networks: Collaborative Work, Telework, and Virtual Community*, 22 ANN. REV. SOC. 213, 213 (1996) (“When computer networks link people as well as machines, they become social networks. Such computer-supported social networks (CSSNs) are becoming important bases of virtual communities, computer-supported cooperative work, and telework.”).

²⁴ See MIFSUD BONNICI, *supra* note 9, at 196 (discussing self-regulation of cyberspace as still an indispensable part of regulating the Internet as private regulation fills substantive gaps where state regulation is missing).

B. Copyleft Arguments for an Open and Free Information Society

Several scholars have supported the argument that this new virtual utopia can solve many of the drawbacks that exist in the social, economic, and legal realms.²⁵ For example, proponents of low-barrier copyright, or “copyleft,” believe that content can and should be freely shared, borrowed, copied, and built upon.²⁶ The idea is that by removing the established barriers of traditional intellectual property (“IP”) creation, and creating a more permissive culture of copyrights, women and minorities would be more inclined to participate in the IP market. Low (or no) barrier enthusiasts often point to the current web logging, or blogging, culture to demonstrate what this theory might look like in the real world.²⁷ Related, but not quite the same, is the idea that copyright needs to move away from a linear consideration of textual creation and somehow accommodate the new modes of collaborative or relational reader engagement most often found on the Internet and through digital communications.²⁸ In this way, the Internet, and the creative freedoms it offers, is seen as the answer to problems that arise in the context of more traditional content creation.

C. The Access to Knowledge Notion of an Open and Free Information Society

Access to Knowledge (“A2K”) is an example of a movement that represents the promise of equality in the virtual sphere.²⁹ A2K can represent several different ideologies, all of which support open access to sources of information (as well as culture, educa-

²⁵ See, e.g., David Manasian, *Digital Dilemmas*, *ECONOMIST* (Jan. 23, 2003), <http://www.economist.com/node/1534303> [<http://perma.cc/37UG-BTPJ>] (“[The Internet and related] technologies will change almost every aspect of our lives—private, social, cultural, economic, and political. In some areas, the changes may be marginal, but in most they will be profound, and unprecedented.”).

²⁶ See generally ACCESS TO KNOWLEDGE IN THE AGE OF INTELLECTUAL PROPERTY (Gaelle Krikorian & Amy Kapczynski eds., 2010).

²⁷ *Id.* at 580.

²⁸ See Dan L. Burk, *Copyright and Feminism in Digital Media*, 14 *AM. U.J. GENDER SOC. POL’Y & L.* 519, 535–37 (2006) (discussing the trend of “hypertext” as being indicative of a move towards nonlinear, relational creation outside the scope of current copyright regimes).

²⁹ *Access to Knowledge*, INFO. SOC’Y PROJECT, <http://isp.yale.edu/access-knowledge> [<http://perma.cc/4WCL-3YUQ>] (last visited Sept. 23, 2015).

tion, and IP) in order to facilitate the widespread dissemination of available content.³⁰

A2K is defined as “the right to access expressions of human inquiry, and the right to participate in the creation and manipulation of raw information, knowledge, and knowledge-embedded tools and services.”³¹ The goal of A2K policies is to “encourage broader participation in cultural, civic, and educational affairs; expand the benefits of scientific and technological advancement; and promote innovation, development, and social progress around the world.”³² The A2K movement is identified with scholars such as Lawrence Lessig and Yochai Benkler from Harvard Law School, who, inter alia, called for reducing the proprietary nature of IP products, especially software, by turning them into open source and making them freely available to everyone.³³ Within this Article, we posit A2K as representative of a movement towards a more democratic creative culture; and specifically, as the prioritization of an individual’s ability to create and participate in the content-creating community.³⁴

The open access approach has its roots in the early software-sharing ethos of the Internet. As software was being developed, many in that industry decided that the only way to foster continuous innovation while honoring the idealistic, democratic nature of the Internet, was to make available all software and codes for other programmers to use, copy, expand, and build upon.³⁵ Open access sought to create an environment where written contributions could be similarly shared, while the author retained the rights

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See, e.g., LAWRENCE LESSIG, *FREE CULTURE: THE NATURE AND FUTURE OF CREATIVITY* (2004); Yochai Benkler, *Freedom in the Commons: Towards a Political Economy of Information*, 52 DUKE L.J. 1245, 1260–61 (2003).

³⁴ See Jack M. Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 N.Y.U. L. REV. 1, 3–4 (2004) (defining a “democratic culture” as one that is about “individual liberty as well as collective self-governance; it is about each individual’s ability to participate in the production and distribution of culture.”).

³⁵ See Benkler, *supra* note 22, at 445.

to integrity and attribution.³⁶ Some theorists analogize open access theory to relational antidiscrimination and, more specifically, feminist conceptions of dialogue, arguing that open access, like relational feminism, values the disruption of individualistic and patriarchal systems.³⁷ The idea is that an open access system will remove the emphasis from the individual creator to the creative community at-large by allowing for a free flow of information, thus creating a system more open to contributions from marginalized groups.³⁸

Ideally, from an A2K perspective, information exchange would be a completely open, neutral, and democratic process, creating a community where costs of access, distribution, and appropriation are low and the ability to participate is wide-spread over a diverse segment of people.³⁹ The idea is that through completely open and democratic discourse, the individual freedom to express will be realized.⁴⁰ In other words, anti-discriminatory tools should disappear automatically once free access to knowledge becomes the norm, giving rise to blogs, Wikipedia, websites, social networks, etc. that all engender a more free and democratic reality.

³⁶ See Carys J. Craig, Joseph F. Turcotte & Rosemary Coombe, *What is Feminist About Open Access?: A Relational Approach to Copyright in the Academy*, 1 FEMINISTS@LAW, 19–20 (2011). These ideas were also written into what is known as the Berlin Declaration, a document that was created following several conferences that brought together various research and academic institutions that were concerned with the future of academic and scientific publishing. What started in Berlin has since become an international coalition of organizations who have all ratified the Berlin Declaration as evidence of their commitment to creating a more open and collaborative future within the sphere of academic scholarship. See *The Berlin Declaration on Open Access*, BERLIN 9, <http://www.berlin9.org/about/declaration> [<http://perma.cc/3HVB-E2FG>] (last visited Sept. 23, 2015). In the United States, moral rights are limited. For example, there are moral rights in “work made for hire” cases. See Visual Artists Rights Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, 5128–33 (codified as amended in scattered sections of 17 U.S.C.); see also *Carter v. Helmsley-Spear, Inc.*, 71 F.3d 77, 80 (2d Cir. 1995), *cert. denied*, 116 S. Ct. 1824 (1996).

³⁷ See generally Craig, Turcotte & Coombe, *supra* note 36.

³⁸ See *id.* at 29.

³⁹ Balkin, *supra* note 34, at 8.

⁴⁰ Yochai Benkler, *From Consumers to Users: Shifting the Deeper Structures of Regulation Toward Sustainable Commons and User Access*, 52 FED. COMM. L.J. 561, 567 (2000).

D. The Feminist Approach to IP in an Open Access Utopia

Unlike copyleft and A2K theories, a feminist rendering of information would fall outside the realm of IP in a non-IP system. Open access and non-linear renderings of IP remove all traditional concepts of protection, regulation, and how content is created and consumed. Specifically, feminist IP scholars hope for a future of IP that would move away from a system of ownership and towards a system focused primarily in the area where relational and community-centered creation overlap.⁴¹ The idea is that by removing the traditional forces both within the law and from the market, more innovation would occur in a manner that would not exclude women and other underrepresented minorities.⁴² Others have lobbied for a system, yet undefined, that operates completely outside of the IP sphere, bypassing institutionalized protection and regulation altogether in favor of an entirely open exchange of information.⁴³

Although a lot of articles have been written about the feminist arena, almost none address theoretical aspects of cyberspace gender biases directly. This Article brings a new perspective by focusing on the exclusion of women from the open and free virtual spheres as a systematic, step-by-step phenomenon. To address and prove our claims, we will focus on Wikipedia as a specific example, and gender harassment and hostile environments in cyberspace more generally.

