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Prosecuting the Phone Scammer When Extradition Fails and Concurrent Jurisdiction Exists

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PROSECUTING THE PHONE SCAMMER WHEN EXTRADITION FAILS AND CONCURRENT JURISDICTION EXISTS

INTRODUCTION

On October 29, 2020, I received the following automated voicemail: “Since we’ve not gotten a response, we’re giving you a courtesy call before we close out your file. Press one to speak with someone in my office about reinstating your vehicle’s warranty or press two to be put on our do not call list or call our 800 number at 844-989-1708.”¹ This is one of many scam phone calls I, and many people around the world, receive on a daily basis.² I knew this message was a scam because (1) I do not own a vehicle; (2) the voicemail did not mention the name of a company; and (3) a quick Google search of the 844 number revealed several complaints about a car warranty scam.³ Phone scams⁴ are wide-ranging in their subject matter.⁵ They include: tech-

1. Voicemail from Phone Number 786-705-7450, to author (Oct. 29, 2020, 11:39 AM) (on file with author).

2. In 2020, TrueCaller, an app designed to block scam phone calls, successfully blocked, and identified 31.3 billion spam calls. Kim Fai Kok, *TrueCaller Insights: Top 20 Countries Affected by Spam Calls in 2020*, TRUECALLER (Dec. 8, 2020), <https://truecaller.blog/2020/12/08/truecaller-insights-top-20-countries-affected-by-spam-calls-in-2020-2/>. TrueCaller identified Brazil, United States, Hungary, Poland, Spain, Indonesia, United Kingdom, Ukraine, India, Chile, Mexico, Vietnam, Russia, Peru, Germany, Romania, South Africa, Greece, Belgium, and Colombia among the top 20 countries affected by spam calls in 2020. *Id.*

3. Betty Blue, Post on *844-989-1708: Robocall*, REPORT SCAM (Apr. 22, 2020), <https://reportscam.com/844-989-1708>.

4. Phone scams are perpetrated by scammers who rely on internationally connected telecommunication systems to “distribute massive automated spam and scam calls,” which results in financial losses for some victims. Huahong Tu, *From Understanding Telephone Scams to Implementing Authenticated Caller ID Transmission 1–3* (Dec. 2017) (Doctoral Dissertation, Arizona State University), https://repository.asu.edu/attachments/194022/content/Tu_asu_0010E_17402.pdf.

5. See generally Caralynn Lippo, *The 8 Most Sophisticated Phone Scams Right Now the Average Person Falls For*, INSIDER (Apr. 1, 2019, 2:33 PM), <https://www.businessinsider.com/phone-scams-robocall-spoofing-2019-4>.

support scams,⁶ government impersonation scams,⁷ lottery scams,⁸ investment scams,⁹ and many others.¹⁰ Generally, the goal of the phone scam is to elicit money from a potential victim¹¹ and unfortunately, many people often end up penniless.¹²

6. Tech support scammers pretend to be computer technicians who convince computer-illiterate victims that their devices have a virus or another issue which they can fix for a fee. *See How to Spot, Avoid, and Report Tech Support Scams*, FED. TRADE COMM'N: CONSUMER INFO. (Feb. 2019), <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams> (last visited July 15, 2021).

7. Government imposter scams involve scammers pretending to be a government agent or official who threaten victims with arrest or a lawsuit unless the person pays their supposed outstanding taxes or debt. *How to Avoid a Government Impersonator Scam*, FED. TRADE COMM'N: CONSUMER INFO. (May 2021), <https://www.consumer.ftc.gov/articles/how-avoid-government-impersonator-scam> (last visited July 15, 2021).

8. Lottery scammers call victims offering the chance to participate in a high-stakes lottery or other financial winning opportunity in exchange for payment. *Fake Prize, Sweepstakes, and Lottery Scams*, FED. TRADE COMM'N: CONSUMER INFO. (May 2021), <https://www.consumer.ftc.gov/articles/fake-prize-sweepstakes-and-lottery-scams> (last visited July 15, 2021).

9. Investment scammers call victims claiming to be a stockbroker or portfolio manager with an investment opportunity that is low-risk, with high-returns. *Investment Scams*, AUSTL. COMPETITION & CONSUMER COMM'N, <https://www.scamwatch.gov.au/types-of-scams/investments/investment-scams> (last visited July 15, 2021).

10. *See, e.g., Phone Scams*, FED. TRADE COMM'N: CONSUMER INFO. (Oct. 2020), <https://www.consumer.ftc.gov/articles/0208-phone-scams#examplesof> (last visited July 15, 2021) (explaining charity scams, extended car warranty scams, “free” trials, travel scams, etc.).

11. *See* FED. TRADE COMM'N, PHONE SCAMS 1 (2014), <https://www.consumer.ftc.gov/articles/pdf-0060-phone-scams.pdf>.

12. *See* Press Release, U.S. Att’y’s Off. N. Dist. Ga., Three Defendants and an India-Based Call Center Indicted in Phone Scam Targeting U.S. Victims (Mar. 12, 2019), <https://www.justice.gov/usao-ndga/pr/three-defendants-and-india-based-call-center-indicted-phone-scam-targeting-us-victims> (“Since 2013, IRS impersonation scams have been on a relentless path, claiming more than 15,000 victims who have lost upwards of \$74 Million to the scammers.” (internal quotation omitted)). *See also Inheritance Scam: Leo Gives Away His Life Savings Trying to Gain An Inheritance*, AUSTL. COMPETITION & CONSUMER COMM'N, <https://www.scamwatch.gov.au/get-help/real-life-stories/inheritance-scam-leo-gives-away-his-life-savings-trying-to-gain-an-inheritance> (last visited July 15, 2021); Michael Mutch & James Brinsford, *Single Mum Left Penniless Before Christmas After Bank Scam Robs Her of £1,000*, SOMERSETLIVE (Dec. 16, 2018, 1:46 PM), <https://www.somersetlive.co.uk/news/somerset-news/single-mum-left-penniless-before-2333561>; Pat Reavy, *I was so Humiliated: Utah Woman Shares Story of Being Scammed Online*, DESERTNEWS

Phone scams are a lucrative enterprise because the financial rewards far outweigh the low operating costs.¹³ Scammers use the internet to dial millions of cold calls with each call only costing “a fraction of a cent.”¹⁴ Scammers who can convince even just a few people to answer the call and send money are able to offset the costs of the unanswered calls and still retain a large profit.¹⁵ For example, a tax fraud phone scam collected \$2 million from only 1,500 victims.¹⁶

Despite the nuisance of the calls and possible financial peril facing those who fall victim, little has been done to stop them.¹⁷ This is not to say governments and individuals have not tried.¹⁸

(Sept. 15, 2019, 3:02 PM), <https://www.deseret.com/utah/2019/9/15/20859553/i-was-so-humiliated-utah-woman-shares-story-of-being-scammed-online>.

13. Tara Siegel Bernard, *Yes, It's Bad. Robocalls, and Their Scams, Are Surging*, N.Y. TIMES (May 6, 2018), <https://www.nytimes.com/2018/05/06/your-money/robocalls-rise-illegal.html>.

14. Raymond Huahong Tu, *Robocalls are Unstoppable – 3 Questions Answered About Why Your Phone Won't Quit Ringing*, THE CONVERSATION (Feb. 26, 2019, 6:44 AM), <https://theconversation.com/robocalls-a-unstoppable-3-questions-answered-about-why-your-phone-wont-quit-ringing-108554>.

15. *See id.*

16.

The scam involved call center employees sending mass text messages announcing an urgent inquiry to as many as 10,000 American cellphone numbers, according to Parag Manere, deputy commissioner of police in Thane, in the western state of Maharashtra. If recipients called back, the call center employees would introduce themselves as “Christopher” or “Daniel” and speak with an American accent, impersonating IRS officers. They would then warn the victims that the local police or IRS agents would raid their homes within 30 minutes unless they sent an immediate payment, Thane police officials explained.

Jim Pavia, *Sadly, IRS Phone Scams Are Very Successful 'Businesses'*, CNBC (Oct. 18, 2016, 7:36 AM), <https://www.cnbc.com/2016/10/18/sadly-irs-phone-scams-are-very-successful-businesses.html>.

17. Yuki Noguchi, *Why It's Hard to Put an End to Unwanted Robocalls*, NPR (Nov. 18, 2015, 6:17 AM), <https://www.npr.org/2015/11/18/456355120/why-it-s-hard-to-put-an-end-to-unwanted-robocalls>.

18. Governments pass legislation to block unwanted calls. *See, e.g.*, Jason Cipriani, *Tired of Annoying and Intrusive Spam Calls? Here's How to Keep Robocalls at a Minimum*, CNET TECH (Aug. 15, 2021, 5:51 AM), <https://www.cnet.com/tech/mobile/tired-of-annoying-and-intrusive-spam-calls-heres-how-to-keep-robocalls-at-a-minimum/>; *New Rules to Detect, Trace and Block Scam Calls*, AUSTL. COMM. & MEDIA AUTH. (Dec. 2, 2020),

Governments have enacted legislation requiring phone companies to create mechanisms and software that block such calls,¹⁹ created Do Not Call registries,²⁰ sued private companies responsible for facilitating the calls or accepting payments from victims,²¹ and broadcasted campaigns to raise public awareness of the financial dangers of such calls.²² Despite these efforts, phone scams continue to operate with no end in sight.²³ One reason is that criminal prosecution is unlikely due to the cross-border and

<https://www.acma.gov.au/articles/2020-12/new-rules-detect-trace-and-block-scam-calls>; *Call Blocking Comes Into Force: Canadians To Have More Protection Against Nuisance Calls*, CAN. RADIO-TELEVISION & TELECOMM. COMM. (Dec. 17, 2019), <https://www.canada.ca/en/radio-television-telecommunications/news/2019/12/call-blocking-comes-into-force-canadians-to-have-more-protection-against-nuisance-calls.html>. Individuals try to turn the tables on scammers and waste their time. *See, e.g.*, theScore Esports, *The Streamer Who Scams The Scammers*, YOUTUBE (Feb. 21, 2020), https://www.youtube.com/watch?v=Q5PtltiIDDQ&ab_channel=theScoreesports.

19. In the United States, phone carriers use STIR/SHAKEN technology, which verifies every incoming and outgoing call passing through their networks. Jason Cipriani, *Robocalls Still Haven't Gone Away, So Here's Every Method We Know for Stopping Them*, CNET TECH (July 3, 2021, 1:00 AM), <https://www.cnet.com/tech/mobile/robocalls-havent-gone-away-so-heres-every-method-we-know-for-stopping-them/>.

20. Do Not Call registries allow people to register phone numbers to a central database to limit unwanted sales calls. *National Do Not Call Registry FAQs*, FED. TRADE COM'N: CONSUMER INFO. (May 2021), <https://www.consumer.ftc.gov/articles/national-do-not-call-registry-faqs> (last visited Sept. 19, 2021). As of 2019 consumers in Brazil could register their phone numbers with “não perturbe” or “do not disturb me” lists to block unwanted calls. Dane Avanzi, *National “Do Not Disturb Me” Registration Now Available*, AVANZI (July 17, 2019), <https://grupoavanzi.com/en/national-do-not-disturb-me-registration-now-available-2/>.

21. In the United States, phone carrier Sprint Corp. agreed settle for \$7.5 million with the Federal Trade Commission against claims of “fail[ing] to spare consumers from unwanted telemarketing calls.” Alina Selyukh, *Sprint to Pay \$7.5 Mln In Record U.S. Settlement for Unwanted Calls*, YAHOO! FINANCE (May 19, 2014), <https://finance.yahoo.com/news/sprint-pay-7-5-mln-193411665.html>.

22. The European Union’s website, Europol, has multiple public awareness and prevention guides, in multiple languages, concerning cyber scams. *See, e.g.*, *Take Control of Your Digital Life. Don't Be a Victim of Cyber Scams!*, EUROPOL, <https://www.europol.europa.eu/activities-services/public-awareness-and-prevention-guides/take-control-of-your-digital-life-don%E2%80%99t-be-victim-of-cyber-scams> (last visited July 15, 2021).

