

CONSTITUTIONAL RIGHT OF NIGERIAN CHILDREN TO RECEIVE INFORMATION AND THEIR EXPOSURE TO PORNOGRAPHY ON THE INTERNET: A CASE FOR EFFECTIVE LEGISLATIONS

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1. INTRODUCTION:

Nigeria, like most part of the third world is desperately trying to play catch-up in information technology (IT). Consequently, internet is gradually being made available to all and sundry including children. Several State governments are providing internet facilities in schools on the assumption that it will aid research capacities. Along with research materials, and also information, come pornographic materials¹. Generation and distribution of pornographic materials² is growing like wide fire. This growth is fuelled primarily by spread and easy availability of internet facility all over the world. It is estimated that as at 2008³ about 7% or 260million pages in the world wide web (www)⁴ are made up of pornographic materials. Research has shown that the spread of pornography on the internet has affected every age group. Children are increasingly vulnerable. Influence of internet pornography on children can take the form of children being used at the main actors in the production of pornographic materials⁵ or children

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¹ It is estimated that over 40% of internet usage in Nigeria is related to browsing of sex sites. The remaining 60% is distributed among search for information, sports etc (Longe:2004 cited in Longe & Longe, *The Nigeria Web Content: Combating Pornography using content filters* (Journal of Information Technology Impact, Vol. 5, No.2, 2005) p.60.

² Pornographic materials are essentially sexually explicit material intended to cause sexual arousal.

³ Lauer and Lauer 2008 cited in http://www.freeonlineresearchpapers.com/negative_effects_pornography_research_paper(accessed on 31/8/2010)

⁴ Defined in Encarta Dictionaries as a system of accessing manipulating and downloading a very large set of hypertext-linked documents and other files located computers connected through the internet.

⁵ Mainly to satisfy the pedophiles.

being exposed to sexually explicit websites on the internet⁶. The latter is our concern in this paper.

Studies show that pornography has harmful effects on children which include emotional problems such as anxiety, guilt, confusion and shame; stimulation of premature sexual activity and the development of harmful attitudes and beliefs about sex and sexual relationship⁷. Pornography has also been blamed for increase incidence of HIV/AIDS, drug addiction, increased incidence of rape, home breakage and child- abortion⁸. This development is worrying considering the premium which the international community places on the “full and harmonious development of children”⁹.

The Constitution of the Federal Republic of Nigeria (as Amended) “1999 Constitution” guarantees “every persons”¹⁰ the right to freedom of expression and the Press¹¹. This right includes the right to receive and impart ideas and information without interference. This paper seeks to explore the possibility of regulating access of Nigerian children to internet, especially internet pornography without tampering with their right to receive ideas and information without interference. Although the use of internet is not yet widespread in Nigeria compared to the situation in the West¹², yet in view of the experience of countries like the United States, it may not be premature to prepare our minds to tackle this issue before it hits our “legal shores”. Like all “developments” in the West, there is no doubt that it is only a matter of time before we start scampering to articulate solutions to this problem if we fail to anticipate and address it now. There is therefore a

⁶ Indeed studies show that the largest consumers of pornography in America are children between the ages of 12years to 17 years.

⁷ Lauer and Lauer (2008) cited in http://www.freeonlineresearchpapers.com/negative_effects_pornography_research_paper(accessed on 31/8/2010)

⁸ Itzim:2003 cited in in Longe & Longe, *The Nigeria Web Content: Combating Pornography using content filters* (Journal of Information Technology Impact, Vol. 5, No.2, 2005 p.61. See also Longe et al, *Exposure of Children and Teenagers to Internet Pornography in South Western Nigeria: Concerns, Trends and Implications*, Journal of Information Technology Impact, Vol. 7, No.3,2007, p.198.

⁹ See Preamble to Convention on the Rights of the Child.

¹⁰ This should include children.

¹¹ Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)

¹² Made up mainly of the “Developed” countries of the world.

need for a legislation to address the negative effects of internet pornography on its teeming youth population which include children¹³.