II. SHATTERED DREAMS — THE REALITIES OF OPEN ACCESS IN THE VIRTUAL SPACE AS EXEMPLIFIED BY WIKIPEDIA

Wikipedia, while not necessarily a direct representation of any one particular theory, seems to occupy a space that spans many of

⁴¹ See, e.g., Debora Halbert, *Poaching and Plagiarizing: Property, Plagiarism and Feminist Futures*, in *PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD* 111, 119 (Lisa Buranen & Alice M. Roy eds., 1999); Shlomit Yanisky-Ravid, *Eligible Patent Matter—Gender Analysis of Patent Law: International and Comparative Perspectives*, 19 *AM. U.J. GENDER & SOC. POL'Y & L.* 851, 855 (2011) (arguing that patent law excludes women inventors by using gender-biased terms within its legal definitions).

⁴² See Halbert, *supra* note 41, at 119.

⁴³ Debora Halbert, *Feminist Interpretations of Intellectual Property*, 14 *AM. U.J. GENDER SOC. POL'Y & L.* 431, 443–45 (2006).

them. It embodies a system not yet theorized to fruition, but one that firmly disrupts the current IP system. Namely, it successfully subverts traditional publishing power-dynamics and classic IP paradigms insofar as it creates a model that is based on the free, open, neutral, and democratic creative community; however, Wikipedia also manages to reinforce systemic gender discrimination, as exemplified through its contributors, content, and categorization within the website. This Part will examine and compare Wikipedia in theory (an equality opportunity community) with reality (another means of perpetuating discrimination).

A. *Wikipedia's Virtual Glass Ceiling*

Amanda Filipacchi is a contemporary American novelist who has published four novels.⁴⁴ What she discovered last year, however, is that she had been re-categorized.⁴⁵ Filipacchi is not considered an American novelist, but rather an American *female* novelist.⁴⁶ In the spring of 2013, Filipacchi noticed that users on Wikipedia had been systematically culling women (and individuals of ethnic minorities) from the “American Novelist” category into a separate category altogether that delineated their specific “other” attributes.⁴⁷ Filipacchi commented in a *New York Times* op-ed on this re-categorization of her and other female novelists, lamenting the fact that there was no “American Male Novelist” category to match.⁴⁸ The response to her op-ed was fast and furious. Filipacchi’s Wikipedia page was immediately altered by Wikipedia editors who “removed the links to outside sources, like interviews of [Filipacchi] and reviews of [her] novels,” and thus declared her page to be in need of “additional citations for verification.”⁴⁹ In less than twenty-four hours, her page had been edited the same amount of times as it had in the four years prior.⁵⁰

⁴⁴ See AMANDA FILIPACCHI, <http://www.amandafilipacchi.com> [<http://perma.cc/66JT-NVGD>] (last visited Sept. 23, 2015).

⁴⁵ Amanda Filipacchi, Opinion, *Wikipedia's Sexism Towards Female Novelists*, N.Y. TIMES (Apr. 24, 2013), <http://www.nytimes.com/2013/04/28/opinion/sunday/wikipedias-sexism-toward-female-novelists.html> [<http://perma.cc/9PTQ-E5V9>].

⁴⁶ See *id.* (emphasis added).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

While the above story is an interesting anecdote, why should anyone care about a petty disagreement between an individual novelist and a cadre of Wikipedia editors? Further, what, if anything, does this incident say about the current state of gender discrimination and IP? The first clear and immediate concern the Filipacchi issue highlights is the hostile environment and rampant misogyny that still exists on the Internet and, in this instance, specifically geared towards women on Wikipedia. Also of concern is Wikipedia's ubiquity as an information-resource; the potential for misinformation to become foundational knowledge for the Internet-reading public is extremely troubling.⁵¹ Finally, as will be discussed below, Wikipedia represents the real-world embodiment of an amalgam of previously-theorized feminist "ways forward" for the IP sphere, in particular a more democratic way forward that would level the playing field and create a more equal content creating culture. As an isolated example of a larger problem, the Filipacchi op-ed manages to highlight three levels of discrimination within Wikipedia: amongst the contributors, the content, and the categorization on the website.

B. Wikipedia in Theory: A Virtual Utopia

Classic publishing interrelationships have been entirely subverted in the Wikipedia community; neither publishers nor authors have any market share, precisely because there is no market to share.⁵² Financial incentives that usually inform the various players in the publishing community are absent: none of the editors are paid to contribute, Wikipedia does not generate money from the distribution of content, and consumers do not have to pay to access the website.⁵³ The website completely bypasses traditional modes of publishing by conveying the title of "Editor" onto anyone who

⁵¹ Katherine Q. Seelye, *Snared in the Web of a Wikipedia Liar*, N.Y. TIMES (Dec. 4, 2005), <http://www.nytimes.com/2005/12/04/weekinreview/snared-in-the-web-of-a-wikipedia-liar.html> [<http://perma.cc/FSB2-PAXX>].

⁵² See *Frequently Asked Questions*, WIKIMEDIA FOUND., <https://wikimediafoundation.org/wiki/FAQ/en> [<http://perma.cc/XPU2-VTN7>] (last visited Nov. 11, 2015).

⁵³ See *id.*; see also *Wikipedia:Paid Editing (Essay)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Wikipedia:Paid_editing_\(essay\)](https://en.wikipedia.org/wiki/Wikipedia:Paid_editing_(essay)) [<http://perma.cc/Z5AV-ZYKQ>] (last visited Nov. 11, 2015).

contributes—either to create a new category or to edit an existing one.⁵⁴ The market is excluded from the equation, as well, given the lack of compensation or any monetary benefit for those who choose to create and participate. This removes the more traditionally motivating concerns from the discussion of IP. And while the legal barriers that prevented female ownership of IP have long since been eradicated, the new landscape, as exemplified by Wikipedia, represents a marketplace that cannot hold any of the comparable remnants of such past discrimination.

Most strikingly, Wikipedia succeeds in representing itself to be a creative environment that embraces all kinds of content created by any combination of individual editors or collaborative groups.⁵⁵ In opening the website to such an expanse of information and author-configurations, Wikipedia serves to eradicate the more complex issues of cultural and social biases that have been entrenched in traditional IP discourse. It works off of a model that assumes collaborative creation, encouraging the community to rely on one another and build off of each other's work.⁵⁶ Ostensibly, the free flow of information allows a constant creativity and new paradigm for knowledge creation and sharing. In this way, Wikipedia is the closest thing we have to a real-life expression and embodiment of the utopian ideals of the Internet and the A2K movement.

C. *Wikipedia in Reality: The Exclusionary Mechanism*

Wikipedia, founded in 2001, is currently the sixth most-visited website in the world.⁵⁷ That means that every time an individual wants more information on a subject, is beginning a research paper, or needs to look up a fact, there is a pretty good chance that he or she will turn to Wikipedia. As noted above, traditional structures and filters of publishing have no place on the website, on which content is entirely created, edited, and managed by “editors,”

⁵⁴ See *Help:Editing*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Help:Editing> [<http://perma.cc/98A7-WGFS>] (last visited Nov. 11, 2015).

⁵⁵ See Shun-Ling Chen, *Collaborative Authorship: From Folklore to the Wikiborg*, 2011 U. ILL. J.L. TECH. & POL'Y 131, 133 (2011).

