

**Issues with the Investigation and Prosecution  
of Online Child Sexual Abuse in Vietnam**

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## **Abstract**

While online child sexual abuse (OCSA) is an international concern, little is known about its negative effects in Vietnam, where the percentages of Internet users exceed 50% of the population. A recent statistic from the Criminal Investigation Department (CID), under the Ministry of Public Security, reveals that during the 4 years period (2014 to June 2018), on average, more than 1,500 child sexual abuse cases were detected per year. However, the proportion of OCSA detected cases in the total detected child sexual abuse cases was only 2.5%. Also, there has not been any formal evaluation of the situation with the investigation and prosecution of OCSA and child pornography in Vietnam. This research project has sought to give an overview of the current state of investigation and prosecution of OCSA in Vietnam and to examine the effectiveness of law enforcement agencies in tackling this serious cybercrime. The research was conducted over 9 months, from February to November 2018 and divided into three parts. The overview of the terminology, nature of OCSA and the regional and international concerns about the rise of OCSA was presented in the first part. In the second part, the practice of Vietnam CID investigation and prosecution of OCSA was analyzed carefully to establish the aim and objectives of the research. The research was illustrated by four selected case studies that had been investigated in order to determine the barriers to current efforts of law enforcement agencies in dealing with this problem. The database of the CID was accessed and analyzed with a view to evaluating the current situation. The cases and related materials of the Police Force during the period of 2014-June 2018 were collected for assessment. In this part, the existing legal framework, the structure, and capacity of relevant law enforcement agencies were studied for a comprehensive evaluation. In the third part, the research identified the existing issues with the investigation and prosecution of OCSA in Vietnam. The issues include the lack of a legal framework, insufficient capacity of law enforcement agencies, the lack of human resources, technical training and the limits on international cooperation.

The findings of the research improve the awareness of OCSA in Vietnamese society. It serves as a valuable academic resource and reference for researchers as well as practitioners.



## **Statement of Originality**

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except where specifically indicated in the text. This work has not been submitted for a higher degree to any other university or institution.

Thi Tuyet Nhung Luong

## **Declaration**

I certify that the work in this thesis entitled “Issues with the investigation and prosecution of online child sexual abuse in Vietnam” has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree to any other university or institution other than Macquarie University. I also certify that the thesis is an original piece of research and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

In addition, I certify that all information sources and literature used are indicated in this thesis.

## **Acknowledgments**

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## Introduction

The exponential growth of the Internet on a global scale has changed dramatically the way in which humanity communicates, entertains, shops or does business. It is also an essential tool for children for studying, developing and improving their skills. The benefit of the Internet cannot be denied. However, there are increasing concerns about the risks the Internet might bring for young children such as sexual abuse. In recent decades, online child sexual abuse (OCSA) has been a significant global problem. A recent report of The End Child Prostitution and Trafficking (ECPAT) noted that web-pages are monitored by their analysts every five minutes and every nine minutes a webpage shows an image of child sexual abuse.<sup>1</sup>(ECPAT, 2018) The anonymity of this online crime and its rapid spread complicates the efforts of law enforcement forces in detection, investigation, and prosecution.

Located in Southeast Asia, Vietnam is a nation with a large population (95.5 million in 2018).<sup>2</sup>(Economics, 2018) According to a recent statistic, Vietnam is an economy with mid Internet penetration (52.72%).<sup>3</sup>(Society, 2017b) The number of Internet users was 53.86 million in 2017 and it is projected to reach 60 million in 2022. The majority of Internet users in Vietnam access the Internet via mobile phones (42.18 million in 2017, and it is forecasted to grow to more than 55 million in 2022).<sup>4</sup> (Dammio.com, 2018)

In recent years, the Vietnamese government has taken several measures in order to enhance the effectiveness of the prevention and detection of crime against children in general and child sexual abuse related to the Internet in particular. According to Vietnamese police statistics, on average, there are more than 1,500 victims of child sexual abuse cases each year. 6,090 child sexual abuse cases were detected during the period of 2014 to June 2018.<sup>5</sup>(CID, 2018) However, the investigation and prosecution of OCSA is still limited. An inadequate legal framework, inexperienced investigators, lack of investigative resources and techniques, and limited international cooperation are obstacles to greater effectiveness of investigation and prosecution capabilities. Therefore, academic research into the current situation with investigation and prosecution of OCSA is absolutely necessary for both practical and theoretical reasons. This research is designed to address this need. First, this research aims to evaluate the current situation with the investigation and prosecution of OCSA

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<sup>1</sup> Trend in online child sexual abuse material, ECPAT 2018

<sup>2</sup> Vietnam Population, Trading Economics <https://tradingeconomic.com>

<sup>3</sup> Mapping Online Child Safety in Asia-Pacific, Internet Society, 2017

<sup>4</sup> Dammio.com website, 7 April, 2018

<sup>5</sup> Statistic of The Criminal Investigation Department 2018



by Vietnamese Police. Secondly, based on this evaluation, the research will suggest what issues currently exist that limit the effectiveness of current efforts.

Within the scope of the research, the Vietnam Police Force's practice with the investigation and prosecution of OCSA during a 4 year period, from 2014 to June 2018 was analyzed. The government policies and legal instruments that assist the prevention and detection of crime against children were also assessed. With permission from the Criminal Investigation Department (CID), the researcher spent a month to analyze and classify the databases of this agency in order to identify relevant statistics and cases related to OCSA.

# **Methodology**

## **1. Analysis of official records and documents**

The research examined carefully the available resources involving international and domestic documents, previous research, articles, existing domestic legislation and reports of law enforcement agencies. As mentioned above, there has not been any research on the investigation and prosecution of OCSA in Vietnam. So the researcher accessed the records of the child sexual abuse cases at the CID database to classify the number of cases that related to the Internet. The summary of 6090 cases was accessed in a month. The classification results were used as the statistics for the research. The annual reports of CID at the central and provincial level on investigating OCSA from 2014 to 2017 were the resource for assessment in the research. Those reports provided the statistics of OCSA in some provinces in Vietnam and the difficulties in combatting OCSA.

## **2. Case studies**

To evaluate the effectiveness of the prevention and combating child sexual abuse, the research considered case studies that have been investigated or are currently being investigated by the Police in Vietnam. The result of cases analyzed, especially the unsuccessful cases, assisted the identification of the barriers to successful investigation and prosecution of OCSA in Vietnam. Each case examined was used throughout the research to illustrate a specific limitation of investigation and prosecution of OCSA in Vietnam. Four selected cases (one successful and three others unsuccessful) are presented.

## **3. Rating and data analysis**

The collected data from the above methods was rated and classified before being used as data in the research. The research accessed the available data to classify statistics related to OCSA. To do this task, the data of the CID from 2014 to June 2018 was accessed to enumerate the data related to the Internet. The researcher also accessed the databases of CID and the Police Force in some provinces: Hanoi, Ho Chi Minh City, Da Nang and Can Tho to locate all available data and statistics. The research identified 153 detected cases OCSA during the period.

## **4. Comparison with the statistics of other offences and other countries:**

To illustrate the issues that currently exist in the investigation and prosecution of OCSA in Vietnam, the research compared the statistics of OCSA with other domestic offences: drug trafficking, economic crime, environmental crime, and corruption. At the same time, the results of combating OCSA in 5 selected countries was compared with Vietnam: the UK, US, Australia, Japan, South Korea. The comparison led to

the conclusions about the limitations of the investigation and prosecution of OCSA in Vietnam.

## **The research contents**

The research is divided into three parts, with each part providing an overview and discussion of each key area identified during the research stages. The first part provides the overview of the terminology, nature and modus operandi of OCSA, the regional and international efforts in tackling with OCSA. The second part analyzes the details of investigation and prosecution of OCSA in Vietnam. Because OCSA and child pornography are still not covered in Vietnamese law, the scope of the second part focused on the overall picture of the investigation and prosecution of child sexual abuse cases related to the internet in Vietnam and its difficulties. In this part, the comparison between Vietnam's situation and other countries revealed the limitation in detecting and investigation OCSA in Vietnam. The recognition of those difficulties is the basis for further examination in the final part. The key topic of the final part is the identification of the reasons for the challenges that Vietnamese law enforcement is facing in the investigation and prosecution of OCSA in Vietnam. This part presents the limitations of the legal framework, investigation techniques, experience, investigation operations and international cooperation.

## **I. The terminology of OCSA and the international efforts in tackling OCSA**

This part provides the terminology, nature and modus operandi of OCSA. The responses to this threat at regional and international level are also analyzed in order to illustrate the concerns of the international community about OCSA. The literature review is also presented in this section.

### **1.1. The definition of OCSA**

#### **1.1.1. *Children:***

The concept “children” is widely understood as a childhood period of a human before they are adults. According to the UN Convention on the Rights of the Child (CRC), a child is a person below the age of 18, unless the law of a particular country set the legal age for adulthood at a younger age.<sup>6</sup>(UN, 1989) Vietnam ratified the Convention in 1990. However, there is a difference in stipulating the age of children between national law and the UN Convention. According to Vietnamese Children Law, “a child is a human being below the age of 16.”<sup>7</sup>(Assembly, 2016) So in the scope of the research, the victim of selected OCSA cases refers to the victims who are under 16-years according to Vietnamese regulations. Furthermore, the concept of OCSA and child pornography do not exist in Vietnamese law. However, in practice, child sexual abuse cases related to the Internet have been investigated and prosecuted under related articles of the Penal Code such as article 142: “Rape of a person under 16”; article 144: “Sexual abuse of a person aged from 13 to 16”; article 145: “Engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16”, article 326: “Distribution of immoral cultural materials”.(Assembly, 2015b) Those cases involved contacting the victims via online applications (apps) or games, possession of child sexual materials and making and/or distributing child sexual materials. This research analyzed those cases to discover the current situation and limitations of the investigation and prosecution of OCSA in Vietnam. The OCSA term used throughout this thesis refers to detected child sexual abuse cases related to the Internet in Vietnam.

#### **1.1.2. *Child sexual abuse***

The United Nation CRC regulates “States Parties undertake to protect the child from all forms of sexual exploitation and child sexual abuse.”<sup>8</sup>(UN, 1989) However, the full definition of child sexual abuse is not described by CRC. The World Health Organization provides detailed terminology about child sexual abuse: “Child sexual

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<sup>6</sup> UN Convention on the Rights of the Child, Article 1

<sup>7</sup> Vietnamese Children Law 2016 No. 102/2016/QH13, Article 1

<sup>8</sup> The UN Convention on the Rights of the Child, Article 34

abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity is intended to gratify or satisfy the need of another person”<sup>9</sup>.(WHO, 1999)

There are regulations that cover child sexual abuse under Vietnamese law. The Law of the Child defines: “Child abuse is activities that cause the injuries of the physical, emotional, mentality, the human dignity of a child under the forms of violence, exploitation, sexual abuse, trafficking, abandoning or neglecting children”<sup>10</sup> According to the Criminal Penal Code, rape of a person under 16 is “The use of violence or threat to use violence or takes advantages of the victim’s defenselessness or other tricks to engage in non-consensual sexual intercourse or other sexual activities with a person aged from 13 to under 16” and “Engaging in sexual intercourse or other sexual activities with a person under 13” Sexual abuse of a person aged from 13 to under 16 is regulated under article 144: “Any person who employs trickery to make a person aged under 13 to under 16 who is his care-dependent or a person in extreme need to reluctantly engage in sexual intercourse or other sexual activities shall face a penalty”<sup>11</sup>(Assembly, 2015b). According to Vietnam Penal Code, Children Law and related legal regulations, an under 13 years old child is immature and has no civil capacity. So engaging in sexual intercourse or other sexual activities with an under 13 year old child with or without the consent of the victim shall be accused of rape of a person under 16 (Article 142). A 13-16 years old child has a part of the civil capacity. So engaging in sexual intercourse with a person from 13-16 year old shall be punished under the article 124 or article 145 depend on each circumstances: Without the consent of the victim, the pernetrator shall be punished under article 142 for rape of a person under 16; With the consent of the victim, the penetrator shall be punished under article 145 for engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16. There is an acknowledgment that apart from contacting abuse, “child sexual abuse can also be committed without physical contact (so-called non-contact

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<sup>9</sup> WHO Report of the Consultation on Child Abuse Prevention, Geneva, 1999

<sup>10</sup> The Vietnamese Law of the Child, Article 4 (5)

<sup>11</sup> The Vietnamese Penal Code, Article 142, 144

abuse)”<sup>12</sup>(Group, 2016) This is the activities of abusing children online or via technological methods

### ***1.1.3. Online child sexual abuse (OCSA)***

In recent decades, there has been an increase in the number of research publications, documents, and reports related to OCSA or technology-assisted child sexual abuse (technology-assisted CSA). In order to assist law enforcement agencies of countries and regions in combating effectively this transnational crime, a unique definition of OCSA is a requirement. However, there are some differences in legislation and languages. Consequently, the difference in OCSA concept exists between related research. Some studies divide online child sexual abuse into two group: “first, those who use the Internet and mobile phones to target and groom children; and second, those who produce and/or download indecent illegal images of children from the

internet and collect and distribute them.”<sup>13</sup>(Stephen Webster, 2015) The research of Elena Martellozzo defines sexual solicitation and exploitation that may include harmful content like child abuse images; encourage or make payments to pose in sexually provocative ways and pose naked or perform sexual acts via webcams.<sup>14</sup>(Martellozzo, 2012) According to the report of the Ropert project (2013) funded by the European Union and Council of the Baltic Sea States, all activities related to production, distribution, trade, sharing, storing, receiving, viewing child sexual materials or luring children in order to engage them in online sexual activities are defined as an online child sexual abuse offence. This research also indicated that the solicitation of children to engage them in sexual chat, other sexual activities online or to perform offline sexual abuse activities is considered as an online child sexual abuse activity.<sup>15</sup>(Mare Ainsaar, 2013) New and accurate terminology was introduced by the Interagency Working Group in Luxembourg in 2016 that indicates “The term OCSA refer both to the sexual abuse of children that are facilitated by Information and Communication Technologies (ICTs) (e.g. online grooming) and to sexual abuse of children that are committed elsewhere and then repeated by sharing it online through, for instance, images and videos. The preferred term in the case of

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<sup>12</sup> Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Interagency Working Group on Sexual Exploitation of Children, 2016. <https://www.interpol.int/>

<sup>13</sup> The Theoretical Context of Online Child Sexual Abuse, Lulia Davidson and Stephen Webster, Online Offending Behaviour and Child Victimization, New Finding and Policy, edited by Stephen Webster, Julia Davidson and Antonia Bifulco, 2015, page 21

<sup>14</sup> Online child sexual abuse, Grooming, Policing and Child Protection in a Multi-Media World, Elena Martellozzo, 2012, page 57

<sup>15</sup> Ropert project report 2013, page 10 (Ristaking Online Behaviour Empowerment through Research and Training)

the former is “online-facilitated child sexual abuse”<sup>16</sup>(Group, 2016) In addition, in recent research of ECPAT in 2018 indicates some typical forms of OCSA. These may include the production, dissemination, possession of child pornography; online grooming or active sexual solicitation of children; sexual extortion of children; revenge pornography; exploitation of children through online prostitution; live streaming of sexual abuse.<sup>17</sup> (ECPAT, 2018)

Conclusion: The various terminologies of OCSA indicate the diversity of illegal activities against children online. The nature of OCSA offence might need further development in the future. Methods of OCSA might be varied into different forms. However, at this time, it can be summarised this offence by the following description: Online child sexual abuse is one type of cybercrime, in which perpetrators take advantage of Information and Communication Technologies (ICT) to target children on the internet for illegal sex purposes. This crime is also recognized by its link to the online environment and the illegal engagement of a child in sexual activities via internet facilities. It can be described in different ways: child sexual materials (CSM), online child sexual exploitation (OCSE), assisted-technology child sexual abuse (assisted-technology CSA), child pornography. Consequently, all the activities that related to exploiting children in the digital world for the sexual purpose are considered as OCSA.