23. *See* Noguchi, *supra* note 17.

global nature of phone scams.²⁴ Countries with countless phone scam victims often find it difficult to put an end to these scams via criminal prosecutions because most scammers operate in another country and are therefore beyond their jurisdiction.²⁵ Consequently, individuals, hackers, and investigative journalists disrupt scam call centers by pretending to be victims to waste the scammer's time,²⁶ warning potential victims against sending money,²⁷ or publicly shaming scammers through video exposés.²⁸

This Note will discuss the jurisdictional issues countries face when trying to impose domestic criminal laws onto international phone scammers and the importance of ensuring successful prosecutions to stop phone scams. Part I of this Note will describe how phone scams operate, including the technology used

24. Roger A. Grimes, *Why It's So Hard to Prosecute Cyber Criminals*, CSO (Dec. 6, 2016, 3:00 AM), <https://www.csoonline.com/article/3147398/why-its-so-hard-to-prosecute-cyber-criminals.html>.

25. *See id.* *See also* Paul Muschick, *International Scammers Can Be Caught*, THE MORNING CALL (Jan. 8, 2011), <https://www.mcall.com/news/local/mc-xpm-2011-01-08-mc-watchdog-catching-foreign-scammers20110108-story.html>.

26. Some people return a scammer's call and pretend to be a gullible victim to waste the scammer's time so that other potential victims cannot be reached in the meantime. *See, e.g.*, Kitboga, *Buying A Scammer Gift Cards (2 Hours Of Their Time Wasted)*, YOUTUBE (May 21, 2018), https://www.youtube.com/watch?v=_qmPzuNYU_M&ab_channel=Kitboga (a YouTuber who solely produces video content "calling out" scammers and pretends to be a victim).

27. YouTuber and hacker "Jim Browning," (an alias), hacks into the computers and CCTV systems of scam call centers and warns victims not to send money. Yudhijit Bhattacharjee, *Who's Making All Those Scam Calls?*, N.Y. TIMES MAG. (Jan. 27, 2021), <https://www.nytimes.com/2021/01/27/magazine/scam-call-centers.html>.

28. For example, instead of mailing money to a phone scammer, YouTuber Mark Rober mails scammers a home-made glitter bomb equipped with a GPS tracking device; when opened, it shoots out glitter, video records the person who opens the package, sprays fart spray, and plays a recording from the film *Home Alone*—"Hello...You guys give up or are you thirsty for more?" Mark Rober, *Glitterbomb Trap Catches Phone Scammer (Who Gets Arrested)*, YOUTUBE (Mar. 18, 2021), https://www.youtube.com/watch?v=VrKW58MS12g&list=LL&index=2&ab_channel=MarkRober. *See also* 60 Minutes Australia, *Reporter Tracks Down Scammers in Dramatic Raid*, YOUTUBE (Feb. 4, 2019), https://www.youtube.com/watch?v=vzSXPW4wZB4&ab_channel=60MinutesAustralia (reporter Liam Barlett of 60 Minutes traveled to the Philippines to track down conmen scamming Australians in an investment scam).

to make it a lucrative business.²⁹ Part II will discuss the traditional international principles of establishing criminal jurisdiction, such as the territoriality and passive personality principles.³⁰ These principles explain how a country may establish jurisdiction to prosecute an international phone scammer.³¹ This section will also examine how establishing criminal jurisdiction over a phone scammer gives rise to the issue of concurrent jurisdiction.³² Part III will highlight how issues of concurrent jurisdiction can be addressed by the *aut dedere aut judicare* (extradite or prosecute) rule and the potential obstacles countries may encounter when applying the rule to the context of prosecuting a phone scammer.³³ Part IV will offer a solution to the concurrent jurisdiction problem, making a case for using the *aut dedere aut judicare* rule, and discussing how countries should

29. Phone scammers often rely on Voice Over Internet Protocol (VoIP), a system where they can place calls using the internet, to engage in caller ID spoofing, which makes the calling phone number appear to come from a legitimate agency. Keven Hendricks, *Investigating Scam Phone Calls*, FBI L. ENFT BULL. (June 10, 2020), <https://leb.fbi.gov/articles/featured-articles/investigating-scam-phone-calls>.

30. “Territoriality is the principle that a country may regulate both civil and criminal matters within its sovereign borders.” AM. SOC’Y INT’L L., BENCHMARK ON INTERNATIONAL LAW IIA-2 (Diane Marie Amann ed., 2014), https://www.asil.org/sites/default/files/benchmark/ASIL_Benchbook_Complete.pdf. Passive personality is the principle that a country may establish criminal jurisdiction over a crime occurring outside its territory based upon the nationality of the victim. *Id.* at IIA-3.

31. *See generally id.*

32. Concurrent jurisdiction occurs when more than one country can establish jurisdiction to prosecute a criminal matter. *See* José Luis de La Cuesta & Albin Eser, *Concurrent National and International Criminal Jurisdiction and the Principle of ‘Ne Bis In Idem’*, 72 INT’L REV. PENAL L. 753, 754 (2001).

33.

The role the obligation to extradite or prosecute plays in supporting international cooperation to fight impunity has been recognized at least since the time of Hugo Grotius, who postulated the principle of *aut dedere aut punire* (either extradite or punish): ‘When appealed to, a State should either punish the guilty person as he deserves, or it should entrust him to the discretion of the party making the appeal.’ The modern terminology replaces ‘punishment’ with ‘prosecution’ as the alternative to extradition in order to reflect better the possibility that an alleged offender may be found not guilty.

Int’l Law Comm’n, Rep. on The Obligation to Extradite or Prosecute (*aut dedere aut judicare*), U.N. Doc. A/69/10, ¶¶ 57–65 at 141–42 (July 6, 2014).

distribute financial and organization responsibilities to successfully prosecute phone scammers. According to the principles of deterrence, phone scammers will continue to view phone scamming as a lucrative venture unless prosecutions and convictions are successful.³⁴ This Note specifically focuses on phone scams generated in India,³⁵ but argues that any country housing international scam call centers ought to prosecute the scammers if it is unwilling to extradite its citizens.

I. BACKGROUND

A. Anatomy of a Phone Scam

There are many versions of the phone scam, but each scam typically begins with a phone call to a potential victim from a telephone number that either appears to be local or appears to come from a government agency.³⁶ Scammers utilize spoofing technology, which masks the real phone number they are calling from so that the number presented on the caller ID disguises their true identity.³⁷ This is a strategic maneuver, as people are

34. See generally JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 50 (8th ed. 2018).

35. This Note focuses on India because a majority of phone scams originate in India; however, phone scams operate in many countries including, Jamaica, Costa Rica, and Pakistan. See U.S. SENATE SPECIAL COMMITTEE ON AGING, FIGHTING FRAUD: SENATE AGING COMMITTEE IDENTIFIES TOP 10 SCAMS TARGETING OUR NATION'S SENIORS 14, 17, (2020), <https://www.aging.senate.gov/imo/media/doc/Fraud%20Book%20%202020.pdf>. See also Bhattacharjee, *supra* note 27; Eric Markowitz, *The Inside Story Of How Pakistan Took Down The FBI's Most-Wanted Cybercriminal*, INT'L BUS. TIMES (Mar. 30, 2015, 10:08 AM), <https://www.ibtimes.com/inside-story-how-pakistan-took-down-fbis-most-wanted-cybercriminal-1860808>; Andy Greenberg, *Listen to 'Tech Support' Scam Calls That Bilk Victims Out of Millions*, WIRED (Mar. 13, 2017, 7:00 AM), <https://www.wired.com/2017/03/listen-tech-support-scam-calls-bilk-millions-victims/>.

36. Bernard, *supra* note 13 (“In one tactic, known as ‘neighborhood spoofing,’ robocallers use local numbers in the hope that recipients will be more likely to pick up.”). See also Paul Witt, *Who's Pretending to Be the Government Now?*, FED. TRADE COMM'N: CONSUMER INFO. (July 1, 2019), <https://www.consumer.ftc.gov/blog/2019/07/whos-pretending-be-government-now>.

37. “Caller ID spoofing is a practice where scammers falsify the information that appears on your caller ID screen.” *The Epidemic of Caller ID Spoofing in the United States—and What You Can Do About It Right Now*, ROBO KILLER (May 22, 2020), <https://www.robokiller.com/blog/caller-id-spoofing/>. For a detailed description of how phone scammers operate using spoofing, see Huahong Tu, *supra* note 4, 14–22; see also *Caller ID Spoofing*,

less likely to answer calls from blocked or non-local numbers.³⁸ The scam operates as a numbers game—the more people the scammer can convince to pick up the call, the more opportunities they have to deceive potential victims.³⁹

When a victim answers the call, they will often hear a pre-recorded phone message.⁴⁰ Scammers prefer to use automated messages, also known as “robocalls,”⁴¹ because they are inexpensive.⁴² Instead of paying a human to place calls all day, the scam business uses a computer system to generate the calls; all that is required is a decent quality Internet connection.⁴³ Calls are made using Voice Over Internet Protocol (VoIP),⁴⁴ allowing the scammers to bypass local phone companies and making it cheaper to reach out to international victims.⁴⁵

The automated message generally reveals which type of scam the call is about.⁴⁶ In imposter scams, the automated message may claim to be a government tax agent alleging that the

FED. COMM. COMM'N (Mar. 17, 2021), <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id>.

38. *BBB Scam Alert: “Neighbor Spoofing” is a Common Type of Phone Scam*, BETTER BUS. BUREAU (May 29, 2020), <https://www.bbb.org/article/news-releases/16670-a-new-kind-of-phone-scam-neighbor-spoofing>.

39. A former scammer explained that he made between 1,300–1,500 calls per day and was expected to “make a sale” for every 1 of 100 calls. Karl Rock, *At Home with an Ex-Indian Phone Scammer (Part 2: Scammer Training)*, YOUTUBE (Apr. 2, 2020), https://www.youtube.com/watch?v=TAeIkc39tDU&ab_channel=KarlRock.

40. *Robocalls*, AARP (June 1, 2021), <https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html>; see also Bernard, *supra* note 13.

41. Robocalls are automated, pre-recorded messages intended to spam telecommunication devices; the calls are usually made by a computer, also known as an auto dialer. *Scam Calls - How to Stop Them*, MALWAREBYTES, <https://www.malwarebytes.com/scam-call/> (last visited July 16, 2021).

42. CNN, *Here’s Why You Get So Many Robocalls*, YOUTUBE (May 14, 2019), https://www.youtube.com/watch?v=H9Py7XJ05ok&ab_channel=CNNBusiness.

43. *Id.*

44. “Voice over Internet Protocol (VoIP), is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.” *Voice Over Internet Protocol (VoIP)*, FED. COMM. COMM'N, <https://www.fcc.gov/general/voice-over-internet-protocol-voip> (last visited July 16, 2021).

45. *Here’s Why You Get So Many Robocalls*, *supra* note 42.

46. See *Robocalls*, *supra* note 40.

potential victim has outstanding taxes,⁴⁷ or that a family member is in need of bail money.⁴⁸ In a technical support scam, the automated message may claim that there is an issue with the potential victim's electronic devices.⁴⁹ Some scammers also pretend to be able to fix credit issues,⁵⁰ or claim that the victim has won prize money on the condition that the victim *send* money before they receive the funds.⁵¹ Once the target of the scam responds to the automated message, they may be re-directed to a live person.⁵² This live person will often rely on a script⁵³ and social engineering to make them sound official and trustworthy.⁵⁴

Although there are many different types of phone scams, they all share the same goal—to elicit money from the victim.⁵⁵ Scammers make promises or threats to coerce victims into sending money and utilize creative methods to receive the money.⁵⁶ Some scammers request direct payments from their victims while others seek personal information in order to conduct more

47. See FRANK W. ABAGNALE, SCAM ME IF YOU CAN: SIMPLE STRATEGIES TO OUTSMART TODAY'S RIP-OFF ARTISTS, 74–78 (2019).

48. E.g., *Grandparent Scams*, FRAUD.ORG, <https://fraud.org/grandparent-scams/> (last visited July 16, 2021).

49. *How to Spot, Avoid, and Report Tech Support Scams*, *supra* note 6.

