



Cyberspace, cyber security and the cyberization of economic rights

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Abstract

This paper examined the use and protection of rights in cyberspace. The exercise of rights in cyberspace is as a result of the activities of cyberization spearheaded by the Fourth Industrial Revolution. Accordingly, the adoption of various aspects of reality, into digitalized formats, has not only created another dimension for transacting, executing rights, it has created a fresh epicenter for social media menace and abusive practices. Following this, the State's duty to protect, now possesses a cyber aspect that is jurisprudentially embodied in cyber laws and cyber security regulations. Therefore, this work adopts the doctrinal research methodology for assessing safety and security concerns as it relates to the exercise of human rights in cyberspace. Bearing the above in mind, focus is placed on the protection of ownership and possession of exclusive rights, thereby ensuring the legal basis of activities so performed on cyber platforms and the stoppage of criminality. States are then encouraged to take practical steps towards ensuring the guarantee of human rights protection in cyberspace. The research more so emphasized that it is fundamental to ensure that cybersecurity laws and regulations adopted by governments are practicable enough to deal with the challenges and complexities of cybercrime.

Keywords: Cyberspace, cyber security, cyberization, cybercrime and economic rights

Introduction

Human rights are basic entitlements legally and fundamental to the human person.^[1] Historically, the recognitions of human rights under international and national institutional frameworks, rights have often been address in the context of concomitant duties.^[2] Thus, human rights became the premise of states responsibility to respect, and protect; as well as the aspirational basis for maintaining law and order in the world.^[3] Thus, rights not only involve liberties or freedoms, they correlatively necessitate regulations, to curb disruptive and abusive actions that procure the violation of rights.^[4] Consequently, the paradox of human rights law is that it guarantees, as well as limits human rights, on the basis of legitimate objectives.^[5] So human rights inexorably procure correlative expectations on states and the society in general to provide satisfactory conditions, and an enabling environment for persons to exercise their liberties for the execution of autonomous actions, undertakings, and individual projects.^[6]

The above state of affairs is not limited to physical reality, because the social and economic dynamics of physical reality are adopted and engineered into formats that are replicable within digital spheres in the cyberspace.^[7] Just as the First Industrial Revolution caused rapid urbanization that made industrial

hubs the new epicenter of social and economic exchanges; the Fourth Industrial Revolution is progressively creating a new epicenter, characterized by digitalization.^[8] Thus, the cyberspace is the new digital hub, where social and economic exchanges are executed all over the world, within a borderless space without travel visa procurements.

Presently, the cyberspace is a market like, transactional and digitalized exchange platform where designated tasks are executed in cyber-environment where humans act and communicate through software;^[9] Thus, the crux of the cyberspace as identified by the College of Engineering and Technology (MRCET), is the interplay between 'people, software, and services.'^[10] The cyberspace is utilized by all

aspects of society including businesses, organizations, governments, clubs and associations, religious sects, individuals and ideological movements. Owing to its developmental nature, the cyberspace is bound to become more complex as technology progresses.^[11] According to Ajiji, the cyberspace is synonymous to the internet.^[12] Nonetheless, it encompasses all digital platforms in which humans communicate and execute actions through software.

The Modernization of Security

Security is the consequence of an efficacious or successful act of protecting a space, a person or people. It involves the practice of organizing an efficacious framework for protection, through active, proactive, or reactive measures that are suited to the demands or exigencies of a situation. Hamourziadou conceptualizes freedom as the guaranteed exercise of one's rights. He further emphasizes that the primary purpose of security is the protection of fundamental or basic human rights.^[13] On that account, security is an indispensable requirement for ensuring the respect for, as well as the fulfilment of rights. Thus, the duty to protect, is what creates a vital link between human rights and security. Thereby, making them mutually reinforcing, due to the recognition of 'the ethical and political importance of securing the holders' of human rights and fundamental freedoms.^[14]

Hamourziadou also adopts human rights as a frame of reference for defining security: So he explained the modern concept of security to mean the successful and progressive practice of protecting the rights and liberties of the human person.^[15] Based on that analogy, he further notes that the imperativeness of securing the exercise of all classes of rights, procures a new dimension of what constitutes a threat.^[16] Consequently, a threat is not solely what is potentially ruinous to the civil rights of the individual, it is rather a multidimensional phenomenon that expresses itself in various ways, but with the one rigid and common feature of being a potential danger to the rights and liberties of a

person. Therefore, security threats are not limited to physical acts of aggression.^[17]

