

## ONLINE GAMBLING AND CHILD PROTECTION: A CASE FOR REVIEW OF THE REGULATORY PROTECTION FOR UNDERAGE PERSONS IN NIGERIA\*

### Abstract

*Online gambling is faced with several challenges that have posed regulatory difficulty to gambling transaction. One of such challenge is the issue of Underage Gambling. The use of Internet and other Digital Media by young persons for purposes of gambling represents a serious concern. Despite clear prohibitive legislation excluding minor or young person from all relevant gambling products, Online Gambling has proven to be resistant to such regulation as a result of the challenges inherent in this medium or channel of Gambling. This article adopts doctrinal research methods to examine Online gambling in Nigeria. It assesses the prohibitive provisions on Child gambling and regulatory challenges in Nigeria, making apt comparison of online gambling to other form of gambling-like activities and proposes practical and regulatory recommendations for possible reforms to guarantee adequate protection for under-aged Persons in Nigeria. The paper seeks to educate the Government, Gaming Services Providers, the general public and Stakeholders of the Gambling Industry in Nigeria.*

Keywords: Gambling, Child, Online Gambling, Virtual Property, Video game, Penny Auction

### 1. Introduction

The emergence of Internet and Mobile Technological Devices brought about dependency on its usage for several aspects of human activities. The Internet being a global network interconnected in a logical manner made communication, social and commercial activities easily accessible and at the convenience of the user. The accessibility of Internet to all person, afforded Minor, children and, or adolescence the opportunity to carry on several activities such as making research on schoolwork, entertainment and socializing activities such as Online Games, Instant Messenger, Emails, Online videos viewing and communication with friends and, family via Social Media Network.<sup>1</sup> While these laudable purposes are achieve by Minor on the Internet, its usage have also afforded Minor the opportunities of playing with and, or manipulating their identity.<sup>2</sup> Such identity manipulation and, or change of identity has enable Minor to gain access to goods and services that are either prohibited or restricted for certain age below majority. In most traditional transaction conducted offline, certain goods and or services such as films, Alcohol, tobacco, gaming content, gambling etc are well considered to be harmful and of negative effect on minors, therefore prompting regulatory protection restricting access or purchase of such goods and services.<sup>3</sup> Gambling products are age restricted products, whereby access to underage persons is prohibited notwithstanding the channel or medium through which gambling products are offered. While most Industries have been legally subjected to verify the age of consumers before selling or advertising certain product or services, the challenges of such Age Verification still persist.<sup>4</sup> This persistence is not for its undesirability but the lack of an easy means of remotely confirming the age of person and absence of uniform standard or code of practice in the Online gaming industries.<sup>5</sup>

Globally, the issue of Underage Gambling is on the rise; however, the scale of the number of minor engaging in such prohibited act in Nigeria is relatively unknown, but global indication point to the fact of growing number of Underage Gambling.<sup>6</sup> While prevention of minor from gambling has proved rather difficult to manage in the traditional land- based casinos and gaming houses, online platform presents a good means for detection of minors engaging in gambling.<sup>7</sup> For a proper understanding of this research, it is however pertinent to define some of the following key concepts for the purposes of clarity.

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<sup>1</sup> S. Livingstone, L. Haddon, A. Görzig, K. Ólafsson, *Risks and Safety on the Internet: The Perspective of European Children. Full Findings* EU Kids Online, LSE. (London: 2011)

<sup>2</sup> S. Livingstone, M. Bulger, 'A Global Agenda for Children's Rights in The Digital Age'. (2013) *UNICEF Office of Research: Florence*. < <http://www.unicef.org/publications/pdf/lse%20olol%20final3.pdf> > Accessed 3 February, 2020

<sup>3</sup> V. Nash, R. O'Connell, B. Zevenbergen, A. Mishkin, 'Effective Age Verification techniques: Lessons to be learnt from the Online Gambling Industry' Final Report, (University of Oxford 2014) <<http://www.oii.ox.ac.uk/research/projects/?id=102>> Accessed 19<sup>th</sup> January 2020

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> M. Griffiths, J. Derevensky & J. Parke, 'Online Gambling among Youth: cause for concern?' in R. Williams, T. Wood, and J. Parke J (eds) *Routledge International Handbook of Internet Gambling* (Routledge London and New York 2012) 183–99. Reported acceptability, availability and social acceptance of gambling is the rationale behind the increased in underage gambling in most countries.

<sup>7</sup> B. Nastally & M. Dixon, 'Adolescent Gambling: Current Trends in Treatment and Future Directions' (2011) *Int J Adolescence Med Health* 96 (95-116)

## **Gambling**

Gambling can be define as any game, activity or other arrangement where a person risk something of value on the outcome of an uncertain event, in which he lacks control and such event is predominantly determined by chance.<sup>8</sup> Section 57 of the National Lottery Regulatory Commission Act 2007 define Gambling with the use of the word 'Lottery' to mean 'any game, scheme, arrangement, system, plan, promotional competition or device for the distribution of prizes by lot or chance, or as a result of the exercise of skill and chance or based on the outcome or sporting events, or any other game, scheme, arrangement, system, plan, competition or device, which the President may by notice in the Gazette declare to be lottery and which shall be operated according to a license.'<sup>9</sup> Lottery as define by the Act encompasses all forms of Gambling, in the real sense of the word 'Lottery' is a form of Gambling.

