

Virtual Criminality: Examining the Successes and Pitfalls of the Fight against Sexual Abuse of Children on the Internet through a Select American, European and African Nations

YAHYA DURO UTHMAN HAMBALI

ABSTRACT

The world has become a global village where activities hosted in one jurisdiction may be accessed by a visitor on the internet site from another jurisdiction from where it is hosted. However, one of the downsides of this technological advancement is its adoption for disseminating information and pictures that are inimical in respect for children, namely sexual abuse of children of which child pornography is a key element. This is an online business where perpetrators make humongous profits at the detriment of the children depicted in the pornographic materials. The key objective of this paper therefore is to interrogate the efforts of the United States, Canada, United Kingdom, Republic of Ireland, Ghana and Nigeria as well as the international efforts made so far at curbing the rise in such online activities and to find out the success or otherwise of such efforts. The paper adopts the doctrinal methodology to discover the efforts made so far and the factors, if any, militating against the success of the efforts. The study finds that there have been significant interventions through regional conventions and domestic legislation to arrest the scourge but, the impacts of these efforts have been greatly eroded by jurisdictional issues and absence of uniformity in the definition and scope of child sexual abuse. The paper finally recommends the synergy of enforcement mechanisms among nations where the crime is being perpetrated. It also recommends a comprehensive national campaign as well as parental control of their children's activities on the internet.

Keywords: Child pornography; sexual abuse; internet; cyberspace; cybercrime

INTRODUCTION

The internet has become much more prevalent and is heavily affecting every facet of our lives. Nowadays, the bulkiness of human hours is spent online, and the volume of social-networking sites increases by the day. Instances such as Twitter, WhatsApp, Zoom, Telegram and Facebook are just a few of such social-networking sites. These sites share the attributes of the real or physical world where the visitors may choose to manipulate the environment for either legal or illegal purpose or both. Quite a number of the illegal manipulations otherwise known as virtual criminality have surfaced in recent times and they include but not limited to child pornography, cyber piracy cybersquatting, cyber theft, cyber terrorism, identify theft etc.

Despite several legislation made by the states under review, that is, the US, Canada, UK, Republic of Ireland, Ghana and Nigeria, to protect children from becoming victims of sex predators on the internet, they however live in an increasingly dangerous world due to the explosive growth of the Internet.¹The criminal law is premised on notions of offences against property and against human being. It is a truism that the common law by and large

limited the scope of criminal law to behaviours that cause real or expected physical harm to individual.² This very old common law notion of criminal law seems to have taken a swift turn or to put it mildly, has expanded to accommodate conduct that does not cause expected or actual physical harm to the person. Today, we live our lives more and more in an online world where action that occurs online significantly affects our physical existence. An instance is cyberbullying which has made some victims to attempt suicides.³

A very significant aspect of virtual criminality deals with the use of information and communication technology (ICT) to circulate hateful materials. The notion of hateful material here is a very broad one which creates great challenges in bringing every conceivable offensive material within a single legislative ambit.⁴ For instance, some developed countries could not concur on any type of visual or audio content that should be regarded as a crime other than child pornography, which is inconsistency to the Council of Europe's Cybercrime Convention.⁵

Cyberspace is the most easily accessible venue for criminal activities. It is open to every person who wishes to either visit or post offensive materials

on the internet. Crimes committed on this space could have transboundary effects while the alleged offender remains within the comfort of his bedroom from where the offensive material is released to the internet. Child pornography or materials showcasing the sexual abuse of children on the internet have been on the rise and this has attracted both national and international responses because of the adverse effects it has on the psychology of the children depicted in such materials as well as its effects on the moral fabrics of the society.

Accordingly, this paper seeks to examine the impacts of these responses on stemming the tides of child pornography or sexual abuse of children on the internet. This paper is divided into three broad titles with each of the titles having various level headings. The paper opens with the first broad title namely, the problem, where the problems which the various legislative and policy interventions seek to solve are discussed. The second broad title namely, notable efforts at dealing with the scourge of on-line child sexual abuse, identifies three regions, namely the US, Canada, UK, Republic of Ireland, Ghana and Nigeria, for discussion while the efforts of notable non-governmental and not-for-profit organisations in each of the three regions, namely the US, Canada, UK, Republic of Ireland, Ghana and Nigeria, are also discussed. The third broad title namely, constraints of enforcement of sexual abuse of children prohibition laws, discuss two significant constraints militating against the enforcement of the prohibition laws namely, jurisdictional issues and lack of uniformity in the definition/scope of pornographic materials among nations. The paper wraps up with conclusion and the way forward.

THE PROBLEM

Internet has become a fertile ground to carry out illegal activities. Hence, internet has been used to display and transfer offensive materials such as phonographic.⁶ Different statistics have been quoted on the size of pornographic materials posted on the internet. In a survey of the extent of adolescents viewing of online pornography in the United Kingdom by a team from Middlesex University, during late 2015 and early 2016, it was found that 48% of adolescent surveyed had seen online pornography as opposed to 52% them who had not, and out of the 476 respondents who had seen online pornography, 34% of them reported seeing it once a week or more.⁷ However, another study on human sexuality by a group of academics led by Dr. Odi

Ogas revealed that only 4 percent of the web's most popular sites were dedicated to porn.⁸ The difference between the two researches is that, whereas the Optenet based their figure on the number of pages covered by porn materials, the academics based their figure on the number of sites devoted to porn materials.