50. *Phone Scams*, *supra* note 10.

51. *Fake Prize, Sweepstakes, and Lottery Scams*, *supra* note 8.

52. *Robocalls*, AARP: FRAUD RESOURCE CTR., <https://www.aarp.org/money/scams-fraud/info-2019/robocalls/> (last visited July 16, 2021).

53. Martin Kaste, *The Language of Cybercrime*, NPR (Nov. 18, 2019, 5:00 AM), <https://www.npr.org/transcripts/779386167>.

54. Social engineers obtain personal information about an individual by using psychology to manipulate that person into providing the data themselves. See *Social Engineering*, MALWAREBYTES, <https://www.malwarebytes.com/social-engineering/> (last visited July 16, 2021). Phone scammers often use authority to manipulate their victims by threatening jail time if they do not send money. *Id.* See also ABAGNALE, *supra* note 47, at 42–43.

55. *Caller ID Spoofing*, *supra* note 37.

56. *Phone Scams*, *supra* note 10; see also Alert, U.S. Att'y's Off. Dist. N.J., Email & Telephone Scam Alert (Mar. 18, 2015), <https://www.justice.gov/usao-nj/email-telephone-scam-alert>; Amy Nofziger & Mark Fetterhoff, *Four Ways Fraudsters Like to Get Paid*, AARP (Jan. 2, 2020), <https://www.aarp.org/money/scams-fraud/info-2020/how-scammers-get-paid.html>; ABAGNALE, *supra* note 47, at 33.

sophisticated scams, like gaining access to a victim's bank accounts.⁵⁷ Scammers that directly request money often convince their victims to send payment in the form of gift cards.⁵⁸ Although gift card values are relatively low, the totals can add up quickly when many victims fall for the scam.⁵⁹ Unlike large wire transfers, which require a clearing period and can be recalled, gift card information can be provided over the phone, ensuring that the scammer receives the money quickly.⁶⁰ Gift cards are like cash—once used it is hard to trace back to a person.⁶¹ Gift cards also do not require identity verification for use, ensuring the scammer's anonymity.⁶²

For similar reasons, some scammers induce victims to send money through money transfer services like Western Union or MoneyGram since they can be difficult to trace.⁶³ Some scammers may also request payment in the form of cryptocurrency.⁶⁴

57. *How Phone Scammers Try to Access Your Online Banking*, NW. CMTY. CREDIT UNION, <https://www.nwcu.com/learn/phone-scams-online-banking> (last visited July 16, 2021).

58. *Why Do Scammers Ask for Gift Cards as Payment?*, AGAINST SCAMMERS (Jan. 20, 2020), <https://againstscammers.com/why-do-scammers-ask-for-gift-cards-as-payment/> [hereinafter *Why Do Scammers Ask*].

59. Garick Giroir, *Scammers Want You to Send Them Gift Cards, Here's Why*, LA. FED. CREDIT UNION (Sept. 9, 2019), <https://www.louisianafcu.org/articles/gift-card-fraud-scam>.

60. See Rachel Cottam, *How Long Does a Wire Transfer Take?*, DIVVY (Feb. 2, 2021), <https://getdivvy.com/blog/how-long-does-a-wire-transfer-take/#:~:text=Unlike%20checks%20or%20deposits%20over,it's%20available%20in%20their%20account>; Sarah Krouse, *Why Robocallers and Scammers Love Gift Cards*, WALL ST. J. (Dec. 22, 2019, 2:58 PM), <https://www.wsj.com/articles/why-robocallers-and-scammers-love-gift-cards-11577019600>.

61. See *Why Do Scammers Ask*, *supra* note 58.

62. See *id.*

63. See Joey Keys, *Untraceable Transactions*, SE. MISSOURIAN (June 8, 2016, 8:42 AM), <https://www.semissourian.com/blogs/2000/entry/66213>.

64.

A cryptocurrency is a digital or virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend. Many cryptocurrencies are decentralized networks based on blockchain technology—a distributed ledger enforced by a disparate network of computers. A defining feature of cryptocurrencies is that they are generally not issued by any central authority, rendering them theoretically immune to government interference or manipulation.

Similar to cash transactions, once a victim pays a scammer in cryptocurrency, it is unlikely that they will be able to retrieve it.⁶⁵ Cryptocurrency is also unregulated and therefore less likely to raise any fraud flags.⁶⁶ Each of these payment methods are also very difficult for law enforcement to trace, thereby allowing the scammer to remain anonymous and continue to defraud others.⁶⁷

B. The Phone Scam Business Model

Phone scam businesses use various tactics to remain under the radar.⁶⁸ For example, offices may be located in buildings hidden from public view,⁶⁹ in “unfashionable” areas,⁷⁰ or require fingerprint scanning in order to enter the building.⁷¹ Job advertisements give the illusion that the scam is like any other legitimate call service center⁷² affiliated with prominent companies like

Jake Frankenfield, *Cryptocurrency*, INVESTOPEDIA (Aug. 9, 2021), <https://www.investopedia.com/terms/c/cryptocurrency.asp> (last visited Sept. 19, 2021); *see also* Nofziger & Fetterhoff, *supra* note 56.

65. Nofziger & Fetterhoff, *supra* note 56.

66. D. Towne Morton, *The Future of Cryptocurrency: An Unregulated Instrument in an Increasingly Regulated Global Economy*, 16 LOY. U. CHI. INT'L L. REV. 129, 131–32 (2020). *See also* ABAGNALE, *supra* note 47, at 312–13.

67. *See* Keys, *supra* note 63.

68. *See* Snigdha Poonam, *The Scammers Gaming India's Overcrowded Job Market*, THE GUARDIAN (Jan. 2, 2018, 1:00 PM), <https://www.theguardian.com/news/2018/jan/02/the-scammers-gaming-indias-overcrowded-job-market>. *See also* Bhattacharjee, *supra* note 27.

69. Jim Browning, *Spying on the Scammers [Part 1/4]*, YOUTUBE (Mar. 2, 2020), https://www.youtube.com/watch?v=le71yVPh4uk&ab_channel=Jim-Browning.

70. Poonam, *supra* note 68.

71. *The Perfect Scam: Inside the IRS Phone Scam Bust*, AARP (Sept. 28, 2018) (downloaded using Apple Podcasts) [hereinafter *Inside the IRS*].

72. *See* Bhattacharjee, *supra* note 27 (legitimate call centers often handle customer service for Western companies and do not seek to threaten or defraud potential targets); *see also* Rajini Vaidyanathan, *Confessions of a Call-Centre Scammer*, BBC NEWS (Mar. 8, 2020), <https://www.bbc.com/news/stories-51753362>.

Amazon,⁷³ Microsoft,⁷⁴ or Samsung.⁷⁵ The job is accessible to those who have little work experience, so long as they can speak English.⁷⁶ To ensure secrecy, new employees are often kept in the dark during the interview and training process.⁷⁷ Scam employers send cryptic text messages to new hires that do not include company's name or address.⁷⁸

Despite the seedy practices used to hide the true purpose of the call center, the scam operates much like any other ordinary telemarketing call center.⁷⁹ In surveillance video footage obtained from within a scam call center in Delhi, India, employees can be seen sitting in cubicles with computers and headsets.⁸⁰ They gather in a kitchen common area and the "CEO" has his own large office space, complete with a standing desk and couch.⁸¹ Much like legitimate call centers based in India, the scammers' shifts begin at night in order to communicate with

73. Poonam, *supra* note 68. Amazon is an online retailer, producer of electronic device and services, and web services. *What We Do*, AMAZON, <https://www.aboutamazon.com/what-we-do> (last visited Nov. 1, 2021).

74. Microsoft, a multinational technology company that produces computer software, hardware, and cloud services, commissioned a study on technical support scams in 2021. Mary Jo Schrade, *Tech Support Scams Adapt and Persist in 2021, Per New Microsoft Research*, MICROSOFT: MICROSOFT ON THE ISSUES (July 21, 2021), https://blogs.microsoft.com/on-the-issues/2021/07/21/tech-support-scams-adapt-2021-microsoft-study/#_edn1. It commissioned the study, in part, because it receives about 6,500 complaints monthly about tech support scams. *Id.* See also Glenn Wickman, *Don't Believe A Word: Spanish Police Warn of New Scam Involving Conmen Posing as Microsoft Technicians*, OLIVE PRESS (May 24, 2021, 9:00 PM), <https://www.theolivepress.es/spain-news/2021/05/24/dont-believe-a-word-spanish-police-warn-of-new-scam-involving-conmen-posing-as-microsoft-employees/>.

75. *The Desperation of India's Scammers*, RADIO NEW ZEALAND (Jan. 14, 2018, 11:07 AM), <https://www.rnz.co.nz/national/programmes/up-this-way/audio/2018628439/the-desperation-of-india-s-scammers>. Samsung is an electronics manufacturer. *About Us*, SAMSUNG, <https://www.samsung.com/us/about-us/our-business/> (last visited Nov. 1, 2021).

76. Poonam, *supra* note 68.

77. *See id.*

78. *See id.*

79. *See* PINDROP, 2017 CALL CENTER FRAUD REPORT 1–2, 7 (2017), <https://www.pindrop.com/resources/download/report/2017-call-center-fraud-report/>.

80. BCC Stories, *Spying on the Scammers*, YOUTUBE (Mar. 2, 2020), https://www.youtube.com/watch?v=7rmvhwviQAY&ab_channel=BBCStories.

81. *Id.*

international victims during the day.⁸² Similar to other sales and volume-based businesses, some owners write out the center's goal revenue on a large whiteboard to incentivize employees to meet the target in order to increase their own commissions.⁸³ The more people the scammer can convince to send money, the more they can earn in commissions.⁸⁴

C. Who is Affected?

Several factors contribute to the reasons why people fall victim to phone scams. One study found that the pressure to make a rushed decision explained why individuals fall victim to fraud.⁸⁵ Scammers utilize the scarcity principle, an economic theory that creates a high-stakes demand for goods,⁸⁶ to encourage victims to act fast.⁸⁷ Retailers use the scarcity principle by displaying "only x amount left" next to a product to encourage consumers to make a quick purchase or else risk it selling out.⁸⁸ Using similar psychology on scam victims causes them to hand over their money without first gathering all the necessary information because they feel that the scammer's "offer" will not last forever.⁸⁹

People also tend to comply with authority figures who are perceived to be trustworthy.⁹⁰ Knowing this, scammers who claim to be government agents use fear tactics and threaten victims with arrest or criminal charges in order to pressure victims to

82. *Reply All, Long Distance: The Real Alex Martin*, GIMLET MEDIA (July 16, 2020), <https://gimletmedia.com/shows/reply-all/8whx9e>.

83. *Id.*

84. See Rajendra Jadhav, Euan Rocha, & Rahul Bhatia, *Callers for Dollars: Inside India's Scam Call Centers*, REUTERS (Nov. 29, 2016, 6:35 PM), <https://www.reuters.com/article/us-india-fraud-usa/callers-for-dollars-inside-indias-scam-call-centers-idUSKBN13O2XZ>.

85. Martina Dove, *The Voices of Scam Victims: A Psychological Model of the Experience of Fraud 16* (June 6, 2018) (Doctoral Dissertation, University of Portsmouth), <https://ssrn.com/abstract=3616326>.

86. ABAGNALE, *supra* note 47, at 28–29.

87. Paul Seager, *Five Psychological Reasons Why People Fall for Scams—and How to Avoid Them*, THE CONVERSATION (Sept. 19, 2018, 5:21 AM), <https://theconversation.com/five-psychological-reasons-why-people-fall-for-scams-and-how-to-avoid-them-102421>.