⁵⁶ See *id.*

⁵⁷ Tom Simonite, *The Decline of Wikipedia*, MIT TECH. REV. (Oct. 22, 2013), <http://www.technologyreview.com/featuredstory/520446/the-decline-of-wikipedia> [<http://perma.cc/M2TG-SVTK>].

which could be anyone who has an Internet connection and a Wikipedia log-in.⁵⁸ The landscape for content creation and, as a result, content protection, has been rapidly evolving to a point where IP laws and theories have little place in the current IP realities.

Rather, the reality of Wikipedia, as was demonstrated briefly by the Filipacchi issue, is a far cry from an equitable community that fosters that collaborative ideal. Beyond the re-categorization of women and minorities discussed above, gender discrimination on Wikipedia—amongst editors, content, and the indexing of content—is endemic and entrenched. Over the past five years, many cultural and technological commentators seem to have a unified voice in lamenting over Wikipedia’s “gender problem.”⁵⁹ Most have no insight, however, into why the “gender problem” exists on Wikipedia, given that it is structured to be open to all.

That a gender problem is pervasive on Wikipedia is not just a mere cultural comment by contemporary newspapers, magazines, and websites. Over the last few years, there have been several studies that confirm deeply rooted gender biases throughout the Wikipedia community. Our discussion will focus specifically on how those biases affect (1) editor demographics, (2) subject matters covered, and (3) content categorization. Three of those studies will be discussed here, namely the official study conducted by the Wikimedia Foundation that examined editor demographics;⁶⁰ the sta-

⁵⁸ See *supra* Part II.B.

⁵⁹ See Noam Cohen, *Define Gender Gap? Look Up Wikipedia’s Contributor List*, N.Y. TIMES (Jan. 30, 2011), <http://www.nytimes.com/2011/01/31/business/media/31link.html> [<http://perma.cc/RV8J-XRP7>]; Jennifer Van Grove, *Study: Women and Wikipedia Don’t Mix*, MASHABLE (Sept. 1, 2009), <http://mashable.com/2009/09/01/women-wikipedia> [<http://perma.cc/W9H4-Y4AS>]; *Where Are the Women in Wikipedia?*, N.Y. TIMES (Feb. 4, 2011, 3:07 PM), <http://www.nytimes.com/roomfordebate/2011/02/02/where-are-the-women-in-wikipedia> [<http://perma.cc/H8UD-AZ5X>]; see also James Gleick, *Wikipedia’s Women Problem*, N.Y. REV. BOOKS: NYR DAILY (Apr. 29, 2013, 5:09 PM), <http://www.nybooks.com/daily/2013/04/29/wikipedia-women-problem/> [<http://perma.cc/R6XF-G6BH>]; Riva Gold, *Women Contributors Still Face Hurdles at Wikipedia*, WALL ST. J. (Aug. 19, 2013, 4:34 AM), <http://blogs.wsj.com/digits/2013/08/19/women-contributors-still-face-hurdles-at-wikipedia> [<http://perma.cc/K5SH-N7ZV>]; Ellie Robins, *The 9%: Women on Wikipedia*, MELVILLE HOUSE (Oct. 27, 2011), <http://www.mhpbooks.com/the-9-women-on-wikipedia> [<http://perma.cc/RL9V-HBRQ>].

⁶⁰ *Wikipedia Editors Study, Results from the Editor Survey*, WIKIPEDIA (April 2011), http://upload.wikimedia.org/wikipedia/commons/5/51/Editor_Survey_Report_April_

tistical analysis conducted by researchers at the University of Minnesota that looked at overall gender imbalances;⁶¹ and an unofficial, informal survey conducted by a member of the Wikipedia community that asked women and male-to-female trans editors several questions about their experiences with regard to discrimination on the website.⁶² All three studies used similar means to identify female editors: either through the editor's name (that indicated gender), a self-identifying line-item on the editor's biographic page, or by some other detail in the editor's biography that indicated his or her gender.⁶³ The data from each analysis confirmed a culture in which there is systemic and deep-rooted discrimination.⁶⁴

1. Editor Demographics

At a most basic level, there exists an enormous disparity between the number of men and women who participate as editors. As the Wikimedia study revealed, as of 2011, only 8.5% of editors were female.⁶⁵ The goal was to roughly triple that number and increase the number of female editors to 25% by 2015.⁶⁶ As of August

2011.pdf [<http://perma.cc/F5GS-TUFX>] [hereinafter *Wikipedia Editors Study*]. The survey was conducted in 2011 by the Wikimedia Foundation, the non-profit organization that runs the Wikipedia website. The results examined demographics, editing activity, community relations, and technology and networking in relation to the website. The foundation found not only an enormous gender disparity, but also geographic, racial, educational, and age disparities as well. The majority of editors are comprised of white English-speaking males from the Western Hemisphere who have had some form of higher education and are in between the ages of eighteen to thirty-nine. While this Article will only discuss gender disparities, it is clear that Wikipedia is ripe for other analyses focused on discrimination within its community.

⁶¹ Shyong (Tony) K. Lam et al., *WP:Clubhouse? An Exploration of Wikipedia's Gender Imbalance* (2011), <http://files.grouplens.org/papers/wp-gender-wikisym2011.pdf> [<http://perma.cc/NLG2-G645>].

⁶² Sara Stierch, *Women and Wikimedia Survey 2011*, META-WIKI, http://meta.wikimedia.org/wiki/Women_and_Wikimedia_Survey_2011 [<http://perma.cc/DY6S-7GZQ>] (last visited Sept. 26, 2015).

⁶³ See Lam et al., *supra* note 61; Stierch, *supra* note 62; *Wikipedia Editors Study*, *supra* note 60.

⁶⁴ The majority of the discussion about gender discrimination will focus on the male/female binary. This is in no way meant to imply that "male" and "female" are the only gender labels worthy of discussion, rather, it is a reality of the way that data has been collected that the data available reflects these gender designations.

⁶⁵ *Wikipedia Editors Study*, *supra* note 60, at 21.

⁶⁶ *Id.*

8, 2014, Wikipedia had not achieved that goal, and the editorship remains split at roughly 9:1 male-to-female.⁶⁷ Using a nationally representative sample of Wikipedia readers to account for the inadequacies of using opt-in surveys on the Internet, scholars from the Massachusetts Institute of Technology and Northwestern University have adjusted these numbers to claim that 16% of the editors on Wikipedia are female.⁶⁸

The statistics from the University of Minnesota study, published around the same time as the Wikimedia report, confirmed the gender disparity amongst editors and further noted that the gap between male and female editors was not likely to appreciably shrink in the following years.⁶⁹ Their data actually predicted the stagnancy of the gender disparity amongst editors, and indeed as evidenced above, numbers have remained fairly consistent.⁷⁰ One reason may be based on self-perception. “Women are more likely to underestimate their online skills and abilities” or “judge their skills more modestly” compared to men.⁷¹ At least partially as a result of this disparity, there has understandably been a corresponding imbalance in the kind of content that receives the most attention on the website, and thus, more significant development in both support and depth.

2. Subject Matter: Friendship Bracelets Versus Baseball Cards

In addition to evaluating editor demographics, the University of Minnesota study also discussed an inconsistency in the content available on the website and its appeal to members of either gender.⁷² Using examples of popular culture that appeal mainly to one gender or the other, the study revealed that those posts more tradi-

⁶⁷ *Wikipedia “Completely Failed” to Fix Gender Imbalance*, BBC NEWS (Aug. 8, 2014), <http://www.bbc.com/news/business-28701772> [<http://perma.cc/P3BU-TAPJ>].

⁶⁸ B.M. Hill & A. Shaw, *The Wikipedia Gender Gap Revisited: Characterizing Survey Response Bias with Propensity Score Estimation*, 8 PLOS ONE 4 (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3694126/pdf/pone.0065782.pdf> [<http://perma.cc/RJC3-SRYN>].

