

Responsibility and Direction of International Law in Regulating Transnational Dissemination of Pornography

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Abstract. In today's digital age, the transnational dissemination of pornography has become increasingly accessible and prevalent, leading to serious social issues and legal challenges all around the world. The high internationalization and digitalization of the pornography crime chain are blurring the legal and regulatory boundaries between different countries. To curb the rampant proliferation of pornographic materials across borders, international law should undertake the responsibility of and assume a pivotal role in regulating and restraining the transnational dissemination of pornography to protect human rights and uphold social order. There is an urgent need for establishing international legal mechanisms to combat transnational obscenity crimes. The direction for the application of international law also lies in the enhanced cooperation among nations, the development of robust legal frameworks, and the utilization of technological innovations to counter illicit pornography networks. Furthermore, a balanced approach that respects the principles of freedom of expression while prioritizing the protection of ethical standards and societal values should be emphasized. Ultimately, by elucidating the responsibility and direction of international law in regulating the transnational dissemination of pornography, this paper aims to contribute to the global discourse on protecting human dignity and maintaining societal well-being.

Keywords: International Law; International Criminal Law; Transnational Crime; Transnational Dissemination of Pornography; Regulation of Pornography.

1. Introduction

Pornography is an inevitable topic that has a complex and multifaceted history deeply intertwined with human culture and societal norms. Its development spans millennia and has long plagued the stability and harmony of human society. From ancient slave societies to modern capitalist societies, sex, as a necessity and innate desire of human life, has been giving birth to a form of media to meet the needs of sexual entertainment and sexual stimulation, namely pornography. Early pornography was closely tied to religion and custom and was featured in art forms such as sculpture and literature. The invention of the printing press during the Industrial Revolution significantly expanded the production and distribution of pornography. Pornographic texts, illustrations, and photographs became more widely available, leading to increased consumption and initial transnational dissemination. Despite its original significance as an instructional guide or a symbol of fertility, pornography, condemned and censored by moral standards and law, tended to thrive in the underground or illegal market that spans multiple countries. Pornography had gradually become a national problem and an international issue in the nineteenth century [1].

However, what cannot be ignored today is that pornography has become a more serious, complex, and intractable dilemma. The twentieth century witnessed significant technological advancements that further transformed the pornography industry. The invention of movies, television, and videotapes enabled the birth and rise of pornographic video works, albeit under more strict regulations and censorship laws in many countries. The proliferation of the Internet in the late twentieth and early twenty-first centuries revolutionized the pornography industry. With the click of a button, users easily obtain an unprecedented array of pornographic material ranging from amateur videos to professionally produced content, leading to an explosion in the availability and accessibility of pornography. The anonymity and privacy of the Internet also facilitated the exploration of diverse

sexual preferences and niche sexual fetishes, further fueling demand. Moreover, the technology of virtual reality, which provides users with an immersive erotic experience, should not be underestimated as well. Convenient and immense information dissemination in the digital age has obviously contributed to the no longer expensive pornography less secretive, awkward, and delicate [2].

Even more alarming is the fact that the decentralized nature of the Internet is destroying the original regulatory mechanisms like censorship of publications and screenings. Pornography in the digital age has become ubiquitous, permeating every corner of the online world. Social media platforms, streaming websites, live broadcasting platforms, and online forums host a vast array of pornographic content, catering to a global audience. The phenomenon of soft pornography, which utilizes sexually suggestive clothing, gestures, and language to attract attention and traffic, as well as the more perverted phenomenon of child pornography, is commonplace on online live streaming and advertising platforms nowadays. Unlike traditional media outlets, online platforms usually operate internationally across borders and employ a range of encryption technologies and privacy tools. This means that pornographic content can be distributed across multiple jurisdictions with varying laws and regulations, and widely circulated within regions of the globe. Not only are there differences in legal constraints, but cultural differences can also make behavior that is acceptable in one jurisdiction potentially illegal or offensive in another. The transnational nature of the Internet poses challenges to law enforcement agencies attempting to monitor and regulate illegal or harmful contents, and is a serious impediment to the development of a coherent and effective regulatory framework. Not to mention encryption tools such as digital payment technologies and cryptocurrencies, where anonymity provides strong protection for user privacy, making cross-border tracking and management efforts nearly impossible. The transnational dissemination of pornography has reached an unprecedented level in contemporary society.