88. ABAGNALE, *supra* note 47, at 28–29.

89. Seager, *supra* note 87.

90. See David Modic & Stephen E G. Lea, *Scam Compliance and the Psychology of Persuasion* 3 (2013), <https://ssrn.com/abstract=2364464>.

act quickly without thinking critically about the situation.⁹¹ Some scammers use a more charming approach by asking their victim personal, emotional questions that gain the victim's trust.⁹² For example, in *Scam Me If You Can*, Frank Abagnale writes that a scammer may ask his victim, "I know you loved your husband very much and miss him terribly. If you don't mind my asking, how long has he been gone?" instead of asking, "When did your husband die."⁹³ This type of questioning causes the victim to associate the good memories related to their husband with the scammer, building trust.⁹⁴ Scammers are also trained to determine if the victim lives alone because those who do not have family or friends nearby are more likely to remain on the phone and send money.⁹⁵

Phone scam victims are generally believed to be people who lack basic technical skills and are elderly.⁹⁶ In the United States, however, young people between the ages of 18–24 are *more* susceptible to scams (56.6%) than adults aged 65 and above (31.9%).⁹⁷ One possible explanation for this is that while young people tend to be more technologically savvy, they may not have as much experience with scams as older adults.⁹⁸ Another possible reason is that millennials⁹⁹ tend to share more personal

91. See Colin Barras, *How Con Artists Trick Your Mind*, BBC FUTURE (Oct. 2, 2014), <https://www.bbc.com/future/article/20141003-the-mind-tricks-of-scammers>.

92. ABAGNALE, *supra* note 47, at 26.

93. *Id.* at 27. *Scam Me If You Can* is a book intended to provide readers with information on how to protect themselves against scams. *Id.* at 9. Its author, Frank Abagnale, is also author of *Catch Me If You Can*, an autobiography of how he went from a con artist evading law enforcement, to helping the Federal Bureau of Investigation catch other scammers. *Id.* at 7. *Catch Me If You Can* was also made into a film, released in 2002, and was directed by Steven Spielberg and starred Leonardo DiCaprio as Mr. Abagnale. *Id.*

94. *Id.*

95. *Inside the IRS*, *supra* note 71.

96. See Elizabeth Olson, *When Answering the Phone Exposes You to Fraud*, N.Y. TIMES (Dec. 7, 2018), <https://www.nytimes.com/2018/12/07/business/fraud-robocalls-spoofing.html>.

97. BETTER BUS. BUREAU, ONLINE SCAMS RISE DURING COVID-19 PANDEMIC 17 (2020), <https://www.bbb.org/globalassets/local-bbbs/council-113/media/bbb-institute/riskreport2020/2020-BBBscamtracker-riskreport.pdf>.

98. Modic & Lea, *supra* note 90, at 23.

99. According to the Pew Research Center, millennials are individuals born between 1981 and 1996. Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RESEARCH CTR. (Jan. 17, 2019),

information online, providing scammers with data they can use to conduct “social engineering.”¹⁰⁰ In the first episode of *T-Mobile the Young and the Scammed*, Aya, a millennial and second-generation immigrant fell victim to an Internal Revenue Service (IRS)¹⁰¹ scam.¹⁰² She was the perfect victim, according to an ex-scammer, because she did not know that the IRS would never request payment in the form of gift cards.¹⁰³

Aya’s story illustrates another vulnerable population—immigrants.¹⁰⁴ Some phone scammers threaten victims with deportation or the revocation of their immigration status unless money is exchanged.¹⁰⁵ Scammers also try to extort victims for personal identifying information so they can later conduct identity theft.¹⁰⁶ Immigrant victims comply with the demands out of fear of deportation and due to a lack of awareness that government agencies would never demand money over the phone.¹⁰⁷

Although millennials may be more likely to become victims of fraud, people aged 40 years and older are *more likely to lose more*

<https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/>.

100. Casey Bond, *Millennials are Scammed Twice as Often as Seniors. Here’s Why*, HUFFPOST (Sept. 11, 2019, 5:46 PM), https://www.huffpost.com/entry/millennials-scammed-more-than-seniors_1_5d77f62fe4b0752102345620.

101. In the United States, the IRS is the government agency responsible for the country’s tax administration. *The Agency, Its Mission and Statutory Authority*, IRS (Sept. 8, 2021), <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>.

102. Vice, a news outlet, teamed up with T-Mobile, a telephone company, to create a three-part documentary and advertisement series intended to educate millennials on how they can avoid falling victim to phone scams. *The Young and the Scammed: Ava*, VICEMEDIA, https://www.vice.com/en_us/partners/t-mobile-the-young-and-the-scammed/episode-1-ava (last visited July 16, 2021).

103. *Id.*

104. See Jonathan Franklin, *Immigration Scammers Pose as ICE, Stealing from Terrified Victims*, WUSA9 (Mar. 4, 2020, 9:58 PM), <https://www.wusa9.com/article/news/local/dc/immigration-scammers-pose-as-ice-agents-fraud/65-344c8ef3-4b50-4b05-9781-a67514fa5b9b>.

105. Cristina Miranda, *Threatening Phone Scams are Targeting Parents and Immigrants*, FED. TRADE COMM’N: CONSUMER INFO. (Oct. 19, 2020), <https://www.consumer.ftc.gov/blog/2020/10/threatening-phone-scams-are-targeting-parents-and-immigrants>.

106. Octavio Blanco, *Immigration Phone Scam Seeks to Steal Victims’ Identities*, CNN MONEY (Apr. 20, 2017, 12:49 PM), <https://money.cnn.com/2017/04/20/pf/immigration-phone-scam/index.html>.

107. *Immigrants are Victims of Phone Scams*, MOTION LAW (Oct. 20, 2020), <https://www.motionlaw.com/immigrants-are-victims-of-phone-scams/>.

money to fraud.¹⁰⁸ A Federal Trade Commission (FTC)¹⁰⁹ study showed that from September 2017 through August 2019, the median reported losses from people aged 20–39 was \$400.00.¹¹⁰ During the same time period, people aged 40–59 reported a median loss of \$500.00, people aged 60–79 reported a loss of \$640.00, and people aged 80 and above reported a loss of \$1,700.00.¹¹¹ A 2015 True Link study showed that elderly victims lose about \$9.85 billion dollars annually to fraud scams.¹¹² The same study explained that elderly people are subject to the “friendly grandma syndrome”¹¹³ and are less likely to hang up on scam callers if they are “extremely friendly” over the phone.¹¹⁴ Elderly victims are four times more likely to become subject to financial losses¹¹⁵ and there are many tragic stories of elderly people falling victim to phone scams and losing their life savings in the process.¹¹⁶ In one such story, an elderly victim reportedly lost \$120,000.00 to scammers who claimed that her recently

108. See Emma Fletcher, *Not What You Think: Millennials and Fraud*, FED. TRADE COMM’N: DATA SPOTLIGHT (Oct. 1, 2019, 9:26 AM), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/10/not-what-you-think-millennials-fraud>.

109. In the United States, the FTC is a government agency with “a unique dual mission to protect consumers and promote competition.” *What We Do*, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc/what-we-do> (last visited Sept. 19, 2021).

110. Fletcher, *supra* note 108, at 2 n.1.

111. *Id.* at 2 n.4.

112. “True Link Financial is a San Francisco, California-based financial services firm that helps seniors and their families protect themselves from fraud, exploitation, and financial abuse.” TRUELINK, THE TRUE LINK REPORT ON ELDER FINANCIAL ABUSE 2015 12 (2015), <https://d1qqb8hu7huvwj.cloudfront.net/uploads/2019/07/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf>.

113. *Id.* at 20 (According to True Link, friendly grandma syndrome is when grandma “is just too polite to hang up on anyone, and before you know it, she’s ready to make them cookies.”).

114. *Id.*

115. *Id.*

116. The American Association of Retired Persons (“AARP”) hosts a podcast, *The Perfect Scam*, wherein it shares stories and raises awareness of elderly people falling victim to the grandparent scam. In the grandparent scam, scammers use social engineering to convince the elderly victim that their grandchild is severely ill or has been arrested and needs the grandparent’s financial help quick. See, e.g., *The Perfect Scam: Scammers Persuade Grandfather to Send Ransom by Mail*, AARP (May 22, 2020) (downloaded using Apple Podcasts); *The Perfect Scam: The \$16,500 Grandparent Scam*, AARP (Dec. 6, 2019) (downloaded using Apple Podcasts).

deceased husband owed money to the IRS.¹¹⁷ The scammers demanded payment from the victim over the course of six months.¹¹⁸ Elderly victims are also more susceptible to becoming repeat victims, thereby increasing their financial losses.¹¹⁹

Another victim of the phone scam are the phone scammers themselves.¹²⁰ As mentioned, most people who become phone scammers think they are applying to work in a call center for a reputable corporation.¹²¹ Some employers require applicants to pay a fee for training *before* they even know if they have the job.¹²² In India, phone scam companies take advantage of the lack of opportunity for jobs and convince prospective employees that this work is easy money.¹²³ Generally, it is only once the new employee finishes the training process, which can take up to three months, that they realize the job involves scamming victims.¹²⁴ For the first few months scam companies insulate new employees from the scam because they are told to pass the potential victim's call to a "senior supervisor" who is responsible for actually following through with the scam; this makes it harder for newer employees to realize what they are a part of.¹²⁵ Some employees feel bad when they realize the job involves scamming others, but choose to stay because they need the money;¹²⁶ they too are victims of circumstance.¹²⁷ For example, one scammer began working for a technical support phone scam at the age of fourteen to pay off his school fees after he was abandoned by his parents.¹²⁸

The high paying, easy money job the scammers were promised does not always turn out to be so; for one scammer, he only made

117. U.S. SENATE SPECIAL COMMITTEE ON AGING, *supra* note 35, at 24.

118. *Id.*

119. Hebe R. Smythe, *Fighting Telemarketing Scams*, 17 HASTINGS COMM. ENT. L.J. 347, 366 (1994).

120. *See The Desperation of India's Scammers*, *supra* note 75.

121. *Id.*

122. Poonam, *supra* note 68.

123. Vaidyanathan, *supra* note 72.

124. Karl Rock, *Exclusive Interview with Indian Phone Scammer! (Part 1: First Meeting)*, YOUTUBE (Mar. 30, 2020), https://www.youtube.com/watch?v=LIhrtk2bR0U&ab_channel=KarlRock.

125. *Id.*

126. Vaidyanathan, *supra* note 72.

127. *See* Rock, *supra* note 124.

128. *Id.*

one Indian rupee (about USD \$ 0.013)¹²⁹ for every United States dollar he was able to get from a victim.¹³⁰ Meanwhile, a scam boss may make about USD \$300,000.00 in a month, about INR 22,109,475.¹³¹ The scammer's payment schedule also convinces employees to stay on the job; for example, at one scam company employees were paid their salaries on the 7th of every month and their commissions ten days later.¹³² If an employee left on the 7th, then they would not receive their commissions; alternatively, if they left after receiving their commissions, they would lose out on the money they made during the ten-day period.¹³³

The scam business is also a high pressure job with bosses always demanding more "sales."¹³⁴ One scammer quit after three weeks because he did not like the work culture.¹³⁵ He claimed the "hours were long and the targets unrealistic."¹³⁶ At another scam company, the target sales were set to at least USD \$10,000.00 a day.¹³⁷ If daily targets were not met, employees were subjected to yelling by the bosses, threats of firing, and even physical violence.¹³⁸ At yet another scam company, employees were forbidden from using the toilet or were not allowed to go home until they met the target.¹³⁹ Amid the COVID-19 pandemic, a scam call center forced its employees to work from a hotel room and violate social distancing rules.¹⁴⁰ These

129. *Convert Indian Rupees to US Dollars*, XE CURRENCY CONVERTER, <https://www.xe.com/currencyconverter/convert/?Amount=1&From=INR&To=USD>, (last visited Nov. 1, 2021).