⁶⁹ See Lam et al., *supra* note 61.

⁷⁰ See *id.*

⁷¹ See Laura Robinson et al., *Digital Inequalities and Why They Matter*, 18 INFO. COMM. & SOC’Y 569, 573 (2013), <http://www.tandfonline.com/doi/pdf/10.1080/1369118X.2015.1012532> [<http://perma.cc/DV65-LANC>].

⁷² Lam et al., *supra* note 61.

tionally geared towards and read by men were more robustly created.⁷³

Unlike the straight number analysis of the editorial disparity, this kind of gender discrimination is a bit more problematic because it forces a reliance on several gender-normative assumptions. One of the most popular examples to show the difference in depth and breadth of content that is considered “male” or “female” is the difference in the Wikipedia posts for friendship bracelets versus baseball cards, and edits for *Sex and the City* versus *The Sopranos*.⁷⁴ Although differences in detail, length, and number of edits are objective data points, using these metrics for analysis requires a foundational assumption that certain topics appeal only to men and others only to women. One explanation for the more robust “male” content is that there has been a decline in active editors on Wikipedia, creating a disparity between the proportion of edits by editors who make fewer than ten edits per month and higher-volume contributors.⁷⁵ One study found that only 16% of new editors were women.⁷⁶ Because this number is nearly double the website-wide average, the attrition rate of female editors is higher than that of new male editors.⁷⁷ Additionally, the study found that female newcomers participate at a lower rate than new male editors and have a lower satisfaction rating of their editing experience.⁷⁸ Thus, categories of “female interest” are probably not maintained as actively as “male categories,” resulting in less detailed or up-to-date content.

While these studies do highlight the inconsistencies across Wikipedia topics, it might be more harmful to be so reductive in relation to a feminist reading of the website. The gender binary and its projections onto material that has been created on Wikipedia might be the easiest way to analyze the disproportionately researched topics, but it might also serve to entrench staid assumptions about women and men (not to mention the rest of the gender spectrum).

⁷³ See *id.*

⁷⁴ Cohen, *supra* note 59.

⁷⁵ Jonathan T. Morgan et al., *Tea & Sympathy: Crafting Positive New User Experiences on Wikipedia*, WIKIMEDIA FOUND. (2013), http://dub.washington.edu/djangosite/media/papers/morgan_cscw2013_final.pdf [<http://perma.cc/H93D-95ZV>].

⁷⁶ *Id.*

⁷⁷ See *id.*

⁷⁸ See *id.*

For the purposes of this Article, the incongruities will be understood as an insufficiency on the website that may indicate some gender inequality, but not to stand for any unique truth about either gender or any consumer habits that may or may not be associated.

3. Content Categorization

Finally, in addition to the disparities in editor demographics and content created on the website, there is also a problem with the categorization of topics on Wikipedia, as evidenced by the Filipacchi issue.⁷⁹ The problem with this third prong is slightly more opaque than those of the first two, but is ultimately much more troubling. In the instance of the “American Novelist” category, the systematic re-categorization of women and minorities was undertaken primarily by only one individual.⁸⁰ That one misguided individual can have control over the organization of knowledge on the sixth most popular website in the world is unnerving. As James Gleick comments in his discussion of the Filipacchi op-ed, knowledge on the website is searched, organized, and navigated by categories.⁸¹ There will always be some discussion as to how knowledge could and should be indexed, but to allow those in Wikipedia’s editorial community to impose opinions that clearly denigrate some does not seem in the spirit for which the feminist theorists had hoped.⁸²

Thus, although Wikipedia represents a new system of information gathering where the content and concept mirrors more traditional knowledge-sharing models (i.e., an encyclopedia), the way in which that knowledge is created and shared completely upends traditional publishing paradigms by allowing open accessibility. Because of this, Wikipedia, in theory, represents the ultimate democratic, equal opportunity way forward within IP. The facts surrounding gender disparity amongst editor demographics, content created on the website, and categorization of topics on Wikipedia, however, show that there is much work to be done before Wikipedia can realize its full potential.

⁷⁹ See Gleick, *supra* note 59.

⁸⁰ *See id.*

⁸¹ *Id.*

⁸² *See id.*

III. THE TWO-STAGE MODEL: THEORETICAL EXPLANATIONS FOR THE VIRTUAL GLASS CEILING BARRING FEMALE PARTICIPATION IN CYBERSPACE

The following discussion will focus on theoretical feminist arguments explaining why the gender net neutrality model fails. This Article suggests that discrimination occurs in two stages, which results in preventing women from being equal, active, and meaningful participants on the web. The first stage of discrimination excludes women by providing them the opportunity to participate in content creation on open access websites—creating an illusion of free and equal participation—while simultaneously allowing men to take control and filter out female users. The second stage occurs when women insist on taking an active part only to find themselves subject to harassment. The result is a virtual ceiling effect within cyberspace’s “open” websites.

A. Stage 1: The Filter Effect of Hierarchical Structures

The surprising truth is that even within these new virtual spheres, which were created to be equal and open to all, men continue to be dominant.⁸³ Meanwhile, women are being excluded systematically from the virtual spheres by virtual means. Unfortunately, these mechanisms of excluding women in cyberspace have become more sophisticated and less obvious over time.⁸⁴ Professor Yochai Benkler, a prominent author in the field of A2K, asks how, in the Internet age, a relationship for cooperation and sharing has not developed despite the common, openness, and accessibility features of Internet media and, as a result, oppose opportunities for developing new web cooperation between individuals.⁸⁵ One answer he gives suggests that IP legal structures block the ability to create a common community.⁸⁶ Benkler criticizes this trend and encourages cooperative trends.⁸⁷ But clearly, as demonstrated above, the eradi-

⁸³ See discussion *supra* Part II.

⁸⁴ See WOMEN AND MEDIA: INTERNATIONAL PERSPECTIVES (Karen Ross & Carolyn M. Byerly eds., 2004) (discussing gender issues on the Internet).

⁸⁵ See Benkler, *supra* note 33, at 1254–56.

⁸⁶ See *id.* at 1273–74.

⁸⁷ See *id.* at 1270–72 (claiming that the digital information environment encourages desirable norms of cooperation and economy but these are broken by IP law); see also Benkler, *supra* note 22, at 445.

cation of traditional IP-ownership structures, as embodied in Wikipedia, is not necessarily the answer. Moreover, Benkler's work does not address women's rights. While it might explain how the unorthodox structures invaded the virtual sphere, where domains are not totally regulated by IP norms,⁸⁸ it fails to explain why these new systems still lead to the exclusion of women.

Professor Dan Burk analyzed IP laws and related them to the hypertext structure of the web, where texts are linked in a non-linear way that cannot be predicted in advance.⁸⁹ He reaches a conclusion similar to Benkler's, based on assumptions regarding the way women think and the Internet's hypertext organization.⁹⁰ He claims that the existence of non-hierarchical structures is very important for egalitarian discourse.⁹¹ The question presented in his work is how digital spheres remain linear and hierarchical, and based on power, centralism, and control, even though digital media is consistent with egalitarian (feminist, in his words) patterns; or, at least, how these spheres pose a challenge to the accepted interpretation.⁹² Burk also finds roots to his question in the structure of IP laws—the laws that give one group control over women and deny the development of other more egalitarian doctrines.⁹³

Wherever there is a position of controlling and filtering of one user by another, the egalitarian, open, and free accessibility is lost, and a structure is created where the dominant control—and can exclude—the weak. This is the case, for example, with the Wikipedia editing process. We refer to this phenomenon as the “Filter Effect.”

The connection between a structured hierarchy, particularly one with a Filter Effect that leaves room for a small number of controlling or dominant people, and the feminist discourse is natural and immediate. Feminist analysis is often concerned with issues of

⁸⁸ See Benkler, *supra* note 22, at 445; see also Benkler, *supra* note 33, at 1270–72.