It can be argued that the rise in online child sexual abuse directly relates to the rapid penetration of the Internet in society. We can never do an accurate assessment of the exact quantity of CSM available or how much OCSA occurs via the Internet. However, the negative effects of OCSA on society and young children are recognized globally. International Criminal Police Organization (Interpol-ICPO) notes that “the Internet plays a central role worldwide in the dissemination of child sexual exploitation material” and “the dissemination of child sexual exploitation material via the internet has significantly increased in recent years.”<sup>18</sup> (INTERPOL, 2011a) A report of the Internet Watch Foundation in 2016 asserts “criminals are increasingly using masking techniques to hide child sexual abuse images and videos on the internet” and “we’ve seen a 112% increase in this technique.”<sup>19</sup>(IWF, 2016) This report also indicates that there has been a 258% increase in the number of websites relating to the purchase of child sexual images and videos. In addition, a report for the UK Children Exploitation and Online Protection (CEOP) Centre:

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<sup>16</sup> Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Interagency Working Group on Sexual Exploitation of Children, 2016, page 23. <https://www.interpol.int/>

<sup>17</sup> Trends in online child sexual abuse material, ECPAT, 2018, page 6

<sup>18</sup> Interpol Resolution AG-2011-RES-05: Combating online sexual exploitation of children through a legislative global engagement strategy, 2011

<sup>19</sup> IWF annual Report 2016, page 5



Threat Assessment of Child Sexual Exploitation and Abuse states “over one-third of the world population was connected to the internet in 2012. A prediction, in the next few years is that the scope for growth in Internet penetration in the world is clearly huge and the threat to children from sexual abuse online can only increase”<sup>20</sup>(CEOP, 2013)

It is believed that the modus operandi of the offenders has become increasingly sophisticated along with the advance of technology. Technology offers predators greater opportunities to find vulnerable youth that they can prey on.<sup>21</sup> (Catherine Hamilton-Giachritsis, 2017) Online child sexual abuse threatens a safe online environment and child protection. Considered as a borderless crime, OCSA is one of the most serious crimes in cyberspace. With the rapid growth and popularity of social networks such as Facebook and Instagram, criminals find it easy to contact children in order to persuade them or even force them to produce sexual materials or engage in other sexual activities. “A real risk of victim selection via the routine scanning of social network sites and chat room does exist.”<sup>22</sup> (Jaishankar, 2011) The anonymity of online access has emboldened criminals. Perpetrators have used the advantages of technology to avoid being detected. Online child sexual abuse offenders are hiding their identities and making it difficult for law enforcement agencies to find them through the use of encryption and anonymity software. Research by Australia National University indicates that there is sufficient evidence to show the connection between apps and games with child exploitation material (CEM) while our children are engaging with apps and games. This is facilitated through the means of anonymity, encryption, demographics, desirability factors and location of those apps and games.<sup>23</sup>(Broadhurst et al., 2016) It is not difficult for perpetrators to access a victim via apps or games online with a false identity. A 40-year-old offender can find an easy way to attract a teenage victim online using the identity of a 14-year-old child. Furthermore, offenders can communicate easily with others via online forums, social media, and anonymous networks. Criminals are also educating each other on how to avoid being identified, investigated or arrested. *“Offeders are using tutorials [on] how to avoid on site investigations or how to avoid being arrested and [prosecuted] and “18 of 30 responding countries have investigated offenders who*

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<sup>20</sup> [http://www.norfolkscb.org/wp-content/uploads/2015/05/CEOP\\_Threat\\_Assessment\\_CSE\\_June\\_2013.pdf](http://www.norfolkscb.org/wp-content/uploads/2015/05/CEOP_Threat_Assessment_CSE_June_2013.pdf)

<sup>21</sup> Everyone deserves to be happy and safe, NSPCC, University of Bath, University of Birmingham, 2017, Catherine Hamilton-Giachritsis, Elly Hanson, Helen Whittle, Anthony Beech

<sup>22</sup> Online Social Networking and Pedophilia, An Experimental Research “Sting”, Roderic Broadhurst, Kasun Jayawardena

<sup>23</sup> Online Child Exploitation Material –Trends and Emerging Issues, Australia National University, Roderic Broadhurst, Stephanie Orlando, Donald Maxim, Katie Skinner, 2016, Page 25

*were discussing and/or sharing information about how law enforcement agencies investigate and/or prosecute child pornography offence”*<sup>24</sup>(Justice, 2015). In addition, persons who access or distribute child sexual websites believe that their online behavior is less risky than offline activity because it is “non-contact offence”. It is one reason why online child sexual abuse is on the rise and has become a major challenge for law enforcement agencies.

## **1.2. Literature review**

There is the concern within the international community about the rise and spread of OCSA on the Internet. Thousands of research, articles, books, and publications have assessed the criminal nature, the criminal methods, victim protection, the trend of this crime and how to recognize, prevent or combat OCSA effectively. The results for searching the keywords “online child sexual abuse” only within the Macquarie University's library yielded 46,820 articles, 45,905 dissertations, 9,840 newspapers and 706 books. There were about 78,000 results related to child sexual abuse and OCSA on Google Scholar when using the same search words.

In recent decades there has been considerable research involving evaluation and discussion relating to the investigation and prosecution of OCSA in some aspects. They are a valuable source for researchers and practitioners. This research focuses on the issues with the investigation and prosecution of OCSA in Vietnam. So the researches involve with the nature and method of the offenders, the situation of OCSA in some countries and regions as well as the efforts of law enforcement agencies and international organizations was selected as the reference. The publications below are some of them, selected on the basis of breadth of coverage and commitment to positive action.

- “A Typology of Online Child Pornography Offending”, Australia Institute of Criminology, Tony Krone, 2004 is a paper that provides the non-legal and legal definition of child pornography, forms of online child pornography offences and the practice of law enforcement agencies in dealing with this issue. The research indicates that law enforcement agencies should focus on the web-page connections among offenders to stop the spread of child pornography. Stings (using false websites target unsophisticated users and stings operations aimed at groomers) are also mentioned in this paper as an effective method for the investigation of online child pornography.

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<sup>24</sup> 2015 Threat Assessment Report, Global Alliance Against Child Sexual Abuse Online, 2015, Page 9, 10, <https://ec.europa.eu/home-affairs>

- “Online Social Networking and Pedophilia, An Experimental Research “Sting”, Roderic Broadhurst, Kasun Jayawardena, Cyber Criminology, Edited by K.Jaishankar, 2011. The paper is a valuable source for practitioners when investigating OCSA. The research provides an investigating technique: criminological sting, and how to conduct an investigation sting effectively. Four fictitious profiles were designed to illustrate the investigating technique.
- “Online Child Sexual Abuse, Grooming, Policing and Child Protection in a Multi-Media World” Elena Martellozzo, 2012. The book provides the overview of the nature of child sexual abuse, the problem of child sexual abuse, the knowledge about offenders, the international legislative framework and UK policy, practice in combating OCSA, the challenges that official agencies meet in the protection of children from OCSA. The cooperation at the policy level is also presented in the book. In the investigation, the research proposes new techniques such as undercover investigations. To use this approach in the investigation, the police officer should be equipped with the knowledge about perpetrators as well as children habit online, and the way of interacting online in order to interact with the methods of offenders. The book also recommends that to combat effectively OCSA, the police practitioners should identify and understand various methods used by offenders, and characteristics of groomers.
- “Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children”, United Nations Office on Drugs and Crime, 2015. The study identifies and describes the bad effects of technologies on the abuse and exploitation of children, presents the forms of sexual abuse of children on the internet and characterizes the offenders. This report summarised the efforts of national, regional and international efforts in establishing legal frameworks as well as practical means of addressing this problem. International legal instruments are listed in the report: United Nation Conventions on the Right of the Child (CRC), United Nation Convention against Transnational Crime (TOC) and its relevant protocols. The research also indicates that there are variety of laws of states on OCSA and child sexual materials. The research provides the various techniques that assist police investigators in investigating Information and Communication Technology (ICT)-facilitated child sexual abuse and exploitation. They are “the use of image analysis and image database, digital forensics, automated search, data mining and analytics and undercover operations”
- “Online Offending Behaviour and Child Victimization, New Finding and Policy”, edited by Stephen Webster, Julia Davidson, and Antonia Bifulco, 2015. The book is a publication of the authors, that illustrates the policy and legislation on combatting OCSA, the theoretical context of this crime, understand, and psychopathology of online grooming, social media, and young people and young victims.

- “Understanding and Preventing Online Sexual Exploitation of Children”, edited by Ethel Quale and Kurt M. Ribisl, 2012. The publication has three parts: the first includes research on abusive images and how to recognize OCSA and pornography, the second illustrates the legal, social and familial context of OCSA, the third contains research on prevention and harm reduction of OCSA.
- “Behind the screen – Online Child Exploitation in Australia”, research of University of Technology Sydney, Anti-Slavery Australia, Nelson Foundation, 2017. The research provides an overview of Australian legislation and sentencing outcomes for offenders. It also identifies critical issues relevant to effective responses. Also, the report provides an overview of key international and domestic agencies that provide the framework for the investigation and prosecution of online child exploitation offenses in Australia and overseas.
- “Online Child Exploitation Material – Trends and Emerging Issues”, Australia National University Cybercrime Observatory, Roderic Broadhurst, Stephanie Orlando, Donald Maxim, Katie Skinner, 2016. The research explores the connection and relationship of online and offline offending, emerging areas of child exploitation materials and current regulatory, educational and collaborative approaches to combat child exploitation material.
- “Global Strategies for Tackling Child Sexual Abuse Material Online”, Report for Winston Churchill Memorial Trust, Sarah Smith, 2014. The research gives an overview of both the Internet Watch Foundation Policy and UK policy in tackling child sexual material online. The strategies, policies and experiences in dealing with child sexual abuse material (CSAM) online of selected countries: Australia, New Zealand, Japan, USA, and Canada are presented in the research. The research also connects available individuals and agencies who enhance the international cooperation in combatting CSAM online. The report proposes recommendations for tackling CSAM online in the UK such as strengthening existing hotlines, enhancing cooperation agreements between NGOs and law enforcement agencies, improving technical training, and resourcing special units.
- “Online Grooming of Children for Sexual Purposes: Model Legislation and Global Review”, International Centre for Missing & Exploited Children, 2017. The report presents the efforts of countries in addressing the online grooming of children for sexual purposes. An overview of existing international and national law is also discussed in the report in order to identify recommendations for developing effective legislation.
- “Online Child Sexual Abuse and Exploitation, Current Forms and Good Practice for Prevention and Protection”, ECPAT France and Luxemburg, Nikoleta, Lydaki Simatiri, 2017. The report presents the definition of online child sexual abuse and

exploitation, legislation and the international cooperation in tackling this crime among 14 countries of Africa.

- “Digital Safety of Children and Youth”, Internet Society, Asia-Pacific Bureau, 2017. The paper discusses the risks that the internet brings to our children and the response of countries in the Asia-Pacific region.

- “Protecting Children from CyberCrime, Legislative Responses in Asia to Fight Child Pornography, Online Grooming, and CyberBullying”, The World Bank, International Centre for Missing and Exploited Children, 2015. This report analyzes the alignment of domestic laws with international legislation of 17 Asian countries in the prevention and detection of OCSA in those countries. The practices used in combatting OCSA of Asian countries, as well as the improvement of related national legal frameworks are also presented.

- “IWF Annual report 2016”, Internet Watch Foundation presents the results of IWF work to identify web-pages containing child sexual abuse images and videos. The report assesses the situation of OCSA on a global scale in 2016 and the trend of this threat.

- Global Threat Assessment 2018: “Working together to end the sexual exploitation of children online” by WeProtect Global Alliance. The report presents a warning of the rise and dangers of online child sexual exploitation, provides an understanding of the impact on victims and the society, gives information to support member countries in tackling online child sexual exploitation as well as enhancing the cooperation among member countries.

- “Exploring Practitioners’ Understanding of Child Sexual Abuse Images on the Internet”, the University of Toronto, Ph.D. thesis, Jennifer Joan Martin, 2013. The research provides an overview of child sexual images on the Internet and the impact of those images on the child victims. This research also explores how law enforcement agencies respond to child sexual images on the internet.

- “Protection and Security in a Technologically Advanced Society: Children and Young People’s Perspective”, University of Stirling, Ph.D. thesis, Kerry Hannigan, 2014. The thesis provides an overview of child sex abusers, internet grooming, protection and security on the internet for children and young people, minimizing the dangers for children when accessing the internet.

- “An Investigation into Online Sexual Grooming and Abuse of Children via Internet Technologies”, University of Birmingham. Ph.D thesis, Kloes, Julianne, 2015. This thesis analyzes offenses of online sexual abuse of children via internet technologies, discusses the offenders’ modus operandi and their methods in approaching victims. The research also discusses the limitations of the investigation of online sexual grooming and child abuse on the internet.

**Internal research:** OCSA is a new problem in Vietnam. So the availability of research and studies of OCSA in Vietnam are still limited. There has not been any research directly related to this issue in Vietnam. This is also a consequence of the limitations in regulation and the practice of law enforcement agencies in tackling this threat. The following are some examples of research related to child sexual abuse in Vietnam:

-“Prevention of child sexual abuse in Vietnam”, Nguyen Van Son (2012). The research evaluates the situation of child sexual abuse in Vietnam, the forms of this crime as well as the modus operandi of offenders. As the statistic provides by the research, the number of detected child sexual abuse cases in the period of 2008-2012 was over 6,000 cases. The research also proposes a recommendation for improving the prevention of child sexual abuse in Vietnam: amending legal framework, rebuilding the investigation unit, enhancing awareness in society through education, and media.

- “The investigation of child sexual abuse in ethnic communities in Dien Bien province”, Vietnamese Police Academy, Master thesis, Le Binh, 2013. The thesis evaluates the effectiveness of the investigation of child sexual abuse in some rural areas in Dien Bien province. This thesis points out the difficulties in the investigation of this serious crime in ethnic areas, especially the lack of awareness of local people and the custom of the ethnic communities that allow 12 or 13 year old children to marry. The research proposes some solutions for enhancing the capacity of local investigation units in investigating this crime.

-“Media in prevention and detection of child sexual abuse in Vietnam”, The University of Culture, thesis, Le Thi Phuong Anh, 2017. The thesis analyses the active role of media in providing information and knowledge of online child sexual in Vietnam. The research presents evidence to show that enhanced effectiveness in prevention and combatting of OCSA by using media is necessary.