2. **LEGAL FRAMEWORK GOVERNING THE RIGHT OF NIGERIAN CHILD TO FREEDOM OF EXPRESSION.**

(i) **INTERNATIONAL TREATIES:**

Nigeria has signed and ratified¹⁴ a host of international treaties on human rights. However most of these treaties are yet to be made municipal laws in law in accordance with the provisions of Nigerian Constitution¹⁵. The implication of this is that the provisions of these treaties do not have force of law in Nigerian¹⁶. Nonetheless it is important to note that the provisions of these treaties remain an eternal reminder of international standards on issues of human rights which Nigeria should strive to conform.

Although Nigeria has not made most of these municipal laws in accordance with the provisions of the Nigerian Constitution, the incorporation of the provisions of some these treaties into our municipal laws means that we are reaping their benefit. For instance the provisions of the Convention of Civil and Political Rights¹⁷ are now substantially incorporated into the provisions of Chapter IV¹⁸ of the 1999 Nigerian Constitution. One of the provisions of the Convention on Civil and Political Rights proclaims that,

- “1. Everyone have the right to hold opinion without interference.***
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom 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 his choice.***

¹³ It is estimated that 44% of Nigeria population are between the ages of 0- 14 years. The age bracket of 15- 60 make up 58% (See http://en.wikipedia.org/wiki/demographics_of_Nigeria/Age_structure)

¹⁴ Article 2 of Vienna Convention on the Law of Treaties provides that “ratification”, “acceptance”, “approval” and “accession” means in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

¹⁵ See section 12 (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999.

¹⁶ Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999.

¹⁷ Adopted by the United Nations General Assembly on 16 December 1966 and came into force on 23rd March 1976

¹⁸ Dealing with “Fundamental Rights”.

3. *The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
- (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.”¹⁹*

It is clear from this provision that the use of “everyone” is wide enough to include children²⁰. Similarly, the Convention on the Rights of the Child²¹, the only comprehensive, children oriented treaty within the international realm, specifically provides,

- “1. *The child shall have the right to freedom of expression; this right shall include freedom 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 his choice.*
- 2. *The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.”²²*

The Convention on the Rights of the Child significantly pegged the age of children to be every human being below the age of eighteen years²³.

In the African continent, the OAU Charter on the Human and People’s Rights²⁴ provides that,

- “1. *Every individual shall the right to receive information.*
- 2. *Every individual shall have the right to express and disseminate his opinion within the law”²⁵*

¹⁹ Article 19.

²⁰ The Article 2 (1) of this Convention lends credence to this position.

²¹ This Convention was adopted by the General Assembly of the United Nations on 20 November 1989 by resolution 44/25 and it came into force in September 1990.

²² Article 13

²³ Article 1.

²⁴ Came into force on 21st October 1986. Nigeria has incorporated this Charter into her municipal law as Cap. A9 Laws of the Federation of Nigeria 2004.

²⁵ Article 9.

It is also instructive to note that the Charter gives *every individual* the right to enjoy the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind²⁶.

(ii) **MUNICIPAL LAW:**

Currently, the principal municipal law in Nigeria is the 1999 Constitution from where every other law in Nigeria derives their validity²⁷. Section 39 of the 1999 Constitution provides,

“(1) *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.*

(2) *Without prejudice to the generality of subsection(1) of this section every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:*

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

(3) *Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society-*

(a) *for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or*

(b) *imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law”*

Apart from restriction imposed on the enjoyment of this right²⁸ in subsections (2) and (3), there is yet another restriction placed on the right

²⁶ Article 2.

²⁷ Sections 1 (1) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁸ And other rights.

contained in this section in the provisions of section 45 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). According to this provision,

- “(1) *Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-*
- (a) *in the interest of defence, public safety, public order, public morality or public health; or*
- for the purpose of protecting the rights and freedom of other persons.*

In the case of **Cheranci v. Cheranci**²⁹, which originated in Northern Nigeria, Bates J while commenting on the phrase *reasonably justifiable in a democratic society* reviewed the application this phrase from Basu’s Commentary on the Constitution of India in the United States and India³⁰ and then came to the conclusion that in position in India and the United States should be applied in Nigeria. To him a restriction on fundamental rights before it may be considered reasonably justifiable must:

- (i) be necessary in the interest of public morals or public order and
- (ii) must not be excessive or out of proportion to the object which it is sought to achieve.³¹