Before the digital age, paperback books in a physical form were seen as the greatest example of pornography [3]. The process of vetting, tracing, seizure, and destruction is a powerful deterrent to the distribution and consumption of this type of pornography. But when pornography ceases to be visible or tangible and becomes an electronic message that travels across borders as fast as electricity, the primitive methods of regulation have long been unrealistic. More progressive and effective regulatory concepts and implementation strategies that are responsive to the digital age are urgently needed around the world.

What is so egregious about pornography is the association with and drive for sexual violence, abuse, and crime, centering on the exploitation and consumption of vulnerable groups such as women, children, and homosexuals [4]. As the most effective means of controlling pornography, the law, especially international law, must demonstrate its coerciveness, authority, and credibility. In the face of the daunting task of combating the transnational dissemination of Internet pornography in the digital age, as China's prosecutorial system once called for, international law must not be absent [5].

2. Literature Review

2.1. Existing International Law Regulating Transnational Dissemination of Pornography

It must be acknowledged and given great attention that the existing international laws and regulations governing transnational dissemination of pornography are scarce, lacking, and waiting to be improved. On the whole, this incomplete system shows extremely obvious characteristics of fragmentation.

One of the more explicit statutes is the international crime of trafficking in obscene publications, which, as an international offense, is governed by a series of international agreements and conventions from the first half of the twentieth century. It regulates the preparation, manufacture, possession, transportation, importation, exportation, and dissemination of obscene publications between two or more countries, not for personal use [6]. Although it emphasizes the transboundary character, it has long since lost its value for effective implementation in the present day because it

was formulated too long ago. Under the historical background of digital transmission, both obscene publications and such crimes have been drastically reduced. Only a few countries are currently bound by international conventions in this regard.

The main content related to the control of transnational pornography is included in a range of United Nations conventions and agreements, such as the Convention on the Rights of the Child (CRC), The United Nations Convention against Transnational Organized Crime (UNTOC), and the Cyber-crime Convention (Budapest Convention). The CRC clearly sets out the obligation to protect minors from pornography [7]. The UNTOC aims to combat transnational crime, and although it does not explicitly involve pornography, the relevant provisions of UNTOC can be applied to combat criminal activities involving the transnational distribution of pornography [8]. The Budapest Convention has strong restrictions on cybercrime using Information and Communications Technologies, and while it again does not specifically address pornography, its framework can be used to combat the illegal online distribution of pornography [9]. Regrettably, these conventions and agreements have not accurately mentioned the subject of transnational dissemination of pornography, and only rely on the universality of some provisions and frameworks to restrict pornography, lacking a unified and precise treaty system.

Other regulations are often found in international cooperation and bilateral agreements. Many countries cooperate through bilateral or multilateral agreements, including information exchange, law enforcement cooperation, and joint action, to combat the illicit distribution of pornography. However, relying on these scattered cooperation and agreements, it is still difficult to form a complete and concrete international legal system. This is also the current international law to regulate the transnational dissemination of pornography common problems.

2.2. Reference to International Criminal Law and National Laws Regulating Pornography

In order to exert the guiding and standard role of international law in controlling the transnational dissemination of pornography, many principles and regulations in the current international criminal law in controlling transnational crimes and the circulation of illegal products can provide sufficient help and reference.

As mentioned above, UNTOC provides a complete and sound paradigm for combating transnational organized crime. There are several principles worth learning from. The principle of cooperation should be prioritized, and cooperation mechanisms such as international judicial assistance and information exchange are indispensable [8]. The principles of sovereign equality and non-discrimination can build a solid foundation for transnational cooperation and international consensus [8]. The principle of universal jurisdiction facilitates the prosecution, within a State's jurisdiction, of transnational crimes of dissemination of pornography committed by any person outside its jurisdiction [8]. The principle of mutual judicial recognition likewise facilitates transnational pursuits and communication [8]. Finally, the principle of international human rights, as the most core principle, should not be missed. In addition to principles, many details in international criminal law regulations are also instructive. For example, a cooperative mechanism for sharing intelligence and coordinating actions in the cyber world to improve the efficiency of crime fighting can play a powerful role in control. Some regulations emphasizing border control can inspire the international community to take similar measures to prevent the cross-border flow of Internet pornography through traffic control, IP blocking, and other means. These contents are undoubtedly of great value for reference.