Economic Security

The International Committee of the Red Cross (ICRC) recognizes the economic dimension of security. The ICRC relates economic security to a state of existence in which, individuals or collectives are capable of sustainably catering for their 'essential needs and unavoidable expenditures' amidst their current socio-cultural and environmental conditions with due regard to the level of psychological, human capital, and financial wherewithal required to survive or thrive in such circumstances.^[18] Economic security has been linked to sustainability, as well as progress. Thus, it is related to a stable state of affairs, and positive outcomes such as economic growth, price stability, affordable costs of living, an adequate standard of living, the integrity of the market, access to economic opportunities and adequate sources of livelihood, a supportive public policy and institutional framework for stimulating economic progress,^[19] as well as an efficacious framework for detecting and neutralizing threats, and for proper management/limitation of the ramifications of adverse situations.^[20]

Economic security is a vital issue of interest, not only physically, but also on the internet – which is an integral part of the economy and livelihood of people all over the world, who leverage the economies of scale afforded by the cyberspace, to supply goods and services; and for the execution of other related transactions that need to be executed securely and effectively, without threats to the integrity of such transactions.

Cybersecurity

Cybersecurity is centered on the formulation, adoption, implementation, or enforcement of measures aimed at neutralizing security threats on the cyberspace.^[21] The process of securing the cyberspace involves a wide range of activities including 'computer network operations, information assurance, law enforcement', administrative regulations, access management, data protection, privacy restrictions, conditional access, identity authentication, preventive measures, 'threat reduction, international engagement' and collaborative arrangements aimed at guaranteeing safety and security within the cyberspace.^[22]

The College of Engineering and Technology (MRCET) defines cybersecurity, as 'the body of technologies, processes, and practices designed to protect networks, computers, programmes and data from attack, damage, or unauthorized access.'^[22] So in-line with MRCET's definition, cyber security can be explained as the digitalization of security, and its operationality within digital spheres of influence, with the aim of ensuring safety and integrity. Thus, it inevitably involves the adoption of security strategies and principles from physical reality, and transforming them into guiding principles for protecting and regulating the realm of virtual reality, internet spaces, or other cyber platforms. That is a feat that is achieved through the interpretation and application of security principles and strategies, in a way that ensures their functionality and adaptability to the demands and nuances of the cyberspace.

Cybercrime

Simply put, cybercrime is the execution of criminal activities via the internet or through other cyber platforms.

For example, the first reported case of cyber murder was committed in the United States of America, through the alteration of prescriptions via the hacking of a hospital's computer system.^[23] That consequently sabotaged a minor surgery process, and led to a casualty. That exemplifies how a cybersecurity threat can lead to the violation of the right to health, and concomitantly, the right to life, which are rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR),^[24] and International Covenant on Economic, Social and Cultural Rights (ICESCR).^[25]

The rising rate of cybercrime is a negative development that is thriving partly as a result of the anonymity afforded by internet platforms, which makes tracking criminals more difficult. Other factors frustrating the fight against cybercrime includes the swift and dynamic nature of online transactions, which reduces the possibility of effective tracking; 'lack of functional databases' especially in African countries that have weak institutions, which are plagued by substandard systemic practices, and record keeping problems.^[26] Ajiji notes that 'it will always be a losing battle if security professionals are way behind the cyber criminals in terms of technological knowledge.'^[27]

The Cybercrimes (Prohibition and Prevention) Act, 2015

The Cybercrimes (Prohibition and Prevention) Act (CCPPA) is legislation created in Nigeria to create a comprehensive legal, regulatory, and institutional framework for the effective prevention, prohibition, prosecution, and punishment of cyber-related offenses.^[28] The CCPPA aims to enhance cybersecurity by mandating that cybercafés register with both the Corporate Affairs Commission and the Computer Professionals' Registration Council.^[29] The CCPPA also requires cybercafés to keep a mandatory logbook that records users' details and signatures, which must be made available to law enforcement agencies upon request for investigation.^[30] Additionally, the Act criminalizes a broad spectrum of cyber offenses, such as intercepting electronic communications and transactions, unauthorized access or interference with systems, tampering with software infrastructure, deliberately misrouting messages, illegal interceptions, computer-related forgery and theft, unauthorized data alterations, cyberterrorism, identity theft, and more.^[31]