## **Child/Young Persons**

The National Lottery Regulation 2007 defines an Underage person to mean 'any person who is under the age of 18 year.'<sup>10</sup> Nevertheless, certain subtle distinctions have been highlighted in some legislation in Nigeria, where individuals are classified into four categories: Infants, Children, Young Persons and Adult.<sup>11</sup> However, in the determination of Criminal Responsibility or whether such an individual is in need of care and protection, the Child Right Act in Section 277 defines a Child as a person under the age of Eighteen years.<sup>12</sup> However, in this research, underage, teenagers, minors, young persons and adolescents are used interchangeably to describe persons under the age of 18 years. Even though an acknowledgement is made that not all adolescents are minor but for the purpose of this paper it refers only to adolescents who are below the age of majority.

## **Virtual Property**

Virtual Property are Online or Digital Asset or anything of value in the cyberspace. It has also been describe as a persistent computer code stored on a remote source system, where one or more persons are granted certain powers to control the computer code, to the exclusion of all other persons.<sup>13</sup> This form of property are seen as valuable and tradable goods, assets, equipment's, raw materials, avatars, and currencies existing in virtual worlds of massively multiplayer online games.<sup>14</sup> They exist in the virtual world of online games.

## **Online Gambling**

Online Gambling is any form of gambling game which is played using a Computer or Mobile Device with the aid of Internet connection.<sup>15</sup> Online gambling can also be referred to as 'Internet Gambling' 'Cyber Gambling' 'Online Wagering' 'Casino Gaming on the Internet' 'Remote Gambling' or 'Interactive Gambling'.<sup>16</sup> Gambling can be categorized into three types namely; Betting or wagering, Gaming and Lotteries.<sup>17</sup> Betting or wagering involves betting on Racing and all other Sporting activities. Gaming refers to Casino style games such as Black Jack, Roulette, Poker, Craps, and Baccarat. Lotteries involve the drawing of numbers at random for a prize. The various forms of gambling can be access with the aid of the computer or a mobile device which have the capacity to operate the appropriate software and with the aid of the internet.

## **2. Legal Framework for Online Gambling in Nigeria**

In Nigeria, at present, there is legislative dichotomy between the state and the Federal government as it relates to legislative jurisdiction on gambling.<sup>18</sup> By virtue of the 1999 Constitution of the Federal Republic of Nigeria, the

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<sup>8</sup> N. A. Cabot, *The Internet Gambling Report II: An Evolving Conflict between Technology, Policy & Law.* (Las Vegas: Trace, 1999).

<sup>9</sup> Section 57 The National Lottery Regulatory Commission Act 2007, No.7 2005 and Section 48 Lagos State Lotteries Board Laws Chapter L89 2004 (Now Lagos State Lotteries Board (Amendment) Law 2008

<sup>10</sup> Section 30 of the National Lottery Regulations 2007, Federal Republic of Nigeria Official Gazette No. 106 Vol.94, Government Notice No. 76, 28<sup>th</sup> December, 2007. (The Regulation commences on the 11<sup>th</sup> of July, 2007 and made pursuant to Section 55(1) of the National Lottery Act, 2005.

<sup>11</sup> Section 2 of the Children and Young Persons Act, 1958, Section 50 Penal code, Cap. P3 LFN 2004 Section 30 Criminal Code Cap. C38 LFN 2004

<sup>12</sup> Child Rights Act 2003, Cap C50, Laws of the Federal Republic of Nigeria, 2004

<sup>13</sup> Charles Blazer, 'The Five Indicia of Virtual Property Note (2006) 5 *Pierce Law Review* 137

<sup>14</sup> C. M. Matthew, 'Virtual Property in China: The Emergence of Gamer Rights Awareness and the Reaction of Game Corporations' (2011) 13 *New Media & Society* 722

<sup>15</sup> Online Casinopedia <<https://www.casinopedia.org/terms/online-gambling>> Accessed 20 March, 2020.

<sup>16</sup> R. B. Massimo, 'Online Gambling: Today's Possibilities and Tomorrow's Opportunities' (2008) *Managing Global Transitions International Research Journal* 6 (1): P 95-110

<sup>17</sup> Ibid, P.95

<sup>18</sup> The controversy on the legislative power to legislate on Gambling is seen in the case of *National Lottery Regulatory Commission v. Attorney General Lagos* (Suit No. FHC/L/CS/1258/2012) where the Federal High Court Held that Lottery and Gaming falls within the meaning of an Inter State Commerce and that the National Assembly has the exclusive competence to

Federal Government has the sole powers to legislate on items provided for in the Exclusive Legislative List, while items in the Concurrent Legislative List falls under the legislative competence of both the Federal and the State Government. Items not provided for under Exclusive and Concurrent List falls under the Residual list that only the State has powers to legislate upon.<sup>19</sup> Gambling/gaming not been mention in the Exclusive and Concurrent List, falls under the Residual List for the State to exercise legislative competence on such matters.<sup>20</sup> However, at present gambling is regulated by the State and Federal Legislation. In Nigeria, there is no Legislation restricting Gaming Services Operators from extending its services online and the law is settled to the effect that an act not expressly prohibited in Nigeria is Permissible<sup>21</sup> and recent licenses like the Sport Licenses by the National Lottery Regulatory Commission allows Licensee to offer such Gaming Service Online. In States like Lagos State of Nigeria, the Law specifically provides for only Online Gambling in all Relevant Gambling Product.<sup>22</sup> Therefore, Regulations dealing with Land Based Gambling in Nigeria are same regulation regulating Online and Remote Gambling in Nigeria. Nigeria is a Gambling permissive Jurisdiction where Licensee licensed under the National or State Law has powers to extend its operations on the relevant gambling product permitted by his license Online.<sup>23</sup> Therefore, at present the laws regulating gambling in Nigeria comprises of both Federal and State Legislation depending on the Licencing Authority. These Laws can be outline as follows:

