

Excerpt from the book:

Fondation Scelles, Charpenel Y. (under the direction of), *Sexual Exploitation: New Challenges, New Answers (5th Global Report)*, Paris, 2019.

© Fondation Scelles, 2019

DEALING WITH CYBERPROCURING AND ONLINE SEXUAL EXPLOITATION

Online prostitution is a booming industry. Escorting agencies, directories of escorting advertisements, and “adult” or “massages” sections on online advertising sites prosper, and more or less explicit meeting proposals develop on dating sites, forums linked to sexuality... Faced with this explosion of cyber-procuring, countries are reinforcing their penal policies, adopting new laws and implementing new prevention actions related to risks on the Internet. However, we need to go further: mobilize social networks, held liable sites gaining profit from these activities... Real governance is yet to be constructed.

Despite France’s adoption of law n.2016-444 of April 13th, 2016, which “aims to reinforce the fight against the system of prostitution” by notably penalizing sex-buyers, prostitution and sexual exploitation on the Internet seems to be a rapidly expanding plague. It represents nearly two thirds of prostitution in France, and is developing both inside and outside of main metropolises. Indeed, in addition to escort websites, messages offering sexual acts show up on dating websites, on forums related to sexuality, and on websites having no direct connection to this theme. The digital technology facilitates the concealment, anonymity, and discretion that allows for the development of these illegal activities.

Thus, every Internet user has very easy access to paid sexual transactions. Use of the digital technology allows for this type of researches through dating or other explicit sites.

The democratization of online prostitution has resulted in numerous sites proposing to introduce prostituted persons

to sex buyers. Whilst characterizing street prostitution and online prostitution is relatively simple, the identification of online procuring is more difficult. Messages published online advertise “massages”, “pleasant moments,” and even, for some, the possibility to “take a shower afterwards.”

The digital sphere is a space of mobilization for women who decided to unite and make their voices heard. In the context of the revelation of the sexual violence committed by the Hollywood producer Harvey Weinstein, women all over the world seized traditional and social media to expose - via the hashtags *#Balancetonporc* and *#MeToo* movement- the violence to which they have been victims.

Although the Internet can create many means of expression and collective mobilization, cyberspace isn’t always a safe place for women.

Thus, the violence that women are subjected to on the Internet is colossal. In a 2018 report by *UN Women*, 73% of

women declared that they had been victims of online violence, 18% of whom reported having been exposed to serious violence on the Internet. This context reinforced the realization of the phenomena of violence and sexual exploitation. Platforms that can facilitate these abuses are being targeted for their responsibility, even though tangible responses still need reinforcement.

The problem with Internet platforms

Vivastreet and Backpage as examples

There are two other types of escorting websites: specialized directories offering escorting advertisements which detail the proposed sexual acts but do not mention the price, and escort agency websites that allow for the reservation of certain women during their visit in France ("sex tours"). On each escort's profile is a list of offered sexual acts, as well as a rate. Claiming more than 30 million visitors, 10 million of whom are from France, the website *Vivastreet* technically bans any advertisements that offer paid sexual acts in its terms and conditions. Its "Massages" section contains neither set prices nor explicit sexual acts. The Parquet de Paris (Parisian public prosecutor's office) has launched an inquiry for aggravated procuring against X after discovering suspicious ads on *Vivastreet's* website¹. This platform is accused of facilitating disguised prostitution, of which it supposedly takes enormous profits by charging for ads that it claims to have moderated, which means it acts as an intermediary, in full knowledge of the true circumstances. One only has to look at the long litany of prostitution cases that are being reported in the press, and see the name of the site in articles everywhere. Looking at the site in question, from the "Erotica" section to the "one-night stand" section, is enough to understand that one is faced with prostitution offers. The prosecutors' decision comes after an initial

inquiry launched in February 2017 by the *Office Central pour la Répression de la Traite des Êtres Humains* (OCRTEH), following a complaint from the *Mouvement du Nid* (MdN), a French association fighting against the causes and consequences of prostitution. The NGO MdN aimed notably *Vivastreet's* paid section, dedicated to "adult services", which includes, among other things, several thousand announcements of meetings and massages. The "Dating" section of *Vivastreet* has since been closed and replaced with the following notice: "*Vivastreet is a web host with an ad platform that includes several categories whose content is created by its users. As a responsible operator, we respect the local laws of each country where we operate and remove about two million ads each month from our French platform. It has been suggested that some users make inappropriate use of our site, acting in a way that would be contrary to our terms and conditions. As a result, we decided to suspend our dating section, to prevent any abuse.*" This decision clearly shows the positive effects of state and judicial engagement, as the platform obviously cares about not tarnishing its e-reputation.

