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The Legal Aspect of Digitalization of Privacy of Children Online

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Abstract

The Digital world provides myriads of opportunities for people all over the world, and it is a great place for mothers to catch up and connect with their family, friends and loved ones. It has provided communities for many parents who find themselves grappling with motherhood challenges and has become an important platform for assistance and growth. However, sharing information about the child has ethical and legal consequences. This study examined the impact of digitalization on the young child and the legal consequences of the exposure. The study adopted a doctrinal approach using both primary and secondary sources of information. The study found out that most states lack comprehensive protection for children online and that the few protections in place did not take cognizance of the fact that parents do expose their children to dangers online despite the fact that that was not the intention of the parents involved. The study also recommended that new laws must be put in place to give children more protection from their parent's actions online. The study concluded by recommending that sensitization must be done for parents on the legal implications of what they share online about their children.

Keywords: Child's privacy, Data privacy, Digitalisation, Regulation, Sharenting

Introduction

Posting and sharing pictures and videos about children on social media is not new¹. Parents and carers use the internet as a medium to connect with family and friends and share important parts of their lives with them. In addition, new parents are in constant search for communal support and affirmations from other parents, and the internet affords them this opportunity. The internet is a world on its own², made up of smaller communities and groups as found in the real world. It is a melting point for people to connect, especially people with similar shared life experiences. Social media use is common among younger parents: world of tags, likes and shares, a world filled with laughter, joy, pains, tears and love, a world of validation and sometimes attacks just like the real world. According to Steinberg, “Parents...use technology and social media not only to share information about their own lives, but also to discuss their children’s lives”.³

Children are exposed to lots of dangers on social media from strangers and third parties. That had formed the basis of many discussions about online use, but little attention is given to exposure from the parents themselves. Many parents share information about their children without considering the implications at all.⁴ Parents are generally regarded as guardians of their children and must not be demonised. They have an interest in protecting their kids and will do nothing to harm them. Yet, they sometimes expose their children to risk online just by sharing or posting details online and “there is no ‘opt-out’ link for children and split-second decisions made by their parents will result in indelible digital footprints”.⁵

What is Sharenting

Sharenting entails posting of important information about children by parents and carers; this is mostly done innocently without any malicious intent. These images are sometimes shared before

¹ Shira Ovide, ‘The Dos and Don’ts of Posting Photos of Your Kids on Social Media’ (The Washington Post, 16 June 2023)<https://www.washingtonpost.com/technology/2023/06/16/parents-posting-kids-social-media/> accessed 12/12/2023.

² Zaryn Dentzel, ‘How the Internet Has Changed Everyday Life’ (Open Mind BBVA, 21 March 2014) <https://www.bbvaopenmind.com/en/articles/internet-changed-everyday-life/> accessed 12/12/2023/

³ S. B. Steinberg, ‘Sharenting: Children’s Privacy in the Age of Social Media, 66 Emory L. J 839 (2017) <<https://scholarlycommons.law.emory.edu/elj/vol66/iss4/2>> at 841

⁴ Josh Burgoyne, ‘Parents Posting: The Effects of Social Media on Children’ (Troomi, 24 October 2022) <https://troomi.com/parents-posting-the-effects-of-social-media-on-children/> accessed 12/12/2023

⁵ Ibid, see also *Your Digital Footprint Matters*, INTERNET SOC’Y <<http://www.internetsociety.org/your-digital-footprint-matters>> cited by Steinberg, 844.

the children are even born⁶, and the children are sometimes powerless to do anything about the digital footprints left for them by their parents⁷. Sharenting is a situation in which adults who are supposed to be the custodians of the children are the perpetrators or transmitters of children's privacy on social media. This will include information put into devices such as tracking tools and toys.⁸ According to Leah Plunkett, "Sharenting is a term that is gaining traction in the popular lexicon. A portmanteau of 'parenting' and 'sharing', the term typically refers to what parents post about their children on social media⁹". The Author further explained that,

Fully understood, 'sharenting' refers to all the ways in which parents, grandparents, educators, and other trusted adults engage in any and all digital activities with private information about the children in their homes or otherwise in their care. While social media may be the most visible of these activities, there are countless others. From 'smart diapers' and sensor-enabled baby booties to giving a toddler smart toy, having an Alexa at grandma's house, teaching elementary schoolers to read with an app, monitoring a tween or teen's whereabouts using a surveillance app and beyond, 'sharenting' is the default setting of today's adults¹⁰.

According to Cordeiro,

Due to the widespread accessibility of technology and internet access, the average child has a digital footprint before their first birthday, typically in the form of an ultrasound image or birth announcement photo. This information is not restricted to images, with birthdays, names, geographical locations and schools all susceptible to data brokers who very often sell personal information to advertisers.¹¹

Adults engage in seemingly innocent activities online without considering the risks and dangers posed by such activities in relation to their kids, not with malicious intent but sometimes carelessly¹². These adults' behaviour is further aided by tech companies that sell the idea that

⁶ Stephanie Sokol, 'The Problems and Danger of Posting Kids on Social Media' (Family Education, 15 December 2022) <https://www.familyeducatio.com/kids/safety/online/the-problems-and-danger-of-posting-kids-on-social-media> accessed 12/12/2023

⁷ V. C. Cordeiro, 'Children's Rights and Digital Technologies: Children's Privacy in the Age of Social Media- The Perils of "Sharenting"' (26 January, 2021) <https://www.humanium.org/en/childens-rights-and-digital-technologies-children-privacy-in-the-age-of-social-media-the-perils-of-sharenting/> accessed 7th July 7, 2023.

⁸ *Ibid.*

⁹ L. A. Plunkett, 'To Stop Sharenting & Other Children's Privacy Harms, Start Playing: A Blueprint for a New Protecting the Private Lives of Adolescents and Youth (PPLAY) Act (2020).

¹⁰ *Ibid*

¹¹ Cordeiro, supra n 7.