1. The National Lottery Regulatory Commission Act 2005.<sup>24</sup>
2. National Lottery Regulation, 2007.<sup>25</sup>
3. National Lottery (Amendment) Regulations 2007.<sup>26</sup>
4. National Lottery Regulation Commission Governing Board Resolution (Amendment of Provision) 2015.<sup>27</sup>
5. Lagos State Lotteries Board (Amendment) Law 2008<sup>28</sup> (inclusive of Gaming Laws of the 36 Federating States in Nigeria).
6. The Casino Taxation Act 1965,<sup>29</sup>
7. The Gaming Machines Prohibitions Act 1977 <sup>30</sup>
8. Criminal Code Act (1990) <sup>31</sup>
9. The Penal Code Act. <sup>32</sup>
10. The Economic and Financial Crimes Commission (Establishment) Act 2004,<sup>33</sup>
11. Money Laundering (Prohibition) (Amendment)Act 2012. <sup>34</sup>
12. The Advance Fee Fraud and Other Fraud Related Offences Act 2006.<sup>35</sup>
13. Cybercrime (Prohibition, Prevention etc) Act 2015.
14. The Constitution of the Federal Republic of Nigeria 1999.<sup>36</sup>
15. National Office for Technology Acquisition and Promotion Act, 2004<sup>37</sup>
16. Companies and Allied Matters Act, 2004<sup>38</sup>

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legislate on Interstate Trade and Commerce. (Paragraph 62(a) Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria) However, in the case of *Edet v. Chagoon*, (2008) 2 NWLR (PT.1070)85 the Court of Appeal in Nigeria held that Pools Betting and Casino Gaming is not within the legislative competence of the National Assembly as same is not listed on the Exclusive and Concurrent list and therefore falls within the residual competence of states.

<sup>19</sup> Constitution of the Federal Republic of Nigeria 1999, section 4, Second Schedule Part 1 and 2.

<sup>20</sup> Constitution of the Federal Republic of Nigeria 1999, section 4 (7).

<sup>21</sup> Constitution of the Federal Republic of Nigeria 1999, section 36(8) and Section 36(12).

<sup>22</sup> Lagos State Lottery Board Law 2008 section 13.

<sup>23</sup> S.O. Onuche, 'Legal and Institutional Framework for Gambling/Online Gambling in Nigeria' (2019) *Benson Idahosa University Law Journal*, Vol. 5. Issue 17 December, 2019, 273-295 <<http://oer.biu.edu.ng/blog-post/legal-and-institutional-frame-work-for-gambling-online-gambling-in-nigeria-onuche-samson-ojodomo>> Accessed 2 April, 2020

<sup>24</sup> NO. 7.2005.

<sup>25</sup> Federal Republic of Nigeria official Gazette No. 106 Vol 94, Notice No.96, Lagos, 28<sup>th</sup> December, 2007.

<sup>26</sup> Federal Republic of Nigeria official Gazette No. 18 Vol 95, Notice No.37, Abuja, 3<sup>rd</sup> September, 2007.

<sup>27</sup> Federal Republic of Nigeria, Official Gazette No.42 Vol 102 Notice No. 50 Lagos, 15<sup>th</sup> March 2015

<sup>28</sup> The law was passed by the Lagos State House of Assembly on the 21<sup>st</sup> day of July 2008. The Law repeal the Lagos State Lotto Authority Law Cap. L 33, Laws of Lagos State of Nigeria and also the Lotteries and Pools Betting Law Cap. L75 Laws of Lagos State of Nigeria, 2003.

<sup>29</sup> Laws of the Federation of Nigeria, Chapter C3, 2004

<sup>30</sup> Laws of the Federation of Nigeria Chapter G1, 2004.

<sup>31</sup> Laws of the Federation of Nigeria Chapter C38, 2004

<sup>32</sup> Laws of the Federation of Nigeria Chapter P3, 2004

<sup>33</sup> Laws of the Federation of Nigeria Chapter E1 2004.

<sup>34</sup> No. 7, 2011.

<sup>35</sup> Laws of the Federation of Nigeria Chapter A 6, 2004

<sup>36</sup> Laws of the Federal Republic of Nigeria Chapter C-23, 2004

<sup>37</sup> Laws of the Federal Republic of Nigeria Chapter N62, 2004

<sup>38</sup> Laws of the Federation of Nigeria, Chapter C20, 2004

### 3. The Term ‘Game of Chance’ and ‘Prize’ Meaning

In consideration of the definition of Lottery as defined in Section 57 of the National Lottery Regulatory Commission Act 2005 and Section 48 of the Lagos State Lottery Board Law 2008, for a Game to qualify within the meaning of Gambling, these factors must be present; (a) there must be a player or a bettor willing to engage in such game,<sup>39</sup> (b) the game itself must be one that is predominantly determined by element of chance and, (c) the motivation for such participation must be for the purposes of winning a prize.<sup>40</sup> Where these three elements are present such game, arrangement and scheme can be said to be gambling. The various Legislative provisions did not define the word ‘Chance’ however, a game of chance can be seen as a game whose outcome is basically or majorly determined by some random device or process, and upon which a player wagers money or anything in money’s worth. A Game of Chance can be best considered with the definition of a Game of Skill which is basically determined by the sheer skill of the player. However, the element of Skill and Chance can be seen in a particular game, but in order to determine an element of skill or chance consideration should be made to that with greater proportion in the said game. The Act defines a ‘Prize’ to mean ‘a prize due to a participant who holds a winning ticket in a lottery conducted by the licensee’;<sup>41</sup> Section 48 of the Lagos State Lottery Board Law in the same vein defines a prize to mean ‘the prize awarded to the winner of a lottery.’<sup>42</sup> These definitions as provided by these statutory provisions respectfully did not define the meaning of a prize as a lot of reward inclusive of emotional and spiritual reward could be inferred into such interpretation. The Gambling regulations in England, define a prize to mean ‘money or money’s worth’.<sup>43</sup> In gaming context, a Prize must at all times be money or something essentially material to the exclusion of any other reward either spiritual or emotional.<sup>44</sup> Therefore, all rewards without extrinsic monetary value do not constitute a prize.