In the United States, the FBI, as part of the fight against prostitution, shut down the *Backpage* website, which specialized in paid dating and sex services advertisements. The FOSTA (Allow States and Victims to Fight Online Sex Trafficking Act) and SESTA (Stop Enabling Sex Traffickers Act) legislation provided law enforcement authorities and victims with new tools to combat sex trafficking. The FOSTA act makes it possible to target websites to prosecute them for sex trafficking offences, and increases "penalties...for persons who promote or facilitate the prostitution of five or more persons; or who contribute to sexual trafficking." Thus, website operators who, for example, allow prostituted persons to interact with sex buyer could be sentenced to 25 years in prison under the new law.

A rarely pursued websites liability

In France, proposing a simple manner to report and remove illegal content quickly after it is reported, as classified websites do, is not sufficient to avoid the legal classification of “an intermediary for the purpose of the commission of acts of prostitution.” It should be emphasized that price indication is not a prerequisite in either statutory or case law for the criminalization of procuring, but may be an indication of the legal classification of the offense.

It is also not sufficient to simply remove any explicit reference to sexual services in order to exempt the host site from prosecution. One can cite the case of a person responsible for a classified newspaper offering a "Relaxation" section, who was successfully prosecuted for procuring on the basis of financial indicators. "The high fee for publishing [display classified ads], of which some appear as commercials, allows the presumption that the advertiser was exercising a lucrative business, of a professional nature" declared the Cour de cassation (one of the highest court of France) in a judgment rendered in 1996.

Content hosts shall be liable to civil and criminal liability if they do not withdraw or make impossible access to the unlawful information and activities of which they are aware, including through reporting procedures. In theory, escort agencies, whose websites are often hosted abroad, are exposed to the risk of prosecution as an intermediary to prostitution if they offer services towards the public in France. In practice, few agencies are prosecuted.

Limits to the loyalty of platforms

Websites putting on display the contents, goods and services offered by third parties (search engines, social networks or price comparisons) will now have to specify the

referencing and ranking criteria they use. They will have, for example, the obligation to indicate to what extent the amount of their remuneration is taken into account in the order in which their contents are presented.

Websites publishing customers' opinions will have to clearly state if the opinions have been verified and, if that was the case, how.

Market places and collaborative economic websites will have to provide the essential information that allow them to guide consumer choices: quality of the vendor (professional or not), amount of the networking costs invoiced by the platform, whether or not there is a right of withdrawal, whether or not there is a legal guarantee of compliance, dispute settlement procedures, etc.

Finally, the most visited platforms (i.e. those with more than 5 million individual visitors) will have to apply the best practices in terms of clarity and transparency.

Pursuant to French law n.2016-1321 of October 7th, 2016, for a Digital Republic, three decrees have been issued to effectively apply this legal obligation of loyalty but whose non-compliance is not subject to criminal sanctions:

- Decree n.2017-1434 of September 29th, 2017 on the information obligations of digital platform operators
- Decree n.2017-1435 of September 29th, 2017 on the setting of a threshold number of connections, above which operators of online platforms must develop and disseminate best practices to improve the loyalty, clarity, and transparency of information transmitted to consumers
- Decree n.2017-1436 of September 29th, 2017 on the information obligations relating to online consumer reviews.

“Procuring in the Suburban Areas” a simple variant of cyber-procuring

The phenomenon of “prostitution in the Suburban Areas” represents 14% of

identified victims of procuring in France in 2016. According to *OCRTEH*, 56% of those victims are children. The statistics are even worse in the Paris region.

Over the last few years, these purely French networks, by recruiting children from welfare homes and high schools, have thrived in the midst of the more traditional networks (*Le Point*, September 6, 2018). Recruitment is increasingly being done via social networks such as Facebook and Snapchat². The police and legal systems are starting to address the issue. The Internet is a major vector for this very lucrative crime, in which the procurers are only slightly older than their victims (*Europe 1*, May 31, 2018).

The progressive reinforcement of the law and the penal policy

It is important to highlight the latest legislative developments that indirectly help combat this phenomenon, such as the recent criminalization of revenge porn³ introduced by the law for the Digital Republic in article 67. The new article, 226-2-1 of the Penal Code, provides that “When the offenses provided for in articles 226-1 and 226-2 concern words or images of a sexual nature taken in a public or private place, the penalties shall be up to two years' imprisonment and a fine of EUR 60,000 (USD 67,448). The same penalties apply if, in the absence of the agreement of the person for its dissemination, the public or a third party is presented with any recording or document relating to words or images of a sexual nature obtained with the express or presumed consent of the person, or made by that person, and obtained by means of one of the acts provided for in article 226-1.”

The new article 226-2-1 of the Penal Code thereby extends the possibility of recourse for victims, because:

- the images may have been recorded in public places, not only in private places

- a separate consent is required to disseminate images that may have been taken consensually.

Moreover, the report by the *Haut Conseil à l'Égalité entre les femmes et les hommes* (HCE - High Council for Equality between Women and Men), of November 16th, 2017, recommends, notably in part 4, the reinforcement of human and financial means for the fight against cyber-procuring, and the mobilization of social networks for the fight against sexist and sexual online harassment, saying that social networks must commit to reinforcing their reporting procedures and their moderation rules. The law should impose a maximum 24-hours response time to the flagging of incidents.