The advent of internet abets upsurge in pornographic materials which consequently rendered traditional or pre-internet enforcement techniques for detecting child pornography quite obsolete.⁹ The United States Department of Justice stated that the federal grand jury in the District of Columbia had indicted Jong Woo Son, 23, a South Korean National, for his *Welcome to Video* operation, the largest child sexual exploitation market by volume of content.¹⁰ It was also reported that 337 site users were arrested and charged.¹¹ On March 5, 2018, agents from the Homeland Security Investigations, International Revenue Service-Criminal Investigation (IRS-CI), Korean National Police in South Korea, and National Crime Agency in the United Kingdom apprehended Son and seized the server he used to operate a Darknet market that solely advertised child pornographic videos.¹²

The forfeiture complaint alleges that law enforcement agencies traced payment of bitcoin to the Darknet site by following the flow of funds on the block chain. The virtual currency accounts identified in the complaint were allegedly used by 24 persons in five countries to fund the website and promote the exploitation of children.¹³ The forfeiture complaint seeks to recover these funds and ultimately through the restoration process, return the illicit funds to the victims of the crime.¹⁴ Another concern arising from child pornography is virtual sex. Virtual sex, according to Wilson, takes place when two (or more) avatars engaged in an erotic act on screen.¹⁵ A website called "*Second life*" provides a clear example of website where virtual sex and porn occur freely.¹⁶

Investigating internet-related crime is differentiated by its international feature. The load of information on the internet becomes almost impenetrable by an average person. Besides, interactions on the internet does not require any personal contact. The foregoing account for why it is always difficult to investigate crimes committed in such space and consequently track down the perpetrator unless the investigator or group of investigators are specially skilled in that particular field.¹⁷ Cybercrimes change rapidly and

these constitute the major obstacles for effective legislation and enforcement.¹⁸ Notwithstanding these difficulties, there have been significant efforts made at national, regional and international levels to bring virtual criminality, in particular, on-line sexual exploitation of children within the dragnet of criminal law. Whether these efforts at criminalizing this sexual abuse of children have had significant impact on the rise or reduction of the virtual crime is a different question.

NOTABLE EFFORTS AT DEALING WITH THE SCOURGE OF ON-LINE CHILD SEXUAL ABUSE

To allow for a focused study of the subject-matter of this research and for paucity of space, the study of the efforts made to address the towering impacts of the on-line sexual abuse on the child is limited to three regions of the world that is, North America, Europe and Africa. Two nations have been selected from each of the three regions for consideration of the notable efforts made to control the menace of sexual abuse of children through the internet.

NORTH AMERICA

1. Canada

In 1993, Canada introduced section 163.1 of the Criminal Code which criminalized child pornography. The code among other purposes was to discourage the practice of using children as sex partners. The code bans the production, publication, distribution, importation, possession and sale of child pornography.¹⁹ This law was put to test in *R. v. Sharpe*.²⁰ The trial court held that criminalization of possession of pornographic materials is of little beneficial effects in the absence of scientific evidence compared to the negative impact such criminalization has on privacy. The Canadian Parliament introduced Bill C-15A to amend the child pornography provisions of Canadian Criminal Code which received Royal Assent in June 2002 while hosts of other amendments followed after the introduction of this Bill.

2. United States

In responding to the scourge, the United States introduced Title 18 Crimes and Criminal Procedure. Chapter 110 of the Code deals with Sexual Exploitation and Other Abuse of Children.²¹ Visual

depictions include photographs, videos, digital or computer-generated images indistinguishable from an actual minor, and images created, adapted, or modified, but appear to depict an identifiable, actual minor.²² It is also deemed visual depiction under the Code.²³

“Sexually explicit conduct” under the Code means actual or computer-generated sexual activity of any form or manner whether between same or opposite sex or against the order of nature or involving indecent exposure of any sexual part of any person.²⁴ The federal law further states that the earlier “sexually explicit conduct”, will also mean sexual intercourse of any form or manner whether between same or opposite sex or against the order of nature or involving indecent exposure of any sexual part of any person.²⁵

The Code prohibits the production, distribution, reception, and possession of an image of child for pornography.²⁶ In particular, Section 2251 prohibits luring of a minor in sexually explicit conduct for purposes of producing visual depictions of that conduct. It is a serious crime to violate the federal child pornography law which attracts stringent penalties. A first-time offender convicted of this crime faces fines and a statutory minimum of 15 years to 30 years maximum term of imprisonment.²⁷

EUROPEAN UNION

In responding to the crime of child pornography, the European Commission approved in December 1998 a proposal for an Action Plan on Promoting Safe Use of the Internet.²⁸ Much of the EU-funded work has concerned matters relating to net filters and the promotion of industry self-regulation.²⁹ In order to achieve the objectives of the EU Action Plan, provision was made to encourage work to be conducted in Member States, under the guidance of the Commission, in specific fields, with particular reference to:

- i. the promotion of industry self-regulation and content-monitoring schemes (for example, dealing with content such as child pornography or content which incites hatred on grounds of race, sex, religion, nationality or ethnic origin);
- ii. encouraging industry to provide filtering tools and rating systems, which allow parents or teachers to select content appropriate for children in their care while allowing adults to decide what legal content

- they wish to access, and which take account of linguistic and cultural diversity;
- iii. increasing awareness of services provided by industry among users, in particular parents, teachers and children, so that they can better understand and take advantage of the opportunities of the internet;
 - iv. support actions such as assessment of legal implications; and
 - v. activities fostering international cooperation in the areas enumerated above.³⁰

In addition, the Council of Europe's Convention on Cybercrime³¹ provides for offences relating to child pornography. Article 9 of the Convention requires State-Party to adopt such legislative or other measures to create as criminal offences under its domestic law, when committed internationally without right, conducts relating to: producing child pornography for the purpose of its distribution through a computer system; offering, making available, distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; and possessing child pornography in a computer system or on a computer-data storage medium.³²

Explanatory memorandum accompanying the Convention attempts a definition of the term pornographic materials and it states.