130. Vaidyanathan, *supra* note 72.

131. *Spying on the Scammers*, *supra* note 80. See also *Convert Indian Rupees to US Dollars*, *supra* note 129. The average cost of living in India is about INR 15,000 – 20,000 INR, or USD 200 – 267. *Cost of Living*, PASSPORT TO TRADE: A BRIDGE TO SUCCESS, <https://businessculture.org/indian-business-culture/cost-of-living/> (last visited Nov. 1, 2021). See also *Convert Indian Rupees to US Dollars*, *supra* note 129.

132. *Reply All*, *supra* note 82.

133. *Id.*

134. *The Desperation of India's Scammers*, *supra* note 75.

135. Poonam, *supra* note 68.

136. *Id.*

137. *Reply All*, *supra* note 82.

138. *Id.*

139. *The Desperation of India's Scammers*, *supra* note 75.

140. Leena Dhankar, *Call Centre Running from Gurugram Hotel Busted Amid Lockdown, 7 Arrested*, HINDUSTAN TIMES (June 23, 2020, 7:45 PM), <https://www.hindustantimes.com/videos/india-news/call-centre-running-from->

employees have no remedy against their employers other than to quit.¹⁴¹ Even then, some scam bosses force their employees to come back to work if they have not fulfilled their one-year contract.¹⁴² Scammers are also unable to report this abuse to law enforcement because they themselves are involved in criminal activity.¹⁴³

II. INTERNATIONAL LAW PRINCIPLES FOR ASSERTING CRIMINAL JURISDICTION

Global crimes, like phone scams, make it difficult for countries to prosecute perpetrators of fraud because historically criminal jurisdiction was determined by territory.¹⁴⁴ Meaning, a country could apply its criminal statutes to an offender who committed a crime within its borders.¹⁴⁵ Due to the global nature of phone scams, however, establishing criminal jurisdiction solely on territory is not easy.¹⁴⁶ Under customary international law,¹⁴⁷ there are different legal theories a country can use to apply its criminal statutes against offenders.¹⁴⁸ These theories include the territorial principle and extraterritorial principles.¹⁴⁹ This section will define both principles and discuss the challenges countries face when applying them to the phone scam context.

A. *The Territorial Principle v. The Extraterritorial Principles*

Under the territorial principle, a country can enforce its criminal laws against individuals who commit an offense *within* its

[gurugram-hotel-busted-amid-lockdown-7-arrestedvideo/video-b69thQK3pBC3WWgNHMRneK.html](https://www.gurugram-hotel-busted-amid-lockdown-7-arrestedvideo/video-b69thQK3pBC3WWgNHMRneK.html).

141. See Rock, *supra* note 124.

142. *Id.*

143. See *id.*

144. Adam Abelson, Note, *The Prosecute/Extradite Dilemma: Concurrent Criminal Jurisdiction and Global Governance*, 16 U.C. DAVIS J. INT'L L. & POL'Y 1, 14 n.28 (2009); Geoffrey R. Watson, *The Passive Personality Principle*, 28 TEX. INT'L L. J. 1, 4 (1993).

145. See Abelson, *supra* note 144, at 14 n.28; Watson, *supra* note 144, at 4.

146. For example, victims may live in one country, the perpetrator in another, and the services used to conduct the scam, like money transfer or VoIP services, might be based in a third country. Grimes, *supra* note 24.

147. Customary international law are norms that have "emerged internationally through a customary lawmaking process." Daniel M. Bodansky, *The Concept of Customary International Law*, 16 MICH. J. INT'L L. 667, 667 (1995).

148. See Abelson, *supra* note 144, at 14–20.

149. *Id.*

sovereign borders.¹⁵⁰ Under customary international law, there are two types of territorial jurisdiction: subjective and objective territorial jurisdiction.¹⁵¹

A country that subscribes to the subjective territorial approach practices a narrow understanding of the territorial principle because it will only prosecute crimes if *every element* of the offense occurred within its borders.¹⁵² The subjective approach is criticized because it restricts a country's ability to prosecute transnational crimes even when part of the offense occurs within its territory.¹⁵³ In the context of phone scams, the subjective territorial approach restricts a country's ability to prosecute a phone scammer if, for example, the scammer's criminal intent originated in a different country.¹⁵⁴

On the other hand, a country that follows the objective territoriality approach "has jurisdiction with respect to any crime committed in whole or part within its territory" including "any participation" and "any attempt outside its territory."¹⁵⁵ The objective approach provides countries with the ability to prosecute cross-border crimes when an element of the crime occurs within its borders or the crime causes an effect to occur within its borders.¹⁵⁶ Objective territoriality conflicts with the international doctrine of sovereignty because its purpose is to apply one country's criminal laws onto the citizen of another country.¹⁵⁷ In the

150. BENCHBOOK ON INTERNATIONAL LAW, *supra* note 30, at 2–3, ("Territoriality is the principle that a country may regulate both civil and criminal matters within its sovereign borders.")

151. Julie R. O'Sullivan, *The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction*, 106 GEO. L.J. 1021, 1030 (2018).

152. INT'L ASS'N OF PROSECUTORS: PROSECUTORIAL GUIDELINES FOR CASES OF CONCURRENT JURISDICTION 17 (2014), https://www.iap-association.org/IAP/media/IAP-Folder/IAP_Guidelines_Cases_of_Concurrent_Jurisdiction_FINAL.pdf [hereinafter IAP].

153. *Id.*

154. *See id.*

155. *Draft Convention on Jurisdiction with Respect to Crime*, 29 AM. J. INT'L L. 439, 439 art. 3 (1935).

156. O'Sullivan, *supra* note 151, at 1032.

157.

State sovereignty is the concept that states are in complete and exclusive control of all the people and property within their territory. State sovereignty also includes the idea that all states are equal as states...Since all states are equal in

context of phone scams, the objective territorial approach allows a country to impose its criminal laws onto an international phone scammer so long as an element of the crime occurs within its borders.¹⁵⁸ Such a broad application of national criminal law to another country's citizen could cause international disputes due to issues of sovereignty.¹⁵⁹

Extraterritorial jurisdiction principles provide countries with another method of establishing domestic criminal jurisdiction with respect to international offenders.¹⁶⁰ Extraterritorial jurisdiction principles are broader than territorial jurisdiction principles.¹⁶¹ A country may rely on extraterritorial jurisdiction when "exercising jurisdiction over crimes under national law of international concern."¹⁶² There are four principles of extraterritorial jurisdiction:

(1) the active personality principle (based on the nationality of the suspect), (2) the passive personality principle (based on nationality of the victim), (3) protective jurisdiction (based on harm to a state's own national interests) and (4) the universality principle (permitting a court in any state to try someone for a crime committed in another state not linked to the forum state by the nationality of the suspect or victim or by harm to its own national interests).¹⁶³

The remainder of this section will focus on the dilemma that countries encounter when they try to apply the passive personality principle to phone scams.¹⁶⁴

this sense, one State does not have the right to interfere with the internal affairs of another state.

INTERNATIONAL LAW AND ORGANIZATIONS, GLOBALIZATION 101: A PROJECT OF SUNY LEVIN INSTITUTE 6, <https://www.globalization101.org/uploads/File/Inter/interall.pdf>.

158. See IAP, *supra* note 152, at 17.

159. See Elijah Bossa, On State Sovereignty: The End of Territoriality as the Starting Point in IR? 1 (July 11, 2012) (University of Exeter), <https://www.e-ir.info/pdf/23758>.

160. Extraterritorial jurisdiction is "the exercise of jurisdiction, or legal power, outside territorial borders." See Anthony J. Colangelo, *What is Extraterritorial Jurisdiction?*, 99 CORNELL L. REV. 1303, 1304 (2014).

161. See *id.*

162. AMNESTY INT'L, UNIVERSAL JURISDICTION: THE DUTY OF STATES TO ENACT AND ENFORCE LEGISLATION 2 (2002).

163. *Id.*

164. The active personality principle is not relevant to the examination of the prosecution of phone scammers because it "permits a state to prosecute its

B. The Difficulties in Applying the Passive Personality Principle to the Prosecution of Phone Scammers

International phone scams primarily thrive because the scammer is located in a different country from their victim.¹⁶⁵ Scammers are therefore “untouchable” by another country’s law enforcement and can operate without fear of arrest, much less prosecution.¹⁶⁶ Under the passive personality principle, a country can attempt to prosecute an alleged international offender based on the nationality of the victim.¹⁶⁷ Meaning, a country may apply its criminal laws to an offender *outside* of its *territorial* jurisdiction because the victim of the crime was a national.¹⁶⁸

Although the passive personality principle provides a loophole to the territorial principle, it is controversial and difficult to

nationals for crimes committed anywhere in the world if, at the time of the offence, they were such nationals.” INT’L BAR ASS’N, REPORT OF THE TASK FORCE ON EXTRATERRITORIAL JURISDICTION 144 (2009), <https://www.ibanet.org/Document/Default.aspx?DocumentUid=ECF39839-A217-4B3D-8106-DAB716B34F1E> [hereinafter IBA]. For example, Country A may prosecute its citizen for committing a crime in Country B if such an offence is a violation of Country A’s criminal laws. *Id.* In the context of phone scams, perpetrators are often citizens of and committing an offense in Country A, while victimizing a citizen of Country B. Muschick, *supra* note 25.

Similarly, the protective principle does not apply to international phone scams because it is reserved for crimes such as treason, government hacking, and other threats to national security. IBA, *supra* note 164, at 144. Phone scams, on the contrary, typically concern civilian victims. See Christian Hetrick, *Robocall Scammers Have a New Trick: Targeting Victims Using Their Personal Data*, THE PHILADELPHIA INQUIRER (July 11, 2019), <https://www.inquirer.com/business/first-orion-robocall-spoofing-scam-business-data-breach-20190711.html>. *But see The Perfect Scam: Robocall King Meets the FCC Part 1*, AARP (Aug. 9, 2019) (downloaded using Apple podcasts) (a phone scammer placed millions of calls through a phone network which began to affect a local hospital’s ability to connect with emergency services personnel).

The universality principle applies to “cases where a state asserts jurisdiction over certain crimes committed by foreigners against foreigners occurring outside the state’s territory.” IBA, *supra* note 164, at 151. This principle is reserved for offenses that are “so grave as to deserve of universal condemnation” such as war crimes and crimes against humanity. IAP, *supra* note 152, at 20. Phone scams do not fall under the definition of “war crimes.” Rome Statute of the International Criminal Court art. 8(2)(a), July 17, 1998, 2187 U.N.T.S. 90 (defining war crimes as acts involving the killing and/or torture of people and the extensive destruction of property).

165. Grimes, *supra* note 24.

166. *See id.*

167. IAP, *supra* note 152, at 19.

168. *See* Abelson, *supra* note 144, at 16.

apply in practice.¹⁶⁹ The passive personality principle is critiqued for three reasons: (1) it intrudes on the sovereignty of another country, (2) it does not provide potential defendants with notice that their actions are criminal, and (3) it is impractical because it will encounter extradition problems.¹⁷⁰ Additionally, the principle “has not been accepted for ordinary crimes, but ‘it is increasingly accepted as applied to terrorist and other organized attacks on a state’s national by reason of their nationality.’”¹⁷¹

Despite the critiques, many countries have been able to successfully indict, prosecute, and convict international phone scammers for so called “ordinary crimes”¹⁷² via the passive personality principle.¹⁷³ The number of successful prosecutions is minimal, however, compared to the number of phone scams that continue to operate.¹⁷⁴ One challenge to the application of the passive personality principle is *ratione personae*, or personal jurisdiction.¹⁷⁵ Although the passive personality principle allows Country A to establish prosecutorial jurisdiction over a defendant conducting a phone scam in Country B (because the victim resides in Country A), most courts around the globe and international norms require a criminal defendant to be physically present in court in order to commence judicial proceedings.¹⁷⁶

169. Regula Echle, *The Passive Personality Principle and the General Principle of Ne Bis In Idem*, 9 *UTRECHT L. REV.* 56, 60 (2013). See also Watson, *supra* note 144, at 2.