⁸⁹ Burk, *supra* note 28, at 549.

⁹⁰ See *id.*

⁹¹ See *id.* at 535.

⁹² See *id.* at 523.

⁹³ See *id.* at 535.

hierarchy and control.⁹⁴ Specifically, feminist discourse rejects the creation and perpetuation of hierarchal structures that enable limited, usually male, domination at the top of the pyramid and the exclusion of women from centers of power and control.⁹⁵

Radical feminists claim that such legal norms are political. They contest any system that supports the existing order, prevents change, and further reinforces the status of powerful groups at the top of hierarchy that simultaneously keeps subordinate groups from altering the existing structure.⁹⁶

The Filter Effect creates hierarchical structures that result in the subordination of weaker parties, presenting an example of an exclusionary mechanism worthy of condemnation. They place an obstacle in the individual's path to self-fulfillment and their perpetuation leaves the individual without any alternatives. Power is the ability to influence another person.⁹⁷ Wherever there is power there is hierarchy, and vice versa; and wherever there is hierarchy and power, there are dominant and dominated people.⁹⁸

We claim that by having a filter mechanism, virtual spheres, such as Wikipedia, reflect a hierarchical-masculine structure that is incongruous with the feminine perception of equal and cooperative relationships. Supporters of liberal equality assert that open access websites and web activities are, by definition, open to all genders and represent an equal opportunity for all who wish to participate. However, this claim does little to address the crux of the problem leading to the exclusion of women and is clearly problematic in the reality of the current Internet culture. The filter control that exists today, even in open and accessible websites, has been used as a mechanism to exclude women from taking a more active participation and reflects the traditional exclusion of women from public domains. The conclusion cannot be avoided; perpetuating the current

⁹⁴ See CATHARINE A. MACKINNON, *Difference and Dominance: On Sex Discrimination*, in FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 40–45 (1988); see also Owen M. Fiss, *What is Feminism?*, 26 ARIZ. ST. L.J. 413, 416 (1994).

⁹⁵ See Fiss, *supra* note 94, at 421.

⁹⁶ See generally MACKINNON, *supra* note 94.

⁹⁷ Jeffrey W. Lucas & Amy R. Baxter, *Power, Influence, and Diversity in Organizations*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 49, 51 (2012).

⁹⁸ See *id.*

situation where the virtual spheres only benefit one gender cannot be sustainable if we intend to create a more harmonious system in which we all participate.

Contrary to the democratic ideal of open and accessible websites, subject to this study, the exclusion of women creates a clearly undemocratic reality and places women in a disadvantaged position. Furthermore, limiting the advancement of women results in our not taking maximum advantage of the entire collective of human potential, which ultimately leads to commercial and economic inefficiency. In order to reopen the “virtual gates” to women, additional research is needed to identify the tools that will help. After all, “integration of a new voice requires finding new words and creating new methods.”⁹⁹

The problem of gender discrimination on the web, and Wikipedia as a specific example, is ripe for an analysis that could suggest a new reality where traditional paradigms of subjugation would not be reinforced.¹⁰⁰ The Filter Effect discussed above that often leads to the subjugation of women is clearly applicable to the data on content disparity on Wikipedia, and even more so in relation to the discussion of the categorization issue. The immediate connection to the categorization problem that was highlighted by Filipacchi’s op-ed is clear. The creation of an “American Women Novelist” category is only a problem in that the standard, the “American Novelist” category, is held to be all male.¹⁰¹ In that way, the Filipacchi op-ed approaches the problem from a decidedly different perspective—she highlights the male-as-standard category as a way to draw attention to the mistreatment that the females (and other minorities) experience on the website.¹⁰²

Thus, as discussed above, the first stage of discrimination effectively excludes women and also filters them out. The second stage affects women who have overcome that initial barrier as they are then subjected to a hostile environment and rampant harassment.

⁹⁹ See CAROL GILLIGAN, *IN A DIFFERENT VOICE* 3–4 (1993).

¹⁰⁰ See MACKINNON, *supra* note 94, at 32, 34, 43.

¹⁰¹ See Gleick, *supra* note 59.

¹⁰² See Filipacchi, *supra* note 45.

B. Stage 2: Gender Harassment and Hostile Environment in the Open Access Virtual Spheres

Online gender harassment, and the hostile environment it creates, has drawn the attention of many scholars recently. It has become clear that the idealistic approach to new and open online communities fails to recognize the phenomena of cyberspace harassment and its consequences, especially with regard to women.¹⁰³ It can be argued that the same features of the virtual spheres that promote individual liberty also amplify the potential for gender harassment and discrimination. Female users of cyberspace are exposed not only to criticism based on their gender, but also to threats of sexual and physical violence, defamation, and sexual harassment.¹⁰⁴ For example, women are targeted online by: “revenge porn,” where an ex-spouse or boyfriend posts sexual photographs, videos, and other content online that share embarrassing and humiliating sexual stories;¹⁰⁵ threats of sexual or physical violence;¹⁰⁶ criticism based on their gender;¹⁰⁷ and sexual harassment on social networks and blogs.¹⁰⁸ This virtual aggression is similar to tradi-

¹⁰³ See, e.g., Ann Bartow, *Internet Defamation as Profit Center: The Monetization of Online Harassment*, 32 HARV. J.L. & GENDER 383, 410 (2009); Mary Anne Franks, *Sexual Harassment 2.0*, 71 MD. L. REV. 655, 661 (2012); see also, e.g., CITRON, *supra* note 4; Leslie Regan Shade & Barbara Crow, *Gender, Digital Divides and ICT Agendas in Canada*, in CRITICAL PERSPECTIVES ON THE WORLD SUMMIT ON THE INFORMATION SOCIETY, OXFORD INTERNET INST. (Mar. 4, 2005). Despite a number of attempts to integrate gender more fully into communication programs and policies, there is still a gender gap and digital divide in the use of technology in both paid and unpaid work, leisure, study, and employment. In this Article we discuss the ways in which gender disparities continue to manifest themselves in ICT policies and practices in Canada and other industrialized nations.

¹⁰⁴ See, e.g., Bartow, *supra* note 103, at 384 (discussing the example of Kathy Sierra, a technology expert who received a torrent of online threats and abuse, including death threats); see also discussion *infra* Part III.B.1.

¹⁰⁵ See generally Amanda L. Cecil, Note, *Taking Back the Internet: Imposing Civil Liability on Interactive Computer Services in an Attempt to Provide an Adequate Remedy to Victims of Nonconsensual Pornography*, 71 WASH. & LEE L. REV. 2513, 2515 (2014) (discussing revenge porn and existing legal options).

¹⁰⁶ See Bartow, *supra* note 103, at 384–85 (describing the online comments threatening sexual and physical violence that tech blogger Kathy Sierra received).

¹⁰⁷ See *id.* at 387 (discussing comments on YouTube to the trailer for *Girls Rock!*, a documentary about a rock and roll camp, which criticized girls as not being able to play guitar well, amongst other misogynistic and vulgar claims).

¹⁰⁸ See Franks, *supra* note 4, at 226–28 (focusing on the particular discrimination of what is being described as unwilling avatar claims that “[c]yberspace idealism drastically

tional notions of harassment and hostile environment claims, but when set in the lawlessness of cyberspace, there is a serious lack of protection afforded to women.