¹² *Ibid.*

more electronic devices are necessary for daily living. The devices intrude into lives, collect important data and profile it without users being aware of the data harvesting.¹³

For example, they do not come equipped with a cigarette-style warning label or nutrition-style information label, nothing that either shrieks a reminder that these devices are transmitting information outside of our immediate surroundings (warning label) or unpacks in a digestible way what that information is, where it is going, and why it is going there (information label). Thus, we may overlook or fail to properly understand the connectivity inherent in the device, even as we rely on that connective functionality to make the device or service useful to us. Even if we are mindful of the connectivity aspect, we are almost uniformly un-informed or under-informed of the scope, severity, and duration of the private information collection, aggregation, analysis, re-sharing and action upon because here are no, reliable accessible means for us to inform ourselves.¹⁴

Sharenting goes beyond just what parents post alone and includes the access that users give of themselves to online platforms through the devices being utilised without being informed about how such information is being harvested. Parents give children digital devices not knowing that they are being profiled and being digitalised. Children are conceived with the aid of digital apps which follow them throughout life. For those in less privileged societies like Nigeria, mothers announce they are pregnant online and later announce the birth of the child(ren), and lots of information is out there about the child. The information will remain online forever and will pop up wherever a search is made about the child.

Social media is a platform for parents to connect and share updates with their friends and loved ones¹⁵. It is both interesting and liberating to share with others as one gets feedback that justifies the decision to share. The significant thing is that the internet never forgets, once an information is out there, it stays there long after the intention has waned off, which may come back to haunt the target of the information - the child years later.

¹³ Chavie Lieber, 'Big Tech Has Your Kid's Data – And You Probably Gave It to Them' (Vox, 5 December 2018) <https://www.vox.com/the-goods/2018/12/5/18128066/children-data-surveillance-amazon-facebook-google-apple> accessed 12/12/2023

¹⁴ Ibid, 461

¹⁵ Steinberg, supra 3 at 846.

Peculiarity of Sharenting

Revolution in digital space has impacted every strata of society, economically and in the area of communication. A great impact has, however, been seen on the family system¹⁶. Social media platforms have provided avenues for getting information across quickly and have gradually removed the barrier between private and public life over time¹⁷.

While sharing milestones between friends and family is not new and has been for ages, digitisation has only made sharing easier and more convenient¹⁸. Former barriers that used to characterise traditional media space are mostly absent in social media space¹⁹ even with the private setting features on social media platforms, and

With the absence of traditional gatekeeping functions on social media, there are factually no limits on the publication of data, notwithstanding legal constraints, for example, child pornography or violence. But as is known, the abundance of hate speech, cyber mobbing, and fake and manipulated information on the internet has proven that the digital public is hardly controllable and open for good use sensu freedom of expression as well as abusive and perturbing practices.²⁰

Parents share information without considering the legal and security risks - many are ignorant of the fact that pictures posted on a site could be modified and reposted to other sites²¹. The peculiarity of sharenting is the fact that children cannot give consent before their pictures are sent to social media.²² Many children have hundreds of images online even before the age of 13 years²³ when they can legally start using social media.²⁴ Digital revolution has changed the way

¹⁶ Ellen Wartella and Nancy Jennings, 'New Members of the Family: The Digital Revolution in the Home' (2001) *The Journal of Family Communications* 1(1) 59-69.

¹⁷ C. Thimm, 'Mediatized Families: Digital Parenting on Social Media' (Springer Link, 02 March, 2023) https://link.springer.com/chapter/10.1007/978-3-658-39664-0_2 accessed 7th July 2023.

¹⁸ Editorial Team, 'The Advantages and Disadvantages of Digitalisation' (Start Smarter) <https://startsmarter.co.uk/the-advantages-and-disadvantages-of-digitilisation/> accessed 12/12/2023

¹⁹ Joan Aimuengheuwa, 'Social Media vs. Traditional Media; Scaling Through Modern Information Space' (Techeconomy 30 October 2023) <https://techeconomy.ng/social-media-vs-traditional-media-scaling-through-modern-information-space/> accessed 12/12/2023

²⁰ Thimm, supra n 24.

²¹ Lucy Battersby, 'Millions of Social Media Photos Found on Child Exploitation Sharing Sites' (The Sydney Morning Herald, 30 September 2015) <https://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html> accessed 12/12/2023

²² *Ibid*

²³ UK Children's Commissioner Data 2008.

²⁴ S. Khatsenkova, 'In France, You May Have to Think Twice Before Sharing Images or Videos of Your Child Online. The Governments Wants to Penalise the Practice' (EuroNews.Next, 10/03/2023)

information is dispatched and collected. Parents are now digital savvy. However, sharenting is not limited to only the parents but any adult in charge of minors, which can include family members, caregivers, teachers and social workers.²⁵ Important and personal details about the child, such as time, place of birth, gender, parent's details, eye colour, hair colour, nationality are put out there online.²⁶

Digital kidnapping is one of the perils of sharenting, a situation in which details about a child is stolen by unknown social media users (mostly complete strangers) and reposted as their own children²⁷. Children are also susceptible to digital fraud; information is harvested by fraudsters who use them in a bad way and hamper the financial future of the children. The most alarming aspect is when details about children are gathered and sold online on the dark web, including pornography sites²⁸.

Children's Right to Privacy

The number of information placed online by parents, family and caregivers can become overwhelming for children later in life, having serious implications which may include psychological breakdown for the children²⁹. Many of the pictures posted by the parents may end up causing embarrassments to the children later in life and predispose them to cyberbullying³⁰. The greater implication may be in terms of their profession. An innocent picture of a child during bath time, naked baby pictures or potty-training session may end up haunting the child if it was discovered by cyberbullies or malicious colleagues at work. It was noted by Khong that: moreover, the act of sharenting may also build a virtual self-representation that leads to the narcissistic self of the children from a young age. The perils of putting "proud" parents and "innocent" children in the "virtual showcase" may lead to emotional harm. The implication of childhood as a spectacle in a toxic environment to the children's psychology is still speculated. It

<https://www.euronews.com/next/2023/10/sharenting-why-is-france-trying-to-stop-parents-from-oversharing-their-childrens-images-on> accessed 7th July 2023.