### 4. Statutory Prohibition of Minor from Gambling in Nigeria

In prohibiting Minors from gambling in Nigeria, the law did not create a distinction in either Land Based Gambling and Online Gambling, therefore, both channels offer the same regulatory restriction for minors in Nigeria. However, some States of the federation have completely outlawed the use or operation of an Offline or Land-Based Gambling, providing for the offering of all relevant Gambling Products by Gaming Services Providers to be made available through Online channels thus eradicating the distinction between Online and Offline Gambling.<sup>45</sup> Section 2 (b) of the National Lottery Regulation 2007 made it mandatory for licensee or agent to adhere strictly to the conditions for the issuing of such licence. The Regulation provides that: ‘to avoid negative social effects of lottery a licensee shall not allow underage persons to participate and shall adhere strictly to government policies on social responsibility in designing and marketing campaigns. (Emphasis supplied)’<sup>46</sup> The strong prohibitive provision of gambling for Underage persons by the Act clearly visualises the legislative intentions to protect Minors from the risk and harm such activity could cause to under-aged Persons. An Underage person is ‘*any person who is under the age of 18 years*’<sup>47</sup> the Act prohibits such age from gaming in Nigeria. In the same vein, Section 47 (a) (i) of the Lagos State Lottery (Amendment) Law 2008, empowers the Commissioner to make regulations as to ‘the minimum age of persons to whom or by whom ticket or chance may be sold’ for participation within the state. The Regulation further provides that every National Lottery Ticket shall contain information on the terms of such Lottery stating the minimum age for participation and that prize money and or winnings shall not be paid to any person less than the minimum age.<sup>48</sup> Section 34 (1) (e) of the National Lottery Regulatory Commission Act 2005, criminalizes and punishes with a term of imprisonment or fine the sales of any Lottery Ticket to any person under the age of 18 years in Nigeria. These Legislative provisions unequivocally prohibit all relevant gambling products and services from the reach of persons below the age of eighteen (18) years.

The various pieces of legislation did not define or describe such Negative Social effect it aims at preventing by prohibiting Underage Gambling. However, in a bid to understand the ‘*negative social effects*’ gambling could

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<sup>39</sup> Section 30 defines a Player as ‘*a person who contributes any part of the consideration for a ticket*’ to participate in such a game. National Lottery Regulation, 2007, Federal Republic of Nigeria official Gazette No. 106 Vol 94, Notice No.96, Lagos, 28<sup>th</sup> December, 2007.

<sup>40</sup> M.A. Carran, ‘Children and Gambling: Attitudes, Behaviour, Harm Prevention and Regulatory Responses’ Submitted in partial fulfilment of the requirement of the Degree of Doctor of Philosophy. Queen Mary University of London.30<sup>th</sup> August, 2015 P.53

<sup>41</sup> National Lottery Regulatory Commission Act 2005, section 57. see also Section

<sup>42</sup> Lagos State Lotteries Board Laws Chapter L89 2004 (Now Lagos State Lotteries Board (Amendment) Law 2008

<sup>43</sup> Gambling Act 2005, Section 6 (5) of the United Kingdom

<sup>44</sup> *Gideons International Services Mark* [1991] RPC 141 (Mrs Justice Douglas)

<sup>45</sup> Lagos State Lotteries Board (Amendment) Law 2008, section 13.

<sup>46</sup> National Lottery Regulation 2007, section 2 (b).

<sup>47</sup> National Lottery Regulations 2007, section 30. The Regulation commences on the 11<sup>th</sup> of July, 2007 and made pursuant to Section 55(1) of the National Lottery Act, 2005.

<sup>48</sup> National Lottery Regulation 2007, section 6 (g).

have on under-aged persons, different stakeholders of the Gaming Sector have at one-point express different negative effect Underage Gambling can have on the society. To some Stakeholders, while adopting a moral stance, sees the undesirability of gambling to the society as same is condemn from the religious and moral point of view.<sup>49</sup> To the State Regulators and Policy Makers of the Gaming Industry, focus is directed towards tracing the link between gambling and negative social outcome to ascertain the manner in which Gambling could possibly produce societal ills on Underage.<sup>50</sup> While to the Psychologists or Psychiatrists focus is beam on pathological behaviours or problem gambling.<sup>51</sup>

While all Stakeholders are in agreement that Gambling poses a risk and harm to Minor, identifying and measuring the impact of such activity has been problematic. However, studies have shown that Adolescents gambling may lead to gambling related problem, such as excessive risk taking by Minor, Crimes, Addiction, Low academic performance and other Gambling Related Problem among under-aged persons.<sup>52</sup> Recent studies have shown that fore knowledge and understanding of underage persons, as to the risk associated with gambling has not helped to prevent such act.<sup>53</sup> Neither has educational signs such as ‘*be gamble aware*’ or ‘*no underage gambling*’ displayed on the website of gaming services operators, religious warnings and parental influence help to reduce the growing number of underage gambling.<sup>54</sup> However, it will be impossible to assert with precision that only gambling can produce such negative social effect as other games not being regulated could produce such negative social effect on underage Persons in Nigeria.