"The term 'pornographic material' in paragraph 2 is governed by national standards pertaining to the classification of materials such as obscene, inconsistent with public morals or similarly corrupt. Therefore, material having an artistic, medical, scientific or similar merit may be considered not to be pornographic. The visual depiction includes data stored on computer diskette or on other electronic means of storage, which are capable of conversion into a visual image."³³

Another significant instrument that seeks to criminalize acts related to child pornography at regional level is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Article 20 (1) of the Convention makes provisions similar to Article 9 of the Council of Europe's Convention on Cybercrime and it requires each State Party to take the necessary legislative or other measures to ensure that conducts related to child pornography are criminalized. The definition of 'child pornography' is not different from the definitions of the concept in other international and regional conventions discussed earlier. However, the Convention seems not to go

beyond mere rhetoric because it accords each State Party the option of applying either entirely or partly, some sub-paragraphs of Article 20 paragraph 1.³⁴

1. United Kingdom

United Kingdom enacted the Protection of Children Act in 1978 while the existing cybercrime convention is the concomitant of 1978 Act. The Act recognized a number of conducts involving the production of photograph of children. For instance, section 1 of the amended Act provides:

1. Subject to sections 1A and 1B, it is an offence for a person—
 - (a) to take, or permit to be taken [or to make], any indecent photograph [or pseudo-photograph] of a child. . . ; or
 - (b) to distribute or show such indecent photographs [or pseudo-photographs]; or
 - (c) to have in his possession such indecent photographs [or pseudo-photographs], with a view to their being distributed or shown by himself or others; or
 - (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [or pseudo-photographs], or intends to do so.³⁵

In addition, Coroners and Justice Act 2009 criminalized that an offence for a person to be in possession of what is referred to as a 'prohibited image' of a child.³⁶ Besides, in the Criminal Justice and Public Order Act 1994, provisions are included under section 84 to extend the ambit of the Criminal Justice Act 1988³⁷ and the Protection of Children Act 1978³⁸ to prohibit possession or distribution of 'pseudo-photograph'.³⁹ 'Pseudo-photograph' is an offensive picture of a child adapted by the use of computer painting packages.⁴⁰

2. Republic of Ireland

In responding to the virtual sex abuse, the Republic of Ireland launched its Action Plan for Online Safety 2018-2019 in July 2018.⁴¹ The Action Plan identified 25 specific actions to be progressed.⁴² The summary of the Ireland's specific actions to be progressed within 18 consecutive months and which are relevant in this paper are those listed as nos 10, 11, 12,13,14,15 &16 as follows:

10. In line with the EU better internet for kids strategy, we will promote best practice standards for quality content for children.
11. Legislate for new criminal offences with the support of the Oireachtas.
12. Ensure that Online Safety is specifically accounted for in statutory child safeguarding statements.
13. Strengthen links and processes with industry for removing illegal and harmful material.
14. Work with online platforms based in Ireland to advance Online Safety measures
15. Work with industry to develop a practical guide for online platforms and interactive services to support best practice in Online Safety in design
16. Work with EU and international partners to actively promote Online Safety.⁴³

AFRICAN UNION

The 23rd Ordinary Session of the Assembly of the African Union adopted Convention on Cyber Security and Personal Data Protection on 27th June 2014. Article 1 of the Convention defines child pornography as any visual representation whether prepared or created by mechanical, electronic, or other means, of sexually explicit action, where:

- (a) the making of such visual representation involves a minor;
- (b) such visual depiction is a digital image, computer image, or computer generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge;
- (c) such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct.

The Convention identifies several cyber conducts that are inimical to child sexual security. The Convention requires nations to take the necessary legislative measure to criminalize any act which tend to facilitate or provide access to images, documents, sound or representation of a pornographic nature to a minor.⁴⁴ State Parties are also required to take the necessary legislative measures to guarantee that, in case of conviction,

national courts will give a ruling for confiscation of the materials, equipment, instruments, computer program, and all other devices or data belonging to the convicted person and used to commit any of the offences mentioned in the Convention.⁴⁵ However as at the time of last visit by the present author to the official website of the African Union only 14 countries out of 55 Member States have ratified the Convention⁴⁶, only 5 countries acceded⁴⁷, only 5 countries have deposited.⁴⁸

1. Ghana

The African Union Convention on Cyber Security and Personal Data Protection was approved by Ghana on 13/05/2019.⁴⁹ Before then, it had earlier responded to the scourge of child pornography with the passage of the Electronic Transaction Act 2008. Child pornography under the Act includes any material that shows the sexual conducts and authorized nakedness of a child in the manner to attract sexual excitement of people.⁵⁰ The Act identifies and prohibits three major cyber conducts that significantly challenge the sexual sanity of a child. Hence, it is a crime for a person to produce, procure, publish or possess child pornography in a computer or an electronic record storage medium either for publication or commercial benefits.⁵¹ The offence attracts a term of imprisonment of not more than ten years, or a fine of not more than five thousand penalty units, or to both upon conviction.⁵²

2. Nigeria

As at the time of this research and the last visit to the African Union official website⁵³, Nigeria was one of those African countries that have neither signed nor ratified the African Union Convention on Cyber Security and Personal Data Protection.⁵⁴ However, in 2015, Nigeria passed into law, the Cybercrimes (Prohibition and Prevention) Act 2015. The Act prohibits materials show a minor, either real or simulated, engaged in actual or simulated sexual conduct.⁵⁵

The Act gives an expanded interpretation of 'sexually explicit conduct' to include every conceivable simulated or actual sexual act involving a child in the manner to attract sexual excitement of people.⁵⁶ Accordingly, it becomes a crime for individual to deliberately use any computer to publish, produce, procure, offer or make available or possess child pornography or use any electronic record storage medium either for publication

or commercial benefits.⁵⁷The Act prescribes imprisonment for a term of 10 years or a fine of not more than ₦20,000,000.00 (\$52,493.44) or to both fine and imprisonment; or term of not more than 5 years or a fine of not more than ₦10,000,000.00 (\$26,246.72) or both such fine and imprisonment depending on the severity of the offence specified under the law.⁵⁸