²⁵ Y. Khong, 'Sharenting: How to Protect Children's Data Privacy in the Age of Social Media' (April 18, 2020, Center for Digital Society) <https://cfds.fisipol.ugm.ac.id/2020/04/18/sharentinghowto-protect-childrens-data-privacy-in-the-age-of-social-media/> accessed 7th July 7, 2023.

²⁶ *Ibid.*

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ *Ibid*

needs further research, but most likely children are vulnerable as adults in receiving peer pressure, cyberbullying, and body insecurity since early childhood.³¹

The security of the children may become jeopardized by sharenting when real information about the children, such as their school, holiday time, and other critical details are carelessly shared online by parents.³² There have been instances of pedophiles downloading children's pictures from the parent's feed and reconvert them for use on pornography sites sometimes without the parents being aware of these activities.³³ LaFrance reported that "This mother warns other parents not to post pictures of children in any state of undress, to use Google's search features to find any images shared online, and to reconsider their interest in mommy blogging".³⁴

Photos or media can become viral and can elicit different reactions from the general public, either good or bad. In some of the viral media, children are involved and may not be spared the backlash to the media even though they may not have any or much say about the situation. In the end, it appears unfair that they have to be subjected to unfair attacks and digital footprints for what they know nothing about³⁵. Social media platforms, for example, Instagram offers short storytelling features that allow users to tell their own stories with pictures and videos. With more and more data becoming available in the digital world. It raises concerns, especially about children, "children need to be understood as 'datafied citizens' and critical questions about the relationship between the datafication of children, algorithmic inaccuracies, and data justice must be made".³⁶

Another danger raised is that the children who are exposed to social media at an small age may become attached to social media themselves and find it difficult to have normal lives, sometimes

³¹ *Ibid*

³² A. LaFrance, 'The Perils Of Sharenting' (The Atlantic, October 6, 2016) <https://www.theatlantic.com/technology/archive/2016/10/babies-everwhere/502757/> accessed 7th July 7, 2023.

³³ R. Wortley and S. Smallbone, 'Child Pornography on the Internet' (2012) Problem-Oriented Guides for Police Problem-Specific Guides Series, No. 41.

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ Thimm, *supra* n; V. Barasi, 'The Child as Datafied Citizen. Critical Questions on Data Justice in Family Life' in M. Giovanni et al., (eds): Digital Parenting. The Challenges for Families in the Digital Age (2018) Goteborg 169-177.

they end up becoming micro-influencers themselves.³⁷ They ultimately find it difficult to detach from the virtual world, which can damage their mental health.³⁸

As children grow and begin to view some of the things posted about them by their parents, feelings may and do change about online data, depending on the personality of the child and how much he or she uses social media and value his or her privacy.³⁹ While some children may view the data in a positive way, especially if they utilise social media themselves, some may not be too disposed to and feel that their consent was not sought before the posting was done. For adolescents, the subject of boundary is germane.⁴⁰ The risks to children can include the following.

I. Sexual Exploitation

The fact that lots of information about a child is put out by the parents predisposes the child to sexual predators, who can target and groom him/her for sexual exploitation. It is important to note that once a picture, video or other data is uploaded about the child, a parent may not be able to control what happens after the upload⁴¹. Such pictures can be shared and re-shared on other platforms beyond the control of the caregivers, with sexual predators always lurking around the virtual world to harvest images and use them for sexual gratification⁴². Sadly, many of the images were taken from ordinary social media sites and reused on porn sites.⁴³ Many children will have a

³⁷ Digital Wellness Club, 'Sharenting: Understanding the Impact on Our Children's Privacy and Well-Being' (29th March, 2023) <https://digitalwellnesslab.org/articles/sharenting-understanding-the-impact-on-our-childrens-privacy-and-well-being/> accessed 7th July, 2023.

³⁸ M. A. Moreno and J. Radesky, 'Social Media & Your Child's Mental Health: What the Research Says' (American Academy of Pediatrics) <https://www.healthychildren.org/English/family-life/Media/Pages/Social-media-and-your-childrens-mental-health-what-research-says.aspx> accessed 12/12/2023

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ Rosie Hopegood, 'The Perils of 'Sharenting': The Parents Who Share Too Much' (Aljazeera, 11 October 2020) <https://www.aljazeera.com/feature/2020/10/11/facing-the-music-the-parents-who-share-too-much> accessed 14/11/2020

⁴² M. Barnes and L. Anderson, 'Should you Share Pictures of Your Kids Online?' (Innocent Lives Foundation, 4 April, 2022) <https://www.innocentlivesfoundation.org/should-you-share-pictures-of-your-kids-online/> accessed 12/12/2023

⁴³ Emma Loffhagen, 'I Wanted to Throw Up': The Dark Side of Posting Pictures of Your Children Online' (The Standard, 17 March 2023) <https://www.standard.co.uk/lifestyle/parents-posting-pictures-children-sharenting-social-media-online-law-b1066966.html> accessed 14/11/2023

digital-footprints left for them by their parents and others, which they will have to live with the consequence of this.⁴⁴

II. Emotional Damage

Some of the images shared online can result in emotional damage to the child. This is because the child may not find the same humour in the picture or video years posted by the parents down the line. Not many people enjoy being at the center of a public joke. The embarrassment can lead to resentment and family infractions. A teenager already suffering from emotional hurt may become angrier at the images displayed by the parents, especially where such are considered deeply embarrassing.⁴⁵ The way children view and relate with their parents and caregivers may become permanently damaged when children realize that they are being pawned for profits and likes. Oversharing about a child could cause self-esteem problems for young people due to the immense pressure of always being the focus of likes and dislikes from strangers, a desire to always be picture perfect which is actually unattainable.⁴⁶

III. Digital Kidnapping

Parents have experienced instances in which a child's images were used by people whose beliefs and ideologies clash with the sharing parents.⁴⁷ Online photos and viral posts are taken beyond the reach of parents and used on other sites. This may predispose the child to online fraud because important details about the child are readily available to interested companies as well as digital fraudsters.