### 5. Legal Protection or Otherwise for Game Exhibiting Similarity with Gambling

In recent times, Gambling like games have emerge and Minors have had unrestricted access to these Online Games. The question whether these forms of Games could produce a negative social effect, is still to be determined. However, effort should be made at comparing these games if same share similarity with any relevant prohibited gaming product for the purposes of extending regulatory protection to Minor. A few of these new online emerging games are; Video Games and Penny Auctions.

#### Video Gaming/Games

Video gaming/games therefore comprises of all games that players can have access to using Mobile Phones, portable tablets, games consoles, computers and other technological devices that do not offer any monetary stake or bet and there is no promise of any possibility of monetary returns or winning emanating from such games.<sup>55</sup> They are played using any form of existing technological devices, with or without the aid of Internet connection, excluding games that fall within the definition of gambling (placing of wagers or stake).<sup>56</sup> Such games can be acquired through download to any computer system<sup>57</sup> or access at will through the website of such gaming services providers for a fee or through periodic subscriptions or even for free. Although, while a lot of Games do not offer the option of cashing out money, there are games that offers prize in term of Virtual Goods, Currency, or In-Game Credit. The question that comes to mind is whether such prizes qualifies within the meaning of our statutory definition of a Prize and if such virtual property can be consider as a property under Nigerian law.<sup>58</sup> Where any

<sup>49</sup> Victoria Government Department of Justice, *Problem Gambling and Harm: Towards a National Definition*. (2005) Publication of University of Adelaide SA Centre for Economic Studies and Department of Psychology. Melbourne: Available at: <http://www.adelaide.edu.au/saces/gambling/publications/ProblemGamblingAndHarmTowardNationalDefinition.pdf>. P ii-iv Accessed 4 February 2020.

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Abbott, Max., Binde, Per., Hodgins, David., Korn, David., Pereira, Alexius., Volberg, Rachel., Williams, Robert., *Conceptual Framework of Harmful Gambling: An International Collaboration*. The Ontario Problem Gambling Research Centre (OPGRC), Guelph, Ontario, Canada. (2013)

<sup>53</sup> Ibid

<sup>54</sup> C. Messerlian, J. Derevensky & R. Gupta, ‘Youth Gambling Problems: A Public Health Perspective’ (2005) Vol 20 (1) *Health Promotion International* P. 69

<sup>55</sup> M.A. Carran (Note 40) P.45

<sup>56</sup> Ibid

<sup>57</sup> Section 58 of the Cybercrime (Prohibition, Prevention etc) Act 2015 defines ‘Computer System’ to mean ‘any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated or interactive processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and Software may include input, output and storage components which may stand alone or be connected in network or other similar devices. It also includes computer data storage devices or media.’

<sup>58</sup> Section 51(1) of the Copy Right Act Cap C28 Laws of the Federation of Nigeria 2004, accords protection to computer software (Digital and Virtual Properties) which the Act defines Computer Software or a Program as; a set of statements or instructions to be used directly or indirectly to bring about a certain result. A video game is produced through a programmed software which the law affords adequate protection on such property. The said provision of the Copy Right Act also defines Computer Software as an aspect of Literary Work. Section 1 of the Act provides that for a work to be eligible for protection two requirements are; (1) that sufficient effort must have been expended to give it originality of character and, (2) it must be

of these questions is answered in the affirmative such games can be seen as gambling and ought to be restricted from Minor.

In jurisdiction like the People's Republic of China, Virtual Property is afforded protection and can be alienated for value; the law recognised that such property can be stolen.<sup>59</sup> Protection is given to such property under Article 75 of the General Principles of the Civil Law of the People's Republic of China.<sup>60</sup> The Court in China also held in the *Case of Li Hongchen v Beijing Arctic Ice Technology Development Co. Limited*<sup>61</sup> where an Online Gamer brought a claim against the Game Operators, Beijing Arctic Ice Technology Development Co. Limited that his Online weapon and virtual money acquired in a game 'Hongyue' or 'Red Moon' which he spent over 10,000 yuan (USD 1,210) and two years to acquire has been stolen by hackers that gain access to the server of the Defendant. The Court held that the virtual property of the Claimant that was acquired in the cause of playing the game developed by the Defendant has been stolen by the defendant when the claimant could not have access to the said acquired equipment. The Court further held that the Acquired Game Equipment should be restored as there was no uniform means to calculate the value of such property.<sup>62</sup>

### **Penny Auction**

This form of Internet Auction began in 2005. It is most enticing to young persons as a result of the opportunity it affords at saving cost in the purchase of an item at reduced or discounted price. Penny Auction is more like a traditional lottery than a traditional online auction.<sup>63</sup> In Penny Auction, operators of the site display item that are for sale calling for participant to make a bid for such item.<sup>64</sup> Before bidding, each bidder is expected to pay in a certain amount of money which will be used as bidding points. The bid package paid for enable the player to have a number of bidding powers. The price of the item starts at zero, and each bid increases the price of the item up a penny. The goal is to be the highest bidder when the clock runs out. But because the clock resets with each bid, the auction process can be unpredictable and take time to complete. Winning the auction does not mean that you have won the item; it only gives the individual the right to pay for the final price of the goods. In situation where you lose an auction the money use in the purchase of bids are gone. Penny Auction has been considered a form of gambling as a result of this transaction possessing the characteristics features of a traditional gambling. Participant in Penny Auctions as a compulsory condition for participation expend some amount of money and there is a likelihood of winning the prize.<sup>65</sup> The motivating factor in this form of Auction is economical and same is majorly the motivation in gambling.<sup>66</sup> A comparison has been made between Penny auction and a slot machine where the player deposits a small amount of money to play with a possibility obtaining an item below its normal value.<sup>67</sup> It has also been compare to lotteries even though penny auction do not depend on some random event, but in all their outcome largely depends on the element of chance.<sup>68</sup>

