



## Content regulation as a legal mechanism for child protection in Nigeria

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### Abstract

Harmful content poses enormous threat for the proper development of minors. In recognition of their physical, mental and moral needs, the law provides an array of measures for their protection. This paper examines content regulation in the context of online sexual abuse and the interaction of minors with harmful publications, while relying on the doctrinal method. Our study shows that in the present digital age, harmful content has assumed a ubiquitous nature and can be easily accessed by children. This raises the need for proper awareness on the safe use of the internet and renewed vigour on the part of persons and authorities charged with the responsibility of safeguarding the welfare of children.

**Keywords:** child, minor, content regulation, harmful content, harmful publication, communication, information, Nigeria

### Introduction

As consumers, children may be influenced by what they see, read or hear in the media.<sup>[1]</sup> This position may be justified on the ground that at the level of childhood development, minors learn by observation and imitation of behaviour.<sup>[2]</sup> Perhaps, it was in acknowledgement of this fact that sections 35 and 36 of the Child Rights Act <sup>[3]</sup> prohibit all “harmful information...which... tend to corrupt or deprave” a minor, who may come into contact with them.<sup>[4]</sup>

Flowing from the above, communication on all platforms, with persons of tender years must be undertaken on the basis of securing their self-esteem and the totality of their rights as human beings. In other words, the best interest of the child should, in accordance with section 1 of the Child Rights Act, be the guiding principle in any interaction with minors.

While acknowledging the media as an invaluable source of information, entertainment, education and by extension, an agent of character formation, it is pertinent to observe that there are instances of genuine concern where media content have been identified as pernicious, unfit for children or clearly at variance with law and acceptable standards. In this article, we shall examine the adverse nature of harmful content and the need to keep Nigeria’s young population adequately protected. In making a case for the building of a nation fit for children, our discussion, draws attention to the issues arising from content regulation in the Nigerian media space and makes suggestions of the way forward.

For the purpose of this article, the term “content”, which originated in the 14<sup>th</sup> century, from the Latin words, *contenta* <sup>[5]</sup> and *continerere*,<sup>[6]</sup> refers to the subject-matter or theme of a speech, book, document, film, song, pictorial representation, work of art or other media of expression, including radio, television, mobile communication and the internet.

As a matter of common knowledge, every message, irrespective of medium or format, is always addressed to an audience – be it the general public or a restricted group. Essentially therefore, content may be exploited for various reasons. A piece of work may seek to evoke strong feelings of love, hate, fear, anger, joy, sadness, contempt, envy or disgust towards a specific cause, persons or institutions. In

addition, content may be employed to reinforce the virtues of nationalism, entrepreneurship, sportsmanship, values-based leadership and other positive attributes.

At this juncture, it is pertinent to point out that, any communication or message, whether in print or electronic format, film, cinematography, photograph, reels or other forms of imagery, which causes distress or harm to the persons who interact with them, may be subsumed under the term, “harmful content.” In the context of our discussion, the “harm or distress” resulting from exposure to such abhorrent content may be manifested in various forms, including brazen violence, racial or ethnic bias, low self-esteem, xenophobic and suicidal tendencies, religious radicalism, the glorification of terrorism, etc <sup>[7]</sup>.

Suffice it to say, what amounts to harmful content may vary from person to person. A piece of communication which may cause distress or harm to a minor might not necessarily be considered an issue by an adult. Therefore, in exploring the day-to-day interactions of children with various contents and platforms, it is pertinent to bear in mind, the peculiarities associated with their tender age. At this stage, many young persons are not yet armed with the rudiments of critical thinking and as a result, may not be in the best position to distinguish between decent programming and those which are tailored to misconstrue reality, mislead or corrupt public morality. It follows therefore, that children who are exposed to harmful contents may be influenced by such damning experience.

With the onset of the internet, which has now become the primary channel of socialisation, the world has since assumed the form of a global village and children are able to access the web with little or no supervision, where they may be exposed to the adverse nature of harmful content. With particular reference to unsupervised internet activity,<sup>[8]</sup> a click on a suspicious link may direct a minor to sources which may seek to corrupt his innocent mind. Beyond this trait, a suspicious link may provide an inroad for malware attack, enabling cybercriminals to deploy applications for the purpose of breaking the security system of a computer, thus interfering with its normal operations.