Parental Rights to Freedom of Expression

While it is important to protect children's privacy online, parents also have a right to freedom of expression, which they can choose to use online by posting updates. However, a balance must be maintained between the two interests. Most parents are very wary and suspicious of strangers in real life and would likely react when a stranger approaches a child in public places. Yet the same parents have no problem sharing important and intimate data about their children online with

⁴⁴ Kapersky, 'Sharenting: What Parents Should Consider Before Posting Their Children's Photos Online' (Kapersky.Com) <https://www.kaspersky.com/resource-center/threats/children-photos-and-online-safety> accessed 12/12/2023

⁴⁵ *Ibid*

⁴⁶ Fact Sheet, 'Manage Your Sharenting' (March 2020) Commissioner for Children and Young People

⁴⁷ Hopegood, *supra* n 40.

complete strangers.⁴⁸ This may be due to the luring evasiveness of social media, where the faces of people are not usually seen. It entails a level of trust in a way because parents trust the friends and family they are sharing the data with and innocently assume that those people who will further access the data are to be trusted.⁴⁹ Parents have the responsibility of keeping their children and wards safe online, just as in physical life. Even on the so-called secure sites such as Facebook and Instagram, it is important to be aware of lurking risks and dangers whilst ensuring that risks are not posed to the children by parent's own actions.⁵⁰ Activating private settings features in most apps is not just enough protection; rather, can lure most users to relax. Discretion in sharing is very important.

There is a need to stress the point that most parents are not malicious and would not deliberately put their children in danger, and social media is a great way to get the necessary support systems in child training.⁵¹ In fact, the virtual world offers many parent communities where parents can share their fears and feelings with other parents who might be in the same situation as them or a place to get parenting advice from the community of other parents.

Parents express themselves through their kids, and expressions sometimes come in the form of religious beliefs, sports affiliations, belief systems, taste in foods, and cultural and political leanings. Many of these activities involve children and are posted online permanently, which could, in future, hinder the children's self-actualisation.⁵² Conflicts happen between what parents desire for the child and what the child wants in relation to the above. Shulman observed that "it might be only natural for parents to want a child to embrace their values and to believe their beliefs...but the expressive liberty of parents becomes despotic when the child is given no real opportunity to embrace other values and to believe other beliefs".⁵³

⁴⁸ Samuel Gilzean, '6 Reasons You Shouldn't Post Photos of Your Kids Online' (Express VPN, 09/ 01/ 2023) <https://expressvpn.com/blog/6-reasons-you-shouldn't-post-photos-of-your-kids-online/> accessed 12/12/2023

⁴⁹ *Ibid*

⁵⁰ Hopegood, supra n 47.

⁵¹ T. C. Stott et al, 'Social Media and Child Welfare: Training, and the Risks and Benefits from the Administrator's Perspective' (2016) *Advances in Social Work*, Vol 17 (2) 221.

⁵² Hopegood, supra n 47.

⁵³ *Ibid*

Social media has created new challenges to parenting; readiness, availability of smartphones and the internet are behind these new challenges. It also changed parent-child dynamics⁵⁴ in a gradual process through "... a continuous process of media adaptation, media usage, and the constant flow of new technology".⁵⁵ It is believed to be a social change aided by the media. Frequent hours of exposure to the internet coupled with high-stress levels can cause parents to share information on social platforms without considering the consequences of their actions. It must be stressed that most of the data shared are not on the basis of malice. In fact, in most circumstances, the intent of sharing is to share their pride in their children's accomplishments with friends and family.⁵⁶

Parents lose control of images as soon as it is posted,⁵⁷ even if they tried to delete such, someone else could have downloaded them and uploaded them on another sharing platform.⁵⁸ In addition, data collected from babies' home gadgets can get into the wrong hands and become manipulated.⁵⁹ It is essential for parents and carers to be mindful of these risks. Posting innocent pictures of children online has both legal and ethical implications that will be addressed below.

Legal Issues Surrounding Sharenting

I Protection of Children's Image

Posting images of children though intended to be a harmless share between family and friends can end up becoming legal nuisance to the child if the images end up in wrong sites.⁶⁰ Children are becoming addicted to devices, with some exhibiting serious withdrawal symptoms when the devices are taken from them.⁶¹ The relationship between the parent and children may become

⁵⁴ Thimm, *supra n*,

⁵⁵ *Ibid*.

⁵⁶ S. Bastemur and M. A. Kursuncu, 'Sharenting: Why Parents Share Their Children's Photos on Social Media?' (2012) ODUSOBIAD 12 (3)

⁵⁷ Anna Brosch, 'When the Child is Born into the Internet: Sharenting as a Growing Trend Among Parents on Facebook' (2016) *The New Educational Review*, 226-235

⁵⁸ See generally N. R. Putri, 'Construction of 'Sharenting' Reality for Mothers Who Share Children's Photos and Videos on Instagram' (2021) *ASSEHR* vol. 558.

⁵⁹ M. J. Amon et al, 'Sharenting and Children's Privacy in the United States: Parenting Style, Practices, and Perspectives on Sharing Young Children's Photos on Social Media' (2022) in *Proceedings of the 25th ACM Conference on Computer-Supported Cooperative Work and Social Computing*, Vol. 6, Article # 116.

⁶⁰ *Ibid*

⁶¹ A. Kamenetz, 'The Problem with Sharenting' (the New York times, 5th June 2019) <https://nytimes.com/2019/06/05/opinion/children-internet-privacy.html> accessed 7th July, 2023.

hampered by revealing too many details about children, as observed, “Sharing sensitive information, particularly if it’s something the child considers embarrassing or private like details about their health or performance at school, could compromise the child’s trust in their parent”⁶².

An individual can become legally liable for things done online in a case of identity theft, where fraudsters steal the person’s data online and use it for crimes.⁶³ With employers and colleagues checking the social media history of workers now in the workplace, a person will become the butt of jokes in the workplace due to their digital footprints. While social media offers parents a system of support and an avenue of keeping in touch with loved ones and or a source of income, the well-being of the children must not be compromised.