There is an increasing concern by regulators on the potential harm and benefits of such games and how best to ensure the protection of Minor in such gaming.<sup>69</sup> However, there are arguments that Penny auction may not constitute gambling or gaming despite the element of chance as same does not constitute a game. Although the absence of statutory definition of the terms 'game' or 'playing a game' 'scheme' 'arrangement', 'system', 'plan',

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fixed in a definite medium of expression. Therefore, there is no doubt that the law protects Video Games as a form of intangible and Intellectual Property in Nigeria. However, the question as to whether Virtual Goods, Currency, or In-Game Credit acquired by a player in such computer software can be deem as his possession in which he has sole right to deal with in such computer software calls ours legislation to question if this could be seen as a form of intangible property or asset.

<sup>59</sup> Susan Abramovitch, David Cummings, 'Virtual property, Real Law: The Regulation of Property in Video Games: Part 2' (2010) 21(2) *Ent LR* 52

<sup>60</sup> MMLC GROUP 'Virtual Property in Greater China' <https://www.hg.org/legal-articles/vitual-property-in-great-china-5538> Accessed on 10 April, 2020

<sup>61</sup> Full opinion Available at <<http://www.chinacourt.org/public/details.php?id=143455>> (Chinese Language website) cited in A.T. Joshua, Virtual Property, (2005), 85 *B.U.L. Rev.*1047,1084 n. 188

<sup>62</sup> MMLC GROUP (Note 60)

<sup>63</sup> Federal Trade Commission Consumer Information <<https://www.consumer.ftc.gov/articles/0037-online-penny-auctions> accessed 20 April, 2020

<sup>64</sup> Ibid

<sup>65</sup> M.A. Carran (Note 40) P. 58

<sup>66</sup> Ali Kakhbod, 'Pay-To-Bid Auctions: To Bid or Not to Bid' (2013) 41 *Operation Research Letters* 462

<sup>67</sup> Brennan C Platt, Joseph Price, Henry Tappen, 'The Role of Risk Preference in Pay-To-Bid Auctions' (2013) 59(9) *Management Science* 1526

<sup>68</sup> M.A. Carran (Note 40) P.59

<sup>69</sup> P. G. Lange, Learning Real-Life Lessons from Online Games. *Games and Culture*, (2011) 6(1), 17-37.

opens up such activity as an act which could constitute a game.<sup>70</sup> In light of the above, these gambling like games must be considered within the meaning of our legislative protection to ascertain if activities such as Video Gaming and Penny Auction constitute a game, scheme, arrangement, system or plan and whether such game possess an element of chance which is highly negligible and there is an anticipation of Prize in money or money worth's.<sup>71</sup> Where all these characteristics are complete in any game such a game must be restricted from participation by minor.

### 6. Age Verification and Gambling In Nigeria

Age verification by gaming Services Providers transcend the purposes of Child protection, the practise is hinged on good business practices to ensure that businesses does not constitute harm and risk to the society.<sup>72</sup> The Provisions of the National Lottery Commission Act and Regulations, prohibits underage gambling, but the procedure for Age Verification and confirmation of potential customers is left unaddressed leaving Licensee of the Relevant Gaming Product to rely on any suitable method to ascertain the age of Minor. However, other Legislative provisions regulating Gambling, remotely made provisions for Age verification for customer for purposes of preventing crimes such as Money Laundering, Cybercrimes and other crimes that may emanate from Gambling. These provision of the Law where properly implemented can adequately serve as a veritable legislative check to curb the issue of Underage gambling in Nigeria. Section 25 of the Money Laundering (Prohibition) (Amendment) Act 2012,<sup>73</sup> defines a Casinos (Gambling Services Providers) as a 'Designated Non-Financial Institution' in the same vein, Section 58 of the Cybercrime (Prohibition, Prevention etc) Act 2015 in its provision classified Casinos as a Financial Institution within the meaning of both Act and requiring these Financial and Designated non-Financial Institution respectively, to carry out effective verification of data of consumers of services. The Money Laundering Act places a duty on Designated Non-Financial Institution (Gambling Services Providers) to identify its customer using proper original identification document before any financial or other transaction is conducted with the institution.<sup>74</sup> The Act provides that the identity of such potential customer must be verified using reliable, data or information, and independent source documents. A designated non-financial institution shall satisfy itself that it knows the beneficial owner of the transaction or customer. The Act states: 'A casino shall (a) verify the identity of any of its customers carrying out financial transactions by requiring its customers to present a valid original document bearing his name and address'.<sup>75</sup> The Act also places a duty on Gaming services providers to maintain and preserve a record of all transactions of its customer and such records shall be preserved for a period not less than five years.<sup>76</sup> Section 37 of the Cybercrime (Prohibition, Prevention etc) Act 2015 also have similar provisions for the compulsory verification of customer before any transaction could be performed by such customer. Section 37(1) (b) Cybercrime (Prohibition, Prevention etc) Act Provides that a financial institution shall '*apply the principle of know your customer in documentation of customers preceding execution of customers electronic transfer, payment, debit and issuance orders;*' and the Money Laundering Act <sup>77</sup>provides for an individual to provide proof of his identity, by presenting to the Financial Institution or Designated Non- Financial Institution a valid original copy of an official document bearing his names and photograph or any other identification documents, thereby effectively enacting the principle of Know your customer (KYC).