Professor Ben Nwabueze notes that since the Nigerian Constitution does not provide a guide to determining what this phrase implies the burden is thrown to the courts to discharge³². He further points out that the Nigerian position is limited to defence, public safety, public order, public health, public morality and the protection of the rights and freedom of others. It does not

²⁹ (1960) NRNLR 24

³⁰ The position in America is that under the doctrine of Police Power this restriction (i) must have a just relation to the protection of the public within the scope of the “Police Power”. In other words, the restriction must be reasonably necessary in the interests of public health, morals, safety or welfare. It must have a real and substantial relation to the object sought to be attained by the restriction or regulation, and such object must be one in the interest of which the state is entitled to exercise its police power (ii) the restriction must not be in excess of the requirement. In other words, the freedom must not be abridged or curtailed unduly or arbitrarily. The Indian position, is that in order for the restriction to be reasonable it must have a reasonable relation to the object which the Legislature seeks to achieve and must not go in excess of the object. See the judgment of the court in this case cited in Oluyede & Aihe, *Cases and Materials on Constitutional Law in Nigeria* (Ibadan, University Press Plc, 2003) p. 249-250.

³¹ See Oluyede & Aihe, Op. Cit, p. 250.

³² B.O. Nwabueze, *The Presidential Constitution of Nigeria* (London, C. Hurst & Company, 1982) p. 250.

extend to national unity, economic well-being, economic development or any other aspect of public welfare outside those specified³³.

Apart from the provision of this right in the Nigerian Constitution, the OAU Charter on Human and Peoples Rights incorporated into body of Nigerian municipal laws³⁴ also guarantees “every individual”³⁵ the right to receive information³⁶. Significantly the Child’s Rights Act³⁷, a landmark legislation regulating the rights of children in Nigeria, incorporated the provisions of Chapter IV of 1999 Constitution into the Act “as if those provisions are expressly stated in the Act”³⁸. Curiously this right³⁹ was omitted among specified rights set out in Act for the benefit of the child⁴⁰.

3. **NIGERIAN LAW REGULATING EXPOSURE OF CHILDREN TO PORNOGRAPHIC MATERIALS ON THE INTERNET:**

Most laws in Nigeria, in almost every area of law, reflect earlier changes made in the English law in such area of law. Consequently Nigerian laws are always inevitably some steps behind the developments of the law in England and other developed countries. The law on internet pornography is no exception. Indeed because internet is a relatively recent development and most developed countries, including England, are still “using” their “first generation” of laws in this area, it is understandable that there is no law in Nigeria on this area. There are however a provision in the Criminal Code of most State in Southern Nigeria generally outlawing the generation, circulation and distribution of pornographic materials⁴¹ in Nigeria. This provision which states that:

“(1) Any person who-

(a) for the purposes of or by way of trade, or for the purposes of distribution or public exhibition, makes, produces, or has in his possession any one or more obscene writings, drawings, prints, painting, printed matter, pictures, posters, emblems, photographs,

³³ *Ibid*, p. 252.

³⁴ Cap. A9 Laws of the Federation of Nigeria 2004.

³⁵ It is contended that this phrase covers ‘Children’.

³⁶ Article 9 (1).

³⁷ Act No. 26 of 2003. This Act was signed into law by the then President Olusegun Obasanjo on 31 July 2003.

³⁸ Section 3 (1).

³⁹ Subsumed under the right to freedom of expression.

⁴⁰ Sections 5- 17.

⁴¹ Both to adult and children “consumers”.

- cinematograph films or any other obscene objects, or any other object tending to corrupt morals; or*
- (b) for any of the purposes above mentioned imports, conveys, or exports, or causes to be imported, conveyed, or exports, or causes to be imported, conveyed, or exported any such matters or thing, or in any manner whatsoever puts any of them in circulation; or*
 - (c) Carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or*
 - (d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters of things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or*
 - (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals, is guilty of a misdemeanor and is liable to imprisonment for two years or to a fine of two hundred naira or to both such imprisonment and fine.”⁴²*

If any constitutive element specified in paragraphs (a), (b), (c) or (d) of subsection (1) is committed in Nigeria such commission shall be sufficient to render the person accused of such offence triable in such a State⁴³.