II Confidentiality of Personal Data

Companies, websites, and predators collect information about children over a course of time and use the data to profile the children and for other sinister and heinous purposes depending on who has the data⁶⁴. Identifiable information about the child available virtually will compromise the safety of the child and predispose the child to marketing attacks as well as attacks from sexual predators⁶⁵. Melilo noted the following:

While companies can use the data “to create psychological or behavioral profiles about what that child might want to purchase or their interests,” pedophiles, kidnappers, and human traffickers can also easily access the information, especially when it is not shared with a private, small group of individuals over an encrypted service. The latter relationships, or parasocial relationships — where a media user engages with a media persona — underscore the tangible dangers of posting children online.⁶⁶

⁶² C. Vinney, ‘The Impact of “Sharenting”, How Much Info is Too Much?’ (Very Well Mind, 01 November, 2022) <https://www.verywellmind.com/the-impact-of-sharenting-6361714> accessed 8th July, 2023.

⁶³ Kamil Kopecky et al, ‘The Phenomenon of Sharenting and Its Risks in the Online Environment. Experiences from Czech Republic and Spain’ (2020) <https://www.sciencedirect.com/science/article/abs/pii/S0190740919309715> accessed 13/12/2023.

⁶⁴ G. Melilo, ‘Why “Sharenting” is Sparking Real Fears About Children’s Privacy’ (The Hill, September 16, 2022) <https://thehill.com/changing-america/enrichment/arts-culture/3644577-why-sharenting-is-sparking-real-fears-about-childrens-privacy/> accessed 8th July, 2023.

⁶⁵ *Ibid*

⁶⁶ *Ibid*

Parents and caregivers are most often oblivious to the permanence and loss of control over data shared online. Most data, once shared, becomes irretrievable, even in situations where the law allows that data to be deleted;⁶⁷ it might be difficult to delete or retrieve from all the other social platforms where the data had been further shared.⁶⁸

III Digital Security

Breach of data leads to dire consequences for children as they do not know most of the people who have their data because many of them are complete strangers. There have been cases of children freaking out because their names were called in public by complete strangers who feel connected to them, having seen them in the virtual world.⁶⁹ Sharenting leaves digital footprints for children, which might conflict with who they are; online websites sometimes use different means to get parents or children to share important information that is then collected and used further for profiling and marketing purposes.⁷⁰

Data obtained from educational devices can be further passed on to third parties without the consent of the parties involved.⁷¹ Sharenting may expose a child to cyberbullying,⁷² cyberstalking⁷³ and rejection from his or her peers⁷⁴. It is possible for a hacker to get hold of the parent's social security number as well as other personal details of the child and use the same to obtain credits fraudulently.⁷⁵ Thus, the action of the parents in sharing can lead to credit score problems for the child in the future.

⁶⁷ What is the Right to be Forgotten? (Cloudfare) <https://www.cloudflare.com/learning/privacy/right-to-be-forgotten/> accessed 13/12/2023

⁶⁸ Stakeholder Guide, 'The Rights of Children and Young People on Digital Platforms' The Swedish Authority for Privacy Protection, https://www.imy.se/globalassets/dokument/rappporter/the-rights-of-children-and-young-people-on-digital-platforms_accessible.pdf. Accessed 13/12/2023

⁶⁹ *Ibid*

⁷⁰ Oli Ballard, 'Experts Warn Against Using Children as 'Marketing Devices' (Business Leader, 9 March 2018) <https://businessleader.co.uk/experts-warn-using-children-marketing-devices/> accessed 14/12/2023

⁷¹ Chloe Nordquist, 'Report: 96 % of K-12 Apps Share Children's Data with Third Parties' (Scripps News, 21 January 2023) <https://scrippsnews.com/stories/96-of-k-12-apps-share-children-s-data-with-third-parties/> accessed 14/12/2023.

⁷² Andra Siibak, 'The Dark Side of Sharenting' (2019) Catalan Journal of Communications and Cultural Studies, Vol. 11. No. 1.

⁷³ Poonam Muttreja, 'We Need to Build Safer Internet for Children' (Healthworld.com, 28 May, 2022) <https://health.economicstimes.indiatimes.com/health-files/in-india-online-abuse-and-exploitation-of-children-is-going-viral/5254> accessed 28/12/2023.

⁷⁴ *Ibid*.

⁷⁵ C. Vinney, *supra n*.

IV Child Labour Exploitation

While traditional work that a child is involved with can be assessed and measured, and protective measures are in place, the same cannot be said of using children to make money online. It remains a grey area that is unregulated due to the fluid nature of the work.⁷⁶

Ethical Issues

I. Protection

Society expects parents to be of good moral standing and protect their children from all dangers in society, including the harmful and dangerous effects of the internet. This is why parents have been given the responsibility of giving consent to the sharing of children's information online.⁷⁷ It is however ironic that same parents meant to protect children from the dangers of the internet are the ones guilty of exposing them to these dangers.⁷⁸

Sharenting results in harmful comparison of children with other 'perfect' children online which is not a good method of parenting, and later amounts to insecurity and mounting pressure on a child at a tender age. Studies have shown that children with online presence often compare themselves to others which may cause a negative impact on their emotional and mental health.⁷⁹

In addition, when sharenting, a child may not be directly involved in creating and sharing contents online, although the feedback may still impact them in various ways. For instance, when parents push their children too hard to perform for a few likes on social media, children may grow up under the pressure of public's expectation and online validation continually.⁸⁰ This may later lead to the feeling of inadequacy when these children are unable to meet up with other kids online.⁸¹

⁷⁶ Emma Loffhagen, *supra* n.

⁷⁷ Section 8, Child Rights Act, 2003.

⁷⁸ Brooke Auxier *et al*, 'Parenting Children in the Age of Screens' (Pew Research Center, 28 July 2020) <https://www.pewresearch.org/internet/2020/07/28/parenting-children-in-the-age-of-screens/> accessed 14/12/2023.

⁷⁹ The Journal of Psychology, 2022 <<https://www.tandfonline.com/doi/abs/10.1080>> visited on 27th of November, 2023

⁸⁰ Boston Children Digital Wellness Lab, 'Sharenting: Understanding the Impact on Our Children's privacy and Well-Being' (29 March 2023) <https://www.bostonchildren.org/sharenting>

⁸¹ Mark Travers, Ph.D <<https://www.forbes.com/sites/traversmark/2023/06/17/2-major-risks-linked-with-sharenting-your-kids-lives-on-social-media/?sh=524f499962e2>> visited on 27th November 2023,

The negative effects of sharenting on a child could be serious; are not what a child at such tender age require and it will better for a parent to limit or cut off totally the social media presence of their child(ren) or seek other ways of protecting their child from the negative effects of sharenting.