Human Rights and Cybersecurity

The evolution of human rights has resulted in diminishing disparities across various kinds of rights, mostly due to the prevailing notion of their interdependence and indivisibility.^[32] Likewise, the concept of security has expanded to encompass not only the prevention of physical injury but also broader socio-economic dimensions.^[33] Consequently, the legal system must safeguard the economic and social conditions that allow individuals to achieve their legitimate objectives.^[34] One of the most significant subjects in cyber-related literature is the matter of security. Shailendra defines cyber law as "the legislation regulating the digital realm," especially concerning the security and privacy of information.^[35] and crimes relating to damages'^[30] On that account, cyber law is a tool for maintaining cyber security, and for deterring criminal activities, which concomitantly undermine human rights.^[31] Nonetheless, Singh and others have identified factors that undermine cyber security:

1. According to Singh, a major problem is the inadequacy of existing laws, specifically in the area of adapting existing legal principles to suit the exigencies of the cyberspace; and the lack of sufficient judicial precedents to guide the decisions of the court in regard to issues concerning the cyberspace.^[32]
2. Singh considers the issue of privacy as another hurdle which constrains the authority of investigative agencies, and hampers their capacity to access and gather relevant information and evidences for the effective prosecution of cases.^[33]
3. Singh also points out an existing deficit in the popular legitimacy of law enforcement authorities – Consequently, there is a sense of distrust, existing between law enforcement agencies and computer professionals, and also netizens that hinders effective collaboration in the area of cyber security.^[34]
4. Pandey et al explains that one problem procured by the novel nature of the cyberspace, is the lack of firm boundaries in regard to what constitutes criminality in the context of the cyberspace.^[35] So the amorphous nature of certain cybercrimes^[36] makes it difficult for IT professionals to detect when it is necessary to report such activities to law enforcement agencies.^[37]
5. The jurisdictional complication, in the sense that the cyberspace is global, however, crime is relativistic, because the content of criminal legislation is jurisdictionally defined. Thus, a crime in one country, maybe a legal act in another.
6. The anonymity afforded by the cyberspace gives criminals the privilege of perpetrating criminality with a low possibility of being exposed.
7. The proliferation of viruses that alter the integrity of computer software.

The Regulatory Dynamics of the Cyberspace

Johnathan Bishop, alluded to the dichotomy between the jurisdictional nature of constitutional and administrative law, and the internet which is ‘a world without forties.’^[38] In the same line of thought, John Perry Barrow has questioned the normative legitimacy of nation-states imposing laws on the virtual, and borderless cyberspace.^[39] Nevertheless, the authoritative force of the state, which is based on an all-encompassing responsibility to maintain law and order, tilts the argument in the favour of public administrative systems/institutions of the government; considering that by virtue of legislative actions at the state level, and intergovernmental cooperation at regional and global administrative levels, there are national and international laws regulating the internet. The reason-centric nature of laws as alluded to by Cicero, St. Paul, and St. Thomas Aquinas;^[40] the universal ethics of human rights jurisprudence as recognized by Maurice Cranston;^[41] and the normative value of Jus Cogens and preemptory norms of international law verifies that there are fundamental and inviolable principles of law, which are universally applicable.^[42] Thus, legal principles are relevant and simultaneously applicable – in the real world, and on the cyberspace.

Johnathan Bishop, pointed out the existence of commonalities between the real world, and the cyberspace, for instance ‘there are commonalities in the way they function.’^[43] Thus, commonality in function, correlatively implies commonality of regulatory norms (laws) to ensure

legality and proper functionality of specific spheres of influence/jurisdictions of activity.^[44]

A Five Paradigm Approach to Human Rights on the Cyberspace

The legal regulation of cyberspace, alongside the human rights concerns associated with ethical and economic considerations, can be comprehended through five fundamental paradigms: ownership, legality, legitimacy, functionality, and accessibility.

1. Ownership

Ownership is an elevated right, in the sense that ownership accords privilege or exclusivity to owners or title holders, to the exclusion of all other persons, for instance: legal property rights under land law, commercial property rights under sale of goods law, and intellectual property rights under Trade Related Aspects of Intellectual Property (TRIPS) and copyright law.^[45] Ownership rights also apply to the cyberspace, in regard to the ownership of exclusive copyrights,^[46] websites, web pages, and social media accounts, which in a general sense affords the web-owners and users, the prerogative right to control, regulate, and administer the affairs of their pages and websites. Ownership rights on the cyberspace can be acquired by:

- a Creating a website;
- b Purchasing a website;
- c Creating a private or business account on an already existing website;
- d Renting a space on a website, by virtue of periodic subscriptions; and
- e Gaining exclusivity in-line with trade-marks,^[47] copyright laws, or other related rights.