Due to the lack of an integrated international control system, when formulating and implementing domestic laws, countries usually take corresponding measures to manage and combat the transnational dissemination of pornography following domestic laws, ethical standards, and social needs. These different legal standards can not only clarify the dilemma of the lack of international law norms and cooperation in the cross-border control of pornographic products, but also are interlinked with many principles of international criminal law, which can provide useful guidance

and inspiration for international law system to control the transnational dissemination of pornographic products.

China's approach to pornography is far more stringent and encompassing, driven by the government's prioritization of social harmony, morality, and the control of information. The Cybersecurity Law of the PRC and the Criminal Law of the PRC, articles 345-347 [10], collectively impose strict penalties for the dissemination of pornographic materials, reflecting a broad prohibition against such content. China's regulatory strategies extend to media control and Internet censorship, effectively limiting public access to pornography. Despite informative regulations, Chinese law on pornography remains confined to the domestic sphere, with a small amount of cross-border dissemination, such as in the case of the crime of smuggling obscene materials, which regulates the carrying of pornography in and out of the country's customs [10]. The main means of dealing with the transnational dissemination of pornography is still independent public security and customs tracking.

The United States has also introduced a series of laws to regulate the distribution of pornography for the domestic rather than the international sphere, including 18 U.S. Code § 1460, which criminalizes the possession with intent to sell of obscene matters on the federal property, and some provisions prohibiting pornography in the Communications Decency Act (CDA) [11,12]. It is important to mention that America's regulation of pornographic content is intricately tied to the First Amendment, which protects freedom of speech and expression [13]. The principle of protecting freedom of speech and expression to some extent limits the strict prohibition of pornography, which has caused much controversy. This is also a topic that cannot be sidetracked in the international law regulation of the transnational dissemination of pornography, which will be discussed later.

Different from China and the United States, the European Union, as a supranational regional international organization, is more transnational and cooperative in supervision. The EU regulatory framework covers the laws and regulations of the EU member states, and on this basis develops uniform laws, directives, and regulations applicable throughout the EU. Typical rules are Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and Directive 2010/13/EU on obscene content in audiovisual media services [14]. These directives have established a set of directly applicable legal frameworks and consistent regulatory standards, which have extremely high reference significance. The European Union is the most obvious example of international law regulating the cross-border dissemination of pornography. However, the achievements the EU has created are mainly based on similar legal and cultural traditions, meaning that the situation may be completely different when it is expanded to a global scale, regardless of geographical limitations. In addition, factors such as poor implementation by EU member states and digital technology challenges must also be taken into account.

3. The Responsibility of International Law Control

Pending the formal indication of the direction and measures of international law to effectively control the transnational dissemination of pornography, the regulatory responsibilities and obligations of international law must first be clarified. This reflects the high value of international law as a legal rule regulating relations between sovereign states and other entities with international personalities and the necessity of combating the international dissemination of pornography.

In the context of this article, international law mainly refers to public international law, which is the law formulated and implemented between countries (or regions) as the subject of international legal relations. Certainly, some specific crimes and disputes related to the transnational dissemination of pornography will also involve some content of international private law and conflict of laws, dealing with the differences between the domestic laws of different countries. As far as macro-control is concerned, however, public international law remains the main subject of discussion.

There is a long-standing academic debate about whether international law is law. Owing to the differences in the comprehensive national power and international status of states, the limitations of

the principle of sovereignty, as well as different legal and cultural traditions, international law often lacks coercive power and enforcement, tending to manifest itself in a consultative and cooperative nature rather than in unilateral commands and coercion. This does not meet the strict definition of law in jurisprudence, leading to many scholars stripping its legal status [15].

Despite many disputes, the legal status and function of international law cannot be easily denied. Just as the United States Supreme Court once said that international law is part of American law, in the interdependent world, the spirit of cooperation and the rule of law emphasized in international law gives its legal character and value, maintaining it an indispensable legal system and normative standard for the international community. Shared values and interests cannot be ignored, contributing to the reduction of international frictions and ensuring a country's ability to invoke international rules that serve its own purposes [16]. For the greater good of all mankind, international law should be regarded as law in a broader sense and should be given priority.

