

PORNOGRAPHY: Definitions and Laws

PORNOGRAPHY- Legal

DEFINED: Sexually explicit pictures, wiring or other material whose primary purpose is to cause sexual arousal (The American Heritage College Dictionary, 4th Ed. (2002)).

EXAMPLES: Some adult pornography (a.k.a. "soft porn") like *Playboy* and *Playgirl* Magazines

Where is it found in Cal Poly's RUP?: Pornography is not mentioned in the RUP. However, there are examples of appropriate and inappropriate uses alludes to sexually explicit material within the policy.

From the **POLICY** page, click **Examples of Appropriate and Inappropriate Uses**, scroll down to

APPROPRIATE USES

Harrassment

- A student working on a computer in a lab creates or downloads one or more images that may disturb or offend others. They remove the images before leaving the facility or relocate to another workstation that is less visible to other users to work on this project.

INAPPROPRIATE USES

Harrassment

- Displaying an intimate, suggestive or disturbing image which a reasonable person would consider objectionable as the "wallpaper" or screen saver on a computer that is routinely visible to other students, staff and faculty.

OBSCENITY-Illegal to distribute/Outside First Amendment Protection

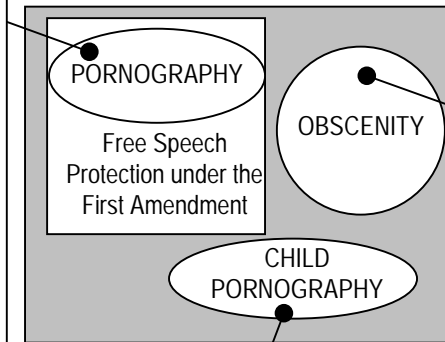
DEFINED: "Matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (California Penal Code 311, viewable from <http://www.leginfo.ca.gov/calaw.html>. The wording is identical to the three-part "Miller Test" for obscenity)

EXAMPLES: Some adult pornography (a.k.a. "hard porn") like *Hustler* Magazine; the front page photograph on the Mustang Daily, Monday, February 10, 2003.

STATE LAW: According to CA Penal Code (PC) 311.2(a) "Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000)." (CA PC 311.2(a) at <http://www.leginfo.ca.gov/calaw.html>)

U.S. SUPREME COURT: Obscenity was defined and judged as outside the protection of the First Amendment in *Roth v. U.S.* 354 U.S. 476(1957). In *Miller v. California* 413 U.S. 15(1973) the definition was refined by adding that obscenity, taken as a whole, lacks serious literary, artistic, political, or scientific value. Both cases can be viewed at <http://www.findlaw.com/casecode/supreme.html> by entering the citation.

PORNOGRAPHY Venn Diagram



Where is it found in Cal Poly's RUP?: Obscenity is not directly mentioned in the RUP. However, you could get to the applicable laws by taking the following steps: From the **POLICY** page, scroll down to "CSU Policies and Applicable Laws", click **Selected California and Federal Computer Crime Laws**, scroll down to **California State Law**, manually jot down or memorize the penal code citation for obscenity, click on **California State Law**, click on CALIFORNIA LAW, check the box marked "Penal Code," manually enter the citation for obscenity, click SEARCH, click **PENAL CODE SECTION 311-312.7**, read and interpret section PC 311 (4,187 words).

CHILD PORNOGRAPHY-Illegal to possess/Outside First Amendment protection

DEFINED: "A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct." (California Penal Code 311.3 (a), viewable from <http://www.leginfo.ca.gov/calaw.html>)

FEDERAL LAW: Child pornography is a felony and a federal offense, 10 years to life in prison (U.S. Code Title 18, Section 2251 at <http://www.findlaw.com/casecode/uscodes/>).

Where is it found in Cal Poly's RUP?: Same steps as those for obscenity (10 steps before reading and interpreting penal code).