1. Cyberspace Harassment of Women

In most cases of cyberspace harassment, the harasser targets a woman by name and posts private information about her, while hiding behind a veil of anonymity thanks to virtual identities and pseudonyms.¹⁰⁹ This concept of a “virtual self” has led to a form of lawlessness online that both destroys online privacy and encourages hate and harassment.¹¹⁰ This can be directly linked to the perception of unreality that often accompanies virtual speech. While virtual speech receives strong protection under the First Amendment, thus limiting legal tools to prevent or punish violent language, cyber harassment is not taken as seriously as similarly real aggression.¹¹¹

This disparity exacerbates the inequality resulting from harassment in open websites and leads to a result similar to that of sexual harassment in the real world: the exclusion of women from the community.¹¹² Furthermore, women are prevented from playing a meaningful part in an evolving society, education, culture, and influence, and also from bringing a different voice to these important present and future worlds.¹¹³ It is worth considering whether the virtual world simply reflects the reality outside the web. We assert that the virtual spheres not only duplicate the discriminative reality, structure, norms, and patterns found in the real world, but also create new methods and means by which women are excluded from an environment where all important activities and opportuni-

downplays the Internet’s power to activate discrimination stereotypes and social scripts”).

¹⁰⁹ See Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 72 (2009).

¹¹⁰ See Ari Ezra Waldman, *Durkheim’s Internet: Social and Political Theory in Online Society*, 7 N.Y.U. J.L. & LIBERTY 345, 355 (2013).

¹¹¹ See *id.* at 383; see also Bartow, *supra* note 103, at 389.

¹¹² See Franks, *supra* note 4, at 227.

¹¹³ See Waldman, *supra* note 110, at 384 (“Identity-based aggressors interfere with victims’ access to education, their liberty to express who they are, their right to participate in the body politic, and perpetuate the legitimacy of a social stigma attached to any given minority.”).

ties now take place. Even businesses that purport to protect individuals by providing reputation defense services (they help bury abhorrent websites and content on search engines or attempt to remove the offending content entirely) have an economic interest in a continuation of discriminatory cyber harassment: the future of their company—financial and otherwise—depends on it.¹¹⁴

The likely result is that women will shut down their blogs (unless they are within female-supported websites), stop expressing their voice and posting their activities, avoid being part of active websites, remove their social network profiles, and avoid engaging in online political commentary.¹¹⁵ This possibility is exemplified by the very real case of Kathy Sierra, who received a flood of online threats—including death threats and verbal abuse—in the comments of her technology blog.¹¹⁶ Her fear led her to surrender her online life by discontinuing her blog, and affected her real life to the point where she was afraid to make public appearances.¹¹⁷

Unfortunately, neither civil nor criminal laws currently offer any protective measures to address, limit, or punish online speech.¹¹⁸ Nor has discrimination law been updated to address sex discrimination in an online setting.¹¹⁹ Both of these legal deficiencies have contributed to the pervasiveness of hostile environments in the virtual sphere.¹²⁰

2. Hostile Environment at Wikipedia

The two official studies, as discussed above,¹²¹ confirm that Wikipedia is not the democratic ideal its founders envisioned. Aside from the rampant underrepresentation of any minority—gender, ethnic, geographic, etc.—there is also a fairly hostile culture that has taken root amongst some of the more vocal editors.¹²²

¹¹⁴ See Bartow, *supra* note 103, at 391–92, for a discussion on the downside of these types of businesses.

¹¹⁵ See Franks, *supra* note 4, at 229.

¹¹⁶ Bartow, *supra* note 103, at 385.

¹¹⁷ *See id.*

¹¹⁸ *See id.* at 389.

¹¹⁹ *See id.* at 389–90.

¹²⁰ See Franks, *supra* note 4, at 255.

¹²¹ *See supra* Part II.C.

¹²² *See* Stierch, *supra* note 62.

An unofficial survey of female and male-to-female trans editors revealed that there were several instances of hostility geared towards editors who were identified, either by name or explicitly stated, or perceived as female.¹²³ This hostility manifests in challenges to female-edited content, targeted attacks on female editors, and the attempt to remove female editors from the website altogether leads to a hostile environment.¹²⁴ Moreover, harassment exists even in the way some content is edited: in certain posts about movies and books, descriptions of scenes of rape or sexual assault have been altered to read as “love stories” or romantic situations.¹²⁵ The hostile environment, created not only through individual editor actions against other editors perceived as female, but also through the kind of content and the tone of the content created, means that the real-life version of the theoretical IP ideal, one that subverts—and exists outside of—the system, and is supposed to be a democratic ideal has failed to remedy even the most basic instances of gender discrimination. The feminist theoretical solution to the gender and IP problem, as embodied in Wikipedia, is entirely unsuccessful.

While each of the three studies reinforced the central idea that gender discrimination is a real and pervasive problem on Wikipedia,¹²⁶ none really explored the reasons why this discrimination exists. It may be that the Internet is merely a reflection of current cultural and social attitudes; perhaps it is an exaggeration of contemporary attitudes of those who are shielded by the mask of an online persona. It also might be that this new system merely reasserts old-IP paradigms. Although Wikipedia lacks the monetary incentives of

¹²³ See *id.*

¹²⁴ Emma Paling, *Wikipedia's Hostility to Women*, ATLANTIC (Oct. 21, 2015), <http://www.theatlantic.com/technology/archive/2015/10/how-wikipedia-is-hostile-to-women/411619/> [<http://perma.cc/4TJ6-CN3S>]; see generally Azy Barak, *Sexual Harassment on the Internet*, 23 SOC. SCI. COMPUTER REV. 77 (2005) (noting that sexual harassment off-line is a well-known, highly prevalent, extensively investigated, and intensively treated social problem); Azy Barak et al., *Sex, Guys and Cyberspace*, 11 J. PSYCHOL. & HUMAN SEXUALITY 63 (1999) (explaining the effects of exposure to Internet-pornography on men); David McGraw, *Sexual Harassment in Cyberspace: The Problem of Unwelcome E-mail*, 21 RUTGERS COMPUTER & TECH. L.J. 491 (explaining that the current law is ill-equipped to confront the expansion of computer networks communication).

¹²⁵ *Id.*

¹²⁶ See generally Morgan et al., *supra* note 75; Robinson et al., *supra* note 71; *Wikipedia Editors Study*, *supra* note 60.

the more traditional system, harassment and hostility still create a disincentive for women for participating and contributing to the website.

3. New Forms of Sexual Harassment in the Virtual (Real) World

The virtual world has clearly not been able to evade hostility towards women and harassment—of both a sexual and non-sexual nature—that is endemic in other, offline parts of our culture. For example, in 2002, Tammy Blakey alleged that she was the victim of sexual harassment on her company's Internet chat room.¹²⁷ She subsequently sued her employer, Continental Airlines, raising the questions of whether an employer has a duty to monitor its website for sexual harassment and, if so, whether a court has jurisdiction over the employer for the activities conducted on its website.¹²⁸ This case exemplifies yet another example of how we as a culture, and courts as arbiters of justice, must adjust to gender discrimination as it exists in this new virtual reality.

The analysis of two-stage gender discrimination, as suggested in this Article, leads to the conclusion that the virtual regime is even more hazardous to women than originally anticipated. Women are subjected to rampant harassment—both on- and offline—in part because of the imperceptible crowd presence and myriad of new ways to target women in cyberspace. Even within virtual work environments, where avatars can be used to blur the boundaries between the virtual and real world, women are subjected to harassment and a new way for social exclusion.¹²⁹ This harassment

¹²⁷ See *Blakey v. Cont'l Airlines Inc.*, 164 N.J. 38, 48, 54 (2000).

¹²⁸ *Id.* at 45; see also *Annotated Legal Bibliography on Gender*, 10 CARDOZO WOMEN'S J.L. 227 (2003); Michele Ann Higgins, Note, *Blakely v. Continental Airlines, Inc.: Sexual Harassment in the New Millennium*, 23 WOMEN'S RTS. L. REP. 155, 169 (2002) (suggesting that the composition of the traditional workplace is being redefined to include the virtual workplace and in its decision, the court in *Blakely* took a first step towards that redefinition).