- “Child sexual abuse- the situation and recommendation” The Court Magazine, Nguyen Trieu Luat, 2018. The article provides an overview of child sexual abuse in Vietnam and the limitations in education and investigation of this crime. According to the statistic of the article, from 2012-2016, more than 6,600 child sexual abuse cases were detected by Vietnam law enforcement agencies. The recommendation includes the improvement of the legal framework, the training of related law enforcement agencies and the cooperation of relevant agencies in combating child sexual abuse in Vietnam

- “Investigation child sexual abuse case”, Ph.D. thesis, The Police Academy, Ha Minh Tan, 2016. The research provides the overview of the investigation of child

sexual abuse cases in Vietnam in a 5 year period 2010-2015. Some new modus operandi of the offender is analyzed such as using Facebook or game online to trace the victims. The research recommends solutions for improving the investigation of child sexual abuse in Vietnam by comprehensive measures: amending legislation with more strict penalties, training in investigation technique for investigators and prosecutors.

These above listed domestic research and studies mainly focus on either the prevention of child sexual abuse in Vietnam, or the situation and solution for law enforcement agencies in the investigation and prosecution in some specific areas in Vietnam, or assessment of the existing child protection laws. There has not been any research that analyses and evaluates the situation of the investigation and prosecution capability of OCSA in Vietnam.

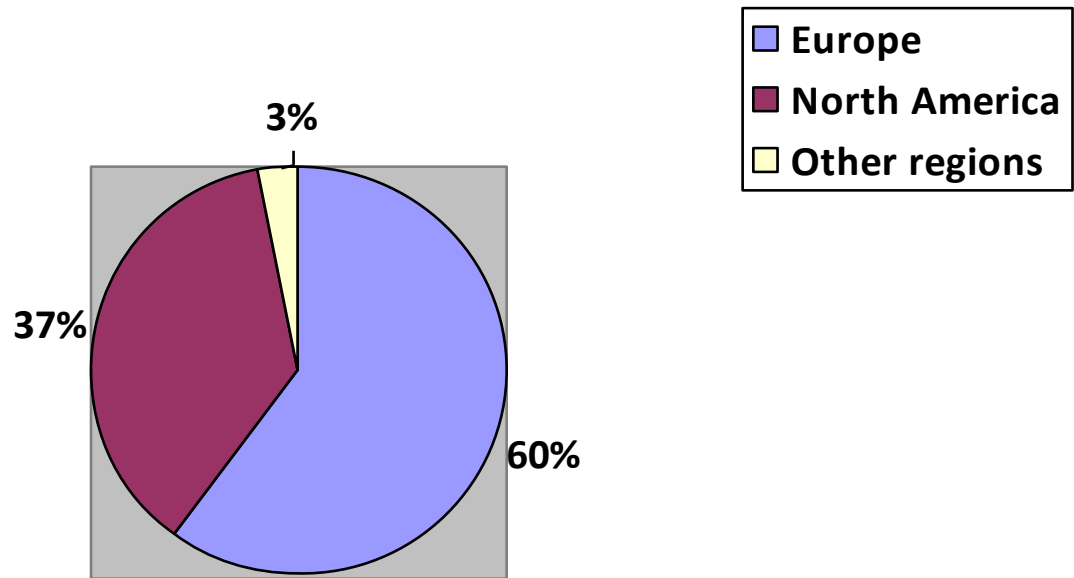
### **1.3. Tackling OCSA on global scale and in some developed countries**

There is an alarming rise of OCSA in the virtual world. International Criminal Police Organization (ICPO-Interpol) states that “the dissemination of child sexual exploitation material via the internet has significantly increased in recent years.”<sup>25</sup>(INTERPOL, 2011a) 57,335 WebPages containing child sexual abuse images or videos were detected and removed in 2016. The number of domains hosting child abuse image in 2016 has increased by 21% in comparison with 2015 (2,416 for the former and 1,991 for the latter). The largest number of child sexual abuse web-pages (33,221) was hosted in Europe, 60%, and while 37% (21,295 web-pages) in North America and 3% for other regions. 1,707 child sexual abuse web-pages were hosted in Asia.<sup>26</sup> (IWF, 2016)

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<sup>25</sup> Interpol Resolution AG-2011-RES-05, 2011: Combatting online sexual exploitation of children through a legislative global engagement strategy

<sup>26</sup> IWF annual Report 2016, Internet Watch Foundation, pages 6, 10, 12



*Chart 1. OCSA hosted web-pages by regions (source: IWF)*

It can be seen that the majority of these web-pages are detected in two regions which have the longest Internet history: Europe and North America (60% and 37% respectively). Some researchers argue that OCSA is a significant problem in those areas as other regions have only 3% detected web-pages in the same period and are safer places for children who access the Internet. However, it is an unconvincing argument. Considering the essence of OCSA in each nation or each region, we should analyze the overall view of the situation including the awareness in society, the legal framework and the capacity of law enforcement agencies in prevention and detection of this problem. Most countries in the European and North American regions are highly developed countries where the legal instruments, equipment, investigation, and human resources are adequate for tackling OCSA. There is sufficient awareness in society, law enforcement agencies as well as profound academic research and reports on OCSA in European and North American countries. Furthermore, comprehensive measures in combatting OCSA in countries such as the UK, US, Canada, Australia have been deployed effectively in recent decades. Consequently, the high number of detected web-pages in those countries is the result of the active actions of relevant law enforcement agencies. On another hand, there is a lack of awareness of OCSA in the majority of developing countries. The capacity of law enforcement agencies in the prevention and detection of OCSA in these nations is still limited. Although protecting children and prevent crime against



children are the concerns of all nations, the terminologies OCSA and child pornography has not been adopted in a large number of developing countries including most Asian nations. In addition, it is impossible to estimate how many web-pages contain child sexual abuse materials and how many hidden web-pages that have not yet been detected. Child sexual abuse materials are updated frequently on the Internet by the sophisticated methods of criminals. The borderless nature of the Internet assists the rapid spread of posted child sexual images or videos. For instance, child sexual abuse materials posted on a dark web in the UK can be easily accessed and downloaded by a computer or a mobile phone in an Asian nation only a few minutes after posting. So it cannot be argued that an area that has not detected any webpage contains child sexual abuse material, is a free OCSA area. Consequently, OCSA is a serious threat in all areas of the world where the Internet has penetrated.

For the last few decades, international community concerns the rise of crime against children on the internet. International cooperation in combating OCSA has been enhancing effectively. In January 2016, 18 organizations gathered together in Interagency Working Group (IWG) in Luxembourg to adopt The Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse. The Interagency Working Group comprised representatives from the African Committee on the Rights and Welfare of the Child; Child Rights Connect; Council of Europe Secretariat; End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purpose (ECPAT); European Police (Europol); The International Association of the Internet Hotlines (INHOPE); Instituto Interamericano del niño, la niña y adolescentes (OEA); International Centre for Missing and Exploited Children (ICMEC); International Labour Office (ILO); International Telecommunication Union; INTERPOL; Office of the United Nations High Commissioner for Human Rights; Plan International; Save the Children International; Special Representative of the United Nations Secretary-General on Violence against Children; United Nations Committee on the Rights of the Child; United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, United Nations Children Fund (UNICEF). The IWG Terminology Guidelines is an available source for countries to refer to when establishing international cooperation to tackle OCSA.

Each nation and international organization has made many efforts in preventing and detecting OCSA. In 1992, the Interpol Specialist Group on Crimes against Children was formed. The Interpol International Child Sexual Exploitation Image Database (ICSE) allows Interpol member countries to access for examination of the available data, and add related national information to the database. To August 2018, “more than 14,000 victims have been identified via the ICSE database, which has lead to

the arrest of nearly 6,300 offenders worldwide”<sup>27</sup>(INTERPOL, 2018a). The Interpol Resolutions on this matter have been adopted: Resolution AG-2009-RES-05, 2009: “Combatting sexual exploitation of children on the internet using all available technical solutions, including access-blocking by Interpol member countries”; the Resolution AG-2001-RES-05, 2001: “Combatting online sexual exploitation of children through a legislative global engagement strategy” and the Resolution AG-2011-RES-08, 2011: “Promoting victim-centric management of child abuse material at the national level”. In recent years, Interpol has led and cooperated with its member countries in implementing programs and operations on protecting children. In 2016, 2017, Operation Tantalio, launched by the Spanish National Police, coordinated by Interpol and Europol, involving 15 nations in Central and South America and Europe resulted in 38 suspects being arrested for exchanging child sexual abuse material via the mobile application WhatsApp<sup>28</sup>(INTERPOL, 2018b).

Other organizations such as UNICEF, IWF, ECPAT also have built and implemented relevant studies, research, and programs against OCSA. Those organizations support their members in international cooperation for child protection. The relevant assessments and publications of the UN, IWF, and ECPAT such as IWF Annual Report 2016, The ECPAT report: Trends in Online Child Sexual Abuse Material 2018 provide an overview of the OCSA situation and how to recognize this crime. Besides, law enforcement agencies in many countries have cooperated actively in dealing with this global threat. The specific agencies of some countries like Australia, the UK, US, Italy, New Zealand with Interpol and Europol have been working together in a Virtual Global Taskforce (VGT) in order to combat online child sexual abuse. WeProtect Global Alliance established in 2013 led by the UK government and supported by 84 member countries assists law enforcement agencies of member countries by improving their capacity in combatting OCSA. The Australia Federal Police established the Online Child Sex Exploitation Team (OCSET); Canadian Police Centre for Missing and Exploited Children (PCCMEC) was established in 2004. In the UK, Child Exploitation and Online Protection Centre under the Serious Organized Crime Agency in charge of crime against children. The US Immigration and Customs Enforcement (ICE) is the unit that deals with OCSA.

Prevention and detection of OCSA is a concern in many nations. OCSA is a serious crime according to legal policies of some developed countries where the Internet has the longest history (since the 1960s in the US, UK). The level of Internet penetration as a percentage of the population in 3 developed countries the UK, US and Australia

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<sup>27</sup> Child abuse victims rescued in Spanish operation supported by Interpol, 2018, Interpol, <https://www.interpol.int>

<sup>28</sup> Global operation targets child sexual abuse material exchanged via messaging apps, Interpol, 2018, <https://www.interpol.int>

to 31 Sept. 2017 are 94.7%, 95.6%, and 87.4% respectively<sup>29</sup>(Stats, 2017) Those countries are also pioneers in preventing and combatting OCSA. Comprehensive methods have been applied by law enforcement agencies of these countries in the investigation such as image analysis, advanced digital forensics and undercover investigation. As the result, in Australia, from 2006-2016 3,035 offenders were dealt with by the criminal justice system in relation to child exploitation materials.<sup>30</sup>(Jenifer Burn, 2017) The US law enforcement agencies have actively tackled technology-assisted child sexual abuse. “There is a substantial increase in the number of arrests for online child sexual abuse materials from 2,577 in 2000 to 7,010 in 2006 and 8,144 in 2009. Approximately half of the arrests were for possession of CSAM (child pornography).”<sup>31</sup>(ECPAT, 2018) According to a report in 2014, in 2013 and 2014, the US Federal Bureau Investigation (FBI) arrested 2,538 suspects related to child exploitation offenses (1,906 convictions).<sup>32</sup>(US, 2014) In the UK, there is an upward trend in online child sexual abuse cases. “The number of offenders convicted of taking, making or distributing child abuse image increased by 35% from 921 in 2005/06 to 1247 in 2013/14 to 2,515 offences reported in 2012/13”. The number of offences for creating, possessing or distributing child sexual abuse material has doubled between 2010/2011 and 2014/15<sup>33</sup>(ECPAT, 2018) Research of Monaghan Andy assesses that in the UK two decades ago, only a few hundred offenders were arrested in 1990 for possessing indecent images of children (IIoC’s). However, by 2009 2.5 million child sexual abuse images were seized from offenders<sup>34</sup>(Monaghan, 2017). Those numbers illustrate the fact that in selected countries, OCSA is considered one of the most serious cyber-crimes. There are rising concerns about the prevention and detection of OCSA and how to minimize the spread of this crime in the virtual world. It is believed that OCSA is more serious than offline offenses because of its ability to spread online unrestrained.

#### **1.4. Combating OCSA in the Asian Region**

It is estimated that there is a high percentage of Internet users in the Asian region. To 31 December 2017 there were 2,032,630,194 Internet users in Asia, being 48.7% the total regional population. The proportion of Internet penetration was 48.1% and there were 818,934,000 Facebook users. There is an increasing trend in Internet users

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<sup>29</sup> Statistic of Internet World Stats., <https://www.internetworldstats.com>

<sup>30</sup> Behind the Screen, Online Child Exploitation in Australia, UTS, Neilson Foundation and Anti Slavery Australia, 2017

<sup>31</sup> Trend in online child sexual abuse material, International Report 2018, ECPAT International, page 9

<sup>32</sup> Report 2014 of the US to Global Alliance Against Child Sexual Abuse Online

<sup>33</sup> Trend in online child sexual abuse material, International Report 2018, ECPAT International, page 9

<sup>34</sup> The impact of Self-Generated Images in online pornography. Monaghan Andy 2017, PhD thesis Middlesex University (page 19)

in this area with 1704% increase during the period of 2000-2018.<sup>35</sup>(Stats, 2018) According to a recent report of the International Telecommunication Union, the highest growth in fixed broadband connections “were recorded in Africa, Asia, and Oceania, as these regions with high growth potential continue to embrace new broadband technology.”<sup>36</sup>(ITU, 2018) It is estimated that Southeast Asia is the third largest market globally of Internet users with the number of monthly active Internet users reaching 330 million by the end of 2017. On average, consumers in this area spend more time on the mobile internet than any other region, 3.6 hours per day while the corresponding figure in the US is 2 hours per day.<sup>37</sup>(Hollander, 2017) According to an assessment of the International Telecommunications Union (ITU), the Asia-Pacific region “has seen substantial growth in ICT infrastructure access, and use”. “The mobile market has also grown very rapidly. Mobile-cellular subscriptions quadrupled since 2005 and by 2016, the number reached 94 subscriptions per 100 inhabitants”. During the period of 2010-2016, “active mobile-broadband subscriptions increased from 7.4 subscriptions per 100 inhabitants to almost 43 subscriptions per 100 inhabitants”<sup>38</sup>(ITU, 2017). In some developing countries in Southeast Asia, “smartphone sales are estimated to grow in Vietnam, Indonesia, and Thailand at a compound annual growth rate of 37%, 31%, and 27% respectively from 2011 to 2016”<sup>39</sup>(Mubarak, 2015a).