II. Consent:

Sharing a child's perfect picture online with parental consent appears to be fair and fine depending on the motive behind it. For instance, a parent may consent to posting an online photograph of his or her child for archival purposes. However, some parents use children's feed as a way of maintaining their own presence online and driving traffic to their posts in order to generate profits and online popularity⁸². A 2019 study found that many adolescents are not in support of sharenting particularly when it had to do with impression management as they found that to be "embarrassing and useless".⁸³

The importance of parental care in the life of a child implies that at no stage should a child have feelings of being exploited by the parents. Apart from giving consent to others on behalf of a child to share his or her content online, parents also should take into cognizance whether the interest of a child tally with such act so as not to offend the child and create a parent-child rift within their family.

International Legal Frameworks for sharenting

Article 13 of the United Nations Convention on the Rights of the Child (UNCRC) guarantees the freedom of expression for parents and everyone, but the freedom is to be used in a responsible manner. Children are independent beings and are not to be treated as extension of their parents⁸⁴. The UNCRC⁸⁵ defines a child as someone below the age of 18 years. It is not clear whether sharenting will fall under the definition of child abuse, which had been said to include sexual,

⁸² Mark Travers, '2 Major Risks Linked with 'Sharenting' Your Kids' Lives on Social Media' (Forbes, 17 June 2023) <<https://www.forbes.com/sites/travemark/2023/06/17/2-major-risks-linked-with-sharenting-your-kids-lives-on-social-media/>> accessed 13/12/2023.

⁸³ Children and Youth Service Review <<https://www.sciencedirect.com/science/article/abs/pii/S0190740919303482>> visited on 27th of November, 2023

⁸⁴ H.O. Callaghan, 'Your Children Are Not an Extension of Yourself: A Guide to Parenting with Confidence' (Irish Examiner, 27 April 2021) <https://www.irishexaminer.com/lifestyle/healthandwellbeing/arid-40274963.html> accessed 12/12/2023.

⁸⁵ The United Nations Convention on the Right of the Child.

emotional, physical, and economic abuse⁸⁶. Article 16 of the UNCRC is to the effect that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor unlawful attacks on his or her honour”. Thus, the right to privacy and dignity of the child is guaranteed by the provision of the UNCRC⁸⁷. Privacy is considered an essential part of the human rights of individuals,⁸⁸ and it was pointed out that enjoying this right creates the possibility for self-development and serves as a prerequisite to enjoying other basic rights, such as freedom of speech, as the former also includes a right to form ideas and opinions without interference from others and to decide whether they should be expressed publicly or within the limited number of persons.⁸⁹

The right to privacy and actualisationself- is recognized by many international instruments⁹⁰. Though what is considered a right to privacy may not lend itself to an easy definition, every human being is imbued with it.

Data Protection Regulation

In the United States of America, the gathering and disclosure of online data pertaining to children under the age of thirteen is governed by the Children’s Online Privacy Protection Act (COPPA) of 1998.⁹¹ Under COPPA, operators of websites targeted at children are prohibited from collecting personal information from a child unless the website first provides written notice of the website operator’s practice for disclosing such information.⁹² Additionally, the website operator is required to obtain parental consent for such collections. As such, the Act places the parent in the role of guardian and gatekeeper of the child’s personal information. Injured parties can bring a suit under the Federal Trade Commission’s protection against unfair or deceptive practices.

In addition, the Federal Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA) offer the most comprehensive framework for

⁸⁶ A. D. Keskin, ‘Sharenting Syndrome: An Appropriate Use of Social Media?’(Healthcare, May 2023) <https://doi.org/10.3390/healthcare11101359> accessed 9th July, 2023.

⁸⁷ A. S. Oyeleke *et al*, “Sharenting” as an Evolving African Social Media Culture: Implication for the Child Rights in Ebonyi State, Nigeria” (2023) ICRRD Journal

⁸⁸ Kakhabeer Goshadze, ‘Legal Implications of "Sharenting"' (2020) 15 Law & World 19

⁸⁹ *Ibid*.

⁹⁰ See the Universal Declaration of Human Rights 1948, Convention on the Rights of the Child 1989 and International Covenant on Civil and Political Rights 1966.

⁹¹ Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 (2012).

⁹² *Ibid*, 502(b)(1)(A).

protecting children's data in the United States.⁹³ The Acts prohibit third parties from releasing children's personal information, such as the child's name, address, age, grades, health and behaviour records, without parental consent.⁹⁴ Once the child turns eighteen, he must give consent before his information can be released.⁹⁵ However, these laws only safeguard children's data from being released by third parties, and are not targeted at parents.⁹⁶ By their very design, they give parents complete control over the release of their children's records.⁹⁷

Despite the fact that these rules acknowledge children's right to privacy protection, they create a conflict between the actor and the party with the authority to grant consent since "in the context of parental sharing, the third-party actor is the parent."⁹⁸ Since the parent can share the same information protected by these laws on social media, these rules are insufficient to address the risks of sharenting.⁹⁹ Thus, while HIPAA and FERPA serve an important role in protecting children's data, they do not serve as a workable framework for addressing sharenting.¹⁰⁰

Promoting children's rights regarding online and data privacy is the express goal of the General Data Protection Regulation in Europe. The General Data Protection Regulation (GDPR), which came into effect on the 25th May 2018, harmonizes European privacy measures with the imposition of monetary sanctions for infringements.¹⁰¹ Children's privacy rights are violated whenever their parents share their intimate information online, even if it's restricted to close relatives and friends. For this reason, some scholars argue that kids should have the "right to be

⁹³ L. A. Plunkett, 'Sharenthood: Why We Should Think Before We Talk About Our Kids Online' (2019) 33 at 81 in Anonymous, Sharenting Is Here to Stay, So Now What? at <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2801&context=sulr> accessed 23/11/23

⁹⁴ S. B. Steinberg, 'Sharenting: Children's Privacy in the Age of Social Media' (2017) 66 EMORY L. J. 839, 849 at 872-73 81 in Anonymous, Sharenting Is Here to Stay, So Now What? <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2801&context=sulr> accessed 23/11/23.