The Penal Code that was applied in most part of Northern Nigeria provides:
“Whoever sells or distributes, imports or prints or makes for sale or hire or willfully exhibits to public view any obscene book, pamphlet, paper, gramophone record or similar article, drawing, painting, representation or figure or attempts or offers so to do or has in his possession any such obscene book or thing for the purpose of sale, distribution or public

⁴² For example Section 218(1) of the Criminal Code (Cap.30) Laws of Enugu State 2004 . This provision is lacking in the Federal Criminal Code (Cap. C 38) Laws of the Federation of Nigeria 2004. Section 232 which contained this provision in the 1958 Laws of the Federation of Nigeria and Lagos was repealed by Ordinance No. 51 of 1961.

⁴³ For instance see Section 218 (2) of the Criminal Code (Cap.30) Laws of Enugu State 2004.

exhibition, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”⁴⁴

The test of obscenity in this section is said to be whether the tendency of the matter alleged to be obscene is to deprave and corrupt. What is deemed to be obscene may vary from age to age, from place to place and from person to person⁴⁵.

Although there is no specific reference to internet in the sections considered⁴⁶, a wide and innovative construction of the words “Distributes⁴⁷” and “Convey⁴⁸” used in the context of these laws may be extended to include flow of pornographic materials on the internet. Crucially, the provisions⁴⁹ of these laws do not directly protect children from exposure to pornography on the internet.

4. **NON- LEGAL (TECHNOLOGICAL BASED) MECHANISMS FOR CHECKING CHILDREN’S ACCESS TO PORNOGRAPHY ON THE INTERNET.**

One of the technology- based mechanism developed for checking the mass distribution of pornographic or obscene materials on the internet is through the “filter” or “censoring” system. There are three basic ways to filter the internet: software analysis, site labeling system and a human analyser. Software analysis leaves the filtering to a computer programme which searches sites for objectionable text or images. The site labeling relies on web site owners to voluntarily label a site content. Human analysis relies on a central staff which reviews competing lists of approved and unapproved sites⁵⁰.

The software analysis works by attempting to distinguish between offensive content and permissible content by searching the text of a web page for certain words, comparing the location to lists of known inappropriate sites, or by analyzing the structure of a web page. For instance, some filters will

⁴⁴ Section 202 of the Penal Code of Northern States.

⁴⁵ S.S. Richardson, *Notes on the Penal Code*, (4th Ed.) (1987) p. 130

⁴⁶ Indeed from the contextual angle, these provisions were made and incorporated into Nigeria law several years before the advent of internet.

⁴⁷ Section 202 of the Penal Code of Northern States

⁴⁸ For instance section 218 (1)(b) of the Criminal Code of Enugu State 2004.

⁴⁹ Even with the wide interpretation canvassed for the key word like “Distribute” and “Conveys”.

⁵⁰ Howard Fienberg, “*Do Internet Filter even work?*” cited in <http://www.hfienberg.com/chp/censorwer.htm>.

block a web page if the word “sex” appears in the page whether the page is pornography, a news report on sexually transmitted diseases or information on sex based discrimination in the work place. However filtering pornography is inherently difficult because most pornography is made of images not text⁵¹.

In Nigeria most cybercafés are able to monitor and control networks users with content filters. This is mostly done through a section in café billing software. Prohibited sites are usually listed among caption- restricted programmes (a form of blacklist). For example, Cyberguage and GoCyber, two popular billing systems usually installed on main servers in Nigerian Cafes, automatically shut down domain names containing specified contents such as erotix, sex, sexy, xxx, porno, pussy etc as a result, cafes with such facilities have been able to minimize the number of pornographic sites visited daily by internet users. However it is argued that the set back with these is that legitimate and illegitimate users accessing pages with these contents are denied service⁵².