170. Watson, *supra* note 144, at 14.

171. O’Sullivan, *supra* note 151, at 1034–35.

172. Although not defined in the Restatement (Third) Of Foreign Relations Law § 402(3) cmt. 8 (Am. L. Inst. 1987), ordinary crimes are “serious and universally condemned offenses, such as treason or traffic in narcotics, [or] offenses by or against military forces.”

173. See Sameer Yasir & Hari Kumar, *Indian Call-Center Plot Fooled American Into Paying Over \$14 Million*, *N.Y. TIMES* (Dec. 17, 2020), <https://www.nytimes.com/2020/12/17/world/asia/india-call-center-scam.html>.

174. See BETTER BUS. BUREAU, *Government Imposter Scams: Reports Decrease, Scammers Pivot for New Opportunities, BBB Study Reveals* (July 31, 2020), <https://www.bbb.org/article/news-releases/22775-government-impostors-study>.

175. “Personal jurisdiction addresses the territorial reach of a court’s power over the parties.” HOWARD M. ERICHSON, *INSIDE CIVIL PROCEDURE: WHAT MATTERS AND WHY* 35 (3d ed. 2018). See also Grimes, *supra* note 24.

176. See, e.g., International Covenant on Civil and Political Rights, art. 14 § 3(d), Dec. 16, 1966, 999 U.N.T.S. 171 (“In the determination of any criminal charge against him, everyone shall be entitled to...be tried in his presence”);

Therefore, even if Country A used its resources to investigate and indict an individual conducting a phone scam in Country B under the passive personality principle, it still has to determine whether it can physically present the accused to a court in its jurisdiction.¹⁷⁷

In the United States, a defendant must be physically presented before a federal court in order for criminal proceedings to commence.¹⁷⁸ Applying the example of an Indian phone scammer, there are five ways the United States could bring such a defendant to federal court.¹⁷⁹ First, the United States government could request that the Indian government extradite the accused citizen to the United States pursuant to an extradition treaty signed between the two nations.¹⁸⁰ Such extradition requests, however, are often ignored.¹⁸¹ Second, the United States could indict the Indian national, issue an arrest warrant, wait for the accused to travel to the United States, and then arrest them upon entry.¹⁸² This method is unsatisfactory because there

United States v. Rendon, 354 F.3d 1320, 1326 (11th Cir. 2003) (explaining that “[a] federal district court had personal jurisdiction to try any defendant brought before it on a federal indictment charging a violation of federal law.”); Criminal Procedural Laws Across the European Union – A Comparative Analysis of Selected Main Differences and the Impact they have over the Development of EU Legislation, EUR. PARL. DOC. PE 604.977, 132 (2018) (In Ireland, Germany, Spain, and Finland “the right to be present during trial is fundamental to due process and *in absentia* trials are usually not permitted in domestic proceedings”). *But see* IBA, *supra* note 164, at 148 (“French courts exercised passive personality jurisdiction in the 1990 *in absentia* trial and conviction of Argentine Captain Alfredo Astiz for the kidnap and disappearance of two French nuns in Argentina”); REUTERS, *French Court Sentences Briton in Absentia for Murder in Ireland* (May 31, 2019, 3:51 PM), <https://www.reuters.com/article/us-france-trial-ireland-murder/french-court-sentences-briton-in-absentia-for-murder-in-ireland-idUSKCN1T12DJ> (after Ireland refused to extradite a British national suspected of murdering a French citizen in Ireland, French courts tried, convicted, and sentenced the Briton *in absentia*).

177. *See* Watson, *supra* note 144 at 43.

178. *Stamphill v. Johnston*, 136 F.2d 291, 292 (9th Cir. 1943).

179. *See generally* 11 ANNE F. MELLEY, MARY BABB MORRIS, KENNETH B. SILLS & THOMAS SMITH, CYCLOPEDIA OF FEDERAL PROCEDURE § 39:137 (3d. ed. 2021).

180. *See* Thomas G. Snow, *The Investigation and Prosecution of White-Collar Crime: International Challenges and the Legal Tools Available to Address Them*, 11 WM. & MARY BILL RTS. J. 209, 214 (2002); Extradition Treaty, U.S. - India, June 25, 1997, S. Treaty Doc. No. 105–30.

181. *Infra* Part III, § C.

182. *See, e.g.*, *United States v. Blanco*, 861 F.2d 773 (2d Cir. 1988) (holding that the government did not violate Blanco’s right to a speedy trial when it did

is a possibility the accused may never travel to the United States.¹⁸³ Third, the United States could indict the Indian national, issue an arrest warrant, and file a request with the International Criminal Police Organization (INTERPOL)¹⁸⁴ to issue a Red Notice.¹⁸⁵ Similar to the second option, this method also requires patience and luck.¹⁸⁶ Fourth, the United States could

not request her extradition from Colombia, after the filing of an indictment against her, because such a request would have been futile). *See also* Snow, *supra* note 180, at 229–30.

183. *See* Press Release, U.S. Att’y’s Off. Dist. N.J., Man Who Laundered Millions From Massive Computer Hacking and Telecommunications Fraud Scheme Gets 48 Months In Prison (June 28, 2017), <https://www.justice.gov/usao-nj/pr/man-who-laundered-millions-massive-computer-hacking-and-telecommunications-fraud-scheme>. *But see* *The Perfect Scam: Rookie FBI Agent Turns Tables on International Scammers, Part 2*, AARP (July 9, 2021) (downloaded using Apple Podcasts) (an FBI agent coordinated with the U.S. State Department to allow a foreign scammer obtain a visa to travel to the U.S. and engaged in a rouse to trick the scammer to fly to the U.S.).

If the defendant does travel to the United States, it could be years after the indictment is filed and witnesses’ memories may fade, making it difficult to prove the scammers’ guilt “beyond a reasonable doubt” at trial. Lauren Baldwin, *Getting a Criminal Charge Dismissed*, CRIM. DEF. LAW. <https://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-defense-case/charge-dismissal-court.htm> (“If a key witness in a criminal case is unavailable to testify or the prosecution loses important physical evidence, the prosecutor may have no choice but to dismiss the case because there is not enough evidence to prove guilt beyond a reasonable doubt.”).

184. INTERPOL is an inter-governmental organization that coordinates the sharing of data on crimes and criminals between 194 member countries. *What is INTERPOL?*, INTERPOL, <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL> (last visited July 17, 2021).

185. Red Notices are requests INTERPOL issues to law enforcement worldwide to help locate, locally arrest, and extradite a wanted person. *Red Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Red-Notices> (last visited July 17, 2021).

186. *See, e.g.*, J. Michael Sheckels & Jennifer L. Fraer, *Investigating and Prosecuting Transnational Telefraud Schemes: The India-Based Call Center Scam and Costa Rica Telemarketing Fraud Cases*, 66 DOJ J. FED. L. & PRAC. 213, 229 (2018) (United States law enforcement issued and submitted arrest warrants to INTERPOL for several Indian nationals allegedly involved in a phone scam, but “[e]fforts aimed at holding the foreign defendants in the case accountable remain ongoing.”).

In order for the United States to gain personal jurisdiction over this defendant, many things would have to line up perfectly: the wanted individual would have to travel to another country that has an extradition treaty with the United States, local law enforcement would need to arrest the alleged offender, and the country would have to agree to extradite the individual. *See id.*; *see*

arrange for the abduction of the Indian national.¹⁸⁷ Finally, the United States could attempt to try the Indian national in an *ad hoc* court at the US Consulate in India.¹⁸⁸

also Press Release, Dep't of Justice, Owner and Operator of India-Based Call Centers Sentenced to Prison for Scamming U.S. Victims Out of Millions of Dollars (Nov. 30, 2020), <https://www.justice.gov/opa/pr/owner-and-operator-india-based-call-centers-sentenced-prison-scamming-us-victims-out-millions> (Indian national was apprehended in Singapore pursuant to an arrest warrant and extradited to the U.S.). Although this method is not entirely implausible, it relies on too many conditional factors. *See* Press Release, U.S. Immigration & Customs Enforcement, Indian National Extradited to U.S. to Face Charges in Houston Federal Court for Leadership Role in Multi-Million Dollar India-based Call-Center Scam (Apr. 19, 2019), <https://www.ice.gov/news/releases/indian-national-extradited-us-face-charges-houston-federal-court-leadership-role#> (“An Indian national was extradited to the United States from Singapore to face charges related to his role as an operator of a ‘call center’ network that targeted U.S. victims.”).

187. *See, e.g.*, *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (“This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436 (1886) that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court’s jurisdiction by reason of a ‘forcible abduction.’”).

This method is a nuclear option because it can cause international conflict, violate general principles of international law, and according to the courts, will not be upheld if the United States and India have an extradition treaty that expressly prohibits such actions. Ruth Wedgwood, *The Argument Against International Abduction of Criminal Defendants: Amicus Curiae Brief Filed by the Lawyers Committee for Human Rights in United States v. Humberto Alvarez-Machain*, 6 AM. U. INT’L L. REV. 537, 540 (1991) (“Article 9 of the Universal Declaration of Human Rights forbids the arbitrary arrest of any individual...The United States approved the Universal Declaration of Human Rights at its adoption in 1948 by the General Assembly of the United Nations, and the Universal Declaration is now taken to be a restatement of customary international law.”); *see also* *United States v. Alvarez-Machain*, 504 U.S. 655, 664 (1992).

188. Although *ad hoc* trials have been established in the past, *see, e.g.*, Donna E. Arzt, *The Lockerbie “Extradition by Analogy” Agreement: “Exceptional Measure” or Template For Transnational Criminal Justice?*, 18 AM. U. INT’L L. REV. 163, 164–67 (2002) (In 1999, two Libyan citizens were convicted in an *ad hoc* trial held in Scotland for bombing a Pan Am flight on its way from London to New York, after the U.N. Security Council pressured Libya to turn over its citizens); *see also* Jacques Hartmann, *An Indian Trial on Danish Soil – An Odd Proposal In A Somewhat Bizarre Case*, EJIL: TALK! (Oct. 5, 2012), <https://www.ejiltalk.org/an-indian-trial-on-danish-soil-an-odd-proposal-in-a-somewhat-bizarre-case/> (In 2012 India considered establishing a tribunal at its embassy in Copenhagen to try a Danish national for his alleged involvement in an attempt to overthrow the Indian government), this method would still require local Indian law enforcement to arrest the scammer because U.S. law

Gaining personal jurisdiction over international defendants under the passive personality principle is easier to achieve in countries belonging to the European Union.¹⁸⁹ Member States can issue a European Arrest Warrant (EAW) when it seeks to prosecute an individual for a crime where the penalty is at least one year of prison or when a judicial authority has already issued a custodial sentence or detention order of at least four months.¹⁹⁰ One advantage of a EAW is that member states cannot refuse to surrender their own nationals, subject to a few exceptions,¹⁹¹ guaranteeing the ability to prosecute the individual.¹⁹² The problem is that EAWs only apply to individuals and nationals located within the borders of the European Union.¹⁹³ The *ratione personae* dilemma still exists when the individual sought for prosecution committed a crime outside the European Union against a citizen of a Member State.¹⁹⁴

III. *AUT DEDERE AUT JUDICARE*—TO PROSECUTE OR TO EXTRADITE?

A. *Understanding Concurrent Jurisdiction*

Establishing criminal jurisdiction over phone scammers not only poses the question of *how* a country can apply its criminal statutes to international defendants, but it also raises the

enforcement do not have the ability to execute arrests in another country due to issues of sovereignty. See CEDRIC RYNGAERT, *THE CONCEPT OF JURISDICTION IN INTERNATIONAL LAW* 7 (2008); *but see* Integrated Cross-border Law Enforcement Operations Act, Can.-U.S., May 26, 2009, S.C. 2012, c. 19, s. 368 (legislation that allows U.S. law enforcement officers to make arrests in Canada).