⁹⁵ *Ibid*

⁹⁶ *Ibid*

⁹⁷ *Ibid*

⁹⁸ *Ibid*

⁹⁹ Anonymous, Sharenting Is Here to Stay, So Now What? Available at <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2801&context=sulr> accessed 23/11/23.

¹⁰⁰ *Ibid*

¹⁰¹ Article 83 GDPR; S. Donovan, "'Sharenting': The Forgotten Children of the GDPR", *Peace Human Rights Governance* (2020), 4(1), 35-59. DOI: 10.14658/pupj-phrg-2020-1-2 <https://phrg.padovauniversitypress.it/system/files/papers/PHRG-2020-1-2.pdf> accessed on 24/11/23

forgotten”¹⁰² or the ability to request that their shared information be removed. Such a right is afforded by Article 17 GDPR/UKGDPR, enabling data subjects to ask parents to erase their personal data in specified circumstances.¹⁰³

Article 17(1)(a) of GDPR, which applies when personal data are no longer necessary for the purposes for which they were originally processed, is most relevant to older children who seek to have their personal data removed. In cases when a child is able to exercise their right to object to processing under Article 21, Article 17(1)(c) may also be applicable. Article 21's application will rely on the parent's legal basis for processing, namely whether or not sharing is done to advance legitimate interests.¹⁰⁴ In actuality, it is rarely evident what legal justification parents are using for processing. In fact, parents are unlikely to give the GDPR/UKGDPR any thought if they are unaware that they are affected by it.¹⁰⁵

In many sharing situations, consent is not obtained from the child whose information is shared, despite the fact that Article 17(1)(b) permits a data subject to request erasure where processing is based upon consent and the data subject withdraws consent to processing. Article 17(1)(f) permits a child to seek erasure of information disclosed to Information Society Services¹⁰⁶ with the consent of the child or parent.¹⁰⁷ In these situations, it is uncertain if consent is lacking or if the parents could be considered to have given consent on their child's behalf.

The UK's data protection authority, has not yet addressed the questions of whether a parent may give legal consent to their own sharing on behalf of their child and if that child may withdraw such consent once he or she becomes competent to do so.¹⁰⁸ For instance, parental permission on behalf of their children is prohibited in Germany. Given that they are both the ones

¹⁰² Roxana Olivera, ‘A Child’s Right to be Forgotten’ (New Internationalist, 28 March 2022) <https://newint.org/features/2022/02/07/feature-children-right-to-be-forgotten> accessed 13/12/2023

¹⁰³ Bessant, Claire & Schnebbe, Maximilian. ‘Does the GDPR Offer a Solution to the ‘Problem’ of Sharenting?’ (2022) *Datenschutz und Datensicherheit - DuD*. 46. 352-356. 10.1007/s11623-022-1618-3 at https://www.researchgate.net/publication/360991009_Does_the_GDPR_offer_a_solution_to_the_'problem'_of_sharenting

¹⁰⁴ *Ibid*

¹⁰⁵ *Ibid*

¹⁰⁶ Article 17 of the GDPR is known as the right of erasure and states that “the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal without undue delay”.

¹⁰⁷ *Ibid*

¹⁰⁸ *Ibid*

accountable under data privacy law and the bearers of parental responsibility.¹⁰⁹ The last justification for seeking erasure under Article 17(1)(d) GDPR/UKGDPR is applicable in cases where personal information has been treated improperly. When parents, for instance, have not complied with one of the requirements outlined in Article 6 and/or have not fulfilled their duty to notify the child data subject of the processing of their data.

However, a child's capacity to demand that their parent erase their information—even in cases where it has been improperly processed—will largely depend on whether the GDPR views the parent who shares it as a data controller.¹¹⁰ Indeed, if the parent is not in control of the data for the purpose of GDPR/UKGDPR, the child has no right to exercise any of the rights afforded to data subjects against his/her parent(s). According to Articles 15-22 GDPR/UKGDPR, the child has the right to claim compensation for damage caused by parental processing which infringes the regulation.¹¹¹ It also includes the right to lodge a complaint with the supervisory authority about such processing¹¹² or to seek any other form of judicial remedy against the parent under the GDPR/UKGDPR in relation to Article 79 GDPR/UKGDPR.¹¹³ However, as Recital 18 makes it clear that social media platforms that enable such sharenting are also covered by the GDPR/UKGDPR, the child may still have recourse against those platforms.¹¹⁴

Despite the rationale of the GDPR being in favour of the protection and safeguarding of children's privacy and private identity, it failed to address the right to privacy and private identity of children who are the subjects of 'sharenting'.¹¹⁵ For instance, according to Article 2(2)(c) of the GDPR and Article 2(2)(a) of the UKGDPR, personal data processed solely for the purpose of conducting domestic or personal activities is excluded from these requirements. However, it is unclear exactly when the exception will apply to parents who post images of their children online due to a lack of regulation on the subject. In the Netherlands, a court ruled that a grandmother

¹⁰⁹ *Ibid*

¹¹⁰ *Ibid*

¹¹¹ Article 82 GDPR/UKGDPR

¹¹² Article 77 GDPR/UKGDPR

¹¹³ Article 79(1) provides that “without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation”.