5. **THE UNITED STATES EXAMPLE:**

It will appropriate, at this stage of our discourse, to consider how a technologically advanced country like the United State, where internet facilities are almost universally available to her citizens, have responded to the problems exposure of children to pornographic materials on the internet. The United States is used also used as an example because they have a written constitution with provisions on fundamental rights just like Nigeria. The tale of attempts to legally check children’s access to pornographic materials on the internet is essentially one of three laws. The first law is the Child Online Protection Act (COPA)⁵³. The declared purpose of this law is restricting access by children to any material defined as harmful to them on the internet⁵⁴. Despite its avowed objective of protecting children from harmful materials on the internet, as of 2009, COPA remains unconstitutional and unenforced in the United States⁵⁵. The thrust of the

⁵¹ Adam Goldstein, *“Like a Sieve: The Child Internet Protection Act and Ineffective filters in Libraries”* (Fordham Intell. Prop. Media & Ent. L.J. (Vol.2) p. 1189. Goldstein points out that there is currently no filter in the market that can analyse the content of an image. Therefore the name “content filter” is something of a misnomer because the filters can only analyse text, not contents.

⁵² Longe et al, Op. Cit, p. 198- 199.

⁵³ Passed into law in 1998.

⁵⁴ http://en.wikipedia.org/wiki/child_Online_Protection_Act (Last visited on 2/09/2010)

⁵⁵ Ibid.

requirement of COPA is for all commercial distributors of “material harmful to minors” to restrict their sites from access to minors⁵⁶. “Material harmful to minors” being materials that by “contemporary community standards” was judged to appeal to the “prurient interest” and that showed sexual acts or nudity including female breasts⁵⁷. The first real legal problem for COPA came in 1999 when the United States Court of Appeal for Third Circuit upheld a court injunction against COPA ruling that COPA was too broad in using “community standard” as part of the definition of pornographic materials⁵⁸. The United States Supreme Court in May 2002 reversed the ruling of Court of Appeal for Third Circuit and found their decision insufficient and returned the case to the Circuit Court⁵⁹.

On March 6, 2003, the Third Circuit Court again struck down COPA as unconstitutional but this time on a different ground. The ground that it would hinder protected speech among adults⁶⁰. Following the opening of the vista that COPA infringes free speech, the United States Supreme Court, in June 29, 2004, held that COPA was likely to be unconstitutional⁶¹.

About four years later, a United States District judge Lowell A. Reed Jr. held that COPA violated the first and fifth Amendments to the United States Constitution⁶². This decision was subsequently⁶³, upheld by the 3rd United States Circuit Court of Appeal. On 21 January 2009, the United States Supreme Court refused to entertain appeal from the 3rd Circuit Court of Appeal decision⁶⁴.

Crucial to the latter decisions of the United States Court’s decision on COPA is the idea that it violates First Amendment to the United States Constitution. The First Amendment to United States Constitution protects people’s right to practice religion, to speak freely, to assemble (meet), to address (petition)

⁵⁶ Children or infants

⁵⁷ http://en.wikipedia.org/wiki/child_Online_Protection_Act (Last visited on 2/09/2010)

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ **Ashcroft v. American Civil Liberties Union** cited in http://en.wikipedia.org/wiki/child_Online_Protection_Act (Op. Cit)

⁶² http://en.wikipedia.org/wiki/child_Online_Protection_Act

⁶³ On July 22, 2008.

⁶⁴ http://en.wikipedia.org/wiki/child_Online_Protection_Act

the government and of the press to publish⁶⁵. The word “speak” is not the same as used in ordinary language and includes the expression of artists including the use of symbolism⁶⁶. Thus the wearing of armbands with peace symbol was protected during the Vietnam War as symbolic speech protected under the First Amendment⁶⁷.

In 1998 case of **NEA v. Finley**⁶⁸, Justice David Souter listed expressions protected under the First Amendment which have been recognized by the United States Supreme Court as painting, poetry, motion pictures, dramatic works, radio and television entertainment, drawing and engravings⁶⁹.

There are however exceptions, recognized by courts, to the First Amendment. One of such exceptions is obscenity. In **Miller v. California**⁷⁰, the United States Supreme Court established a three-pronged test for obscene prohibition which would not violate the First Amendment: (a) whether the average person, applying contemporary community standards, would find the work, taken as a whole, appeals to the prurient interest (b) whether the work depicts or describes, in patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value. This decision in **Miller’s case** is not without criticisms especially as it applies to this era⁷¹.

Another law aimed at curbing the degree of exposure of children to pornographic materials on the internet in the United States, is the Children’s Online Privacy Protection Act (COPPA). This law which is still in force, attempts to limit the ability of pornographic websites to offer services to children aged twelve and under without explicit parental-consent.