The Act also prohibits all forms of sexual exploitation of a child either by proposing, grooming or soliciting through any computer network, to meet a child for that purpose or, abusing the vulnerability of a child either by reason of infirmity of the body or of the mind or, taking an advantage of filial relationship or trusteeship to coerce, induce, or expose a child to sexual activity for commercial purpose or self-satisfaction.⁵⁹

ANTI-CHILD PORNOGRAPHY NON-PROFIT ORGANISATIONS

The rate of child sexual abuse across the world has also attracted the attention of many Non-Governmental Organizations across the world, however, our considerations here will be limited to a few of those organizations that are domiciled within the three regions under the foregoing title namely, North America, Europe and Africa. These Organizations intervened with various programs for child protection and awareness about the danger inherent in the act. The programs are also meant to expose child sexual exploitations. Due to constraints of space, only three of such non-profit organizations will be discussed here. One NGO will be discussed from each of North America, Europe and Africa.

In Europe, there is the UK Internet Watch Foundation (IWF) formed in 1996 by Internet Service Providers (ISPs).⁶⁰ It was established as a result of warning by the Metropolitan Police to the Internet Service Providers Association (ISPA) that some news disseminated by ISPs were offensive imagery of minors and that charges may be brought against the ISPs if they fail to regulate materials available through its server.⁶¹ Thus, the IWF was established as part of a response to the suggestion made by the Metropolitan police.⁶²As an indicator of this, it is unlawful to possess material classed as child pornography which necessarily follows that ISPs could also be classified as publishers of child pornography.

The activities of Internet Watch Foundation can be viewed from two angles. It seeks to promote the use of systems content rating such as PICS

(Platform for Internet Content Selection) and RSACi (Recreational Software Advisory Council). The major tasks of the IWF is to reduce the accessibility of online sexual abuse content, particularly, child sexual abuse hosted around the world and non-photographic child sexual abuse imagery in the UK. The bulk of the IWF work emphasizes the removal of child sexual abuse videos and images. It helps victims of child sexual abuse worldwide by identifying and removing online images and videos of their abuse. It is a not-for-profit organization and it is supported by the global Internet industry and the European Commission.⁶³

In North America, there is the notable internet watch, the (US) National Centre for Missing and Exploited Children (NCMEC),⁶⁴that actively provides help to victims, families, mental health agencies, law enforcement, social agencies, and others when they need help with an exploited, missing, or recovered child.⁶⁵ In the area of education, NCMEC provides safety and prevention resources for professionals and families focusing on child sexual exploitation, child abduction, and internet safety. The different educational programmes of the center are as follows:

- (a) KidSmartz Personal Safety Program that educates families and children about how to prevent abduction and that empowers elementary-aged students to practice safer behaviours.
- (b) NetSmartz Online Safety Program teaches children ages 5-17 about online safety and digital citizenship. NetSmartz offers free, age-appropriate resources including videos, games, presentations, and classroom lessons to help children learn how to protect themselves and their friends online.
- (c) Code Adam named in honor of Adam Walsh, was designed to help businesses and other establishments ensure that they have safety protocols in place to respond quickly and efficiently to situations involving a missing child.
- (d) Safe to Compete provides guidelines for youth-serving sporting organizations and the parents of child athletes to help protect children from sexual abuse.⁶⁶

In Africa, Nigeria has Cece Yara Foundation that was established in 2016 to mitigate child sexual abuse and to offer access to information, protection, care, and emergency intervention for minors who

are at risk or have experienced child sexual abuse (child pornography included). The Foundation offers legal, medical, and psycho-social support for minors through a 24-hour free child telephone helpline. Besides, the Foundation collaborates with government agencies and non-governmental organisations involved in the intervention, investigation, and prosecution in child sexual abuse cases (child pornography included), in order to offer a well-coordinated response to children, in line with global best practices.⁶⁷ Furthermore, the foundation has established specialized programmes to enlighten adults on how to protect the children from sexual abuse. In addition to that, the foundation also established outreach educational programmes on prevention awareness for kids. The activities of the Foundation are in seven broad areas which are (1) 24-hour free child telephone helpline, (2) Education and Awareness programme, (3) Counselling and Support services, (4) Child Forensic interviews, (5) Advocacy and Support, (6) Justice and Law Enforcement, and (7) Research and Data Repository.⁶⁸ It is stated in their official website that their Research and Data Repository Service does the following:

- (a) Provide free access to available data on child sexual abuse.
- (b) Conduct research to assess the frequency of sexual abuse in schools.
- (c) Conduct research to assess the effectiveness of programmes for combating child sexual violence in Nigeria.
- (d) Conduct research to determine the cost of child sexual abuse to state and national levels.
- (e) Record and process data on reported cases of child abuse, especially sexual violence.
- (f) Provide quarterly and annual reports of child sexual abuse.⁶⁹