At any rate, where harmful content is successfully introduced into a system, leading to an unauthorised

interference or hacking, the owner or legitimate user of the computer device may end up as victim of identity theft, impersonation, phishing, spamming, fraud, cyber bullying, harassment, stalking, sexual exploitation or other forms of offences.<sup>[9]</sup>

On this score, the presence of harmful content in the media space has continued to engage the attention of well-meaning persons, governments, supranational unions and international organisations.<sup>[10]</sup>

### Who is a Child?

Depending on the specific issue or subject matter being interrogated, the definition of a child, under Nigerian law, may vary from one statute to another.<sup>[11]</sup> For instance, under section 209 (1) of the Nigerian Evidence Act of 2011,<sup>[12]</sup> which applies specifically to the rendering of evidence in court by minors, a child was defined as a person who has not attained the age of 14 years.<sup>[13]</sup>

However, in determining the age of criminal responsibility, a different rule applies. In this case, the concept “child” assumes a dual classification. The relevant statute in this regard is the Children and Young Persons Act (otherwise CYPA). By virtue of section 6 of the CYPA, children are categorised into two groups. The first category covers persons between the ages of 1 to 7 years. These are not criminally liable under the law for their acts or omissions.

With regard to the second category, comprising of persons above the age of 7 but less than 12, they are only adjudged liable where it can be established that, at the time of doing the act or making the omission which constitutes the alleged crime, the person in question had the capacity of knowing that he ought not to do the act or make the omission.<sup>[14]</sup>

Remarkably, the definitions of a child in both the CYPA and the Evidence Act are influenced by the fact that both statutes are not strictly child-rights-specific but pertain more to the administration of the juvenile justice system in Nigeria.<sup>[15]</sup> Accordingly, a more appropriate definition of a child, which aligns with the purpose of this article, is the one provided in s. 277 of the Child Rights Act. Under that section, a child is anyone below the age of 18.<sup>[16]</sup>

The Act, while specifying that the constitutional provisions relating to fundamental rights shall apply to every child, also confers an array of rights on the Nigerian child in sections 3 – 18 of the Act.

### Right to receive information and the exposure of children to harmful content

S. 39 (1), Constitution of the Federal Republic Nigeria, 1999 guarantees the right of every person to receive and impart ideas and information without interference, save as prescribed by the constitution itself.

Besides, under the United Nations Convention on the Rights of the Child, ratified by Nigeria in 1991, the country has the responsibility of ensuring that every “...child...[has] the right to...seek, receive, and impart information and ideas of all kinds, *regardless of frontiers*, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”<sup>[17]</sup> In ensuring that this right assumes a meaningful value, the CRC underscores the need for appropriate guidelines to be put in place by State Parties, in order to insulate the child from “harmful information and materials [that are] injurious to his... well-being.”<sup>[18]</sup>

To facilitate the full potential of Nigeria’s young population therefore, authorities must work harmoniously to ensure that communication technologies are applied in such a manner as to promote the welfare of the child, including his social, spiritual, moral, physical and mental well-being.<sup>[19]</sup> In other words, where media communication detracts from the cause of promoting the child’s personality and talents, appropriate questions should be raised and prompt action taken. Accordingly, the themes of fetish money-making schemes, inundating the local entertainment industry and the flashy music videos which glorify “Yahoo-Yahoo” business<sup>[20]</sup> are cases which require serious counter measures.

In next segment, therefore, we shall examine the reality of harmful content in the social media space and how minors may be adversely affected.

### Social media content and online sexual abuse

The Nigerian child is fast embracing the world of the internet and the vast opportunity that it offers. In particular, they are drawn to the social media for various purposes including, the choice of meeting, chatting or interacting with other people.

Increasingly, young people use these platforms for creating online presence, building networks, performing academic tasks and building social networks, all of which are necessary for healthy personality development. In short, social media has proven to be a valuable source of entertainment, self-expression and socialisation. Prominent among these platforms include *Facebook*, *Tik Tok*, *WhatsApp*, *YouTube*, among others. Notably, interaction on any of these platforms, may provide and inroad for the abuse of a minor. Hence, the need for proper supervision.