There is no doubt that despite the positive contribution of the Internet for regional economic development, OCSA is a significant negative in its growth in Asia- Pacific. Aware of this problem, Asia-Pacific countries are working together to prevent and stop crime against children in general, OCSA in particular. The majority of Asian nations are members of Interpol and have participated actively in the international police community to prevent and combat OCSA. Eight Asian countries have become members of WeProtect Global Alliance: Cambodia, China, Indonesia, Japan, Philippines, Republic of Korea, Thailand and Vietnam. Recognizing the threat of transnational crime, as well as cybercrime in these regions, the community of Southeast Asia established frameworks for regional police cooperation. The ASEAN Police Association established in 1979 (ASEANAPOL) and up to now, ten countries in this region have become full members of the Association. The ASEAN Ministerial Meeting on Transnational Crime (AMMTC) was established in 1997, meets once

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<sup>35</sup> Internet World Stats. <https://www.internet.worldstats.com>

<sup>36</sup> The State of Broadband: Broadband catalyzing sustainable development, ITU, 2018, <https://www.itu.int>

<sup>37</sup> Southeast Asia could be a leader in mobile internet usage next year, Rayna Hollander, 2017, <https://www.bussiessinsider.com>

<sup>38</sup> ICT Trends and Developments in Asia and the Pacific, ITU, 2017, <https://www.itu.int>

<sup>39</sup> Child Safety Issues in Cyberspace: A critical Theory on Trends and Challenges in the Asean Region, A.R.Mubarak, 2015

every two years. The Senior Official Meeting on Transnational Crime (SOMTC) was established in 1999, has annual meetings. ASEANAPOL, AMMTC, and SOMTC assist ASEAN member countries in working together with regional efforts in combating cybercrime. The Treaty on Legal Assistance in Criminal Matters signed in 2006 has resulted in great efforts of all ASEAN nations in facilitating regional cooperation in combating transnational crime, including OCSA.

In recent years, some Asian countries have made their efforts in prevention and detection of OCSA. There are increasing numbers of detected OCSA cases in this area. Japan is one of the successful nations in the fight against online child sexual abuse. In 2013, Internet Hotline Center Japan quoted 3,056 reports of child material online<sup>40</sup>(Smith, 2014). From January to June 2017 1,142 child pornography cases were detected in this country, in which 387 cases related to distribution and sharing of child pornography, 31 cases related to possession of such images<sup>41</sup>(Kyodo, 2017). The 2014 report by The Republic of Korea indicates the number of offenders who produced and distributed child or juvenile pornography in 2013 was 4,737<sup>42</sup>(Korea, 2014). Meanwhile, the Indonesia National Center for Children reported that 18,707 children had been sexually exploited through the Internet during the period of 2011-2015<sup>43</sup>(Society, 2017a). According to the article “Online child-sex abuse spreads at Phenomenal rate” on the Benarnews website, 6000 websites containing child pornography have been tracked down in Thailand (2017)<sup>44</sup>(Watcharasakwet, 2017).

However, despite the efforts of Asian nations, international cooperation in combatting OCSA in the region is still limited for various reasons. One of the main obstacles is the differences in the legislation and legal jurisdictions among countries in the region. There is a range of agreements and commitments among Asian countries in combating transnational crime. However, a region-wide policy on OCSA has not been issued.<sup>45</sup>(Mubarak, 2015a) The report 2017 of the Internet Society-APAC Bureau in Singapore indicates that all Asia Pacific countries are working actively to protect children from online child sexual abuse and exploitation. However, there is insufficient legislation in some countries, especially in the standardization of the definition of online child sexual abuse. “In China, Indonesia,

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<sup>40</sup> Global Strategies for tackling child sexual abuse material online, Sarah Smith, Report for Winston Churchill Memorial Trust 2014, Page 23

<sup>41</sup><http://www.japantimes.co.jp/news/2017/09/21/national/social-issue/reported-child-abuse-japan-exceeds-30000-case-firsy-half>

<sup>42</sup>The Republic of Korea Report to the Global Alliance Against Child Sexual Abuse Online, 2014

<sup>43</sup>Online Child Safety in Asia-Pacific Report, Internet Society-APAC Bureau, Singapore, 2017, page 6

<sup>44</sup><https://www.benarnews.org/English/new/thai/sex-abuse-10182017161524.html>

<sup>45</sup> Child Safety Issues in Cyberspace: A critical Theory on Trends and Challenges in the Asean Region, A.R.Mubarak, 2015

Malaysia, Sri Lanka, Thailand and Vietnam, the term ‘child pornography’ is not defined in law”<sup>46</sup>(Society, 2017b) The lack of legislation to cover OCSA was mentioned in the Interpol Resolution in 2011: “a number of countries do not have appropriate legislation to cover this form of crime.”<sup>47</sup>(INTERPOL, 2011a) Further, the legal policy of some countries diverges from the regulations of the legal age of consent to have sex. “Some countries will allow an adult to have sex with children as young as 13-year-old”, in Cambodia 13 years, Philippines 12 years and Laos 15 years.<sup>48</sup>(Mubarak, 2015b) Besides, weakness in Internet administration and neglect by adults facilitates criminal activities. Internet shops that are very popular in some developing Asian countries such as Laos, Cambodia, Vietnam, and Philippines and these countries often have inadequate management to combat their use for OCSA. Children in developed countries access the Internet at home and at school mainly for studying purposes. Whereas in developing Asian countries, large numbers of children spend their spare time in Internet shops without the supervision of parents or adults. So, there is concern about the risks of being abused via online games. In addition, the limitations in financial budgets for building the capacity of law enforcement agencies is also one of the difficulties for a majority of South East Asian countries in tackling OCSA. Combatting cybercrime requires provisions of sufficient techniques, equipment, and human resources. OCSA is still a new problem in developing countries, so there is a lack of experienced and trained investigators. This is a challenge for developing countries where the investment in prevention and detection of cybercrime is still limited.

To deal with OCSA in Asian regions, there is a requirement for a clear and unique definition based on international standards and compliant with domestic laws of the countries in the region regarding online child sexual abuse. This would facilitate international cooperation in prevention and fighting online child sexual abuse in the region. It is difficult for different countries with different definitions to cooperate in fighting OCSA.

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<sup>46</sup>Online Child Safety in Asia-Pacific Report, Internet Society-APAC Bureau, Singapore, 2017, page 16

<sup>47</sup> Interpol Resolution AG-2011-RES-05, 2011: Combating online sexual exploitation of children through a legislative global engagement strategy

<sup>48</sup> Child Safety Issues in Cyberspace: A critical Theory on Trends and Challenges in the Asean Region, A.R.Mubarak, 2015

## **II. The situation of the investigation and prosecution of OCSA in Vietnam**

This part analyzes the situation with the investigation and prosecution of OCSA in Vietnam in comparison with other offences in Vietnam and the results of combating OCSA in other countries. The analysis revealed the difficulties of the struggle against OCSA in Vietnam. Four selected case studies illustrate the limitations.

### **2.1. The situation of the investigation and prosecution of OCSA in Vietnam.**

#### ***2.1.1. The policy of the government:***

Located in Southeast Asia, Vietnam is a nation which has a large population (over 96 million in 2018). The Internet established a footprint in Vietnam in 1991 with the assistance of Australia. After one year, in 1992 only one tested email address in Hanoi was created. In November 1997, the Internet was commercialized in Vietnam and provided to the public. However, the Internet has only penetrated widely within the community since 2009 when customers could access the Internet easily via mobile-phones. After 2010, the Internet increased rapidly in Vietnam. The number of Internet user in Vietnam exceeded 50% of the population by the end of 2017. Vietnam is an economy with mid internet penetration (52.72%).<sup>49</sup>(Society, 2017b) This equates to Internet access for 53.86 million users in 2017 and is projected to reach 60 million in 2022. The majority of internet users in Vietnam access the Internet via mobile phone (42.8 million in 2017 and is predicted to rise to more than 55 million in 2022).<sup>50</sup>(Dammio.com, 2018)

Like other developing countries, Vietnam is confronted with serious crimes such as drug trafficking, human trafficking, smuggling, environmental crime, economic crime, corruption and crimes against children. In recent years, the Vietnamese government has taken several measures to enhance the effectiveness of prevention, investigation, and prosecution of crimes against children in general and child sexual abuse in particular. Vietnam ratified The United Nation Convention on the Rights of Children in 1990 and joined the United Nation Convention on Transnational Organized Crime (TOC) in 2000. The existing domestic legal instruments such as Law on the Protection, Care and Education of Children (2004), Penal Code (2015), Children Law 2016 are the available legal instruments for keeping children protected. There are 5 articles under the Penal Code that include offences against children:

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<sup>49</sup>Online Child Safety in Asia-Pacific Report, Internet Society-APAC Bureau, Singapore, 2017

<sup>50</sup>Dammio website, <https://www.dammino.com>

Article 142: Rape of a person under 16; Article 144: Sexual abuse of a person aged from 13 to under 16; Article 145: Engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16; Article 147: Employment of a person under 16 for pornographic purpose; Article 326: Distribution immoral culture materials. Also, some government programs have been implemented effectively for several periods such as the National Program of Action for Children 2011-2010, the National Program on Child Protection 2011-2015, the National Plan of Action on Counter Human Trafficking 2016-2020, the National Plan on Child Protection 2011-2015 and the Action Plan for children 2012-2020. In recent years, to implement these National Programs, the Ministry of Public Security has deployed specific campaigns for tackling crime against children in each of this period.

In practice, Vietnamese law enforcement agencies take their efforts seriously in combating crime against children. There have been some related programs, seminars, and training courses conducted for law enforcement officers under the support of international organizations and other countries. The Project “Enhancing the Capacity of Law Enforcement in prevention and detection Child Sexual Abuse in domestic and cross-border situations in order to identify and react effectively with child sex tourism in Mekong River regions” (XSP/T33 Project) was deployed by the Ministry of Public Security in 2015. The Project is funded by the Australian Government and the support of the United Nation (UNODC). The seminars and training courses (within the scope of the project) have been conducted effectively. Investigators of some Police Criminal Investigation Units in the southern provinces have been trained at the project’s training on child sexual abuse investigation techniques. At the same time, the Ministry of Justice (MOJ) conducted an assessment of the result of the prevention and detection of child sexual abuse in tourism in 9 cities and provinces: Lang Son, Hai Phong, Quang Ninh, Nghe An, Ha Tinh, Quang Binh, Ho Chi Minh City, Dong Nai, and Can Tho. Based on the result of the assessment, MOJ’s recommendations have been proposed to enhance the effectiveness of combating crime against children in these provinces.

Although there is a range of legal provisions, programs and plans for combating crime against children in Vietnam, there has not been a specific legal instrument for the prevention and detection of OCSA. The concepts of OCSA and child pornography remain unfamiliar in Vietnam. There has not been any regulation covering OCSA. This problem is considered a new issue in Vietnamese society. Internally, there has not been any research or report related to this problem. This situation was observed when Vietnamese law enforcement agencies became involved in international cooperation and were faced with the term OCSA some a 5 years ago.

### ***2.1.2 The investigation and prosecution of OCSA in Vietnam***



*\* The main agencies in charge of the investigation and prosecution of OCSA are:*

The Ministry of Public Security is the key agency in charge of the criminal investigation in Vietnam. The Criminal Investigation Department (CID) under the Ministry of Public Security is assigned to be the main body in the investigation of cases related to children as well as building and implementing the programs for protecting children. At the central level, the Crime Against Children Division under CID was established in 2005. This unit conducts investigations into serious cases and cases requiring international cooperation. CID also has the function to instruct criminal investigation techniques for police criminal investigation units at the provincial level. The criminal investigation units in provinces conduct the investigation of the cases that happened in their own areas. Hightech Crime Department (HCD) and the Ministry of Culture, Sports, and Tourism (MCPT) are agencies that assist CID in investigating OCSA cases. The People Procuracy is in charge of prosecuting criminal cases.

*\*The investigation and prosecution procedures of an OCSA case*

The investigation and prosecution of online child sexual abuse requires the cooperation of the listed above agencies. CID is the main agency that conducts the investigation. However, the CID investigators have insufficient capacity to do surveillance online in order to detect digital evidence. So during the investigation, if there is a requirement to collect or identify digital evidence, CID seeks the cooperation of Hightech Crime Department (HCD) to do this step. The CID also has no capacity to do a forensic analysis of the OCSA materials. According to Vietnamese publishing law, MCPT is the licensing authority for cultural production publishing<sup>51</sup>(Assembly, 2012). So detected child sexual abuse materials should be sent to MCPT to define if they satisfy the condition for publishing or distributing or not. If the result of MCPT examination determines that the detected materials are erotic, immoral and put the ban for publishing, the related suspect shall be accused of distributing immoral materials<sup>52</sup>(Assembly, 2015a).

Child sexual abuse has become a significant problem in Vietnam in recent years. There are more than 1,500 victims of child sexual abuse cases each year. In the 4 years period (2014-June 2018) 6,090 child sexual abuse cases were detected in which 2,621 cases were prosecuted for rape of a person; 3,233 cases were prosecuted for engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16. This involved 6314 offenders and 6134 victims.<sup>53</sup>(CID, 2018)

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<sup>51</sup> Vietnam Law in Publishing, No.19/2012/QH13

<sup>52</sup> Vietnam Law in Criminal Investigation Agencies No.99/2015/QH13,

<sup>53</sup>Vietnam Criminal Investigation Department Statistic 2018

As mentioned above, OCSA is a new and growing issue in Vietnam. There is inadequate legal terminology for OCSA, as well as child pornography. Furthermore, Vietnam does not have appropriate legislation to cover OCSA. Unfortunately, child sexual abuse cases relating to the Internet have appeared and been investigated by CID and provincial police investigation units in recent years. According to the statistics of the CID and the police forces in 43 provinces, during the period of 2014 to June 2018, 154 child sexual abuse cases related to the Internet were detected involving 163 suspects, 155 victims, resulting in 98 convictions. (refer table 1, 2, 3).<sup>54</sup>(CID, 2018) These statistics were collected from 43 provinces, in which 18 provinces have not detected any child sexual abuse related to the Internet.