The report also calls on the government to bolster the means of combating cyber-procuring by providing the investigating authorities with the sufficient human and financial resources. It also calls for a report that identifies the obstacles to the criminal liability of Internet websites that facilitate and gain profit from the liability of others, as what is imposed in hotel procuring. The report likewise calls for funding for associations that support the victims of prostitution to prevent prostitution and assist victims.

Given that the rise of cyber-procuring complicates the work of investigative authorities in identifying victims, there needs to be a significant increase in cooperation work and information sharing, especially with specialized associations. Preventive measures were put in place to fight against Internet jeopardizing children.

Thus, several jurisdictions have implemented preventive actions relating to Internet risks (sexual violence and cyber-harassment...) as part of school interventions, conducted either by the prosecutor's office or by the investigative authorities to raise the awareness of

children about the uncertainty as to the age and identity of their interlocutors and the risks associated with sending intimate photographs.

Beyond intervening directly with children, prosecutors sometimes make presentations to school principals and even regional public officials on the various offences susceptible to being committed via the Internet, and on the question of the notification of incidents to judicial authorities as required by article 40 of the Code of criminal procedure.

In conclusion, real governance still needs building in the current context, given that cooperation with other Internet stakeholders remains uncertain. The United States wants a free and open Internet, which allows it to maintain an economic stranglehold through big corporations such as Google, Apple, Facebook and Amazon (GAFA) that tend to contest States sovereignty. The fight must go on.

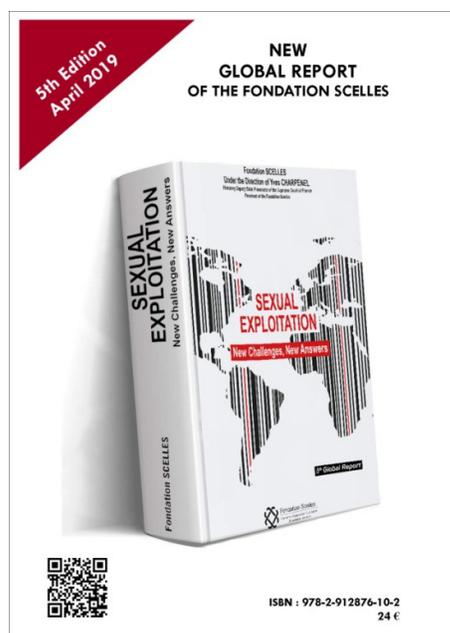
¹ Vivastreet is the second French online advertisement website, present in 13 countries.

² Snapchat is an Internet platform offering the ephemeral publication of photos, videos and messages between subscribers. Each photograph, video or message is visible for a period of time ranging from one to ten seconds before it is no longer available for viewing

³ Publication on the Internet of sexually explicit content without the consent of the person concerned for the purpose of revenge after the break-up of a relationship.

Sources

- « La protection de la jeunesse en ligne », dossier Dalloz IP/IT, *Dalloz*, June 2018.
- « Petites annonces sur Vivastreet : une information judiciaire ouverte pour "proxénétisme aggravé" », *Europe 1*, May 31, 2018.
- Constant J., « Prostitution : les cités, nouveaux eldorados des proxénètes », *Le Parisien*, November 24, 2017.
- Durand E., Ronai E. (Rapporteur), Gayraud A., Guiraud C. (Co-rapporteur), Bousquet D. (President), *En finir avec l'impunité des violences faites aux femmes en ligne : une urgence pour les victimes*, Report n.2017-11-16-VIO-030, Haut Conseil à l'Égalité entre les femmes et les hommes (HCE), November 16, 2017.
- Feral Schuhl C., *Cyberdroit 2018-2019 : Le droit à l'épreuve de l'internet*, Dalloz, Collection « Praxis Dalloz », 7th edition, 2018.
- ONU Femmes, *Annual Report 2017-2018*, 2018.
- Quéméner M., *Le droit face à la disruption numérique : Adaptation des droits classiques - Émergence de nouveaux droits*, Gualino, Coll. « Hors Collection », 1st edition, 2018.
- Scelles Foundation, Sanctuary for Families, Mission permanente de la France auprès des Nations Unies, *Combating online sex trafficking: Confronting challenges forging cooperation*, White Paper, New York, March 14, 2018.
- Sellami S., « Prostitution : enquête sur les nouveaux visages du proxénétisme en France », *Le Point*, September 6, 2018.



The Global Report is produced by the International Observatory on Sexual Exploitation, in collaboration with internal and external experts (magistrates, lawyers, social workers, NGO leaders...), and the support of local NGO correspondents or international researchers.



The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

CONTACT

Sandra AYAD, Head of the International Observatory on Sexual Exploitation
sandra.ayad@fondationscelles.org

14 rue Mondétour
75001 Paris - France



www.fondationscelles.org
 Tw: @Fond_Scelles
 Fb: @FondationScelles