¹²⁹ See Natasha T. Martin, *Diversity and the Virtual Workplace: Performance Identity and Shifting Boundaries of Workplace Engagement*, 16 LEWIS & CLARK L. REV. 605, 645–46 (2012).

should not be ignored by using non-tangible arguments; something the *Blakey* court took a first step towards recognizing.¹³⁰

One of the main obstacles in combating cyber harassment is that it is based not on actual physical interaction or intimidation, but rather a continued and oppressive hostile environment that begins, at least, solely online. Although the latter has been recognized by courts as part of sexual harassment,¹³¹ such cases are harder to prove. Despite the existence of guidelines regarding sexual harassment created by the Equal Employment Opportunity Commission, which include both quid pro quo and hostile environment provisions, the courts' treatment of hostile environment harassment is often problematic.¹³² The weakening of hostile environment cases can be traced to the Supreme Court's requirement that harassment be "severe or pervasive" in order to be actionable.¹³³ To remedy this problem, it has been suggested that courts should disavow this "severe or pervasive" standard and instead adopt a "reasonable person" standard, and acknowledge that the "reasonable person" best suited to make this determination is usually a woman.¹³⁴ This is probably best understood through the lens of the revenge porn, or nonconsensual porn, phenomenon.

Recognition of hostile environments as harassment without any surplus conditions (i.e., "severe" or "pervasive" standards articulated above) has become tremendously important in the digital era. One of the most significant methods of virtual harassment is the

¹³⁰ *Annotated Legal Bibliography on Gender*, *supra* note 128, at 259.

¹³¹ Judith J. Johnson, *License to Harass Women: Requiring Hostile Environment Sexual Harassment to be "Severe or Pervasive" Discriminates Among "Terms and Conditions" of Employment*, 62 MD. L. REV. 85 (2003). In Israel, the Prevention of Sexual Harassment Law was recently amended by adding to the definition of sexual harassment: publishing a photograph, film, or recording of a person, focusing on sexuality, in circumstances where the publication is likely to humiliate or degrade, without consent to the publication. 5758-1998, SH No. 1661.

¹³² *See* Johnson, *supra* note 131, at 85-86, 136. This inconsistency has led lower courts to misinterpret the "severe or pervasive" language barring many meritorious sexual harassment claims. Also, because of the "severe or pervasive" standard, sexual harassment cases have been judged much more stringently than racial harassment cases. *See id.* at 122.

¹³³ *Id.* at 142 (claiming that the Court has decided sexual harassment cases much less strictly than the "severe and pervasive" terminology would indicate).

¹³⁴ *Annotated Legal Bibliography on Gender*, *supra* note 128, at 260.

phenomenon called revenge porn, which predominantly victimizes women.¹³⁵ “Revenge porn is the term used to describe an intimate image or video that is initially shared within the context of a private relationship but is later publicly disclosed, usually on the Internet, without the consent of the individual featured in the explicit graphic.”¹³⁶ This virtual phenomenon allows an ex-lover to humiliate or harass a former lover by posting sexually explicit pictures or videos of her online, often in conjunction with offensive comments.¹³⁷ The perpetrators often link the images to the victims’ social networking pages, including their LinkedIn profiles, and provide the victims’ personal details and contact information with the posting.¹³⁸ Furthermore, once the images appear on several websites, a Google search for the victim’s name often results in page after page of these pictures.¹³⁹

What makes revenge porn particularly distressing is that sexually graphic images are distributed not only publicly, but also without consent.¹⁴⁰ Despite instances where the victim took the picture herself, agreed to have her picture taken, or even sent the

¹³⁵ Adrienne N. Kitchen, *The Need to Criminalize Revenge Porn: How a Law Protecting Victims Can Avoid Running Afoul of the First Amendment*, 90 CHI.-KENT L. REV. 247, 249–50 (2015) (demonstrating that “victims currently have no effective legal recourse because civil suits, including privacy-based torts and copyright claims, fail to remove images or deter perpetrators,” and explaining that revenge porn should be criminalized because a greater deterrent is needed); Lorelei Laird, *Victims are Taking on “Revenge Porn” Websites for Posting Photos They Didn’t Consent to*, A.B.A. J. (Nov. 1, 2013), http://www.abajournal.com/magazine/article/victims_are_taking_on_revenge_porn_websites_for_posting_photos_they_didnt_consent_to/ [<http://perma.cc/R7G5-S65Q>] (quoting University of Maryland law professor Danielle Citron); Janice Richardson, *If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law*, in FEMINIST PERSPECTIVES ON TORT LAW 145, 145 (Janice Richardson & Ericka Rackley eds., 2012). As the vast majority of victims are women, I will refer to the perpetrators as male and the victims as female. See Laird, *supra*.

¹³⁶ Aubrey Burris, *Hell Hath No Fury Like a Woman Porneed: Revenge Porn and the Need for a Federal Nonconsensual Pornography Statute*, 66 FLA. L. REV. 2325, 2325 (2014) (arguing that a federal statute is needed to combat nonconsensual pornography and that a clear and narrow federal statute can pass First Amendment scrutiny).

¹³⁷ See Ann Bartow, *Copyright Law and Pornography*, 91 OR. L. REV. 1, 44–45 (2012); Kitchen, *supra* note 135, at 247.

¹³⁸ Kitchen, *supra* note 135, at 247 (proposing a solution to protect victims’ rights that will avoid constitutional concerns through the First Amendment’s obscenity exception and through careful drafting, including examples of appropriate legislative language).

¹³⁹ See Burris, *supra* note 136, at 2328.

¹⁴⁰ See *id.* at 2328, 2333–34.

picture to her then-lover, the victim did not consent to the photo to being distributed outside their private relationship.¹⁴¹ Furthermore, once the embarrassing images have been posted, the harassment is difficult to stop.¹⁴² Numerous websites are dedicated to revenge porn and allow visitors to make “sexual, crude, and insulting” comments.¹⁴³ The abuse that follows includes sexual solicitations from strangers, rape threats, false prostitution ads, and shaming the victim by calling her—or him, in some cases—a “slut.”¹⁴⁴

The damage caused by revenge porn affects women’s offline lives, including “the loss of relationships, jobs, opportunities, and self-esteem.”¹⁴⁵ Because they are harassed by strangers, revenge porn victims sometimes have to resort to quitting their jobs and even changing their names or altering their appearance. Victims are often unable to attend college or find a job.¹⁴⁶ Revenge porn targets have to avoid certain websites and will “close down email accounts that have been flooded with abusive and obscene messages.”¹⁴⁷ In fact, revenge porn is “potentially even more pernicious and long lasting than real-life harassment.”¹⁴⁸ Many victims suffer psychological harm, and some have resorted to suicide; others have been stalked, assaulted, or even killed.¹⁴⁹

Because of the nature of the virtual sphere, revenge porn can be seen by a very large number of people and can last forever online without being deleted as there is a lack of legal tools to defeat the phenomenon. Feminists argue that dissemination of revenge porn, and the cyber-stalking and domestic abuse that follows, ultimately

¹⁴¹ *See id.*

¹⁴² *See* Bartow, *supra* note 137, at 45 (“Once revenge pornography is circulated in cyberspace, there is no effective technological way to stop its distribution.”).

¹⁴³ Kitchen, *supra* note 135, at 248.

¹⁴⁴ *See id.* at 248.

¹⁴⁵ *Id.* at 250.

¹⁴⁶ *See* Laird, *supra* note 135.

¹⁴⁷ *Id.* at 248–49 (quoting Franks, *supra* note 4, at 246).

¹⁴⁸ *Id.* at 249 (quoting Franks, *supra* note 4, at 255).