Online abuse assumes a number of dimensions. For instance, there have been cases where child predators set up online accounts for the purpose of luring unsuspecting youngsters to harm. Besides, the act of sexting<sup>[21]</sup> may be the opener to online abuse. Nude photographs, videos and other sexually explicit images shared in the process of such interaction may, under the threat of blackmail, be employed as a means of maintaining power or exerting undue influence over the minor.<sup>[22]</sup>

On account of the adverse effects of harmful content, s. 23 of the Cybercrime (Prohibition, Prevention Etc.) Act, 2015 makes it an offence for anyone to engage in the act of child pornography<sup>[23]</sup> or related offences, using a computer system or network.<sup>[24]</sup>

Indeed, early exposure to pornography or other immoral content can have a damaging effect on character formation of the child. UNICEF warns that online sexual abuse may result to “poor mental health, sexism and objectification, sexual aggression and other negative outcomes.”<sup>[25]</sup>

In line with this perspective, Nigerian law strongly forbids the production, importation, display or dissemination of all such materials. Unfortunately, however, despite the presence of legal and regulatory mechanisms, volumes of inappropriate content can easily be accessed on the net by children in the form of films, cartoons, video games and other materials.

The prevalence of online harmful content in the social media space was highlighted in a survey carried out by Paul Bischoff in 2021. The results showed that in the first three-quarters of that year, the social network platform, *Facebook*, flagged a staggering 55.6 million pieces of content under, “child nudity and sexual exploitation.”<sup>[26]</sup> This figure,

according to Bischoff, translates to 20 million more than that of the previous year, which stood at 35.6 million. Bischoff also confirmed that other platforms, including *Instagram, Youtube, Twitter, Tik Tok, Reddit* and *Snapchat* combined are constrained to remove lots of posts and images which violate community guidelines on child abuse.<sup>[27]</sup>

### **Interaction of minors with harmful publications**

The repulsive nature of harmful publications is captured in s. 227 of the CRA. They include all pamphlets, books, magazines, newspapers, leaflets, films, pictures, video or audio tapes, print and other medium which tend to corrupt or deprave “a child into whose hands it may fall.”

In Nigeria, the statute books are replete with laws which prohibit the production, publishing and hiring of harmful publications.<sup>[28]</sup> The existing legal mechanisms for protecting the Nigerian child will form the subject of the next segment.

### **Legal framework for protecting the Nigerian child**

In the eyes of the law, children constitute a vulnerable group who depend on their immediate society for nourishment, guidance and legal protection.<sup>[29]</sup> Over the years, the Nigerian state has established a number of safeguards to protect its young population from the damning consequences of exposure to harmful content. Some of the legislative authorities in this regard include: The constitution of the Federal Republic of Nigeria, 1999, The Child Rights Act, the Cybercrimes (Prohibition, Prevention, etc.) Act of 2015, the National Film and Video Censors Board (Amendment) Act, 2016;<sup>[30]</sup> National Broadcasting Commission Act,<sup>[31]</sup> National Information Technology Development Agency Act of 2007<sup>[32]</sup> and the Nigeria Communications Act.<sup>[33]</sup>

### **The Nigerian constitution of 1979**

The 1999 Nigerian constitution, being the most fundamental legal instrument in Nigeria, provides that among other causes, the policy of the Nigerian nation shall be directed towards ensuring that children and young persons are protected against all forms of exploitation, and particularly, against moral and material neglect.<sup>[34]</sup> Accordingly, the laws discussed here derive their validity from the constitution.<sup>[35]</sup>

### **The child rights act and the protection of children from moral dangers**

The Child Rights Act seeks to protect children from physical and moral dangers. Under the Act, parents, guardians, institutions, persons and authorities responsible for the care, upbringing, education, training and socialisation of a child are duty-bound to provide the guidance required for the proper development of the child.

The CRA, adopted by Nigeria in 2003, gives legal consent to both the United Nations Convention on the Rights of the Child<sup>[36]</sup> and the African Charter on the Welfare of the Child.

As discussed above, the role of the CRA as a mechanism for the protection of children from harmful content is linked to sections 35 - 38 of the Act, which deals with offences relating to harmful publications.