189. See *European Arrest Warrant*, EUROPEAN COMMISSION, https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en#eaw-statistics-2018 (last visited July 17, 2021).

190. *Id.*

191. Some exceptions to extradition under an EAW include: double jeopardy, “the person is a minor,” or “the offense is covered by amnesty.” *Id.*

192. See *Report from the Commission to the European Parliament and the Council*, at 3, COM (2020) 270 final (Feb. 7, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0270&from=EN>.

193. Handbook On How to Issue and Execute a European Arrest Warrant, June 10, 2017, 2017 O.J. (C 335) 10.

194. Steve Peers, *Extradition to Non-EU Countries: The Limits Imposed by EU Citizenship*, in EUROPEAN AREA OF FREEDOM SECURITY & JUSTICE (2016), <https://free-group.eu/2016/09/12/extradition-to-non-eu-countries-the-limits-imposed-by-eu-citizenship/>.

question of *which* country can prosecute when concurrent jurisdiction exists.¹⁹⁵ Concurrent jurisdiction arises when at least two countries can seek to exercise their respective criminal laws over an alleged perpetrator.¹⁹⁶ In the context of a phone scam, the accused can be prosecuted by the country where the scam operates under the territorial principle or by the country where their victim resides under the passive personality principle.¹⁹⁷ The question then becomes, which country should prosecute the individual?

For the purposes of explaining the complexity of concurrent jurisdiction, I will refer to the following hypothetical: a phone scammer (PS) is a citizen of and conducts his scam in Country B. PS scams a victim (V), who is a citizen of, and resides in, Country A, out of USD \$10,000.00.

First, it is important to determine which country will prosecute PS due to the principle of *ne bis in idem*, or double jeopardy, which “protects defendants from repeated prosecution for offenses arising out of one event.”¹⁹⁸ Although there is no uniformity on the definition and interpretation of double jeopardy across countries or in the international context,¹⁹⁹ the rationale behind this principle is to “protect the individual against the arbitrary power of a state.”²⁰⁰ The underlying assumption is that Country A and Country B cannot both prosecute PS for the same crimes they committed against V.²⁰¹

195. See IAP, *supra* note 152, at 6.

196. Concurrent jurisdiction arises “as a consequence of the concurrent incidence of the criminal laws of several states” when the same offence is committed by the same person. S. Z. Feller, *Concurrent Criminal Jurisdiction in the International Sphere*, 16 ISR. L. REV. 40, 40–41 (1981).

197. IAP, *supra* note 152, at 9.

198. Michele N. Morosin, *Double Jeopardy and International Law: Obstacles to Formulating a General Principle*, 64 NORDIC J. INT’L L. 261, 261 (1995); see also MODEL CODES FOR POST-CONFLICT CRIMINAL JUSTICE 51 (Vivienne O’Connor & Colette Rausch eds., 2007) (“The principle of *ne bis in idem*...is also an internationally protected human right under the International Covenant on Civil and Political Rights....”).

199. Morosin, *supra* note 198, at 263; *but see* International Covenant on Civil and Political Rights, *supra* note 176, art. 14, § 7 (“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”).

200. MODEL CODES FOR POST-CONFLICT CRIMINAL JUSTICE, *supra* note 198, at 51.

201. See Morosin, *supra* note 198, at 263.

In determining which country should prosecute when concurrent jurisdiction exists, the International Association of Prosecutors (IAP)²⁰² created a set of guidelines for governments to consider.²⁰³ When evaluating which country should prosecute PS, the IAP suggests that governments should apply either a “reasonableness test” or a “subsidiarity approach.”²⁰⁴

1. The Reasonableness Test

Under the reasonableness test, prosecuting authorities must weigh multiple factors such as: (1) the extent to which the criminal conduct occurred within the territory of a country; (2) the nationality or primary residence of the accused; (3) the importance or severity of the criminal conduct; (4) the importance of regulating such criminal conduct to the “international political, legal, or economic system;” and (5) the extent that regulation of such conduct “is consistent with the traditions of the international system.”²⁰⁵

2. The Subsidiarity Approach

Under the subsidiarity approach, competing jurisdictional claims should prioritize countries “with traditional connections to a crime” as understood by the territoriality principle.²⁰⁶ The IAP also encourages governments to consider (1) the credibility of the judicial system claiming jurisdiction; (2) the nationality of the victim and a country’s interest affected by the victimization of its citizens; (3) the location of witnesses; (4) in which country it is relatively more convenient to prosecute, based on the

202. Established in 1995, the IAP is an international organization of prosecutors from more than 177 countries. *About the IAP*, INT’L ASS’N OF PROSECUTORS, <https://www.iap-association.org/About> (last visited Sept. 19, 2021).

203. *See generally* IAP, *supra* note 152.

204. *Id.* at 8.

205. IBA, *supra* note 164, at 168–69.

206. IAP, *supra* note 152, at 9.

doctrine of *forum non conveniens*;²⁰⁷ and (5) the cost of prosecuting the offence.²⁰⁸

Unfortunately, the IAP guidelines are not engraved in international law nor are they part of customary international law.²⁰⁹ The guidelines therefore do not provide a clear answer as to which country should prosecute individuals perpetrating phone scams.

B. The Concurrent Jurisdiction Problem Illustrated

Under the territorial principle and the subsidiarity approach to concurrent jurisdiction, Country B can exercise criminal jurisdiction over PS, as a citizen of Country B, because the criminal conduct occurred in Country B. Several issues may arise as a result: (1) Country B may not have the resources or intelligence capabilities to properly investigate, arrest, prosecute, and convict PS for their crimes;²¹⁰ (2) Country B may not be able to prosecute PS without evidence provided by V or without V's testimony that they were victimized by PS;²¹¹ and (3) Country B's penalties for PS's crime might be considered, relative to Country A's penalties, a "slap on the wrist."²¹²

207. *Forum non conveniens* is "a doctrine allowing a court with jurisdiction over a case to dismiss it because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue." *Forum non conveniens*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/forum%20non%20conveniens> (last visited Nov. 15, 2020). However, it is important to note that "[n]either civil nor common law systems appear to apply the doctrine of *forum non conveniens* or *lis alibi pendens* to criminal cases." IBA, *supra* note 164, at 168 n.119.

208. IAP, *supra* note 152, at 10–16.

209. IBA, *supra* note 164, at 168.

210. See Karl Rock, *Here's Why the Indian Police Do Nothing! Scam Call Centres*, YOUTUBE (Nov. 19, 2019), https://www.youtube.com/watch?v=OsFZbJs6ayM&ab_channel=KarlRock.

211. See *id.*

212. See Sheckels & Fraer, *supra* note 186, at 235.

In India, police have been able to issue arrests²¹³ and shut down some international scam call centers,²¹⁴ but they ultimately lack the necessary resources and training to adequately investigate phone scams.²¹⁵ Not only do law enforcement officers need to have an understanding of how scammers use technology

213. *E.g.*, Shefali Anand, *Indian Police Bust IRS "Scam Center,"* WALL ST. J. (Oct. 5, 2016, 3:38 PM), <https://www.wsj.com/articles/indian-police-detain-workers-over-possible-irs-phone-scam-1475674691>; Dhankar, *supra* note 140; Vindu Goel & Suhasini Raj, *That Virus Alert on Your Computer? Scammers in India May be Behind It,* N.Y. TIMES (Nov. 28, 2018), <https://www.nytimes.com/2018/11/28/technology/scams-india-call-center-raids.html>; *Indian Police Raid New Delhi Call Centre Targeting Canadians, 32 Arrested,* CBC NEWS (Nov. 18, 2019, 7:49 PM), <https://www.cbc.ca/news/world/indian-police-raid-call-centre-1.5364116>; Press Release, Delhi Police, Nw. Dist., Two Fake Call-Centers Busted By North-West District Teams Of Cyber Cell & Ps Mukherjee Nagar (Aug. 12, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=YWu3J+UkGVQ=; Press Release, Delhi Police, Dwarka Dist., Fake International Cheatingscam Call Centre Busted By The Joint Team Of Cyber Cell Dwarka District And Police Station Dwarka South Staff (Aug. 2, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=E1pvIxd11+Y=; Press Release, Delhi Police, South Dist., Fake Call Centre Busted In Delhi-Duped American Citizens (July 13, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=qHbc96xJy8I=; Press Release, Delhi Police, Crime Branch, Delhi Police Crime Branch Busts International Fake Call Centre Chain (July 7, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=OZQb8/xliow=; Press Release, Delhi Police, Rohini Dist., Fake Call Centre Racket Busted & Seven Accused Persons Arrested 12 Mobile Phones, 5 Sim Cards, 9 Rubber Stamps Of Snap Deal, Shop Clues, Naptol And 7 Registers Recovered (July 27, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=i5AbfHzuW+s=; Press Release, Delhi Police, Shahdara Dist., Fake Call Centre Busted (Jan. 22, 2021), https://infopromotion.delhipolice.gov.in/Press_Release_Details_iframe.aspx?cid=YFQlh3e9bQs=.

214. *E.g.*, Rory Cellan-Jones, *"I Lost £4,000 In a Call Centre Scam,"* BBC NEWS (Oct. 21, 2019), <https://www.bbc.com/news/technology-50117796>; Mansi Choksi, *This Indian Cop Took Down a Massive IRS Call-Center Scam,* NARRATIVELY (Feb. 24, 2017), <https://narratively.com/this-indian-cop-took-down-a-massive-irs-call-center-scam/>; Gabriele Parussini & Debiprasad Nayak, *Fake IRS Collection Job Lands India 'Scam Center' Workers in Jail,* WALL ST. J. (Oct. 7, 2016, 8:22 AM), https://www.wsj.com/articles/fake-irs-collection-job-lands-india-scam-center-workers-in-jail-1475822606?mod=article_inline.

215. Nir Kshetri, *Cybercrime and Cybersecurity in India: Causes, Consequences and Implications for the Future*, 66 CRIME, L. & SOC. CHANGE 313, 319 (2016) (Generally, "[r]esource limitations are of particular concern for white-collar crimes due to their complexity, which require substantial amounts of investigative and prosecutorial efforts.").

to conduct these scams,²¹⁶ which requires time, money, and extensive training,²¹⁷ but they also need to be able to conduct digital forensics on the electronic devices found at the illegal call centers.²¹⁸ Indian police themselves also claim that it is difficult to investigate, much less prosecute, phone scammers when the victims are located overseas.²¹⁹

Under Indian law, police are legally required to begin investigating a crime when a victim files a formal complaint,²²⁰ but victims of international phone scams often do not know where the scammer is calling from, much less how to file a complaint in India.²²¹ Further, victims and law enforcement located in other

216. See Choksi, *supra* note 214; see also Bhattacharjee, *supra* note 27; Nirmal John, *Why Corporates Prefer Private Investigator to Cyber Cops*, THE ECON. TIMES (Oct. 20, 2017, 2:09 PM), <https://economictimes.indiatimes.com/tech/internet/why-corporates-prefer-private-investigator-to-cyber-cops/articleshow/61151345.cms> (“Cyber crime investigations require the law enforcement to be nimble on their feet as well as technologically proficient but that is often not the case.”).

217. See Hendricks, *supra* note 29; see also Rock, *supra* note 210.

218. “Digital Forensics is defined as the process of preservation, identification, extraction, and documentation of computer evidence which can be used by the court of law.” *What is Digital Forensics? History, Process, Types, Challenges*, GURU99, <https://www.guru99.com/digital-forensics.html#:~:text=Digital%20Forensics%20is%20defined%20as,phone%2C%20server%2C%20or%20network> (last visited July 17, 2021). Digital forensics is required to uncover records of fraud that may be found on computers in the form of spreadsheets or databases. See Tommie W. Singleton & Kelly J. Todd, *Digital Evidence in a Fraud Investigation*, in 4 BANK FRAUD & IT SECURITY REP. 1 (2006). Additionally, an expertise in computer forensics is needed to uncover evidence of previously “deleted” files which might be stored in the random-access memory of a computer or if no longer available on the device itself, may be found in the fraudster’s network server. *Id.* 1–2.

