

Child sexual abuse in the digital era: Rethinking legal frameworks and transnational law enforcement collaboration
Witting, S.K.

Citation

Witting, S. K. (2020, June 11). *Child sexual abuse in the digital era: Rethinking legal frameworks and transnational law enforcement collaboration*. Retrieved from https://hdl.handle.net/1887/96242

Version: Publisher's Version

License: License agreement concerning inclusion of doctoral thesis in the

Institutional Repository of the University of Leiden

Downloaded from: https://hdl.handle.net/1887/96242

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle http://hdl.handle.net/1887/96242 holds various files of this Leiden University dissertation.

Author: Witting, S.K.

Title: Child sexual abuse in the digital era: Rethinking legal frameworks and

transnational law enforcement collaboration

Issue Date: 2020-06-11



Child Sexual Abuse in the Digital Era: Rethinking Legal Frameworks and Transnational Law Enforcement Collaboration

Sabine K. Witting

Child Sexual Abuse in the Digital Era: Rethinking Legal Frameworks and Transnational Law Enforcement Collaboration

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 11 juni 2020
klokke 15.00 uur

door
Sabine Katharina Witting
geboren te Berchtesgaden, Duitsland
in 1989

Prof. dr. J.J. Sloth-Nielsen Prof. dr. S. van der Hof Promotores:

Prof. dr. T. Liefaard Promotiecommissie:

Prof. dr. J. Lleraard
Prof. dr. J. E. Doek
Prof. dr. E. Lievens (Ghent University, Belgium)
Prof. dr. A. A. Gillespie (Lancaster University, UK)
Prof. dr. J.M. ten Voorde

TABLE OF CONTENTS

| СНАРТ | TER I: INTRODUCTION | . 1 |
|-------|---|------------|
| I. | BACKGROUND | .1 |
| II. | AIM AND RELEVANCE OF THE STUDY | .2 |
| III. | PROBLEM STATEMENT AND RESEARCH QUESTIONS | .4 |
| IV. | METHODOLOGY | .5 |
| v. | SCOPE AND LIMITATIONS | .8 |
| VI. | OUTLINE OF THE STUDY | 0 |
| | TER II: THE 'GRAYSCALE' OF CHILD SEXUAL ABUSE MATERIAL: OF AS, AVATARS AND SCHOOLGIRLS1 | 5 |
| | WHEN TECHNOLOGY OUTPACES THE LAW: EMERGING ASPECTS OF SEXUAL ABUSE MATERIAL1 | 6 |
| | WHAT CONSTITUTES HARM TO CHILDREN? OF OFFENCES WITHOUT DIATE VICTIMS1 | 6 |
| III. | PERSPECTIVE(S) OF INTERNATIONAL LAW1 | 8 |
| | FREEDOM OF EXPRESSION AND RIGHT TO PRIVACY VS. PUBLIC WELFAR HILD PROTECTION: NATIONAL RESPONSES TO THE 'GRAYSCALE' | |
| v. | STRIKING THE BALANCE | 32 |
| VI. | CONCLUSION | 37 |
| | TER III: REGULATING BODIES: THE MORAL PANIC OF CHILD SEXUALITY II IGITAL ERA3 | |
| I. | INTRODUCTION4 | ŀO |
| II. | O TEMPORA, O MORES!: TEENAGE SEXUALITY AND DIGITALISATION4 | 12 |
| III. | TEENAGE SEXTING ACROSS THE WORLD: USA, CANADA, GERMANY4 | 14 |
| IV. | REGULATING BODIES: BALANCING AUTONOMY AND PROTECTION5 | 59 |
| V. | PREVENTING RISK FROM TURNING INTO HARM IN THE DIGITAL SPACE 66 | |
| NATIO | TER IV: LEVERAGING INTERNATIONAL LAW TO STRENGTHEN THE NAL LEGAL FRAMEWORK ON CHILD SEXUAL ABUSE MATERIAL IN BIA6 | 5 7 |
| I. | INTRODUCTION6 | 8 |
| II. | ONLINE CHILD SEXUAL ABUSE IN NAMIBIA6 | 39 |
| III. | INTERNATIONAL LAW ON ONLINE CHILD SEXUAL ABUSE IN NAMIBIA .7 | ′3 |
| IV. | CONCLUSION | 32 |
| | TER V: DO UT DES: DISSEMINATING ONLINE CHILD SEXUAL ABUSE | 25 |