Thus, in the context of the cyberspace, ownership guarantees freedom to carry out any legal act, transaction, or function on a website, and to benefit commercially by virtue of exclusive ownership rights. In *Chinda v Amadi*,^[48] it was held that ‘acts of ownership are derivative from the ownership. Ownership forms the quo warranto of those acts as it gives legality to the acts which would have otherwise been’ a trespass or a breach of the rights of others.^[49] Section 1(c) of the Cyber Crimes (Prohibition and Prevention) Act, 2015 (CCPPA) is aimed at protecting intellectual property and privacy rights. Section 25(1) of the CCPPA, states that –

Any individual who intentionally employs or adopts a name, business name, trademark, domain name, or any other term that is registered, owned, or utilized by an individual, corporate entity, or governmental body in Nigeria—whether online or within any computer network—without appropriate authorization or legal entitlement, and with the intent to obstruct its use by the rightful owner, registrant, or legitimate prior user, is committing an offense.

2. Legality

All activities carried out on the cyberspace are expected to be lawful. Hence, there are limitations to the exercise of ownership rights and freedoms on the internet. As earlier noted, the cyberspace cannot be divorced from society. Consequently, all acts which are criminalized by statutory law, are also by extension – prohibited on the cyberspace, and liable to the sanctions prescribed by criminal legislations, for instance, fraud, libel, mobilizing terrorism,

identity theft, forgery, and other crimes, which can be executed on the cyberspace or internet.

Section 6(1) of the CCPA prohibits the orchestration of unauthorized access to computer systems, for fraudulent purposes. Section 22 of the CCPA criminalizes identity theft. Section 23 of the CCPA criminalizes the electronic distribution of child pornography. Section 24 of the CCPA prohibits acts of bullying, threatening or harassing other persons, 'where such communication places another person in fear of death, violence or bodily harm.'

3. Legitimacy

All regulatory, prohibitive, and administrative actions executed on the cyberspace, are expected to be aimed at executing legitimate objectives, without unethically or unlawfully interfering with the ownership or user rights of other persons. Thus, any act that unjustly or unjustifiably interferes with the user rights of other persons, is inconsistent with the principle of legitimacy. So, there is an implied expectation on web-administrators, as well as users, to act in-line with the terms and conditions regulating the services or activities executed therein. In-line with *Lawan v FRN*,^[50] a legitimate action is conceptualized as the practice of adhering to a laid down procedure^[51] which according to practice is usually based on reasonable and objective criteria.^[52]

Section 10 of the CCPA criminalizes acts abuse of office/position, by the staff of private organization or financial institutions, who abuse their privileged access to execute intentional acts of tampering with any critical infrastructure, electronic mails, or to commit 'any act which he is not authorized to do by virtue of his contract of service or intentionally permits' such practices. Section 17(c) of the CCPA prohibits the forging of electronic signatures for purposes of executing fraudulent acts or other forms of misrepresentation.

4. Functionality

The proper functioning of a websites is a necessity for the execution of social and economic exchanges therein. Thus, service providers have a duty to ensure the proper functioning of websites, which they are authorized to manage and administer. While owners or administrators of websites are actively responsible for the efficiency and functionality of their websites; third parties on the other hand, have a passive responsibility, to avoid interfering with the functionality of websites – third parties can interfere with the proper functioning of websites by maliciously spreading computer viruses that cause websites or web pages to malfunction, by hacking accounts, or through other malevolent and intrusive activities. Section 1(c) of the CCPA is aimed at protecting computer systems and networks, electronic communications, data and computer programs. Section 8 of the CCPA provides that –

Any person who without lawful authority, intentionally or for fraudulent purposes does an act which causes directly or indirectly the serious hindering of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or any other form of interference with the computer system, which prevents the computer system or any part thereof, from functioning in accordance with its intended purpose, commits an offence.

Section 9 of the CCPA prohibits the unlawful destruction

or abortion of electronic mails, or the sabotage of any functional process through which money or valuable information is being conveyed. Section 16(1) of the CCPA criminalizes the unlawful and unauthorized act of directly or indirectly modifying any data held in any computer system or network.

5. Accessibility

This is one of the most fundamental and controversial issues on the internet today, considering the indispensability of internet access to the execution of socio-political and economic affairs in contemporary society.^[53] The principal question in this context is: can there be any justification for barring an individual from major platforms on the cyberspace, considering the economic, social and political ramifications involved? This is a digital era where people transact, trade, communicate, and source information on the internet, so an individual's right to access and existence on the cyberspace is fundamental to achieving success in this digital era of the Fourth Industrial Revolution. Thus, there is a persuasive argument in favour of a guaranteed right to access the cyberspace, which might be subject to the payment of specified subscription fees; and limited for the purpose of prohibiting criminality.