¹⁴⁹ *See* Citron, *supra* note 109, at 69–71; *see also* Elizabeth Adjin-Tettey, *Sexual Wrongdoing: Do the Remedies Reflect the Wrong?*, in *FEMINIST PERSPECTIVES ON TORT LAW*, *supra* 135, at 179, 181 (arguing that psychological, long-term harm may affect “self-esteem, feelings of safety, ability to focus and obtain education, difficulties maintaining employment, and interpersonal relationships”); Burris, *supra* note 136, at 2336–69; Franks, *supra* note 4, at 246; Kitchen, *supra* note 135, at 248–49.

“denies women control over their bodies, reputations, and lives.”¹⁵⁰ Furthermore, when a woman is subject to “slut-shaming” and other forms of degrading insults or harassment, it diminishes a woman’s self-worth and sexuality.¹⁵¹ When intimate images are distributed nonconsensually, the betrayal of trust presents a significant threat to human “intimacy, gender equality, and privacy.”¹⁵²

C. Relational Cultural Feminism

Relational feminism, as relied upon by the open access feminist theorists, headed by Carol Gilligan, could provide some insight into this entrenched issue of systemic harassment.¹⁵³ While the open access devotees posit that a freer system will allow a more feminist concept of dialogue, the reality is that in a system where various voices are struggling to be heard, the familiar patriarchal construction is reasserted.¹⁵⁴ Open access theorists borrow most frequently from Gilligan, a feminist theorist who postulated that women and men have different ways of communicating: men usually communicating through principles, and women through relations.¹⁵⁵ As detailed above, open access feminists believe that a free-flow of information would more closely resemble the relational mode of communicating, allowing creators to situate themselves in an industry as related to the work that came before.¹⁵⁶ In theory, perhaps; but, as seen within the Wikipedia community and in proliferation of revenge porn, the reality is not nearly so successful. Instead, the differing approaches seem to clash within the Wikipedia editor community and the web at-large, allowing communication to return to a more traditional patriarchal structure.¹⁵⁷ Susan Herring, who studied gender differences within computer-mediated com-

¹⁵⁰ Burris, *supra* note 136, at 2338.

¹⁵¹ *Id.* at 2339.

¹⁵² *See id.*

¹⁵³ *See generally* Mary Becker, *Patriarchy and Inequality, Towards a Substantive Feminism*, U. CHI. LEGAL F. 21 (1999) (coining the phrase “relational feminism”).

¹⁵⁴ *See id.* at 36, 67.

¹⁵⁵ GILLIGAN, *supra* note 99, at 24, 29.

¹⁵⁶ *See* Craig, Turcotte & Coombe, *supra* note 36, at 1.

¹⁵⁷ Susan Herring, *Gender Differences in CMC: Findings and Implications*, 18 COMPUTER PROFS. FOR SOC. RESP. NEWSL., no. 1 (Winter 2000), <http://cpsr.org/issues/womenintech/herring> [<http://perma.cc/4N2R-XPNH>].

munications in the early aughts predicted as much.¹⁵⁸ She noticed that in mixed-sex communication groups, there was a tendency for communication to be dominated by males, to the detriment of female participation.¹⁵⁹

Gilligan's and Herring's theories are not without issue, and might just serve to reinforce gender stereotypes that are neither productive nor progressive.¹⁶⁰ A slightly less-problematic approach is to acknowledge the fact that these online virtual spheres are simply creating a new community, a process that is hardly unprecedented within IP or beyond. Traditional communities, however, have not usually been a bastion of equal treatment; women are frequently saddled with "low power" and "low status."¹⁶¹ In that way, the Internet, with Wikipedia as a specific example, is simply recreating more traditional communities that, although unencumbered by monetary or economic motivations, are still entirely mired within the traditional power structure.

Ultimately, as an experiment of what a more "feminist future" in IP might look like, Wikipedia, and even the more general iteration of an open, free, and democratic web, fail both in reality and in theory, raising the unanswered question: how can the tensions between gender discrimination and the traditional IP paradigms be resolved?

CONCLUSION

In the context of online activities, the control and filtering mechanism coupled with the hostility and harassment that exists have a chilling effect, both on the women disinclined, as a result, to create and on the resulting disparity of information available. In the context of Wikipedia, for example, this means that fewer women are creating and fewer traditionally "female" subjects are being

¹⁵⁸ *Id.*

¹⁵⁹ *See id.*

¹⁶⁰ *See* Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 799-801 (1989) (rejecting Gilligan's gender binary, arguing that it allows for an academic confirmation of staid gender stereotypes).

¹⁶¹ Malla Pollack, *Towards a Feminist Theory of the Public Domain, or Rejecting the Gendered Scope of United States Copyrightable and Patentable Subject Matter*, 12 WM. & MARY J. WOMEN & L. 603, 624 (2006).

represented, both of which lead to severe deficiencies in a supposedly comprehensive and neutral repository of knowledge.

Clearly women's exclusion from the market cannot be remedied by destroying the market itself.¹⁶² That does nothing to address the actual cultural and social problems that are then just reasserted in this new environment. There must be a fundamental change to make the virtual world open and easy to access by all genders.

There have been small steps towards a new, more inclusive Internet. With regard to Wikipedia, various members and groups in the online and offline community have begun to take steps towards remedying gender disparities, both in the editor demographic and in the content created. Communities are creating Wikipedia editing marathons, or "Wiki-a-thons," to promote interest in editing the website and to draw attention to the underdeveloped areas on Wikipedia that they believe need attention.¹⁶³ And in the arena of revenge porn, web providers are starting to take note and attempt to create a more hospitable virtual environment. In March 2015, Twitter came out with new guidelines intended to specifically address the problem of nonconsensual pornography disseminated through its service. It added a clause that directly prohibits the sharing of any intimate photographs or videos that were taken or posted without consent. Instagram and Reddit followed suit with an update to their community guidelines, and, perhaps most encouraging of all, Google recently created a protocol to facilitate disabling these harmful websites and erasing them from popular searches.¹⁶⁴

There is certainly a lot of work to be done towards creating a system that both celebrates all contributions to the creative com-

¹⁶² See discussion *supra* Part II.B.

¹⁶³ Alex Hern, *Wikipedia "Edit-a-Thon" Seeks to Boost Number of Women Editors*, GUARDIAN (Mar. 4, 2014, 2:07 PM), <http://www.theguardian.com/science/2014/mar/04/wikipedia-edit-a-thon-boost-women-editors> [<http://perma.cc/2J5C-TRDS>]; Sarah Mirk, *An Epic Feminist Edit-a-Thon Takes Aim at Wikipedia's Gender Gap*, BITCH MEDIA (Jan. 24, 2014, 7:57 PM), <http://bitchmagazine.org/post/an-epic-edit-a-thon-takes-aim-at-wikipedias-gender-gap> [<http://perma.cc/3A82-X6WP>].

¹⁶⁴ Amit Singhal, *"Revenge Porn" and Search*, GOOGLE: PUB. POL'Y BLOG (Jun. 19, 2015), <http://googlepublicpolicy.blogspot.com/2015/06/revenge-porn-and-search.html> [<http://perma.cc/A2Q8-CADF>].

munity and yet still manages to foster a system of innovation and development. As of now, there has not been a real or theoretical solution that would directly address the interconnected concerns that a feminist analysis of IP engenders.

Wikipedia, as an embodiment of a creative community, fails to address the most basic concerns of gender discrimination. Old systems of communication, categorization, and gendered hierarchies, as well as hostile environments, have merely reasserted themselves within the new system. Clearly, women's exclusion from the market is not remedied by creating a system completely outside of the market. The main concern is that there is no clear path forward. Hopefully, as feminist analyses become more commonplace in other areas of the law, the virtual world can benefit from the insights gleaned from more obviously gendered segments. Until we figure out a way to combat the massive disparities that exist, the web cannot be the democratic, open, or neutral endeavor that is hoped for by feminist and A2K theorists.