Based on the above arguments, international law should take the lead in the fight against the international proliferation of pornography. Not only the harm to people's physical and mental health arising from digital pornography, but also the destruction of international security and harmony caused by the transnational illegal transmission has caused a threat to the common interests of all mankind. For the pursuit of international peace and development, international law with universal applicability has an inescapable responsibility and obligation to be the first to be adopted to effectively curb and control the transnational dissemination of pornography.

It is high time to come up with ideas for international law regulating the transnational dissemination of pornography in today's digital age.

4. Beneficial Directions and Strategies for International Law Regulating Transnational Dissemination of Pornography

4.1. International Convention and Agreement Legislation

In view of the main forms of international law, the primary strategic direction is to enrich and improve the system of various international conventions and agreements, that is, international legislation.

International conventions and agreements are the legal basis for transnational bilateral and multilateral cooperation, as well as the minimum standards and obligation requirements for the construction of international criminal judicial assistance and cooperation. Therefore, to carry out transnational cooperation on the basis of relevant international conventions and agreements universally signed by all countries is not only the fulfillment of international law obligations, but also the path to consolidate the protection of countries from Internet pornography crimes under relatively uniform global standards. The signing of international conventions and agreements may cover specific areas of application, the allocation of responsibilities of states on the basis of the principle of proportionality, trial and extradition procedures, etc., all having positive implications for combating cross-border sexual crimes

The new situation of digital dissemination of information and the proliferation of online pornography requires international conventions and agreements to keep pace with The Times, effectively add new provisions such as information protection, and take technical means and data analysis into consideration, overcoming the challenge of transnational dissemination of pornography in the digital age. The re-establishment of a more participatory and improved Convention on Cybercrime within the UN system is a useful proposal [17]. In addition, attention needs to be paid to the efficient application of conventions and agreements. For example, some cases of Internet pornography transmission crimes involving servers abroad cannot fully apply national laws, so it is necessary for countries to actively seek the greatest common divisor under the overall framework of international conventions and agreements, and then carry out equal communication and consultation in the same discourse system to clarify international law obligations [5].

4.2. Actually Strengthening Transnational Cooperation

Only written international conventions and agreements are far from enough, the actual implementation of transnational cooperation needs to focus on strengthening.

The establishment of a digital national cooperation platform is an effective means to strengthen mutual cooperation. Such a platform could take the form of international conferences, working groups, cyber security forums, etc., to promote cooperation between governments, international organizations, civil society, and Internet companies with the aim of jointly addressing the transnational dissemination of pornography.

Information sharing is of great significance in the Internet age. States can work together to combat the production, distribution, and sale of pornography by establishing joint international investigation organizations. National law enforcement agencies can use the information-sharing platform to share intelligence, cooperate in investigations, and carry out joint operations through digital forms to strengthen the fight against the transnational dissemination of pornography.

The development of international industry standards and self-regulatory norms is also a unique strategy for international cooperation. The international community can formulate international industry standards and self-regulatory norms related to the Internet, digital media, and other fields to regulate the behavior of Internet companies and digital content providers. These standards and specifications can include content moderation, user authentication, data encryption, objectionable content filtering, etc., to reduce the dissemination of pornography on the Internet.

Finally, some advanced technical means of transnational cooperation need to be taken into account. Countries can be encouraged to use technological means such as artificial intelligence and big data analysis to identify and filter pornography. It is also possible to jointly improve the regulatory capacity of transnational dissemination of pornography by cooperating in researching technology and sharing data resources.

4.3. Strengthening Support for International Tribunals and Adjudicatory Bodies

International tribunals and adjudicatory bodies, such as the International Criminal Court (ICC) and the International Court of Justice (ICJ), are judicial bodies responsible for dealing with international legal disputes and violations of international law. Their rulings are authoritative and can provide legal interpretation and guidance to the international community. They are also an integral part of the system of international law.

These international judicial bodies also fully deal with cases related to the transnational dissemination of pornography. For example, for the illegal production, dissemination, and sale of pornography, the persons or organizations involved can be referred to the International Criminal Court for trial in order to realize the prosecution and punishment of transnational crimes. International tribunals and adjudicatory bodies can strengthen the crackdown and restriction on the transnational dissemination of pornography by hearing cases, making rulings, and issuing judgments. The application of such judicial means can not only punish criminal acts, but also emphasize the authority and effectiveness of international law, and enhance the attention and concern of the international community on the transnational dissemination of pornography.