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<sup>54</sup> Vietnam Criminal Investigation Department Statistic 2018

**Table 1****The total of OCSA cases, subjects and victims in Vietnam (2014- June 2018)**

	<b>Provinces</b>	<b>Number of cases</b>	<b>Number of subjects</b>	<b>Number of victims</b>	<b>Note</b>
1	Hanoi	11	15	12	
2	Son La	0	0	0	No detected case
3	Lai Chau	1	1	1	
4	Ha Giang	0	0	0	No detected case
5	Lao Cai	0	0	0	No detected case
6	Binh Dinh	3	3	3	
7	Phu Yen	1	1	1	
8	Khanh Hoa				Have not collected statistics
9	Gia Lai	5	5	5	
10	Kon Tum	0	0	0	No detected case
11	Dak Lak	2	2	2	
12	Lam Dong				Have not collected statistics

13	Dien Bien				Have not collected statistics
14	Tuyen Quang				Have not collected statistics
15	Cao Bang	0	0	0	No detected case
16	Lang Son	2	2	2	
17	Hai Phong	1	1	1	
18	Yen Bai				Have not collected statistics
19	Thai Nguyen	0	0	0	No detected case
20	Bac Kan	0	0	0	No detected case
21	Quang Ninh				Have not collected statistics
22	Vinh Phuc				Have not collected statistics
23	Phu Tho				Have not collected statistics
24	Bac Ninh	1	1	1	

25	Bac Giang				Have not collected statistics
26	Hai Duong	2	2	2	
27	Hung Yen	0	0	0	No detected case
28	Hoa Binh				Have not collected statistics
29	Ha Nam	11	12	11	
30	Nam Dinh				Have not collected statistics
31	Ninh Binh	0	0	0	No detected case
32	Thai Binh				Have not collected statistics
33	Thanh Hoa	2	2	2	
34	Nghe An	0	0	0	No detected case
35	Ha Tinh				Have not collected statistics
36	Ho Chi Minh city	23	23	23	

37	Binh Thuan	0	0	0	No detected case
38	Ninh Thuan	1	1	1	
39	Dong Nai	30	33	31	
40	Ba Ria Vung Tau				Have not collected statistics
41	Binh Duong				
42	Binh Phuoc	0	0	0	No detected case
43	Tay Ninh				Have not collected statistics
44	Long An	5	5	5	
45	Ben Tre	3	3	3	
46	Tien Giang	2	2	2	
47	Dong Thap	7	7	7	
48	Vinh Long	5	7	3	
49	Tra Vinh	0	0	0	No detected case
50	Can Tho				Have not collected statistics
51	AnGiang	9	9	9	

52	Kien Giang				Have not collected statistics
53	Bac Lieu	7	7	7	
54	Ca Mau	0	0	0	No detected case
55	Dac Nong	0	0	0	No detected case
57	Soc Trang				Have not collected statistics
58	Quang Binh				Have not collected statistics
59	Quang Tri	0	0	0	No detected case
60	Da Nang	9	8	8	
61	Quang Nam	1	1	1	
62	Quang Ngai	0	0	0	
63	Thua Thien Hue	6	6	6	
64	CID	4	7	6	
Total		154	166	155	

- Total of the cases: 154
- Total of Offenders: 166

- Total of Victims: 155

The detected OCSA cases in 25 cities and provinces in Vietnam during the selected period revealed that the majority of the cases were detected in the major cities such as Dong Nai, Ho Chi Minh City, Hanoi, Ha Nam, Da Nang, An Giang, Bac Lieu, Dong Thap, Hue (30, 23, 11, 11, 9, 9, 7, 7, 6 cases respectively). In the regions where the economy is growing rapidly such as Dong Nai and Ho Chi Minh city, the detected cases are higher than in other regions. Other provinces contribute a small number with only one or two cases for a four year period. In some rural areas, no case has been detected.



**Table 2****Classification of OCSA cases by different offences (2014-June 2018)**

	<b>Provinces</b>	<b>Production, distribution, possession pornography</b>	<b>Luring children via the Internet to take sexual photos and produce OCSA materials for trading</b>	<b>Luring children via the Internet for offline sexual abuse</b>
1	Hanoi			11
2	Son La	0	0	0
3	Lai Chau	0	0	1
4	Ha Giang	0	0	0
5	Lao Cai			
6	Binh Dinh			3
7	Phu Yen			1
8	Khanh Hoa			
9	Gia Lai			5
10	Kon Tum	0	0	0
11	Dak Lak			2
12	Lam Dong			
13	Dien Bien			
14	Tuyen Quang			
15	Cao Bang	0	0	0
16	Lang Son			2
17	Hai Phong			1

18	Yen Bai			
19	Thai Nguyen	0	0	0
20	Bac Kan	0	0	0
21	Quang Ninh			
22	Vinh Phuc			
23	Phu Tho			
24	Bac Ninh			1
25	Bac Giang			
26	Hai Duong			2
27	Hung Yen	0	0	0
28	Hoa Binh			
29	Ha Nam			11
30	Nam Dinh			
31	Ninh Binh	0	0	0
32	Thai Binh			
33	Thanh Hoa			2
34	Nghe An	0	0	0
35	Ha Tinh			
36	Ho Chi Minh city		1	22
37	Binh Thuan	0	0	0
38	Ninh Thuan			1
39	Dong Nai			30

40	Ba Ria Vung Tau			
41	Binh Duong			
42	Binh Phuoc	0	0	0
43	Tay Ninh			
44	Long An			5
45	Ben Tre			3
46	Tien Giang			2
47	Dong Thap			7
48	Vinh Long			5
49	Tra Vinh	0	0	0
50	Can Tho			
51	AnGiang			9
52	Kien Giang			
53	Bac Lieu			7
54	Ca Mau	0	0	0
55	Dac Nong	0	0	0
57	Soc Trang			
58	Quang Binh			
59	Quang Tri	0	0	0
60	Da Nang	1		8
61	Quang Nam			1
62	Quang Ngai	0	0	0

63	Thua Thien Hue			6
64	CID	1		1
Total		2	1	149

- Production, distribution, possession immoral culture materials: 2 cases
- Luring children via the internet to produce OCSA material for trading: 1 case
- Luring children via the Internet for offline sexual abuse: 149 cases

The majority of the cases involved luring children via the Internet for contact abuse. There is only one case related to distributing immoral materials that was investigated by CID. The initial information of this case provided by foreign law enforcement agencies (the US Federal Bureau Investigation (FBI)). One detected case related to luring children to make OCSA materials was detected in Ho Chi Minh city. These numbers illustrate the current situation of OCSA investigation in Vietnam: Cases that have clear evidence such as physical injuries and reports of victims or their family members make up the largest number of detected cases.

**Table 3****Results of the investigation and prosecution of OCSA cases (2014-June 2018)**

	Provinces/ Cities	Administrative penalty	Cases being investigated	Investigated cases	Convictions	Suspended cases
1	Hanoi	1	2	10	8	
2	Son La	0	0	0		
3	Lai Chau	0	0	1		
4	Ha Giang	0	0	0		
5	Lao Cai					
6	Binh Dinh			3		
7	Phu Yen			1		
8	Khanh Hoa					
9	Gia Lai			5		
10	Kon Tum	0	0	0		
11	Dak Lak			2	1	
12	Lam Dong					
13	Dien Bien					
14	Tuyen Quang					
15	Cao Bang	0	0	0		
16	Lang Son			2		
17	Hai Phong			1		
18	Yen Bai					

19	Thai Nguyen	0	0	0		
20	Bac Kan	0	0	0		
21	Quang Ninh					
22	Vinh Phuc					
23	Phu Tho					
24	Bac Ninh			1	1	
25	Bac Giang					
26	Hai Duong			2		
27	Hung Yen	0	0	0		
28	Hoa Binh					
29	Ha Nam			11	11	
30	Nam Dinh					
31	Ninh Binh	0	0	0		
32	Thai Binh					
33	Thanh Hoa			2		
34	Nghe An	0	0	0		
35	Ha Tinh					
36	Ho Chi Minh city	2	1	14	4	2
37	Binh Thuan	0	0	0		

38	Ninh Thuan			1	1	
39	Dong Nai	1		20	25	
40	Ba Ria Vung Tau					
41	Binh Duong					
42	Binh Phuoc	0	0	0		
43	Tay Ninh					
44	Long An			5	5	
45	Ben Tre		1	3	2	
46	Tien Giang			1	1	
47	Dong Thap		1	5	1	
48	Vinh Long		1		3	
49	Tra Vinh	0	0	0		
50	Can Tho					
51	An Giang			8 (1 case the subject under 16)	8	
52	Kien Giang					
53	Bac Lieu			7	7	
54	Ca Mau	0	0	0		
55	Dac Nong	0	0	0		

57	Soc Trang					
58	Quang Binh					
59	Quang Tri	0	0	0		
60	Da Nang	1		8	8	
61	Quang Nam			1		
62	Quang Ngai	0	0	0		
63	Thua Thien Hue			6		
64	CID			7	3	1
Total		5	5	127	98	3

- Administrative penalty (money fine): 5
- Cases under investigation: 5
- Investigated cases: 127
- Convictions: 98
- Suspended cases: 3

Convictions make up 63.6% of the total detected cases. However, there is only one conviction for distributing immoral culture materials. The other convictions are for contact abuse such as rape of children, sexual abuse of children. The perpetrators use apps and games to contact victims for the purpose of offline sexual abuse. All the convictions were based on clear evidence showing that the victims were abused physically by the offender. This meant that medical examination found physical injuries on the victims or there was witness to the crimes.

*\* Comparison with other forms of child sexual abuse*

The proportion of OCSA cases is a modest number in the total number of child sexual abuse cases in Vietnam (153 for the former and 6090 for the latter). As percentages



of the OCSA cases, offenders, victims, convictions and money fine represent 2.5%, 2.58%, 2.24%, 1.8%, and 0.7% respectively of the total child sexual abuse cases.

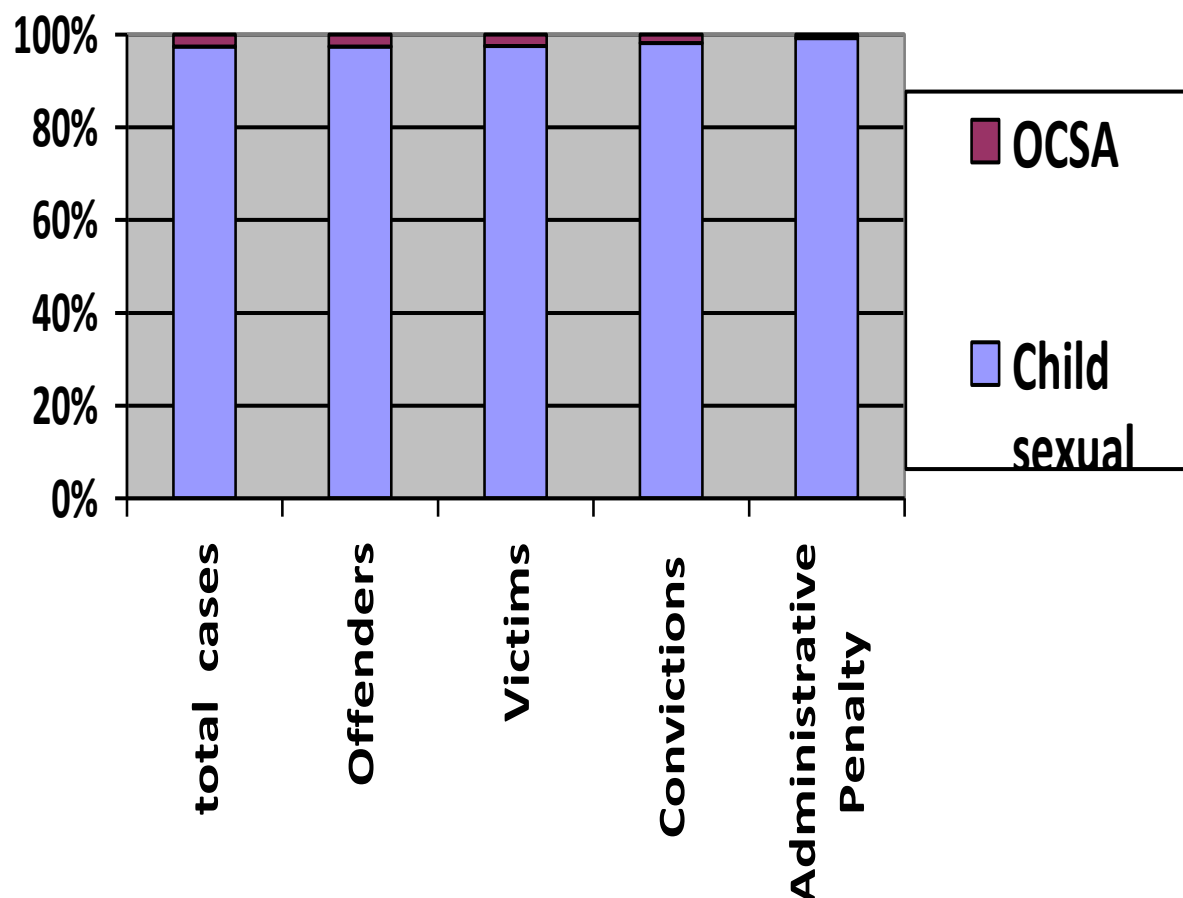
**Table 4.**

**The proportion of OCSA in the total of child sexual abuse cases (2014 to June 2018)**

2014-June 2018	Total cases	Offenders	Victims	Convictions	Administrative Penalty (money fine)
Child sexual abuse	6090	6314	6134	5397	693
OCSA	153	163	149	98	5

Source: The report of Vietnam Criminal Investigation Department on 27 August 2018

**Table 5: The proportion of OCSA in the total of child sexual abuse cases**



Source: The report of Vietnam Criminal Investigation Department on 27 August 2018

-The analysis of detected OCSA cases reveals that the initial information of 154 OCSA cases all came from the reporting by the victims, their parents or relatives. The researcher analyzed the files of these cases and found that there was no case reported by the officers of the CID. The investigators of the Crime Against Children Team had never been trained in the investigation of crimes against children, in general, and OCSA in particular. Consequently, investigators can often be confused when dealing with OCSA cases.

- Contacting children online via apps and games in order to abuse them offline is the main method used by the offenders in the majority of the cases (149/154). The perpetrators contacted victims via Facebook, Instagram, MySpace or online games.

After making friends online, they persuaded the victims to meet offline for sexual abuse purposes. There are only two cases related to the distribution of child pornography and one case involving the luring of children to produce child sexual materials. In the successful cases (convictions), there was clear evidence of physical assaults of victims by the accused offenders (DNA of offenders, victims' physical injuries). The vast majority of cases did not require online investigation online techniques (150 cases).

*\*Comparison with other crimes in Vietnam*

Vietnam is confronted with the serious problems of a developing country including economic crime, corruption, environmental crime, drug trafficking, and human trafficking. In 2017, there were 16,923 drug trafficking cases, 376 human trafficking cases; 854 economic and corruption cases; 348 environmental cases detected.<sup>55</sup>(An, 2017) The number of detected cases of drug trafficking in 2017 was more than over 100 times OCSA detected cases in a period of 4 years (16,923 vs 154). There were 154 detected OCSA cases during the 4 year period (2014-June 2018). On average, there were only 38 detected OCSA cases each year during the period.

The statistics appear to indicate there is a huge gap between the detected OCSA cases and detected cases of some major offences in Vietnam. It is natural that in a developing country there is a lack of human resources and budget for criminal investigation, law enforcement becomes overloaded for some serious crimes. Vietnam has long coastlines and land borders with China, Lao, and Cambodia. The difficult terrain of the borders facilitates illegal activities across borders including drug trafficking, human trafficking, and smuggling. The situation with economic, environmental crimes and corruption are also made complicated. Human resources and budgets should be increased to deal with these problems more effectively. This is one of the reasons why the prevention and detection of OCSA is neglected. These cause limitations in the knowledge of OCSA, the lack of legal frameworks, academic discussion and understanding of this problem. So the number of detected OCSA cases does not reflect the prevention and detection of OCSA required. It shows the investment of the government and law enforcement agencies in dealing with this kind of cybercrime is insufficient. Comprehensive measures for the prevention and detection of OCSA need to be aligned with the rise of this crime.

The nature of OCSA has not been understood fully in Vietnamese society nor reflected in its legal framework. For example, in Vietnam the examination of the

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<sup>55</sup> The Vietnamese People Magazine, <https://www.nhandan.com.vn/phapluat>

scene of a crime is required when doing an investigation. In a OCSA case, each child sexual image or video should be considered as part of the scene of the crime.