### 7. Customer Identification Principle in Gambling

The Know your Customer (KYC) principle does not only applies to Financial Institutions like Banks but also extends to Licensee of all Relevant Gambling Products by virtue of the Act definition to cover providers of the Relevant Gambling Products as both Financial and Designated Non-Financial Institution.<sup>78</sup> A Licensee of any of the Relevant Gambling Product in Nigeria is duty bound to ensure compliance at all time with the KYC principle, sufficient information must be obtained from customer at the time of the opening of any Gaming Account. The purpose of KYC principle in gambling industry is to ensure that gambling transactions are done with almost honesty and integrity and to prevent all forms of persons who are either restricted or prohibited from gambling such as underage persons and bankrupt individuals and to ensure that all suspicious transaction of customers are

<sup>70</sup> Section 30 of the National Lottery Regulation, 2007, defines 'Lottery' to mean 'the procedures authorised under Section 57 of the Act through which prizes are awarded or distributed by chance among persons who have paid or unconditionally agreed to pay, for a chance or other opportunity to receive a prize.'

<sup>71</sup> M.A. Carran (Note 40) P.71

<sup>72</sup> V. Nash, R. O'Connell, B. Zevenbergen, A. Mishkin, & others' (Note 3) P. 6

<sup>73</sup> No. 7, 2011

<sup>74</sup> Money Laundering (Prohibition) (Amendment) Act 2012, section 3.

<sup>75</sup> Ibid, Section 4(1)(a) of the Act

<sup>76</sup> Ibid, Section 4 (2) of the Act

<sup>77</sup>Ibid, Section 3 (2) of the Act

<sup>78</sup> Cybercrime (Prohibition, Prevention etc) Act 2015, section 58 and Money Laundering (Prohibition) (Amendment)Act 2012, section 25, respectively

traced and reported timeously. Although these provisions of the Act were enacted primarily for the check of Money Laundering, they are also relevant in the prevention of other forms of Crime such as Underage Gambling. Where these provisions of the Act are strictly applied, they remotely curb the issue of Underage Gambling as presentation of a valid means of identification can help prevent Underage Gambling. The strict implementation of this principle in the gaming sector is a means for restricting minor from accessing prohibited goods and services.

#### **8. Good Practice adopted for Age Verification in other Jurisdictions**

In most gambling permissive jurisdiction, some very proactive method and good business practice has been adopted to restrict Underage Gambling.<sup>79</sup> These practices combine Regulatory and technological methods at achieving Age verification to effectively exclude Underage persons from Online Gambling.<sup>80</sup> There methods are:

##### **Online Method which Rely on Existing Official or Government Data Base**

This method is adopted in jurisdiction such as Denmark, Spain, and Italy, where Gambling Services Providers effectively collaborate with the government in having access to government data base to verify through electronic means the identity of potential customer before such services are open to customer. Italy uses the 'Fiscal Code' a comprehensive platform created for the purposes of tax payment to verify the age of gamblers. In Denmark such a person must visit a local Danish government office for identification.<sup>81</sup>

##### **Online Verification through Public Data stored on private platform**

The data of potential gambler are verified from various websites where such has been imputed and such data are compared to that supplied to the gaming services providers. In the United Kingdom, confidence is placed on the data base of third party to confirm if such person is old enough to access the Relevant Gambling Product or Self-excluded from gambling. In line with the Age Verification Rules 2019 of the Gambling Commission of the United Kingdom such verification is to be made before gambling and not at the stage of payment. This verification also applies to Play for Free Games and Demo Games on the website of Gaming Services Operators.<sup>82</sup>

##### **Physical submission of identity document through offline method**

This method is used by countries that do not have electronic data base where information can be confirm. Potential gamblers are subjected to submit their identity document to the issuing authority for confirmation of all details before such is submitted as genuine. However, this approach is very burdensome to the requirement of Age Verification and the need for identification before gambling.<sup>83</sup> While the above methods have been used for Age Verification purposes by several jurisdictions, the first two methods adopting online verification has proof to be a veritable means of Age Verification. According to Margaret Anna Carran;

The particular successes of the Online Gambling Providers have been made easier by the technological advances that enabled potential customers to be age verified with reference to a variety of digital databases, as well as due to the Internet being an inherently cash-free environment. These features are not present in offline venues, resulting in significant variations between remote and land-based gambling providers in their levels of successes in underage gambling prevention.<sup>84</sup>

However, the successes of online verification of Age and Identity of Gambler have not been the case for the Gaming Industries in Nigeria. Land Based Gaming verification had offered a more effective check.