The role of international tribunals and adjudicatory bodies is not limited to hearing cases, but also to providing international legal assistance. When dealing with cases of transnational transmission of pornography, it may involve the jurisdiction and law enforcement cooperation of multiple countries, and it is necessary to cooperate through international judicial assistance mechanisms such as information exchange, evidence transfer, and extradition, so as to combat and punish criminal acts.

In the digital age, international tribunals and adjudicatory bodies will also face challenges including jurisdictional limitations, the difficulty of online judicial cooperation, and the difficulty of hearing digital evidence. In order to address these challenges, there is a need to improve mutual legal assistance procedures and the use of technological means, in accordance with the characteristics of

digital information dissemination, to ensure that international tribunals and adjudicatory bodies can effectively respond to the transnational dissemination of pornography.

4.4. Narrowing the Cyber Security Digital Divide among Countries

A significant reason for the lack and fragmentation of international law in the field of regulating the transnational dissemination of pornography is the cyber security digital divide between developing and developed countries. At present, a series of international conventions against cybercrime are often based on the interests of Western countries and do not have the true openness and broad representation of global conventions. This is especially true in the digital age when the gap in network technology is huge. The conviction mechanism at the entity level is not clear, the guarantee mechanism at the procedural level is unreasonable, and the implementation situation at the executive level is not optimistic [18].

To narrow the cyber security digital divide between developing countries and developed countries, it is required to integrate the value concept of "diversity and inclusiveness" into the norms of the new convention on cybercrime, provide information technology support, network interoperability, and resource tilt for developing countries, and ease the tension between different countries and regions in combating the transnational dissemination of pornography. Further, with the help of the elimination of the digital divide, it is required to insist on using the United Nations as a concluding platform to promote the formulation of a new convention on more equality and the conclusion of international legal documents on cyber crimes, to pay more attention to the weak position of developing countries in the construction of substantive rules and procedural rules, and finally eliminating the legal differences and control difficulties of various countries to a certain extent [18].

4.5. Concerns about Freedom of Speech and Expression

When it comes to regulating pornography, freedom of speech and expression can become a vague, complex, and difficult topic to discuss. Censorship certainly violates absolute freedom of speech and expression. But it is necessary as we define freedom as the freedom to do whatever one wants while not violating other's rights and wills. So the question is where the boundary should be. This is also a question to be considered at the boundaries of the international law system.

There is a view that the exchange of pornography on the Internet platform may be entirely out of the will of the two parties, and it should not be restricted under the principle of autonomy, because they do not violate anyone's rights and wishes. This may make sense for the legal sex industry in some countries. But on a global scale, the interests of all vulnerable groups and the well-being of all mankind should be promoted and protected. Although some pornography is mild and meets the criteria for transmissibility in one country, it should be subject to strict scrutiny and reasonable control under international law, taking into account the fact that the rest of the world may not yet be able to accept this scale, any suggestion of sexual violence, and the suffering of vulnerable people who are being sexually exploited. International law should stand by the position of a wider range of people around the world, consider the feasibility of measures and the degree of differences in regulation by different countries to comprehensively weigh the advantages and disadvantages between the control of pornography and freedom of speech and expression, always maximizing the interests of mankind.

This undoubtedly requires international law to explore a set of rigorous and effective evaluation and review standards in concrete practice to balance the interests of all parties and promote the proper control of the transnational dissemination of pornography. Guided in the right direction, it is clear that international law regulation still has a long way to go.

5. Conclusion

In the above discussion of freedom of speech and expression, the pursuit of values and ideals at the core of international law have been most fully demonstrated, namely, the well-being of the whole world and mankind. This is also the noble goal and conceptual guidance of international law on the

control of transnational dissemination of pornography. The international proliferation of pornography in the digital age has indeed caused great obstacles and subverted the original mechanisms of international law because of the elusive nature of digital information. It is also an indisputable fact that the existing international law system is highly fragmented and the regulations of various countries are fighting for themselves. However, it is firmly believed that at the time when international law has stepped forward, assumed the major responsibility to curb and control the transnational dissemination of pornography, and followed the right directions of international convention and agreement legislation, strengthening transnational cooperation and support for international tribunals and adjudicatory bodies, as well as the keeping narrowing of the cyber security digital divide among countries, the transnational dissemination of pornography will eventually be effectively regulated and eliminated, not only maintaining the human dignity but also realizing the interest of the international community and all mankind.

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