### ***2.1.3. International cooperation in combating OCSA:***

Vietnam became a member of the International Criminal Police Organization (Interpol - ICPO) in 1991. It is a positive result of the open policy established since 1986. Joining Interpol is a great opportunity for the Vietnam Police Force to enhance international cooperation in combating transnational crime. Vietnam joined the UN Convention on Transnational Organized Crime in 2000 and became the member of ASEAN Treaty on Mutual Legal Assistance in Criminal Matters in 2006. These international legal engagements facilitate cooperation between Vietnam and other countries in combatting transnational crime. As an active member of Interpol and Aseanapol, Vietnam is one of 54 Interpol member countries that has shared its data with the ICSE database as well as the Aseanapol Database System.

Interpol Vietnam is the main contact point for international cooperation between the Vietnam Police Force and foreign law enforcement agencies. Criminal mutual assistance requests from overseas partners to the Vietnam Police Force and vice versa requests from Vietnam agencies to other countries occur via Interpol channel.

From 2015 to May 2018, via Interpol channel, Interpol Hanoi had received 28 OCSA requests from foreign counterparts. Those requests mainly came from law enforcement agencies of developed countries such as Germany (9 cases), Canada (7 cases), the US (4 cases); the UK (2 cases); New Zealand (2 cases); Ireland (1 case); Switzerland (1 case) and Australia (1 case).<sup>56</sup>(Vietnam, 2018)

However, there has not been any OCSA request for criminal mutual assistance from Vietnam law enforcement agencies to law enforcement agencies of other countries.

The above OCSA requests reveal evidence that shows individuals or web-pages in Vietnam are suspected of being involved in OCSA. Offenders are foreigners and victims are Vietnamese individuals. In some cases, perpetrators in Vietnam contact foreign victims in the US, Canada via social networks in order to attempt to sexually abuse the victims.

CID Vietnam cooperates actively with foreign partners in investigating those cases. However, the difference in legal regulations of Vietnam and requesting country causes difficulties with international cooperation in such cases. In some cases, CID Vietnam is unable to identify the digital evidence because of insufficient experience and inadequate investigation techniques. The lack of equipment in investigating

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<sup>56</sup> Statistic of Interpol Vietnam 2018

high-tech crime is one of the barriers to the investigation of cases. Besides, the regulations that cover joint investigation between the Vietnam Police Force with other countries' investigation forces does not exist. So for now, it is impossible to establish the joint investigation teams between Vietnam CID and foreign investigation units in order to benefit support from the deeper experience of investigators of other countries. In addition, the evidence that is provided by overseas agencies is only the initial information that is required to be followed up by an investigation in Vietnam. CID Vietnam should do their own investigation and the evidence must be usable in a Vietnamese court. Furthermore, because of language barriers, all the information about the cases needs to be translated by Interpol Vietnam before being transferred to CID. This delays the investigation and the timeliness of the information about criminal activity is affected. As an example, despite 28 referrals, only one case (involving 2 offenders) was prosecuted for the distribution of the immoral materials in 2015 (see the first case study: Nguyen Tran Bao Anh).

Fortunately, after joining Interpol in 1991, Vietnam law enforcement officers, especially officers from Interpol and criminal investigation units have attended international conferences and training courses in investigation procedures and techniques. Through those activities, their knowledge about the new modus operandi of rising offences like OCSA has been updated and improved. However, the limitation in English language capacity of criminal investigators is an obstacle to integration with international cooperation. Until now, there have only been a few OCSA international conferences and training courses that Vietnam has sent its investigators (who directly conduct OCSA cases) to attend. In practice, Vietnamese investigators use interpreters for communication with foreign partners. The requests and information from foreign investigation agencies need to be translated into Vietnamese before sending to CID and vice versa. Consequently, the response time of the investigation can be affected negatively.

Enhancing international cooperation in the protection and detection of OCSA is a mandatory requirement. Vietnam needs to benefit from the experience in investigating OCSA of countries which have achieved great successes in the prevention and investigation of online crimes against children. The number of detected OCSA cases in some countries such as UK, USA, Australia, Korea, and Japan illustrates the effectiveness of the investigation and prosecution methods in those countries. Apart from sufficient legal infrastructure, the experience and investigation techniques of the investigators are critical elements for future success. In comparison with the number of detected cases of 5 selected countries, the number of detected OCSA cases in Vietnam is extremely modest (7.5 in Vietnam compared to 58 elsewhere)



**Table 6: The comparison in Vietnamese OCSA statistics and five other countries**

Country or Region	Number of offenders or cases	Period	Average number of cases or offenders per year	Comparison with Vietnam (times)
Australia <sup>57</sup>	3,035 offenders	2006-2016	303.5	>7.5
USA <sup>58</sup>	2,538 offenders	2013,2014	1,269	>31
The UK <sup>59</sup>	1247 offenders	2013,2014	623.5	>15
Republic of Korea <sup>60</sup>	4,737 offenders	2013,2014	2,368	>58
Japan <sup>61</sup>	1,142 cases	Jan.-Jun. 2017	2200	>56
<b>Vietnam<sup>62</sup></b>	<b>153 cases, 163 offenders</b>	<b>2014-2018</b>	<b>38.25 cases; 40.75 offenders</b>	

**Table 7<sup>63</sup> Internet users in Vietnam and five other countries 2010-2016 (million)**

Country or Region	Internet users 2010 (Million)	Internet users 2016 (Million)	Increase in Internet users (Million)	% Population (penetration)
USA	226	250	24	76%

<sup>57</sup> Behind the Screen, Online Child Exploitation in Australia, UTS, Neilson Foundation and Anti Slavery Australia 2017

<sup>58</sup> Report 2014 of the US to Global Alliance Against Child Sexual Abuse Online

<sup>59</sup> Trend in online child sexual material, International Report 2018, ECPAT International

<sup>60</sup> The Republic of Korea Report 2014 to Global Alliance Against Child Sexual Abuse Online

<sup>61</sup> <http://www.japantimes.co.jp/news/2017/09/21/national/social-issue/reported-child-abuse-japan-exceeds-30000-case-firsy-half>

<sup>62</sup> The report 2018, Vietnam Criminal Investigation Department.

<sup>63</sup> ITU, New data visualization on internet users by region and country 2010-2016, <https://www.itu.int>



Japan	102	120	18	93%
The UK	53,5	62	8,5	95%
Republic of Korea	41,3	47	5,7	93%
Vietnam	27	44	17	47%
Australia	16,5	21	4,5	88%

On average, during a 4 year period (2014 to June 2018), there were only 38 OCSA cases or 40 offenders were detected each year in Vietnam. The percentage of convictions was 63% (97/153). The number of OCSA detected cases and offenders in Vietnam was less than other countries by a factor of 7.5 to 58 times (whereas Vietnam is in the top 20 countries with the highest Internet users in the world.<sup>64</sup>) Table 5 lists that of six selected countries, with only Vietnam a developing nation, 5 others are developed countries. In comparison, the proportion of internet penetration in Vietnam made up only 47% population in 2016. However, the number of Internet users in Vietnam increased rapidly during the period 2010-2016 from 27 million to 44 million. It can be argued that with such rise of Internet users, Vietnamese children are an attractive target for criminals.

## 2.2. Case studies<sup>65</sup>:

To identify the difficulties of the investigation and prosecution of OCSA in Vietnam, the researcher has assessed the database of CID to analyze OCSA cases that were investigated by CID and the local police investigation units. The results of the analysis revealed existing issues. They are the lack of a legal framework, the difficulties in international cooperation, the insufficient capacity of law enforcement agencies in investigation and prosecution of OCSA. 4 selected cases reflect the existing issues:

- Case 1: the lack of the legal instrument
- Case 2: difficulties in international cooperation and the lack of the legal instrument
- Case 3: the limitation of the legal framework
- Case 4: the insufficient capacity of investigation units in investigating and the lack of legal framework.

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<sup>64</sup> <http://www.internetworldstats.com/top20.htm>

<sup>65</sup> The names of offenders and victims were anonymized

### **2.2.1. Case 1 (successful):** base on the request of foreign law enforcement agencies

In July 2014, The US Federal Bureau Investigation (FBI) sought Vietnamese Police' assistance in investigating an OCSA case. As the initial investigation of FBI, the suspect, Lixthom created some false accounts on the social networks with the fictional identities of female children with ages of 10-12 years old on social websites. Lixthom made friends with male children in some countries including Canada, USA, and the UK. On the first communications, he persuaded the victim to send their sexual images or videos to him. After that, if any victim wanted to stop communicating with him, he forced the victim to continue with the threat that their sexual images and videos would be sent to the victims' parents, relatives, friends, and school. Nearly 200 child victims in USA, Canada and the UK (the youngest was only 9-year-old) were identified by relevant law enforcement agencies in these countries.

After receiving the request from FBI, CID and HCD conducted an investigation into the case. The investigation in Vietnam revealed the real identity of Lixthom. He was a Vietnamese, we refer to as Offender A (28-year-old, lived in Binh Thanh, Ho Chi Minh City). Offender A was one of the members of Vkid.tv. web-page. He played an active role in posting and distributing child sexual videos and images on the web-page. From 2013 to 2015 Offender A had posted 47 times comprising of 2 child sexual videos and more than 100 child sexual images on the Vkid.tv. web-page

Further investigation led the police to the Vkid.tv founder – Offender B. Offender B (21-year-old, live in Duc Hoa town, Long An province) founded Vkid.tv web-page in mid-2010. The web-page allowed the members to access, post and share male child sexual videos and images. There were 1,500 members of the website. On average, about 200 members accessed to the web-page per day. The web-page contained 1,328 child sexual videos and 693 child sexual albums. The member purchased the right to access the web-page via mobile cards or game cards. The money was transferred to Offender B's account in Vietcombank via the electric payment gateway of Bao Kim Company. Members of the web-page posted the child sexual images or videos to the website so their access to the web-page could be free.

During the investigation, Offender B confessed to the police that he had also connected to some male child victims via the Internet in order to meet in person and abuse them offline. Offender B was arrested on 16/01/2015 and Offender A was arrested on 22/01/2015. They were prosecuted under article 45, items h,p, section 1,2 (Mitigating factors) and article 253, the Penal Code 1999 (Distributing immoral culture materials). The punishment was only 2 years in prison for Offender B and 18 months in prison for Offender A.

**Discussion:** This case is the only one successful case in 28 cases that CID have cooperated with foreign law enforcement agencies. However, there were some limitations to the investigation and prosecution of the case:

- The subjects were sentenced only 2 years in prison for Offender B and 18 months in prison for Offender A because under Vietnamese Criminal Code, distributing sexual materials in Vietnam is a less serious crime. The judge applied the article 46 “Mitigating factors” to reduce the punishment for them. To be more specific, the item h, p, section 1,2, article 46 stipulates that the offender can be in the extenuating circumstances and impose lesser penal liability if: “The offender commits a less serious crime and does not have a prior criminal record”. In this case, even when distributing and purchasing thousands of child sexual materials, the activities of Offender A and Offender B illegal activities were considered as a less serious crime.
- The activity of Offender A (Lixthom) related to producing child sexual images and videos by luring children in the US, the UK, and Canada has not been punished. The reason: The evidence provided by FBI could not be considered as legal evidence in the Vietnamese court while doing a further investigation to verify that evidence was beyond the capacity of Vietnamese CID. The CID has inadequate equipment and experience in conducting an investigation online, especially related to overseas countries. Further, there are have no regulations that define OCSA offense in Vietnamese law. The concepts of OCSA and child pornography do not exist in Vietnamese law. Consequently, the element “child victim online” was not considered in this case.
- The further investigation to clarify the offline child sexual abuse activity of Offender B as he confessed had not been conducted. So the victims could not be identified and this criminal activity was omitted.

### **2.2.2. Case 2: (*Unsuccessful*)** based on the request of foreign law enforcement agencies

In August 2015, The US Homeland Security Investigation (HSI) sent to Criminal Investigation Department (CID) and Hightech Crime Department (HCD) a request related to online child sexual abuse case (Blackheath case). HSI provided evidence to show that a Vietnamese person founded a webpage that contained child sexual materials. The website was removed by the Royal Canada Mounted Police (RCMP) in December 2012. HSI copied the detected child sexual images and videos that had been posted to the webpage by the suspect onto DVD disks and handed them to CID.

The investigation in Vietnam revealed 2 subjects: Offender C, the main subject (32 years-old, worked for Financing Promoting Technology Corporation (FPT) in Da

Nang) and Offender D (25 years-old, worked for FPT in Hanoi). In 2012, Offender C established Lumfile company in order to found the Lumfile.com website (the main server was hosted in Canada). The website allowed the members to access, post and share child sexual abuse images and videos. All members paid Offender C to access the website. It was found that Offender C illegally earned more than USD\$100,000 for the illegal activities in a year. Further investigation in Vietnam revealed that Offender D, one of the members of Lumfile also posted and shared nearly 100 child sexual videos (mostly Japanese videos) on the website.

The investigation revealed that activities by Offender C and Offender D violated the Penal Code 2015 (article 326: distribution immoral materials). The subjects confessed their illegal activities to the CID. They also conceded that they were the founders of the detected pages that contained child sexual images and videos. Furthermore, Offender D confessed that he was also the founder of a Javsuki.com website in May 2015. The website was being used for purchasing Japanese child sexual abuse materials. Offender D ended the website in July 2012. He also shared child sexual materials to the Rapidgator.net website. However, while Javsuki.com was stopped, Rapidgator.net was an overseas website, so CID was unable to investigate Offender D's illegal activities related to two these websites (as per his confession).

During the investigation, HCD detected the links to the Lumfile.com web-page and copied the child sexual images and videos that had been posted on Lumfile.com into 35 DVD disks.

The conclusion of the CID investigation indicated that Offender C and Offender D violated article 326, the Penal Code 2015: "distributing immoral culture materials". However, after considering the conclusion of the investigation, on 19 December 2017 the Supreme Procuracy of Vietnam refused the request of the CID to arrest Offender C and Offender D because of following reasons:

- The information relating to the members of the web-page and their payments for accessing the web-page could not be identified
- The police searching Offender C's bank account could not identify, nor separate his legal and illegal incomes.
- At the time of the investigation, the web-page was unavailable for access because the main server of Lumfile.com was removed in 2012 by the RCMP. The Supreme Procuracy argued that this meant the scene of the crime did not exist. The investigators could not access the web-pages to do their investigation. This meant that the collected evidence that was contained in 35 DVD disks taken from the links on the web-page was non-convincing evidence.

The case was closed when the Supreme Procuracy made a decision to refuse to arrest two subjects.

### **Discussion:**

- The activities of the two subjects related to the possession of child sexual materials were not punished. Possession of child sexual material is not illegal according to the law. Article 326, the Penal Code regulates: “Any person who makes, duplicates, publishes, transports, deals in, stores books, magazines, pictures, films, music, or other items that contain pornographic contents *for the purpose of distributing them* or distributes pornographic materials in any of the following cases<sup>66</sup> shall be fined from VND 10,000,000 to VND 100,000,000 or face a penalty of up to 3 years’ community sentence or 6-36 months’ imprisonment”. It can be inferred that if a person possesses child pornography or any child sexual materials without the purpose of distributing, he is not to be accused. In this case, there was no evidence to prove that the subjects had distributed child sexual material. Besides, the web-page was removed and the procuracy argued that the web-page no longer existed. It meant that the evidence of the crime did not exist. So there was no evidence to accuse Offender C and Offender D
- In this case, child sexual images and videos that were detected by HSI and CID were not be considered as evidence against the suspects. The procuracy argued: The main server of the Lumfile.com was demolished. So there is no clear connection between the detected child sexual materials from the web-page. (even when the suspects confessed their criminal activities). This meant that the scene of the crime did not exist. Consequently, the detected child sexual images and videos were non-convincing evidence.