| I. | TASK FORCE ARGOS - FOR THE 'GREATER GOOD'? | 86 |
|--------------|---|-----|
| II. | THE CURRENT LEGAL SITUATION IN GERMANY | 87 |
| III. | OF CONSENT, RIGHT TO PRIVACY AND ENDS-MEANS RELATIONS | 88 |
| IV. | RULE OF LAW OR THE CONCEPT OF THE LESSER EVIL? | 90 |
| V. | CONCLUSION | 92 |
| BORD | TER VI: TRANSNATIONAL BY DEFAULT: CONTEXTUALISING CROSS- DER LAW ENFORCEMENT COLLABORATION IN ONLINE CHILD SEXUAL E CASES | 95 |
| I. NO BO | TRANSNATIONAL BY DEFAULT: ONLINE CHILD SEXUAL ABUSE RESPI | |
| II. | (EXTRA)TERRITORIAL JURISDICTION | 98 |
| III. | MUTUAL LEGAL ASSISTANCE AND EXTRADITION | 106 |
| IV. ENFOI | CHILD SPECIFIC CONSIDERATIONS IN TRANSNATIONAL LAW RCEMENT | 111 |
| V. | CONCLUSION | 116 |
| CHAP' | TER VII: CONCLUSION | 117 |
| I. | KEY FINDINGS FOR RESEARCH QUESTIONS | 117 |
| II. | KEY FINDINGS FOR PROBLEM STATEMENT | 123 |
| III. | FINAL REMARKS | 124 |
| REFER | RENCES | 127 |
| PUBLI | ICATIONS | 141 |
| SUMN | MARY | 143 |
| SAME | NVATTING (DUTCH SUMMARY) | 147 |
| CURR | ICULUM VITAE | 151 |

ACKNOWLEDGEMENTS

The complexity of prevention and response to the horrific offence of online child sexual abuse has been of great interest to me since I started working on the topic in 2016 in Namibia. When I went for dinner with Prof Julia Sloth-Nielsen in Windhoek in 2017, I had no idea that I would have a PhD supervisor two hours later. But she immediately believed in the importance of the topic and, more importantly, in me as a PhD candidate. I am proud to have joined the ranks of the 'army' of child-rights advocates whom she has educated, inspired and supervised around the world. Prof Sloth-Nielsen has not only provided her immense technical expertise in the area of children's rights, but has been a role model, a life coach, and a constant source of wisdom for any questions that come to mind. Therefore, I would like to thank her deeply for her role as my primary supervisor.

Furthermore, I would like to thank Prof van der Hof for her role as co-supervisor. From the outset she has been passionate about the topic and crucial in merging the cybercrime with the child protection lens. Even though I could visit Leiden Law School only rarely, Prof van der Hof contributed significantly to making my short stay there a remarkable experience. This includes her constant efforts to guide me through the technicalities of the PhD procedure at Leiden University and her explanation of the specificities of the Dutch PhD procedure. Therefore, I wish to thank Prof van der Hof for her relentless work in making my PhD a success, and for her invaluable contribution, specifically from the eLaw perspective.

I would also like to take this opportunity to thank all my colleagues in the eLaw and the Child Law Department at Leiden University for their hospitality during my visits, for their interest in my research, and for championing a spirit of mutual support. This is a trait which is unfortunately not common in the legal fraternity, and I shall always aspire to demonstrate the same spirit in my interactions with fellow researchers and academics.

Further, I would like to thank a group of child-rights experts who have been at the forefront of my PhD journey both in Namibia and Zimbabwe and a great source of strength to me: Karen Hollely, for pushing me in the right direction, for critical interdisciplinary discussions, and for cheering me up when times were rough; Simon Mason, for being a true source of inspiration, for giving me insight into his complex work, and for always looking out for my personal and professional wellbeing; Jolanda van Westering, for giving me the opportunity to start a career in child online safety, for always appreciating my 'legal mind', and for being a champion of women's empowerment; and, lastly, Frauke de Kort, for her constant support of my academic career, for trusting me to juggle various tasks, and for championing a true child-rights approach.

Lastly, I would like to thank my family and friends for their support of and commitment to my studies. In particular, I would like to thank Irene Lang von Hirschberg for always cheering from the side-lines; my wonderful sister, Eva Galler, and her husband, Stefan Galler, who gave me moral support throughout this process and never shied away from debating complex issues in my PhD research while on holiday. Finally, I wish to thank my mother, Claudia Witting. Her strength, wisdom and reflections on this difficult topic have been the cornerstone of this study. I dedicate this research to her.