¹¹⁴ THALES, ‘Children’s Privacy under GDPR—Part 9 of 9’ (OneWelcome, 16 July 2021)

¹¹⁵ S. Donovan, “‘Sharenting’: The Forgotten Children of the GDPR”, *Peace Human Rights Governance*, (2020) 4(1), 35-59, <https://phrg.padovauniversitypress.it/system/files/papers/PHRG-2020-1-2.pdf> accessed 23/11/23.

had to take down photographs of her children from Facebook because their mother no longer wished for the photos to be posted there.¹¹⁶

A bill was put forward in February 2023 by the National Assembly's Law Committee in France to protect children's rights to their own images.¹¹⁷ This bill seeks to communicate to parents that it is their job to protect their children's privacy. It includes protecting their children's privacy among parents' legal duties. Both parents would be jointly responsible for their offspring's image rights and “shall involve the child ... according to his or her age and degree of maturity”. In case of disagreement between parents, a judge has the authority to prohibit one parent from sharing or uploading a child's photos online without authorization from the other parent.¹¹⁸ The bill grants children the legal right to demand that photos posted by their parents be removed, and sharing private photos of children without their consent could cost parents up to 35,000 euros in fines or imprisonment for up to one year.¹¹⁹

Legislations on Sharenting in Nigeria

The Child's Right Act

It is the most important legislation on the rights of a child in Nigeria. It recognizes a child as anyone below the age of 18 years. The Act was enacted in 2003 to work in tandem with Chapter IV of the 1999 constitution of Nigeria to guarantee a child's right to privacy, family life, home, expression, liberty and telecommunications subject to the control of the parents and guardian of the child.¹²⁰

¹¹⁶ BBC News, Grandmother ordered to delete Facebook photos under GDPR. (May 2020), retrieved August 16, 2020 <https://www.bbc.com/news/technology-52758787> accessed on 24/11/23.

¹¹⁷ Yse Rieffel, 'French MPs Examine Bill on Children's Right to Privacy on Social Media' (Le Monde, 5 March 2023) https://www.lemonde.fr/en/france/article/2023/03/05/french-mp-proposes-bill-to-protect-children-s-privacy-on-social-media_6018268 accessed 12/12/2023.

¹¹⁸ Laura Kayali, 'France aims to protect kids from parents oversharing pics online' (2023) <https://www.politico.eu/article/emmanuel-macron-france-law-aims-to-protect-kids-against-oversharing-parents/> accessed 23/11/23.

¹¹⁹ Jess Staufenberg, 'French parents 'could face prison' for posting photos of their children on Facebook' (The Independent, March 2016) <https://www.independent.co.uk/news/world/europe/frenchparents-told-their-children-might-sue-them-pictures-put-facebook-a6906671.html> accessed on 24/11/23.

¹²⁰ Section 37 of the 1999 Constitution is to the effect that “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”.

The Act enjoins all parents and guardians when taking care of a child to do it in the best interest of the child.¹²¹ The problem however lies in what a guardian or parent considers to be in the best interest of a child. Some parents see sharenting with its negative and harmful effects to be in the best interest of a child. This is alarming as the Act did not define what is in the best interests of a child and leaves it in the hands of the parents to decide.

In the Nigerian context, the Nigeria Data Protection Act is relevant. It is the main legislation aimed at data privacy and protection in Nigeria. It was passed as a bill in 2019 with reviewed and signed into law in 2023 for the regulation and control of data usage in Nigeria.¹²² The law is a replica of the European Union General Data Protection Regulation, which recognizes the need for the protection of a child's personal data as well as the consequences and risks attached when such protection is not in place. It provides that, for children or persons lacking the legal capacity to consent, a data controller shall obtain the consent of a parent or legal guardian.¹²³ Thus, it does not take into account that the data controller could be the parents or guardian. Thus, it does not recognize that the child has been able to exercise her rights as to how much personal data the child wants to be in the public domain or how it will affect the child adversely or otherwise in the future. In essence, the Nigerian Act affords little protection to a child whose parents have been posting data online.

Cybercrimes (Prohibition and Prevention) Act

It guarantees the protection of a child from being exploited for pornographic tendencies online. Pursuant to the act, anyone who intentionally grooms, proposes, or engages a child in sexual activities through the medium of a computer commits a felony and shall be liable.¹²⁴ This also pertains to parents who engage or lure their children into the pornographic digital space via the medium of sharenting. Parents are, therefore, to be mindful of the sort of content they expose kids to online, as they can be liable and sentenced to jail if they are found wanting by the law.

¹²¹ Section 1, Child Rights Act, 2003.

¹²² The Nigerian Data Protection Act 2023 was signed into law by President Tinubu on 12th of June 2023 and it created a legal framework for the protection of personal data in Nigeria.

¹²³ Section 31, Nigeria Data Protection Act 2023

¹²⁴ Section 23, Cybercrime Act, 2015.

Conclusion and Recommendations

Sharenting is an aspect of social media that has remained largely unregulated in many states till now¹²⁵, though it is generally believed that it portends great consequences for the child at the receiving end of the spectrum.¹²⁶ In the light of the above, it is recommended that:

- i. Parents are to be educated about the consequences of the clicks and likes on social media. Parents must understand that the internet never forgets and that anything posted online will likely stay there for life and may have both ethical and legal consequences both now and in future for the child. In the same manner that parents are penalized for abusing and exposing their children to dangers physically in many states, so also should parents be made to face legal consequences for exposing their wards to dangers online.
- ii. Many young people lack the right to consent to things posted by their parents there should be a law to protect children's right to privacy. The right can be conferred on a guardian where the parents are the ones actually breaching the right of the child to privacy. This is important as children now meet lots of people who already have myriads of information about them through their parents' feeds.
- iii. In Nigeria, the new Data Protection Act offers a measure of protection for Nigerian children. However, enforcement of the law is very important; in essence, an effective enforcement mechanism should be put in place for the law to take effect. Sensitisation of the provisions of the law is therefore of urgent importance.
- iv. Many of the existing privacy laws should be reviewed to include protection for the parents. It is generally assumed that parents are protectors. However, it has been shown that that is not always the case, especially in relation to social media exposure. Therefore, children should be given more protection from adults in their lives under a legal framework.

¹²⁵ Leah Plunkett, 'To Stop Sharenting & Other Children's Privacy Harms, Start Playing: A Blueprint for A New Protecting the Private Lives of Adolescents and Youth' (2020) Seton Hall Legislative Journal 458.

¹²⁶ Ibid; G Ranzini et al, 'Sharenting, Peer Influence, and Privacy Concerns: A Study on the Instagram-Sharing Behaviors of Parents in the United Kingdom' (2020) Social Media and Society <https://creativecommons.org/licenses/by-nc/4.0/>;