#### **9. Challenges and Inadequacy of the Current Legal Protection for Minor in Online Gambling Transaction**

While in Land-based Gambling Premises, there are proof of age checks by physical examination of Gamblers and their identity document, online gambling is face with the following challenges. Despite the regulatory and practical check employed by the Gambling Services Providers to restrict underage persons from gaining access to gambling products on their websites, there are few instances where adult or guardian uses their Gaming Account, Bank Account, credit card, debit cards etc, aid minor in gambling and this has the potency of negating all forms

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<sup>79</sup> Victoria Nash 'and others', 'Effective Age Verification Techniques: Lessons to Be Learnt from the Gambling Industry' (University of Oxford 2014) <<http://www.oii.ox.ac.uk/research/projects/?id=102>> Accessed 19<sup>th</sup> January 2020

<sup>80</sup> (Sparrow 2008: 23)

<sup>81</sup> Victoria Nash 'and others', (Note 3) P. 30

<sup>82</sup> Account Verification and identification Required to bet online in the UK <<https://www.onlinebetting.org.uk/betting-guides/betting-site-verification-and-id.html>

<sup>83</sup> Victoria Nash 'and others', (Note 3) P. 33

<sup>84</sup> M.A. Carran, (Note 40) P. 103



of regulatory check and practical check to restrict underage Gambling.<sup>85</sup> While ordinarily, Banks information and data would have curbed underage gambling, this channel is confronted with its own challenges. The use of Debits and Credit cards to fund Betting account has been problematic while credit card ordinarily is not issued to customer below 18 years by the Banks, there are instance where age is falsified and Gaming Services Provider relying on such information have narrowly admits Minor who falsify their age. Debit card in Nigeria, can be issued to persons below the age of 18 years. Holders of this form of Bank account have access to fund betting account without restriction thereby allowing minor to place wagers and also receive prizes from gaming.<sup>86</sup> Self-reporting of age or date of birth by gamblers through ticking or clicking of Age Verification Boxes in Gaming websites has proven to be futile. False information is often submitted by potential customer attesting to having the statutory capacity to access the Relevant Gambling Services and site disclaimers has proof difficult to curb the issue of Underage Gambling. Unlike some Gambling permissive jurisdictions that maintain a Central Gambling Register where names of Problem gamblers, Self- Excluded persons, Underage person who have tried to gain access, bankrupt individuals etc are recorded. Nigeria does not operate or have such Central Register to check the issue of underage Gambling. These challenges and many others have accounted have resulted in the increased of underage Gambling and there is need for urgent action in other to avoid the negative social effect Underage Gambling may have in our society.

### **10. Conclusion and Recommendations**

While the issue of Underage Gambling, requires further protection of the law in Nigeria by way of amendment of the current legislation, enactment of new legislation, Code of practice and guidelines for the industries, such Statutory and regulatory provisions must be sufficiently commanding with adequate enforcement procedures and such regulations must have the necessary backing of the industry and the society through an aggressive orientation of the resultant effect of gambling and the nature of risk and harm pose to the society by underage gambling and all these must be supported by adequate and appropriate technological innovations suitable for online Gambling transactions for compliance to be optimum.

Therefore, flowing from the above discussions on the protection of underage Persons from gambling, this paper recommends some practical technological method and also regulatory reforms on the belief that implementation of these recommendations will largely curb the issue of under-age gambling in Nigeria. These Practical approaches are as follows: There should be an effective online platforms where through collaborative efforts, the online Gambling services Providers can have access to government records of data contained in documents such as Voters Card, Birth Certificate issued at birth by the National Population Census, National Identity Card, International Passport and same should be verified before a Gaming account or gaming product can be access. The Banks providing financial assistance to online gambling service providers should make it a policy for only holders of credit cards to be able to fund or withdraw from a gaming site and the use of counter payment and electronic mobile application should be restricted to Bank Account of persons above 18 years of age in accessing Gambling transactions through such Bank. The availability of demonstration games on the site of gaming services operators which could be access even without a proper Betting Account and played without a stake or a reward been given should be prevented as underage can get use to such games on the site and be prone to gambling.<sup>87</sup> Licensee of gambling product must operate its Website in manner that prevents access without a proper Log-In of Betting Account details even for games that are free on the website. Public awareness must be undertaken by the National Orientation Agency and all key stakeholders of the Gambling industry in Nigeria to educate the public on the negative social effect of gambling on underage persons in Nigeria and ways in which underage gambling can be restricted.

In terms of regulatory reform, the following changes must be considered in other to effectively restrict underage gambling in Nigeria. The protection offered by the various legislation to underage person in Nigeria only made provisions for the legal age for participation and criminalized the act of knowingly selling of a Gaming ticket to a minor in Section 34 (1) (e) of the National Lottery Regulatory Commission Act. The Act should be amended to criminalize conduct such as invitation of a minor to engage in gambling, offering employment to a minor in such industry and offences bordering on the actual participation of minor in such activity. In online gambling, information as to the confirmation of age by clicking or ticking of the box in an online gaming website should be made on oath after strict warning as provided for in the Evidence Act 2011 where such information is found to be false declaration such an individual can be prosecuted for the Offence of Perjury as provided for in Nigeria

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<sup>85</sup> Alex Blaszczyński & others', 'Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions' (RGT 2014), <[http://www.responsiblegamblingtrust.org.uk/user\\_uploads/obhm\\_report\\_final\\_version.pdf](http://www.responsiblegamblingtrust.org.uk/user_uploads/obhm_report_final_version.pdf)> Accessed 20 March 2020

<sup>86</sup> Victoria Nash & others', (Note 3) P. 30

<sup>87</sup> Gambling Commission (UK), 'Proposed Amendments to Licence Conditions and Codes of Practice (LCCP) for all Operators: Response Document' – Part 1 (March 2014)

Criminal Justice system. The law should be amended to criminalize the act of Adult aiding underage persons in the participation or purchased of Gambling Products and services A Central online Gambling Register should be made mandatory by amending the Act or enacting of another Act, where names of Bankrupt Gamblers, underage persons who have previously gain or trying to gain access should be register and such records be made available to gambling services providers to aid the screening of potential bettors trying to gain access to such services.