### **2.2.3. Case 3:** (No prosecution, initial information: victim report)

In June 2016, Offender E made friend with Victim 1 (15 years-old) via Facebook. From June-August 2016, Offender E had sex with the Victim 11 times and took 10 nude photos of Victim 1 which were stored in Offender E’s iPad (319.9KG). After that, Victim 1 decided to break up but Offender E did not want to. Offender E used Victim 1’s photos to threaten her that her sensitive photos would be posted on the Internet if she did not obey him. After that, Offender E sent Victim 1’s nude photos to her friends via messenger: 8 photos to Receiver 1, 3 photos to Receiver 2, 3 photos

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<sup>66</sup> a) The offence involves an amount of digital data from 01GB to under 05GB in size; b) The offence involves 50-100 physical books or magazines; c) The offence involves 100-200 physical pictures; d) Pornographic materials are distributed among 10-20 people; dd) The offender incurred an administrative penalty or has a previous conviction for the same offence which has not been expunged.

to Receiver 3. He also had sent 4 nude photos of Victim 1 to Offender F. After receiving those photos, Offender F sent them to Receiver 4 via Facebook. At the same time, Offender E sent the photos to Receiver 5 via Facebook. After that, Receiver 5 showed them to Receiver 6, one of his friends.

Victim 1 made a report to the police about the activities of Offender E and Offender F. The investigation proved their activities were illegal. However, the Son Tra Police Station, Da Nang city made a decision to apply an administrative penalty (money fine) to Offender E and Offender K because of the reason:

- The size of the child sexual images is not enough size (319.9KG) to prosecute Huynh E and Huynh K under article 326, item a, the Penal Code: distributing of immoral culture materials. This article regulates that “Any person who makes, duplicates, publishes, transports, deals in, stores books, magazines, pictures, films, music, or other items that contain pornographic contents *for the purpose of distributing them* or distributes pornographic materials in any of the following cases<sup>67</sup> shall be a fine of from VND 10,000,000 to VND 100,000,000 or face a penalty of up to 3 years’ community sentence or 6-36 months’ imprisonment:
  - a) The offence involved an amount of digital data from 1GB to under 50GB in size”.

So under the Penal Code, the child sexual materials that were posted on the Internet by Huynh E was under 1GB. As the result, Huynh E was not prosecuted.

#### **2.2.4. Case 4:** (No prosecution, initial information: victim report)

In March 2017, Offender G, a guardian for a Primary school in Ho Chi Minh city made friends via Facebook with Victim 2, a pupil at 4 grade (11 years old) of this school. Offender G has contacted Victim 2 many times on Facebook and included Victim 2 to come to the toilet of the school in order to abuse him. The victim was abused by Offender G many times in the toilet and in the playground of the school. In May 2017, the messages on Facebook between Offender G and Victim 2 were discovered by Victim 2’s relatives. The father of Victim 2 reported the matter to the Police. The initial investigation of the Police District 3 revealed that Offender G

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<sup>67</sup> a) The offence involves an amount of digital data from 01GB to under 05GB in size; b) The offence involves 50-100 physical books or magazines; c) The offence involves 100-200 physical pictures; d) Pornographic materials are distributed among 10-20 people; dd) The offender incurred an administrative penalty or has a previous conviction for the same offence which has not been expunged.

committed a crime. Offender G also conceded his criminal activities to the Police and made his statement at the Police station about his illegal activities.

However, the victim's family withdrew their complaint against Offender G and refused to the medical examination of their child. Consequently, the Police of District 3, Ho Chi Minh city decided against prosecuting the case. The Police informed to the perpetrator's school and requested the school to punish Offender G for his illegal activity as an administrative measure.

### **Discussion:**

In this case, Offender G confessed his criminal activities to the police. He conceded that the victim was abused by him. He was a danger to children and should be forbidden from contacting children, who could become his victims in the future. However, there had not been any regulation to cover the interaction with children by a person who had a history of abusing children. So Offender G continued to do the job of a guardian for a Primary school where he could contact children and have the opportunity to commit a crime against children again.

### **III. Issues relating to the investigation and prosecution of OCSA in Vietnam**

It is obvious that with the rapid rise of the Internet in Vietnam, the risk of OCSA can be a real threat to the society when the prevention and detection of this crime is still so limited. As discussed above, over 50% of the population regularly accessed the Internet in 2017. This number is on the rise with the prediction in 2020 of nearly 60% of the population. This chapter has focused on existing problems that limit the effectiveness of investigation and prosecution of OCSA in Vietnam efforts.

#### **3.1. Limitation in the legislation**

##### ***3.1.1. International legislation***

It can be argued that the lack of an adequate legal framework is one of the most difficulties for investigation and prosecution of OCSA in Vietnam. Vietnam is a member of UN, INTERPOL, ASEANAPOL. There is a range of international instruments that facilitate international cooperation in combating OCSA:

- The UN Convention against Transnational Organized Crime (2000) (TOC) (UN, 2000b) and its Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children. Vietnam joined TOC in 2000 and ratified in 2011. The TOC regulates the scope of application:

TOC shall apply, except as otherwise stated herein, to the prevention, investigation, and prosecution of “serious crime as defined in article 2 of this Convention”<sup>68</sup>

TOC defines the scope of a transnational crime offence:

- + It is committed in more than one state
- + It is committed in one state but a substantial part of the preparation, planning, direction or control takes place in another state
- + It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or
- + It is committed in one state but has substantial effects in another state

From that provision, OCSA satisfies the elements of a transnational crime. For example, an offender can easily to contact victims in Asia by using an internet device in the UK.

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<sup>68</sup> Article 2,(b), TOC: Serious crime shall mean conducts constituting an offence punishable by maximum deprivation of liberty of at least four years or more serious penalty.



- The UN Convention on the Rights of the Child (CRC)<sup>69</sup>. Vietnam is the first Asian nation and the second nation that ratified the Convention in 1990.

CRC requires members to take measures that address the sexual exploitation and sexual abuse of children, including prevention, and detect the exploitative use of children in pornographic performances and materials (Article 34 of CRC)

- The Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (UN, 2000a). Vietnam ratified in 2001. POSC states that:

The members are required to define offenses that cover the activities of producing, distributing, disseminating, importing, exporting, selling child pornography or possessing child pornography for the purpose of production, distribution, dissemination, importation, exploitation, offer or sale (Article 3 (1) (c)).

The members ensure that, as a minimum, the acts of producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for child pornography are fully covered under national criminal or penal law (Article 3 (1) (a))

As a member of Interpol, Vietnam also has obligation to implement resolutions of Interpol on OCSA:

-The Resolution AG-2009-RES-05, adopted by Interpol General Assembly at its 78<sup>th</sup> session in Singapore, October 2009 “Combatting sexual exploitation of children on the internet using all available technical solutions, including access-blocking by Interpol member countries”

The Resolution “encourages member countries to promote the use of all technical tools available, including access-blocking of the websites containing child sexual images, in order to intensify the fight by their national specialized units against the dissemination of child sexual abuse images on the internet” The Resolution also encourages member countries to provide the Interpol General Secretariat with updated list of websites containing child sexual abuse images for dissemination to Interpol member countries for appropriate action.

- The Resolution AG-2011-RES-05, adopted by Interpol General Assembly at its 80<sup>th</sup> session in Hanoi, November 2011 “Combatting online sexual exploitation of children through a legislative global engagement strategy”.

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<sup>69</sup> Convention on the Rights of the Child,, GA.Res.45/25,61<sup>st</sup> plen.mtg.,U,N.Doc.A/RES/44/25 (Nov.20,1989), entered into fore 2 Sep.1992

The Resolution notes that a number of countries do not have appropriate legislation to cover OCSA and recommends that Interpol makes its efforts in supporting member countries in producing national legal tools.

- The Resolution AG-2011-RES-88, adopted by Interpol General Assembly at its 80<sup>th</sup> session in Hanoi, November 2011 “Promoting victim-centric management of child abuse material at the national level”

The Resolution encourages member countries to establish procedures for the systematic collection and storage of all child abuse material seized or otherwise revealed within their jurisdiction (INTERPOL, 2011b)

In addition, in order to assist countries in understanding the related terms and concepts in prevention and detection crime against children online, the Terminology Guideline for the Protection of Children from Sexual Exploitation and Sexual Abuse was adopted by Interagency Working Group in Luxembourg, 28 January 2016. This is a valuable resource for nations to refer to when building or amending their related legislation as well as best practice in combating OCSA

Vietnam also signed and executed the annual Joint Communiqué of ASEANAPOL, the commitments, the Plan of Actions in transnational crime at ASEANAPOL, SOMTC and AMMTC meetings. Especially, Vietnam became a member of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters in 2006. They are legal instruments for regional cooperation in combating transnational crime in general, OCSA in particular. However, until now, Vietnam has not joint the Convention on Cybercrime of the Council of Europe 2001, one of the important international legal instruments that facilitates its member countries in international cooperation in combating OCSA.

### ***3.1.2. The domestic legislation:***

Even while being an active member of the UN, INTERPOL, ASEANAPOL and having joined and ratified the international conventions, protocols, and resolutions on OCAS, the OCSA domestic legal framework of Vietnam does not fit within the international regulation. However, Vietnam is not only the nation having this problem. “Only 29 out of 187 countries that are members of Interpol have passed legislation to fight against child pornography and 93 countries have never passed such legislation.”<sup>70</sup>(Mubarak, 2015b) As an assessment of a recent research, 6 countries in the Asian region, including Vietnam “provide neither a definition of

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<sup>70</sup> Mubarak A.R. 2015, Child safety Issues in Cyberspace: Critical Theory on Trends and Challenges in the Asean region

“child pornography nor “pornographic/obscene object” under their domestic legislation”<sup>71</sup> (The World Bank, 2015)

Vietnam is one of the Interpol member countries that share child sexual abuse data and link to Interpol International Child Sexual Exploitation Database (ICSE). However, the terminology of OCAS and child pornography does not exist in Vietnamese law. There are only two articles under the Penal Code 2015 can be referred by CID when investigating OCSA cases:

1). Article 147: Employment of a person under 16 for erotic purpose regulates “Any person aged 18 or over who persuades, entices, forces a person under 16 to participate in an erotic performance or watch an erotic performance in any shape or form shall face a penalty of 6-36 months imprisonment”

This article covers only the activities relating to persuading, enticing and forcing a child in an erotic performance or watch an erotic performance. Luring children for producing child sexual materials has not been covered by any regulation.

2) Article 326: The distribution of immoral cultural materials regulates:

“Any person who makes, duplicates, publishes, transports, deals in, stores books, magazines, pictures, films, music, or other items that contain immoral cultural materials and content *for the purpose of distributing them* or distributes immoral cultural materials in any of the following cases shall be fined from VND 10,000,000 to VND 100,000,000 or face a penalty of up to 3 years’ community sentence or 06-36 months’ imprisonment

- a) The offence involves a quantity of digital data from 1GB to under 50GB in size;
- b) The offence involves 50-100 physical books or magazines;
- c) The offence involves 100-200 physical pictures;
- d) Immoral cultural materials are distributed among 10-20 people;
- e) The offender incurred an administrative penalty or has a previous conviction for the same offence which has not been expunged”

This article covers criminal activities carried out against victims who can be adults or children. This is the only one Article for law enforcement agencies which covers investigating and prosecuting of OCSA case. However, there are difficulties for law enforcement agencies when applying the article when dealing with OCSA cases. The difficulties are identified as follows:

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<sup>71</sup> Protecting Children from Cybercrime, Legislative Responses in Asia to Fight Child Pornography, Online Grooming, and Cyberbullying, 2015, Joint report, the World Bank and International Centre for Missing and Exploited Children.

- Firstly, article regulates only the activities related to the distribution of immoral cultural materials. This means that activities involved in making, duplicating, publishing, transporting, possessing or storing OCSA (immoral cultural materials) without the purpose of distribution are not illegal activities. Consequently, in case study 2 that analyzed in item 1.6, Chapter I, the suspects, Offender C, and Offender D were not accused and prosecuted because there was no clear evidence to prove that the detected OCSA materials had been distributed by them.
- Secondly, according to item (a) (b) (c), section 1, article 326, activities involving to the distribution of immoral cultural materials will be only investigated if the size of the materials more than 1GB, or 50 books and magazines, or 100 pictures. This means that distributing immoral cultural materials is less than 1GB, 50 books and magazines, 100 pictures is not be investigated under the Penal Code. By taking the advantage of this provision, a criminal can maneuver the risk of their way through and commit a crime against children without punishment. In case studies 3 that mentioned in item 1.6, Chapter I, Offender E and Offender F was not be prosecuted because of the size of distributed child sexual materials was under 1GB (only 319.9KG). They were also not accused of possessing child sexual materials.
- The scale of the distributed child sexual material is one of the legal factors to consider to determine the activities are illegal or legal. If child sexual materials have been distributed to less than 10 people, the distributor will not be prosecuted (item d, section 1, article 326). According to this provision, Offender E, the suspect in case study 3 was not be prosecuted for activities related to distributing child sexual materials online because this material was distributed among only 7 people.

In addition, there has been no regulation covering the discovering of digital evidence under Vietnamese Law. Consequently, law enforcement agencies have great difficulties in identifying digital evidence online. The detected child sexual materials must be sent to the Ministry of Culture, Sports, and Tourism (MCST) for examination. If the result of the examination indicates that the detected materials are immoral cultural materials, the CID can take further steps in the investigation and the suspect can be prosecuted. However, there has not been any regulation that covers immoral cultural material. According to the Decree 178/2004/ND-CP, 2004 on prevention and detection of prostitution, “Immoral is any action, image, video that is against morality in the society” (Article 3, Section 4).(Government, 2004) The non-specific regulations lead to the confusion for law enforcement agencies when investigating and prosecuting OCSA.

Further, the insufficient legislation in criminal procedures leads to limitations in doing the investigation of OCSA cases. Before March 2018, victims of sexual abuse case required to repeat their reports many times during the investigation and prosecution of the case. This might cause the hesitation of the victim in denouncing criminal. On the first of March 2018, the Circular that regulates the recording of the facts during the interrogation by the police or other law enforcement officers has come into force. (the Circular 03/2018/TTLT-BCA-VKSNDTC, February 2018 on the procedures for recording voices and images and employing, maintaining, storing such information in criminal files during the investigation and prosecution of the criminal cases). According to the Circular, the records and images that have been gathered by law enforcement agencies during the investigation can be considered as evidence at the court.(MPS, 2018) However, in practice, the investigation units in some provinces in Vietnam, especially the poor provinces have not been equipped with the technical equipment to comply with the Circular.

On 12 June 2018, the Internet Security Law was adopted by the General Assembly and come to force on the first of January 2019.<sup>72</sup>(Assembly, 2018) However, the law covers activities against national security and terrorism only. Unfortunately, OCSA is not covered in the Law. This reflects the lack of awareness of Vietnamese society and law enforcement agencies about OCSA and its negative effects on young children. As a member of the UN and Interpol, Vietnam can seek their assistance or that of other countries that have a deeper experience in combatting OCSA in building appropriate legislation to cover this offence.