CONSTRAINTS OF ENFORCEMENT OF SEXUAL ABUSE OF CHILDREN PROHIBITION LAWS

JURISDICTIONAL ISSUES

Jurisdiction has been one the factors militating against the enforcement of most of the cyber-based sexual abuse prohibition laws. This is more so that the nature of this crime in most cases, is trans

boundary Nations of the world do not have uniform Code on cyber-based sexual abuse of children. Some nations do not even have any domestic legislation criminalizing this class of modern offence. There is also the case of discrepancies in the scope and nature of child sexual abuse to be criminalized. Hence, whereas a cyber-based child sexual abuse may be an offence in the host State, it may not be an offence in the State or nation where it is viewed or downloaded and vice versa. Despite this, there is problem of applying localized concepts of obscenity, which are influenced by cultural, religious, and societal values in the international milieu of the internet.⁷⁰ For example, an attempt to prevent internet publication of satanic abuse, Nottingham County Council obtained an injunction restraining a UK based website which had published a copy of report. Whereas, the injunction was effective throughout the UK, it failed to achieve the same result in America when it sought to be enforced in the United States.⁷¹ A letter from a Nottinghamshire's County solicitor threatening the operator of a US website with legal proceedings if it failed to remove the copy of its report from its (US based) website did not yield any positive effect. In fact, the operator admitted the presence of the Nottingham copy of the report on its website but observed that the Council disregard the fact that he and his website are located at Cleveland, Ohio, a jurisdiction where writs of Courts of the United Kingdom was neither applicable nor enforceable.⁷²

The individual states in the United States have the power to decide what makes up obscene material. It is then left to be determined whether the operators of online services could be subjected to the most restrictive laws of the range of jurisdictions where the service is made available. This scenario played out in the case of *United States v. Thomas*⁷³, where the defendants operated a computer bulletin board allowing subscribers to download pornographic materials. Subscribers could also order videos which would be delivered by post after submitting a request giving details of their name and address. A federal statute under United State law makes the foregoing an offence among others, although the interpretation of the provision may differ between States. The Supreme Court having established that the resolve of whether material is obscene is to be made having regard to existing community standards, considered the material in question lawful in California.

However, in the instant case, a charge was brought against the defendant in Tennessee where a number of such images were downloaded and they

were convicted by the Tennessee courts of breach of the federal law referred above. The defendants appealed their conviction on the ground that the material had not been transported by the defendant as provided under the federal law. They also contended in the alternative that the trial court had erred in applying Tennessee standards of morality. In rejecting both arguments, the Court of Appeal held that:

“Defendants focus on the means by which the GIF files were transferred rather than the fact that the transmissions began with computer-generated images in California and ended with computer-generated images in Tennessee. The manner in which the images moved does not affect their ability to be viewed on a computer screen in Tennessee or their ability to be printed in hard copy in that distant location.”⁷⁴

Hence, within the United States of America, images that were not considered as obscene or against the laws of the State of California and lawfully hosted in the State were viewed as obscene and against the laws of Tennessee when such computer-generated images which emanated from California were transmitted and viewed or downloaded in Tennessee against the Tennessee’s laws.

Also, in the UK case of *R. v. Graham Waddon*⁷⁵, an individual pleaded guilty to several specimen charges of publishing obscene materials contrary to the provisions of the Obscene Publications Act 1959. Two contentions were vital to the defendant’s case. First, it was argued that publication of the material took place in the US. This Argument was dismissed, with the judge ruling that publication took place whenever the images were downloaded onto a computer in the UK. The second contention relate to the Police and Criminal Evidence Act 1984 which requires that evidence be led indicating that a computer whose output is relied upon was operating properly at the relevant time. The defendant argued that this would have obliged the prosecution to lead information relating to the operation of the servers in the United States. As before, the Judge ruled against the defence, holding that the requirement was limited to demonstrating the reliability of the computer used to access the materials in the United Kingdom.

This case and the US’ decision in *Thomas* case point to the fact that prosecutions could only be successful as the defendants were or could be brought within the court’s jurisdiction. Where a service provider and the user are located in different jurisdictions, enforcement will become much more difficult. Invariably, extradition will only

be sanctioned by a national authority where the conduct complained of would constitute an offence if committed on its own territory.⁷⁶ Otherwise, it is easier for the person who stores pornographic materials on computers in a country where such is considered criminal to get convicted in a country where it is. Similarly, it will not be a defence that the law of the host country of pornographic materials does not criminalize the hosting of such material if the law of the receiving country where it is published makes it a crime.

In a case reported by BBC News in 2013 according to Lloyds, a teenager had emailed unambiguous photos of himself in the conviction that he was communicating with a fellow teenager of the opposite sex. He then received demands for payment of money failing which the photos would be passed on to the family and friends. He committed suicide by jumping off the fourth bridge. Although, the demand could be an example of blackmail for which the perpetrator could face prosecution but the complication here is that the perpetrator could be located in any jurisdiction in the world different from the location of the victim.⁷⁷ Where the conduct of the perpetrator is not regarded as an offence in the jurisdiction where the perpetrator is located, it then becomes problematic if not impossible to enforce the UK law prohibiting the conduct.

LACK OF UNIFORMITY IN THE DEFINITION/ SCOPE OF PORNOGRAPHIC MATERIALS AMONG NATIONS

The criminalisation of pornographic materials through internet differs from one country to another.⁷⁸ Whereas, some countries have actively criminalized the conduct,⁷⁹ others are either yet to make laws prohibiting such or are in the process of making such laws. The major challenge however, is the lack of standard definitions of erotic or pornographic material. This challenge, in effect makes it complex for law enforcement agencies to investigate those crimes if the offence is perpetrated in or emanated from countries that have not criminalized the swap of sexually explicit material,⁸⁰ as well as countries where each of the federating units is conferred with independent legislative powers as it is the case with the United States and Nigeria. Few instances illustrate the point.