Section 40 of the CCPA alludes to the unethicity of the failure of service providers to perform certain duties. Section 28 of the CCPA makes reference to the importance of password, access codes for securing the exclusive access of persons to services, experiences and opportunities provided therein.

Global Regulatory Cooperation

Due to the jurisdictional and territorial fluidity of the cyberspace and the internet, a state-centric or isolationist approach to regulating the cyberspace might not be the most efficient policy initiative.^[54] Thus, multilateralism and regulatory cooperation, through international institutions that are by design – endowed with the capacity to solve 'problems without borders', might serve as an effective platform for regulating and policing the cyberspace.^[55] Multilateralism can aid the regulation of the cyberspace through harmonization of policies, and the formulation of pragmatic rules, and means of enforcing litigation judgments.^[56]

Thus, if cyber regulatory laws are universal, harmonized, and domestically ratified by countries, the universal enforceability and territorial fluidity of cyber laws, will be made compatible with the borderless nature of the cyberspace. Hence, complaints or court orders can be directed to jurisdiction where enforcement of judgments is most achievable. Nonetheless, the success of such a policy measure will depend on the political will and investment of states in ensuring the success of such global policy objectives.^[57] Nevertheless, if existing laws and regulatory principles for policing the cyberspace are implemented and interpreted prudently for example as held in the case of *National Association of Software and Service Companies (Nasscom) v Ajay Sood & Others*,^[58] the cyberspace will be more secure.

Conclusion

The Fourth Industrial Revolution has propelled digitalization and the proliferation of cyberspace, leading to the rise of digital manifestations of human rights that are

now practiced online or through digital platforms. The intimate connection between human rights and security highlights the essential function of cybersecurity in protecting these rights in the digital domain. The interconnectedness of contemporary life and human action has consistently affirmed the interdependence of rights.

^[59] The preamble of the African Charter on Human and Peoples' Rights emphasizes that the right to development is intrinsically linked to civil and political rights, as well as economic, social, and cultural rights, both conceptually and universally. It further contends that the fulfillment of economic, social, and cultural rights is imperative for the realization and enhancement of civil and political rights. Article I (5) of the Vienna Declaration and Programme of Action⁶⁰ asserts that "all human rights are universal, indivisible, interdependent, and interrelated."

Consistent with this viewpoint, the concept of security has been redefined and expanded beyond its conventional emphasis on physical dangers and violence. It currently has various dimensions that illustrate the intricacies of the contemporary world. The United Nations defines modern security as encompassing economic, health, personal, community, political, and environmental dimensions, all directed towards the primary objective of guaranteeing freedom from fear and want in a holistic and sustainable fashion.

"from fear and want," which has been proclaimed as the paramount ambition of the populace. This research utilizes five fundamental principles to investigate and assess the exercise of human rights in cyberspace, taking into account both empirical facts and normative considerations. Ownership, legality, legitimacy, functionality, and accessibility. These principles provide a framework for tackling the intricate normative and practical aspects of human rights in the digital realm

- a the exercise of ownership rights;
- b the legality of acts perpetrated on the cyberspace;
- c the legitimacy of administrative practices enforced therein;
- d the functionality of websites; as well as
- e their accessibility.

These factors make cyber security an important issue of interest. Especially in the context of the modern concept of security as recognized by the United Nations, which now possesses socio-cultural, and economic dimensions.^[60]

Thus, States are burdened with the task of ensuring cybersecurity and the efficacious exercise of human rights on the cyberspace. That is a feat which among other things, can be achieved through legislation, regulatory cooperation and multilateralism, and adapting to the trends of the fourth industrial revolution, and the modern cyberization process. Consequently, 'it will always be a losing battle if security professionals are way behind the cyber criminals in terms of technological knowledge.'^[61] On that account, states are encouraged to adopt a technologically incline legal approach, for ensuring that the normative and empirical legitimacy of cyber laws are advanced, standardized, and pragmatic enough to cope with the cyberspace.

Another important issue of interest is accessibility, considering the indispensability of internet access: to the execution of various socio-economic and political activities. Thus, at the multilateral level, it is important for States to consider how the liberality of the cyberspace can be guaranteed, for the benefit of all persons

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