There is a gap in Vietnamese legislation that facilitates OCSA perpetrators to repeat the crime again. A provision that forbids the offenders with a prior history of child sexual abuse to contact or work with children does not exist in Vietnamese Law. So previous OCSA offenders can work with or contact children without the supervision. In case study 4 that was analyzed in item 1.6. Chapter I, Offender G is still working as a guardian at the primary school where a pupil was abused by him.

### **3.2. Issues in the practice of investigation and prosecution**

According to research in chapter I, in recent years, CID and provincial police units have conducted the investigation into the cases related to OCSA. However, there are existing difficulties in the practice of investigation and prosecution of OCSA in Vietnam.

**3.2.1. *There has not been established a special unit that in charge of detection and investigation of OCSA.*** Apart from insufficient legal instruments that cover OCSA and online pornography, another major challenge is no appropriate law enforcement

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<sup>72</sup> The Law No. 24/2018/QH14, 2018

force. As mentioned in chapter I, there is a division under the CID that in charge of investigating crimes against children. The Division was established in October 2015 with 25 officers as a result of the rise of crime against children. The Division oversees the investigation of crime against children cases as well as coordinating the programs and strategy on protecting children. To October 2018, there are 48 officers who are working for the Division. However, the investigators make up only 50% of the total employees. There are other officers in charge of building and implementing national programs and plans on protecting children. CID is in charge of serious cases and international cooperation for investigations. The OCSA cases that have happened in provinces are under the authority of the Provincial Police Force. There is no specific unit in charge of crime against children within the local police force. In both central and local level, a special unit is in charge of investigating OCSA has not been established. There are no experts who can work with child victims. As a result, investigators, who have never been trained in working with child victims, have to take reports of victims. They use the standard method in the investigation when receiving information from victims. This might cause negative effects on the psychology of the victims as well as impact the effectiveness of collecting evidence from reports of the victims.

**3.2.2. *The OCSA database has not been established.*** A National Victim Identification Team and Database is a requirement for the identification of child victims and offenders in investigating OCSA. Interpol is aware that OCSA takes place in all member countries and encourages member countries to establish this function and connect to Interpol International Child Sexual Exploitation Database (ICSE). Image analysis and image databases assist investigators in investigating OCSA effectively. According to a recent research of United Nation Office on Drug and Crime (UNODC), this method helps rescue unidentified victims seen in online materials. Technologies such as Microsoft's "photoDNA" help law enforcement quickly identify "known" images. Other software developers assist finding and removing child sexual abuse material from the servers. Available databases such as Interpol ICSE, the United States-based National Center for Missing and Exploited Children (NCMEC) includes images and information of identified and unidentified victims. The database reduces redundancy in the investigation and may assist law enforcement agencies in doing digital forensics by making the comparison between detected child sexual material with images in databases. "By the end of 2013, more than 3,000 victims from more than 40 countries, and more than 1,500 offenders had been identified and recorded in Interpol ICSE". In 2009, "NCMEC had identified 592,044 out of a total of 681,275 sites as child sexual abuse materials sites."<sup>73</sup>(Crime, 2015)

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<sup>73</sup> Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, 2015

**3.2.3. *The inadequate investment in budget and technology for investigations.*** OCSA is a new issue in Vietnam while other offences against children such as rape of a person under 16, sexual abuse of a person aged from 13 to under 16, engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16 are a significant problem. On average, more than 1,500 child sexual abuse cases were detected each year during the period of 2014 to June 2018. So CID and provincial police are overloaded with these offences and the investment for combating OCSA in both human resources and technical equipment is still limited.

Vietnam is a developing country with a rapidly growing population (95,5 million in 2018). Inadequate budget and ICT capacity limit the effectiveness of the investigation and prosecution of OCSA. ICT has been sparingly applied in schools and some government agencies, including investigation units. So the majority of investigators have not been equipped with knowledge of ICT. There are a few computers at the CID that is mainly used for typing reports. The investigators of the CID have never been trained in OCSA investigation techniques. Following up a suspected event online or detecting digital evidence seems beyond the capacity of the investigators.

**3.2.4. *The lack of experience of investigators*** is one of the main difficulties in investigation OCSA in Vietnam. Conducting an investigation online seems beyond the capacity of law enforcement in Vietnam. The investigators have not been trained in OCSA investigation methods, while in some countries, this method has been used for decades such as Australia. “Sting is a planned activity of law enforcement officers to detect and apprehend pedophiles online. The necessity of such methods has been upheld by the Australia High Court in 2002.”<sup>74</sup>(Jaishankar, 2011) Unfortunately, in Vietnam, law enforcement agencies merely play a passive role in the investigation and prosecution OCSA. They instead, wait for reports from the victim.

There are investigation techniques that have been implemented effectively by law enforcement agencies of some countries in detecting OCSA. Recent research of UNODC<sup>75</sup>(Crime, 2015) mentions some of them as follows:

- Automated search:

This method allows forensic investigators easily to find sites and content displaying online child sexual materials by keywords and relevant information.

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<sup>74</sup> Online Social Networking and Pedophilia, An Experimental Research “sting”, Roderic Broadhurst, Kasum Jayawardena, 2011

<sup>75</sup> Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, 2015

- Undercover operations

The common modus operandi of OCSA perpetrators is establishing a false identity online to lure children. The offenders might lurk in the profile of others in order to target minors. The requirement for investigators is the understanding of the nature of this crime, their criminal methods, and their criminal psychology. So they can conduct an undercover investigation (sting) to trace perpetrators online. As mentioned in Chapter I, false profiles are posted online by the investigators in order to trap offenders who are finding victims for sexual abuse. To apply this method in the investigation, law enforcement officers need to be equipped with the knowledge about both offenders and victims.

**3.2.5. *The limitations in OCSA investigation procedures*** impact the effectiveness of OCSA investigation. This is evidenced in some practical operational activities as follow:

\* Recording details at the scene of a crime is a requirement in a criminal investigation but there have been no any regulations that cover this issue. So according to Vietnamese law enforcement agencies, the scene of the crime is the web-page that contains child sexual images. In case study 2 that was analyzed in item 1.6, Chapter I, the Procuracy refused to approve the decision for the prosecution of Offender C and Offender D because the webpage was removed by the Royal Canadian Police. When in fact, each child sexual image or video should be considered as a scene of the crime. However, the investigators lack experience in the analysis and examination of child sexual materials to track down the perpetrators. Consequently, detected child sexual material is not considered as evidence against offenders if the web-page was removed.

\* The complicated procedures required in the investigation of OCSA effect the result of the investigation. The requirement of the examination of the Ministry of Culture, Sports, and Tourism (MCPT) on detected child sexual abuse materials complicates the OCSA investigation procedures. Current practice is all the discovered child sexual abuse material has to be sent to MCPT. If the result of the examination of MCPT reveals that the materials are immoral culture materials, these materials become the evidence against the offenders. This step can be replaced by digital forensics implemented by the investigation unit. “Digital forensics is the branch of forensic science concerned with the recovery and investigation such material found in digital and computer systems.”<sup>76</sup> (Crime, 2015) The digital forensic function requires a range of investigative and forensic techniques to recover photographs, videos, emails and system data. Digital forensics needs to be conducted by trained

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<sup>76</sup> Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, 2015



investigators. This requires the amendment to Vietnam Criminal Procedure Code and Vietnam Law in Criminal Investigation Agencies.

**3.2.6. *The limitations in international cooperation.*** Online child sexual abuse is a transnational crime that makes it difficult for law enforcement to investigate across borders. While at the international level, laws and criminal procedures of nations often differ. In recent years, Vietnam has cooperated actively with other countries and international organization in protecting children. However, until now the law of Vietnam has not been aligned with international laws with respect to online child sexual abuse and child pornography. Insufficient criminal mutual assistance agreements and treaties between Vietnam and foreign countries is another obstacle to international cooperation. Vietnam has signed 32 treaties on mutual criminal assistance and extradition and transferring the prisoner with 29 countries.<sup>77</sup>(MOFA, 2018) However, 4 of these Treaties was signed in the 1980s at the time of “the cold war” and has not been renewed (with Poland, Russia, Slovakia, Hungary), 5 treaties on transferring the prisoner<sup>78</sup>, 5 treaties on extradition<sup>79</sup>, 11 treaties cover both civil and criminal matters and the assistance in criminal matters is regulated in only a part of these treaties<sup>80</sup>. This leads to a lack of ability by local law enforcement authorities to obtain evidence from outside Vietnam. In addition, because of language barriers, investigators of Vietnamese CID meet difficulties in working directly with foreign investigators. All the information of OCSA cases should be translated by Interpol Vietnam before transfer to the CID. The meetings between the CID and foreign law enforcement agencies are coordinated by Interpol Vietnam. This can delay the investigation because the timeliness of the information on criminal activity is affected. In addition, opportunities to attend international conferences, meetings, seminars and training courses on OCSA is limited because investigators of CID cannot attend those events dependently, without interpreters.

OCSA investigating capacity building has been a challenge in Vietnam. The insufficient knowledge and awareness of society and law enforcement agencies are major difficulties in the prevention and detection of this cybercrime. Current existing issues require adequate investment by the government and its law enforcement agencies in building legal instruments, enhancing the capacity of relevant agencies as well as academic research on this problem.

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<sup>77</sup> The list of Legal Mutual Assistance Treaties between Vietnam and foreign countries, <https://lanhsuvietnam.gov.vn>

<sup>78</sup> The Treaties with the UK, South Korea, Australia, Thailand and Hungary

<sup>79</sup> The Treaties with South Korea, Algeria, India, Indonesia and Hungary

<sup>80</sup> The Treaties with Poland, Belarus, Bulgaria, Cuba, Hungary, Indonesia, Lao, Russia, Slovakia, China and Ukraine.



## Conclusion

Located in Asia, which has the world's largest number of incidents of child prostitution<sup>81</sup>(Mubarak, 2015b), Vietnam is facing increased crimes against children, including that of OCSA.

In 2017, Vietnam's trade as a percentage of GDP reached over 200%. This is the highest level for any country with over 50 million people, according to World Bank data, which goes back to 1960<sup>82</sup>(Kopf, 2018) The rapid development of the economy will bring greater risks of criminal activities because of the proliferation of Information and Communication Technologies. With Internet users exceeding 50% of the population, Vietnamese children are, and will increasingly become, a fragile target for OCSA perpetrators. Protecting children, the weakest segment of any society should be the first priority. However, there has been insufficient attention and concern given to the serious effects of OCSA on young children. In practice, the investigation and prosecution of OCSA is still ineffective. Consideration for appropriate measures to deal with this problem both in the short, and long terms, is essential before it becomes an unmanageable situation.

So the question confronting any government is where should limited funds be directed in order to achieve the most effective outcomes.

First, we must appreciate that there are two areas for action. This research has mainly focussed on the effects of OSCA in Vietnam. So we must obviously direct funding in that area. Previously we had identified the following main areas needing attention: increasing the awareness and prevention of OSCA; training and resourcing investigative and policing agencies handling OSCA related criminal activity; and strengthening the legal framework to increase deterrence and penalties.

An immediate task that Vietnamese law enforcement agencies can implement is the improvement of the capacity of law enforcement agencies in the prevention and investigation of OCSA.

Investigators need to be trained about the nature of OCSA crime, the various types of crimes, the modus operandi of criminals, and the global origins of criminal activities.

Fortunately, Vietnam is not isolated in combating cybercrime, especially OCSA. Through its membership of Interpol and the United Nations, Vietnam has established good relations with other countries in combatting transnational crime. As discussed

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<sup>81</sup> Child safety Issues in Cyberspace: A Critical Theory on Trends and Challenges in the Asean region, AR. Mubarak, International Journal of Computer Applications, Volume 129, No1, 2015

<sup>82</sup> Vietnam is the most globalized populous country in modern history, Dan Kopf, World Economic Forum, 2018

in the research, there are concerns by international organizations (UN, Interpol, ECPAT) and countries (USA, UK, Australia, Canada) about the rising threat of OCSA. Many of these have taken advantage of advanced methods and techniques such as coordinated “sting” operations, Microsoft’s “photoDNA” and have applied them effectively in preventing, detecting and investigating OCSA within developed countries.

Vietnam needs to step up its efforts in seeking the assistance of these organizations and countries by doing more research into the nature of OCSA in Vietnam followed by more intensive training of Vietnamese law enforcement officers both in Vietnam and in other countries. Officers need to build relationships which they can draw upon for assistance when they return back to Vietnam.

Even though Vietnam is an Interpol member country, Vietnam has not exploited any information from Interpol ICSE. As a short-term activity, law enforcement agencies should send teams of investigators to INTERPOL Headquarters and the similar investigation units of developed countries such as Australia to train in OCSA investigation techniques as well as mastering the available OCSA databases. After such training, the investigators can become liaison officers who are able to work directly with foreign investigators in investigating OCSA cases.

Establishing OCSA hotlines between Vietnamese investigation units and foreign counterparts is also another mechanism to overcome existing limitations with international cooperation. Also, the Police Force needs to set up a specific course for OCSA investigators at the Police Academy on OCSA improve the effectiveness of investigating and in tackling OCSA. Fundamental to these efforts is the underlying need for better mastery of the English language so communication is not a barrier to effective cooperation and support.

As a long-term goal, Vietnam needs to strengthen its legal framework and build legal instruments that cover OCSA and child pornography crimes specifically and not just as general crimes. To achieve this, there is a need for further research into the exact deficiencies in the present framework. Furthermore, legislators need to acquire a deeper understanding of OCSA so that an effective legal framework can be drafted and legislated. Other countries have a head start on Vietnam in this regard, they have more developed frameworks and they appreciate their existing shortcomings. Vietnam can learn from other countries by sending out teams to become familiar with the current practice and bring back the knowledge so they do not have to reinvent the wheel as they enhance the Vietnamese legal systems.

Finally, more comprehensive media-based awareness programs can be implemented both at schools and in the public domain, so that ignorance of OCSA is no longer an excuse for inaction.

All the above are short-term, quick and low-cost activities which should be able to be implemented within current funding allocations by the Vietnamese government.

The above measures are reactive measures intended to address the effects of OCSA. A plan to contain OCSA is not complete without consideration of the causes of OCSA. To address this, we need to research the causes of why the crime of OCSA arises in the first place. We need to understand the various causes and how they contribute to the initiation, promulgation and growth of OCSA. We need to look into, and understand, the mind of the criminal perpetrator (be they pedophiles, distributors, middlemen, etc) in order to establish better mechanisms to anticipate their actions, plan better entrapments (stings) and possibly even cure their mental states which drive them to commit and facilitate the growth of this shameful crime against children.

I hope that through this first stage of my research, I have demonstrated above that there are several future research remedial pathways that will allow us to more effectively control OCSA. Effects are well known, so all we need to do is develop more effective ways to manage and hopefully overcome them. It's in the area of causes of OCSA that perhaps the greatest reward lies. Knowing what gives rise to this crime and heading it off before it becomes an enormous societal and governmental burden and possibly unmanageable.

The future is laden with challenges to be overcome. I hope and look forward to, being able to contribute to that journey.

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