First, within the United States of America, images that were not considered as obscene or against the laws of the State of California and lawfully hosted in the State were viewed as

obscene and against the laws of Tennessee when such computer-generated images which emanated from California were transmitted and viewed or downloaded in Tennessee against the Tennessee's laws.⁸¹ In Nigeria, section 58 of the Cybercrimes Act 2015 gives an expanded interpretation of 'sexually explicit conduct' to include every conceivable real or simulated sexual act involving a child in the manner to attract sexual excitement of people. In consequence of the foregoing, it is an offence for any person to intentionally use any computer to publish, produce, procure, offer or make available or possess child pornography or use any electronic record storage medium either for publication or commercial benefits.⁸² This is in contradistinction from the Ghanaian Electronic Transaction Act 2008 which does not extend the definition of child pornography to include every conceivable real or simulated sexual act involving a child but rather makes it a crime for a person to publish, produce, procure or possess child pornography in a computer system or on a computer or electronic record storage medium either for publication or commercial benefits.⁸³

Additionally, whereas the Canadian Criminal Code criminalizes possession of purely fictional material and this has been applied in the absence of any images of real children, including possession of fictional stories with no pictures at all, or vice versa, cartoon pictures without any stories,⁸⁴ child pornography laws in the UK which is covered by the Protection of Children Act 1978 only makes it illegal to take, make, distribute, show, or possess for the intent of showing or distributing an indecent photograph of someone under the age of 18. This later definition of child pornography does not cover fictional stories with no pictures or images of children under the age of 18 as it the case with the Canadian Criminal Code.

CONCLUSION AND WAY FORWARD

Various attempts have been made in this paper to show that in the last two decades, nations of the world have witnessed the surge in the problems posed for children in the cyber world. While several nations such as the Canada, UK, USA, Nigeria, Ghana and the Republic of Ireland have confronted the challenges with the force of legislation, enforcement of their laws have in most cases been problematic, particularly where the conduct is not criminalized by the country where the offensive conduct is hosted and extradition of the offender becomes necessary.

It is a truism that a computer operator in the United Kingdom can gladly access content hosted by a different sovereign nation although, such is not available for purchase in a United Kingdom shop. In a situation such as this, there is little or nothing that law enforcement agencies could do. However, where there is synergy of enforcement mechanisms between the jurisdictions i.e., between the nation where the pornographic material is hosted and the nation where the material is accessed, most of these challenges may be suppressed. This can be achieved through appropriate legal framework as well as social infrastructure.

In the area of legal framework, we are of the firm opinion that the relevant Organ of the United Nations could initiate international Conventions where a coordinated approach to combating child pornography can be agreed upon. Definitive scope of child pornography could also be central to the decisions at such Convention. Regional and bilateral Conventions are another means to checkmate the lack of uniformity in the fight against child pornography. A situation where Article 9 of the Council of Europe's Convention on Cybercrime and Article 20 (1) the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse leave State Parties to determine the scope of child pornography to criminalize also contributes to the lack of uniformity in the definition and scope of child pornography. It is therefore suggested that such regional Conventions should promote a uniform definition and scope of child pornography among all State Parties to such Conventions.

In the area of social infrastructure, it has been argued that active national campaigns and collaborative efforts of parents, children, law enforcement and site administrators will significantly help significantly to combat child pornography.⁸⁵ The possibility of child exploitation in the virtual world has prompted creators of virtual world to respond to the danger with various approaches aiming at restricting access to their sites by particular age grades or restricting sexual activities involving a child on their sites.⁸⁶ There is the need for the creators of virtual world, who I consider as gatekeepers to access to online materials, to develop and use more restriction or filtering mechanisms in safeguarding the cyber space from its current use as platform for child sexual abuse.

Another significant step that is worth taking is for parents to show great interest in their underage

children's activities on the internet including the sites they visit and/or virtual groups they join. The parental interests should also cover the information supplied by their children to qualify them to visit those sites or join those groups where the supply of personal data of the visitor or applicant is a requirement. This becomes necessary notwithstanding the segmentation by sites' creators. As Wilson argues, shielding children from virtual sex age restriction has not been effective because all that a child needs to do is to input the age that falls within adulthood to gain access to the site.⁸⁷ Another reason for the need for parental vigilance is the fact that cases bothering on negligence of site creators in the effective control of entry by children into adult space on their sites have not been successful.⁸⁸