### **The National film and video censors board act and the dissemination of**

#### **Adult Content**

The National Film and Video Censors Board (Amendment) Act of 2016 provides for the censoring, classification and approval of films in the Nigerian video industry.

The Act established a regulatory body known as The National Film and Video Censors Board. As it pertains to the regulation of information and child protection, the Board bears the responsibility of ensuring that minors are safeguarded from having access to adult content or movies which promote nudity, profanity, offensive language, violent conduct, illicit drug use and other forms of behaviour that run contrary to societal values.

In line with the provision of the NFVB Act, films are categorised, using classification symbols<sup>[37]</sup> and colour codes<sup>[38]</sup> which help to highlight specific elements of public concern.

### **The national broadcasting commission act and the regulation of abhorrent**

#### **Content**

The National Broadcasting Commission Act provides for the regulation and control of the broadcast industry in Nigeria.<sup>[39]</sup> In exercise of this function, the National Broadcasting Commission, established as the regulatory institution by virtue of section 1 of the NBC Act, has produced a Code for the sector. This document, known as the Nigeria Broadcasting Code, prescribes the minimum standard for broadcasting within the territory of Nigeria. The code devotes some of its chapters to the regulation of abhorrent content. In the interest of minors, the code requires all broadcast stations to avoid featuring obscenity, pornographic presentations or vulgar expressions. As part of protection for tender age, broadcast stations are mandated to refrain from presentations which showcase social vices such as drunkenness, drug addiction or robbery, except to portray them as destructive habits that ought to be avoided. Stations are also under strict obligation to not treat suicide as an acceptable solution to human problems.

Importantly, music and musicals aired by all stations must be decent and devoid of profanity or vulgar expressions. Furthermore, the code prohibits alcoholic and tobacco manufacturers from the sponsorship of programme or event targeted at children or teenage audiences or to use children as models in their advertisement.

### **The Nigeria communications act (NCA) and online corporate governance**

The Nigeria Communications Act sets out the legal framework for the Nigerian telecommunications industry.<sup>[40]</sup> As part of the regulatory mechanism for the protection consumers of telecommunication services,<sup>[41]</sup> Nigerian Communications Commission has introduced some initiatives on content regulation. In relation to minors the NBC has developed an initiative known as The Nigerian Child Online Protection.

This programme is based on the guidelines of the International Telecommunication Union (ITU).<sup>[42]</sup>

**The national information technology development agency (NITDA) - Regulation of Computer Service Platforms and Internet Intermediaries**

The National Information Technology Development Agency (NITDA) Act of 2007 regulates the implementation of the ICT policy of the Federal Ministry of Communication and Digital Economy of Nigeria.<sup>[43]</sup>

For the purpose of giving full effect to the provisions of this enactment, the Act established the National Information Technology Development Agency.<sup>[44]</sup> Recently the Agency released a draft code for regulating interactive computer service platforms and internet intermediaries in Nigeria. The document, it is hoped, will reinforce the process of content regulation, on becoming operational.

**Content regulation as mechanism for child protection: issues, suggestions and Conclusion**

In exercising the right to information, children are entitled to special care and protection from all forms of harmful content. As canvassed in the preceding pages, such protection is necessary for preparing the child to assume responsibilities within his community.

Content regulation in Nigeria, particularly as it relates to our topic, is beset by a number of issues. First, there is a problem of digital illiteracy, which gives rise to poor parental supervision in matters of media socialisation. Be that as it may, only a few minors appreciate that the process of socialising on the internet requires sensitive guidance and that danger is always lurking in the pages of dubious websites. The situation underlines need for the prioritisation of child protection programmes in the school curriculum. Indeed, the subject of child protection should be made an integral part of primary and secondary school education. The curriculum should keep young minds informed and adequately prepared on the safe use of the internet. On this score, schools, in conjunction with Parents-Teachers-Association (PTA) and governmental bodies can establish avenues of collaboration, for the purpose of launching child-friendly platforms where children can carry on learning and other transactions without the fear of being subjected to harm.