The other law in this respect is the Children’s Internet Protection Act (CIPA) which was passed by the United States Congress in December 2000 requires schools and libraries receiving discounted telecommunications, internet access, or internal connection services through federal funding mechanism

⁶⁵ <http://www.usconstitution.net/constquick.html>

⁶⁶ See **Freedom Expression: The First Amendment**, an inter-disciplinary education project partially funded by American Bar Association, Commission on College and University Legal Studies through ABA fund for Justice Education.

⁶⁷ *Tinker v. Des Moines School District*, 393 US 503 (1969)

⁶⁸ No. 97- 371 cited in **Freedom Expression: The First Amendment** (Op. Cit)

⁶⁹ *Ibid.*

⁷⁰ 413 US 14 (1973)

⁷¹ See **Freedom Expression: The First Amendment** (Op. Cit)

to certify and adopt internet safety policy and employ technological protection that blocks or filters certain visual depictions deemed obscene, pornographic or harmful to minors⁷².

It is, however, argued that CIPA's use of "content" filter software system in pursuit of its objective may lead to concerns of violations of the First Amendment⁷³. This is because "content" filters, as we pointed earlier can in the process deny access to permissible website⁷⁴.

5. CONCLUSION AND THE WAY FORWARD FOR NIGERIA:

The internet remains an inevitable phenomenon of today's world and with it come limitless opportunity to acquire and expand knowledge and information for everyone. Nigerian children must not be left out this "new wave" to spread knowledge and information. But we must take care to ensure that they acquire the right knowledge that will make them useful to Nigerian society. Pornography, as we have seen from our study, is not only capable of distorting the healthy development of their individual personalities but also portends disturbing implications for the larger society. Nigeria has fortunately⁷⁵ or unfortunately not responded to enormous challenge posed by this problem. There is now an opportunity presented to us to tackle this problem through effective legislations that addresses the issue of the constitutional right of Nigerian children to receive information and the need to protect them from the harmful effect of pornography on the internet as well as the technological tools to achieve the latter objective. We need not grapple with the issue of constitutionality the legislations as has been done in the United States. It is our contention that sentence "*any law that is reasonably justifiable in a democratic society in the in the interest of defence, public safety, public order, public morality or public health*" in our Constitution⁷⁶ affords our law makers the latitude to make comprehensive laws to tackle this problem without the fear that they may be struck down by the courts as being unconstitutional provided that the laws must not be

⁷² **Children's Internet Protection Act: Study of Technology Protection Measures in Section 1703** (a Department of Commerce National Telecommunications and Information Administration Report to Congress, August 2003) p. 7

⁷³ Adam Goldstein, "**Like a Sieve: The Child Internet Protection Act and Ineffective Filters in Libraries**", Fordham Intell. Prop., Media & Ent. L.J. (Vol.12) p. 1192.

⁷⁴ Ibid.

⁷⁵ "Fortunately" because we have the opportunity of learning from the experience of others like the United States.

⁷⁶ Section 45 (1) (a).

excessive or out of proportion to the object of curbing children's access to pornography on the internet⁷⁷. In this respect our judges and judicial officers should ally with the law makers by interpreting this hallowed constitutional sentence to save our children from the harmful effect of internet pornography on them⁷⁸. There is no doubt that comprehensive and proactive laws⁷⁹ on this subject, strengthened by the Criminal and Penal Codes provisions already discussed, will present Nigerian legal system with formidable arsenal in this battle. We surely desire liberty for Nigerian children but not at the expense of their best interest⁸⁰.

⁷⁷ As Bates J aptly noted in **Cheranci v. Cheranci** (Op. Cit)

⁷⁸ As we noted earlier Professor Ben Nwabueze reminds us that in the absence of a constitutional clarification on the meaning of this sentence, the burden is on our courts to determine the true meaning.

⁷⁹ Incorporating provisions on the technology to regulate children's access to pornographic websites and also the legal provisions to check such access.

⁸⁰ Indeed, the Convention on the Rights of the Child (Article 3 (1)) and Child's Rights Act (Section 1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. As we have demonstrated in this paper, pornography is not in the best interest of Nigerian children, or indeed children in any part of the world.