NOTES

- ¹ A. Rogers, *Child Pornography's Forgotten Victims*, (2008) 28(4) *Pace Law Review*, 2008, p 847.
- ² See J. Herring, *Criminal Law: Text, Cases and Materials*, Oxford, Oxford University Press, 2014, p 7.
- ³ I. J. Lloyd, *Information Technology Law*, Oxford, Oxford University Press, 2014, p 239.
- ⁴ I. J. Lloyd, *Information Technology Law*, p 229.
- ⁵ I. J. Lloyd, *Information Technology Law*, p 229.
- ⁶ I. J. Lloyd, *Information Technology Law*, p 230.
- ⁷ E. Martellozzo, A. Monaghan, J. Davidson, and J. Adler, 'Researching the Affects That Online Pornography Has on U.K. Adolescents Aged 11 to 16' *SAGE Open* <https://journals.sagepub.com/doi/pdf/10.1177/2158244019899462> [25 September 2021]
- ⁸ M. Ward, 'Web Porn' Mark Ward: Just how much is there? (BBC news, July 2013) <http://www.bbc.ac.uk/news/technology-23030090> [25 September 2021]
- ⁹ C. B. Hessick, 'Disentangling Child Pornography from Child Sex Abuse', (2011) 88(4) *Washington University Laws Review*, p 854.
- ¹⁰ B. Zagaris, 'Child Pornography: U.S. charges S. Korean and arrest 337 for Child Pornography through the Darknet', (2019) 35(10) *International Enforcement Law Reporter*, p 379.
- ¹¹ B. Zagaris, 'Child Pornography', p 379.
- ¹² B. Zagaris, 'Child Pornography', p 379 - 380. *Welcome to Video* offered those videos for sale using the cryptocurrency, bitcoin.
- ¹³ B. Zagaris, 'Child Pornography', p 380.
- ¹⁴ B. Zagaris, 'Child Pornography', p 380.
- ¹⁵ See R. F. Wilson, 'Sex Play in Virtual Worlds', (2009) 66(3) *Washington and Lee Law Review*, p 1131.
- ¹⁶ R. F. Wilson, *Sex Play*, p 1130; *A Virtual World – Join Our Community for Free, Second Life*, <http://secondlife.com> [6 June 2020]
- ¹⁷ K. Girhiny, 'The Problem of the Investigation of Computer Criminality', (2015) 2 *Studia Universitatis Babes-Bolyai Jurisprudentia*, p 219.
- ¹⁸ K. Girhiny, 'The Problem of the Investigation of Computer Criminality', p 219.
- ¹⁹ Y. Akdeniz, *Internet Child Pornography and the Law National and International Responses*, London, Routledge, 2016, p 141.
- ²⁰ (2001) SCC 2. File No. 27376, 26 January 2001.
- ²¹ 18 U.S.C. § 2256 (8).
- ²² 18 U.S.C. § 2256 (5).
- ²³ 18 U.S.C. § 2256 (5).
- ²⁴ 18 U.S.C. § 2256 (2) (a).
- ²⁵ 18 U.S.C. § 2256 (2) (b).
- ²⁶ See 18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A.
- ²⁷ See 18 U.S.C. § 2251 (e).
- ²⁸ Y. Akdeniz, *Internet Child Pornography and the Law National and International Responses*, p 141.
- ²⁹ I. J. Lloyd, *Information Technology Law*, p 231.
- ³⁰ Article 3 of the EU Action Plan
- ³¹ Council of Europe (ETS No. 185), https://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf [19 September 2020]
- ³² See Article 9 para 2 (a) –(c) for the scope of child pornography referred to in Article 9 para 1 of the Convention.
- ³³ Title 3 item 99 – Content-related offences, Explanatory Report to the Convention on Cybercrime Budapest, 23.XI.2001, <https://rm.coe.int/16800cce5b> [13 June 2020]
- ³⁴ See Article 20 (3) & (4) of the Convention.
- ³⁵ The Protection of Children Act 1978, <http://www.legislation.gov.uk/ukpga/1978/37> [1 July 2000].
- ³⁶ See section 62 (1) of the Act.
- ³⁷ Section 160.
- ³⁸ Section 1.
- ³⁹ The amended section 1 is reproduced above.
- ⁴⁰ I. J. Lloyd, *Information Technology Law*, p 233.
- ⁴¹ Action Plan for Online Safety 2018-2019: 2018 Progress Report, Government of Ireland, http://www.justice.ie/en/JELR/Progress_Report_on_Action_Plan_for_Online_Safety_2018-2019.pdf/Files/Progress_Report_on_Action_Plan_for_Online_Safety_2018-2019.pdf [13 June 2020].
- ⁴² See Government of Ireland, "Action Plan."
- ⁴³ See Government of Ireland, "Action Plan."
- ⁴⁴ Article 29 (3) para 1(a)-(d).
- ⁴⁵ Article 29 (3) para 3 (a) – (d).