Within the context of regulation, proper monitoring of Nigeria's cyberspace is also imperative for the protection of its population. In addition, cases of content violation should be appropriately prosecuted. Indeed, the paucity reported cases or prosecutions involving content violation is a phenomenon that speak volumes.

Ultimately, persons and institutions saddled with the responsibility of regulation and enforcement should muster the willpower to prevail on social media companies to monitor their platforms for the presence of harmful content and to delete or remove such offensive material.

**References**

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2. See Jennifer Paris *et al*, 'Media Influences on Children' (1 August 2022)

- <[https://socialsci.libretexts.org/Bookshelves/Early\\_Childhood\\_Education/Child\\_Family\\_Community%3A\\_The\\_Socialization\\_of\\_Diverse\\_Children/08%3A\\_Contemporary\\_Issues\\_for\\_Children\\_and\\_Families/8.10%3A\\_Media\\_Influences\\_on\\_Children](https://socialsci.libretexts.org/Bookshelves/Early_Childhood_Education/Child_Family_Community%3A_The_Socialization_of_Diverse_Children/08%3A_Contemporary_Issues_for_Children_and_Families/8.10%3A_Media_Influences_on_Children)> accessed 2 January 2023
3. Hereinafter known as CRA. The Act is encapsulated in *Cap. C 50 LFN 2010*. Note that the various states comprising the Nigerian Federation also have the competence to make laws on child rights. As a result, some have enacted their respective Child Rights Laws.
  4. For details on these products, properly designated as "harmful publications," see s. 277 of the CRA.
  5. In English Language, this word simply means, "things contained" – see, Mairi Robinson (ed), *Chambers 21<sup>st</sup> Century Dictionary* (Edinburgh: Chambers 1996)
  6. i.e. "to contain" – *ibid*.
  7. In much the same vein, Princeton University Library, acknowledges harmful content as: "[Collections or expressions which are] harmful, offensive, or distressing...inappropriate images or language, including but not limited to materials that document violence or hate speech" – see, Princeton University Library, 'Statement on Harmful Content' <<https://library.princeton.edu/statement-harful-content>> accessed 26 November, 2022
  8. In the exercise of supervision and control over the conduct of their children and wards, parents may, pursuant to s. 8 (3) of the CRA, interfere with the correspondence, telephone conversation and telegraphic communications of persons under their care.
  9. For details on the types of harmful content and how to keep the computer system protected, see, F-Secure, 'Protecting the Computer Against Harmful Content' <[https://help.f-secure.com/product.html#home/internet-security/latest/en/vsp\\_main-internet-security-latest-en](https://help.f-secure.com/product.html#home/internet-security/latest/en/vsp_main-internet-security-latest-en)> accessed 14 December 2022
  10. For instance, the United Nations Children's Fund (UNICEF), in conjunction with ECPAT international and INTERPOL, is spearheading a multi-sector research on the risks of abuse and exploitation that children face online. The programme hopes to generate evidence on how technology facilitates sexual exploitation and abuse of children in the various countries of the world – See, UNICEF, 'Disrupting Harm' <<https://www.unicef-irc.org/research/disrupting-harm/>> accessed 15 November 2022
  11. Aja Nwachuku MA. 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria', *Beijing Law Review*, 2016:7(2):123. also available at <<http://dx.doi.org/10.4236/blr.2016.72013>> accessed 5 December 2022
  12. Encapsulated in *Cap E 14 Laws of the Federation of Nigeria, 2010*.
  13. In such an instance, the child shall not give evidence on oath or affirmation. The implication therefore, is that his evidence requires corroboration – see s. 209 Evidence Act, 2015; cf section 160 CRA
  14. See the Nigerian case of *State vs. Nwabueze* (1980) 1NCLR 41
  15. Muhammed Tawfiq Ladan, 'An overview of the Child Rights Act, 2003' (A Paper Presented at the All Nigeria Judges Conference of the Superior Courts held at the National Judicial Institute, Abuja from 15 to November 2021)

16. Note also that under s. 23 (5) of the Cybercrime (Prohibition, Prevention Etc.) Act of 2015, which prohibits the offence of “Child pornography”, a “minor” also refers to a person below the age of 18 years.
17. Art XIII (1) CRC (Italics added for emphasis)
18. Art XVII (e) CRC
19. *Ibid*; cf. ss. 1 and 4 CRA
20. In Nigerian parlance, “Yahoo-Yahoo” simply refers to the crime of cyber fraud, often perpetrated by young men and women. For sources on the glorification of “Yahoo-Yahoo,” see the following: Naijaloaded ‘Top 10 Songs that Glorify Yahoo-Yahoo in Nigeria’ (20 May 2019) <<https://www.naijaloaded.com.ng/lists/top-10-songs-that-glorify-yahoo-yahoo-in-nigeria>> accessed 3 January 2023; Oladayo Tade, ‘Does Nigerian Music Glorify Cybercrime? Here’s Why this Matters’ *Daily Trust* (Abuja, 15 May 2021) <<https://dailytrust.com/does-nigerian-music-glorify-cybercrime-heres-why-this-matters/>> accessed 3 January 2023
21. The term “sexting” is the act of sending and receiving sexually explicit messages, photographs or videos mainly through a mobile device” – see WomensLaw.org “About Abuse” <<https://www.womenslaw.org/about-abuse/abuse-using-technology/ways-abusers-misuse-technology/abuse-involving-texts-photos-and-8>> accessed 2 December 2022
22. WomensLaw.org “Abuse Using Technology” <<https://www.womenslaw.org/about-abuse/abuse-using-technology/ways-abusers-misuse-technology/abuse-involving-texts-photos-and-8>> accessed 2 December 2022
23. By virtue of s. 23 (4) of the Cybercrime (Prohibition, Prevention Etc.) Act, 2015, child pornography includes visual images depicting any of the following features: (a) a minor engaged in explicit sexually conduct; (b) a person appearing to be a minor engaged in explicit sexually conduct; (c) realistic images representing a minor engaged in explicit sexually conduct
24. For a list of offences included in this category and the punishment prescribed under the Cybercrime Act, see s 23 (1) - (3) of the Act.
25. UNICEF, *op. cit.*
26. Bischoff, P. ‘The Rising Tide of Child Abuse Content on Social Media’ Comparitech (11 January 2022) <<https://www.comparitech.com/blog/vpn-privacy/child-abuse-online-statistics/>> accessed 30 November 2022
27. *Ibid.*
28. Apart from ss. 35 -38 of the CRA; see also the following: ss. 58 and 233D – 233 F Criminal Code Act; *Cap. C 38 Laws of the Federation of Nigeria*; ss. 23 and 26 Cybercrime Act 2015
29. See the preamble of the United Nations Convention on the Rights of the Child
30. This Act amends the National Film and Video Censors Board Act, *Cap. N 40 Laws of the Federation of Nigeria, 2010.*
31. Encapsulated in *Cap. N11 Laws of the Federation of Nigeria, 2010*; otherwise referred to as NBC Act
32. Otherwise referred to as NITDA Act
33. Encapsulated in *Cap. N97 Laws of the Federation of Nigeria, 2010.*
34. See s. 17 (g) Constitution of the Federal Republic of Nigeria, 1979.
35. See s. 1 Constitution of the Federal Republic of Nigeria, 1999 and particularly, sub-section (3) which states thus: “If any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail and that other law shall, to the extent of its inconsistency be void”
36. Hereinafter called the CRC, the Convention is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children – see Wikipedia Encyclopedia, ‘Convention on the Rights of the Child’ <[https://en.m.wikipedia.org/wiki/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child#/editor/0](https://en.m.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child#/editor/0)> accessed 1 December 2022
37. See Reg. 13 (1) (a) – (d) and (3) National Film and Video Censors Board Regulations, 2008.
38. *Ibid*, see Reg. 13 (2) (a) – (i) where the various colour codes are specified.
39. For a comprehensive list of the responsibilities of the NBC, see s. 2 (1) and (2) of the NBC Act.
40. Sections 1 and 2, Nigeria Communications Act
41. *Ibid.*, see particularly section 1 (g) of the Act
42. For details on the ITU Global programme in this regard, see, ‘Child Online Protection’ <<http://www.itu-cop-guidelines.com/>> accessed 29 December 2022.
43. See sections 1 and 2 of the NITDA Act
44. Hereinafter referred to as NITDA or the Agency