- ⁴⁶ Benin (28/02/2015), Chad (14/06/2015), Comoros (29/01/2018), Ghana (04/07/2017), Guinea-Bissau (31/01/2015), Mozambique 29/06/2018), Mauritania (26/02/2015), Rwanda ((16/04/2019), Sierra Leone (29/01/2016), Sao Tome & Principe (29/01/2016), Togo (02/04/2019), Tunisia (23/04/2019), and Zambia (29/01/2016), “List of Countries which have signed, ratified/acceded to the African Union Convention on Cyber Security and Personal Data Protection,” African Union, <https://au.int/sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf> [2 July 2020].
- ⁴⁷ Ghana (13/05/2019), Guinea (31/07/2018), Mauritius (06/03/2018), Namibia (25/01/2019), and Senegal (03/08/2016). African Union, “List of Countries.”
- ⁴⁸ Ghana (03/06/2019), Guinea (16/10/2018), Mauritius (14/03/2018), Namibia (01/02/2019), and Senegal (16/08/2016. African Union, “List of Countries.”
- ⁴⁹ African Union, “List of Countries.”
- ⁵⁰ S 136 (2) of the Act.
- ⁵¹ S 136 (1) of the Act.
- ⁵² S 136 (1) of the Act.
- ⁵³ Accessed 2 July 2020.
- ⁵⁴ South Africa, Liberia, Cameroon, Egypt, Niger, Tanzania, Zimbabwe were among the Member States that were not shown on the list to have signed and/or ratified the Convention. See African Union, “List of Countries.”
- ⁵⁵ S 23 (4) of the Cybercrime Act 2015.
- ⁵⁶ S 58 of the Cybercrimes Act 2015.
- ⁵⁷ S 23 (1) of the Cybercrimes Act 2015.
- ⁵⁸ S 23 (1) of the Cybercrimes Act 2015.
- ⁵⁹ S 23 (3) of the Cybercrimes Act 2015.
- ⁶⁰ ‘Our History’, *Internet Watch Foundation*, <http://www.iwf.org.uk> [13 June 2020].
- ⁶¹ ‘Our History’, *Internet Watch Foundation*.
- ⁶² I. J. Lloyd, *Information Technology Law*, p 231.
- ⁶³ What We Do, *Internet Watch Foundation*, <http://www.iwf.org.uk/what-we-do> [17 May 2020].
- ⁶⁴ Nation Centre for Missing & Exploited Children, <http://www.ncmec.org>
- ⁶⁵ See Our Work, *NCMEC*, <https://www.missingkids.org/ourwork> [17 May 2020].
- ⁶⁶ Our Work, *NCMEC*.
- ⁶⁷ ‘Who We Are: About the Cece Yara Foundation’, *Cece Yara Foundation*, <https://www.ceceyara.org/about-cyf> [4 July 2020].
- ⁶⁸ ‘What We Do: About the Cece Yara Foundation’, <https://www.ceceyara.org/what-we-do/research> [4 July 2020].
- ⁶⁹ Research and Data Repository, <https://www.ceceyara.org/what-we-do/research> [4 July 2020].
- ⁷⁰ I. J. Lloyd, *Information Technology Law*, p 237.
- ⁷¹ I. J. Lloyd, *Information Technology Law*, p 237.
- ⁷² I. J. Lloyd, *Information Technology Law*, p 237.
- ⁷³ 1997 United States App LEXIS p 12998.
- ⁷⁴ at p 12998.
- ⁷⁵ [1999] Southwark Crown Court Unreported. Culled from Lloyd, *Information Technology*, 238.
- ⁷⁶ I. J. Lloyd, *Information Technology Law*, p 239.
- ⁷⁷ I. J. Lloyd, *Information Technology Law*, p 240.
- ⁷⁸ M. Jakhar, *Cybercrime: An Introduction*, Random Publications, New Delhi, 2019, p 163.
- ⁷⁹ See UK’s Criminal Justice Act 1988 and the Protection of Children Act 1978; Canadian Criminal Code; section 23 of the Nigerian Cybercrimes (Prohibition, Prevention etc) Act, 2015; ss 184a, 184b (1)-(3) & 184c (1)-(3) of German Penal Code.
- ⁸⁰ M. Jakhar, *Cybercrime: An Introduction*, p 163.
- ⁸¹ See the case of *United States v. Thomas* 1997 United States App LEXIS 12998
- ⁸² See section 23 (1) of the Cybercrimes Act 2015
- ⁸³ S 136 (1) of the Act.
- ⁸⁴ See *R. v. Beattie* C41354 (8 April 2005) <https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/12591/index.do> [4 October 2021]
- ⁸⁵ J. S. Groppe, ‘A Child’s Playground or a Predator’s Hunting Ground - How to Protect Children on Internet Social Networking Sites’, (2007) 16(1) *CommLaw Conspectus: Journal of Communications Law and Policy*, p 216-217.
- ⁸⁶ R. F. Wilson, ‘Sex Play in Virtual Worlds’, p 1135.; Second life, <http://join.Secondlife.com> [6 June 2020]. See also Redlightcenter.com, <http://www.redlightcenter.com> [6 June 2020]
- ⁸⁷ R. F. Wilson, ‘Sex Play in Virtual Worlds’, p 1136.
- ⁸⁸ R. F. Wilson, ‘Sex Play in Virtual Worlds’, p 1143.

REFERENCES

- Action Plan for Online Safety 2018-2019: 2018 Progress Report. Government of Ireland. http://www.justice.ie/en/JELR/Progress_Report_on_Action_Plan_for_Online_Safety_2018-2019.pdf/Files/Progress_Report_on_Action_Plan_for_Online_Safety_2018-2019.pdf.
- Akdeniz, Y. 2016. *Internet Child Pornography and the Law National and International Responses*. London: Routledge.
- Council of Europe (ETS No. 185). https://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf [19 September 2020].
- Girhiny, K. 2015. The problem of the investigation of computer criminality. *Studia Universitatis Babeş-Bolyai Jurisprudentia* 2.
- Groppe J. S. 2007. A child’s playground or a predator’s hunting ground - How to protect children on internet social networking sites. *CommLaw Conspectus: Journal of Communications Law and Policy* 16(1).
- Herring, J. 2014. *Criminal Law: Text, Cases and Materials*. Oxford: Oxford University Press.

- Hessick, C. B. 2011. Disentangling child pornography from child sex abuse. *Washington University Law Review* 88(4).
- Jakhar, M. 2019. *Cybercrime: An Introduction*. New Delhi: Random Publications.
- Lloyd, I. J. 2014. *Information Technology Law*. Oxford: Oxford University Press.
- Nation Centre for Missing & Exploited Children, <http://www.ncmec.org>
- Our History. *Internet Watch Foundation*. www.iwf.org.uk [13 June 2020].
- Our Work. *NCMEC*. <https://www.missingkids.org/ourwork> [17 May 2020].
- Research and Data Repository <https://www.ceceyara.org/what-we-do/research> [4 July 2020].
- Rogers, A. 2008. Child Pornography's Forgotten Victims. *Pace Law Review* 28(4).
- Title 3 item 99 – Content-related offences, Explanatory Report to the Convention on Cybercrime Budapest, 23.XI.2001. <https://rm.coe.int/16800cce5b> [13 June 2020].
- Ward, M. 2013. Web Porn: Just how much is there? *BBC News*. <http://www.bbc.ac.uk/news/technology-23030090> [18 September 2020].
- What We Do. *Internet Watch Foundation*. <http://www/iwf.org.uk/what-we-do> [17 May 2020].
- What We Do: About the Cece Yara Foundation. <https://www.ceceyara.org/what-we-do/research> [4 July 2020].
- Who We Are: About the Cece Yara Foundation. *Cece Yara Foundation*, <https://www.ceceyara.org/about-cyf> [4 July 2020].
- Wilson, R. F. 2009. Sex play in virtual worlds. *Washington and Lee Law Review* 66(3).
- Zagaris, B. 2019. Child pornography: U.S. charges S. Korean and arrest 337 for child pornography through the darknet. *International Enforcement Law Reporter* 35(10).

Yahya Duro Uthman Hambali
 Department of Jurisprudence and Public Law
 Faculty of Law
 Kwara State University, Nigeria
 Email: yduhambali2@yahoo.com;
yahya.hambali@kwasu.edu.ng