219. *Scam Call Centre Owner in Custody After BBC Investigation*, BBC NEWS (Mar. 4, 2020), <https://www.bbc.com/news/technology-51740214>. See also Bhattacharjee, *supra* note 27.

220. Vivek Narayan Sharma, *Know Your Rights: Criminal Trials in India (Part-2)*, THE TIMES OF INDIA (Dec. 22, 2018, 8:52 PM), <https://timesofindia.indiatimes.com/blogs/lawtics/know-your-rights-criminal-trials-in-india-part-2/> (“Once a FIR has been filed the police are legally bound to start investigating the case.”). See also Bhattacharjee, *supra* note 27.

221. See generally *Spying on the Scammers*, *supra* note 80; but see Arun Dev, *Police Launches Helpline to Curb Online Fraud*, HINDUSTAN TIMES (Apr. 17, 2021, 12:47 AM), <https://www.hindustantimes.com/india-news/police-launches-helpline-to-curb-online-fraud-101618600636261.html> (Bengaluru police in India launched a Cybercrime Incident Report helpline to allow victims of cybercrimes to report fraud online).

countries may argue that India's criminal laws do not adequately punish phone scammers, especially considering that restitution to victims is not likely.²²² For example, the United States indicted a phone scammer known as "Shaggy," but instead of extraditing him to the United States, Indian authorities sought to prosecute Shaggy for his crimes related to the phone scam.²²³ Despite Indian prosecutors arguing that he was the "mastermind" of the scam, Shaggy only spent fourteen months in jail in India²²⁴ while one of his co-conspirators was sentenced to 151 months in prison in the United States on a charge of money laundering.²²⁵

Aware of all these obstacles to a successful prosecution, the country where a phone scam victim resides may want to exercise criminal jurisdiction over PS.²²⁶ As mentioned, however, gaining personal jurisdiction over an international defendant is not simple.²²⁷ Thus, there is no clear solution to the concurrent jurisdiction problem.

222. "The Indian government sometimes provides monetary compensation to certain crime victims, especially if the crime or event is newsworthy, but it is not common. The courts of India have limited powers to grant compensation to victims of crime, though under certain circumstances the courts can order the perpetrator to pay compensation." U. S. EMBASSY & CONSULATES IN INDIA, HELP FOR AMERICAN VICTIMS OF CRIME IN INDIA 3 (2017), <https://in.usembassy.gov/wp-content/uploads/sites/71/India-Victim-Assistance-Handout-2017.pdf>. In India, only victims who "have suffered loss or injury causing 'substantial' loss to the income of the family making it difficult to make both ends meet or has to spend beyond his means on medical treatment of mental or physical injury" are entitled to compensation. Dipa Dube, *Victim Compensation Schemes in India: An Analysis*, 13 INT'L J. CRIM. JUST. SCI. 339, 346 (2018). Under the "Karnataka Victim Compensation Scheme," only victims who report the crime within forty-eight hours may be entitled to compensation. *Id.* at 347.

223. Arvind Walmiki, *After 14 Months, Thane Call Centre Scam Mastermind "Shaggy" Granted Bail*, HINDUSTAN TIMES (June 19, 2018, 11:56 AM), <https://www.hindustantimes.com/mumbai-news/after-14-months-thane-call-centre-scam-mastermind-shaggy-granted-bail/story-Hx1k98eT3KOhm5tuQe2b0K.html>.

224. *Id.*

225. Sheckels & Fraer, *supra* note 186, at 235.

226. *See* IAP, *supra* note 152, at 22.

227. *Supra* Part II, § B.

C. The Problem with Extradition

One way to resolve the concurrent jurisdiction problem is through the enforcement of an extradition treaty.²²⁸ Extradition is a criminal procedure where one country surrenders an individual within its territory to another country “pursuant to an official request in order to stand trial for crimes which the requesting state alleges jurisdiction over.”²²⁹ Extradition treaties define the circumstances under which a wanted individual will be surrendered to another country.²³⁰ Although many extradition treaties are silent on the matter of criminal jurisdiction,²³¹ some treaties, like the one between the United States and India, specify that extraditions shall be granted based on extraterritorial jurisdiction.²³² Additionally, many treaties adopt a “dual criminality” approach, meaning extradition will only occur if the alleged crime is punishable in both jurisdictions.²³³

Under the *aut dedere aut judicare* rule, a country is required to either prosecute an individual suspected of certain crimes or extradite the individual to the country seeking extraterritorial jurisdiction.²³⁴ The rationale is that “criminals should not escape trial and punishment simply by absconding to another country.”²³⁵ Despite the obligation to extradite if a country is unable to prosecute, countries often refuse to respect extradition requests.²³⁶ A country may refuse an extradition request for several reasons, including: if the request “fail[s] to meet the requisite evidentiary requirements specified in the relevant treaty,”²³⁷ or if a country is simply unwilling to extradite its own citizens,²³⁸ even if the treaty explicitly states that “extradition shall not be refused on the ground that the person sought is a national of the Requested State.”²³⁹ Sometimes countries may be willing to extradite their own nationals, but because of

228. See IAP, *supra* note 152, at 22.

229. *Id.*

230. Jonathan Masters, *What is Extradition?*, COUNCIL ON FOREIGN REL. (Jan. 8, 2020, 7:00 AM), <https://www.cfr.org/backgrounder/what-extradition>.

231. Abelson, *supra* note 144, at 5.

232. IBA, *supra* note 164, at 164.

233. Masters, *supra* note 230; see also Snow, *supra* note 180, at 214–15.

234. AMNESTY INT’L, *supra* note 162, at 14.

235. IAP, *supra* note 152, at 22.

236. IBA, *supra* note 164, at 173.

237. *Id.*

238. IAP, *supra* note 152, at 22.

239. Extradition Treaty, *supra* note 180, art. 3.

bureaucracy, politics, and policy, the process may be frustratingly slow.²⁴⁰

Although there has been some success in extraditing perpetrators of international phone scams, many extradition requests are denied, unfulfilled, or ignored.²⁴¹ For example, in 2016 the United States indicted fifty-six individuals involved in a call center scam based in Ahmedabad, Gujarat, India.²⁴² Of those fifty-six individuals, only twenty-four were arrested and convicted because they were within the United States.²⁴³ As of December 2018, “[e]fforts aimed at holding the foreign defendants in the case accountable remain ongoing.”²⁴⁴ According to United States law enforcement, it “has not received any information concerning the investigation, arrest, or prosecution by Indian authorities of thirty-one of the India-based defendants charged as part of the public indictment in this case.”²⁴⁵ Extradition requests therefore cannot always be relied upon to successfully gain personal jurisdiction over an international offender.²⁴⁶

IV. HOW THE INTERNATIONAL COMMUNITY CAN SUPPORT SUCCESSFUL PROSECUTIONS OF PHONE SCAMMERS

A. The Importance of Prosecuting the Phone Scammer

To understand the proposed solution to the concurrent jurisdiction problem in the context of phone scams, it is important to understand why phone scammers ought to be prosecuted. The

240. Snow, *supra* note 180, at 213, 221–22, 235.

241. See, e.g., *Phone Scams Targeted in INTERPOL-Coordinated Operation*, INTERPOL (Sept. 2, 2020), <https://www.interpol.int/en/News-and-Events/News/2020/Phone-scams-targeted-in-INTERPOL-coordinated-operation> (INTERPOL facilitated the extradition of two South Korean nationals from China to South Korea in July of 2020 for crimes related to a telephone scam targeting victims in South Korea); but see M. Cherif Bassiouni, *Major Contemporary Issues in Extradition Law: Remarks*, AM. SOC. OF INT'L L. PROCEEDINGS 389, 389–90 (1990), <https://via.library.depaul.edu/lawfac-pubs/448>.

242. Sheckels & Fraer, *supra* note 186, at 220–24.

243. *Id.* at 229.

244. *Id.*

245. *Id.* at 236 n.34; see also Press Release, *supra* note 183 (In 2012 the United States Attorney’s Office District of New Jersey indicted a Pakistani citizen for his involvement in an international telecommunications fraud scheme and as of 2017 he remains a fugitive).

246. See Abelson, *supra* note 144, at 13.

prosecution of phone scammers should have two goals: justice and deterrence.

1. Justice for Victims

Victims of phone scams who are not too ashamed to report their experiences often feel that they are not taken seriously by law enforcement, which can lead to a loss of trust in authorities.²⁴⁷ Law enforcement's unwillingness to take such complaints seriously creates an environment where victims do not report fraud and perpetrators of phone scams can continue to victimize others with impunity.²⁴⁸ Victims who lose their life savings to such fraudulent schemes²⁴⁹ are not only left to deal with financial losses but also emotional trauma, which researchers believe is linked to a fear of revictimization.²⁵⁰ When complaints are taken seriously, victims may still experience a loss of faith in law enforcement because little can be done to seek restitution or convictions against perpetrators committing fraud overseas.²⁵¹ Despite the barriers, law enforcement agencies around the world ought to work together to support local prosecutions of phone scammers to allow victims to heal.

Although there is little research in what victims of fraud want,²⁵² for some phone scam victims, a full recovery of their

247. Dove, *supra* note 85, at 17.

248. See MARK BUTTON, CHRIS LEWIS, & JACKI TAPLEY, NATIONAL FRAUD AUTHORITY, FRAUD TYPOLOGIES AND VICTIMS OF FRAUD 26 (2009), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118469/fraud-typologies.pdf.

249. E.g., Nina Pineda, *7 on Your Side: Woman Loses Life Savings in Apple Support Imposter Scam*, ABC7NY (Mar. 2, 2020), <https://abc7ny.com/apple-support-scam-con-artist-chinyere-ogbonna/5956374/>.

250. CENTER FOR VICTIM RESEARCH, IDENTITY THEFT AND FRAUD VICTIMIZATION: WHAT WE KNOW ABOUT IDENTITY THEFT AND FRAUD VICTIMS FROM RESEARCH-AND PRACTICE-BASED EVIDENCE 15 (2019), https://ncvc.dspacedirect.org/bitstream/handle/20.500.11990/1544/CVR%20Research%20Syntheses_Identity%20Theft%20and%20Fraud_Report.pdf. This fear is not unfounded. According to a study, criminals engaged in romance frauds, where perpetrators pretend to be an individual who has fallen in love with their victim, sell “suckers lists” to one another “which includes a list of their previous victims.” Monica T. Whitty, *The Scammers Persuasive Techniques Model: Development of a Stage Model to Explain the Online Dating Romance Scam*, 53 BRIT. J. CRIMINOLOGY 665, 670 (July 2013). See also ABAGNALE, *supra* note 47, at 43.

251. BUTTON, LEWIS & TAPLEY, *supra* note 248, at 31.

252. *Id.* at 30.

financial losses is preferred.²⁵³ Restitution, however, is not always possible because the perpetrator of the scheme may be judgement proof.²⁵⁴ Although financial recovery may not be available, victims can still experience a sense of justice through criminal prosecution.²⁵⁵ Victims want to ensure that their perpetrators are punished and cannot revictimize them or continue to defraud others.²⁵⁶

2. Deterrence

As an international community dealing with the global crime of phone scams, we ought to support the prosecution of phone scammers in order to deter such conduct. Though there have been some arrests,²⁵⁷ indictments,²⁵⁸ and prosecutions²⁵⁹ of phone scammers, many international defendants remain at large.²⁶⁰ An indictment without a trial and conviction is meaningless until the accused is arrested, presented in court, and

253. *The Perfect Scam: Kentucky Fights Back Against Scammers*, AARP (Sept. 20, 2019) (downloaded using Apple Podcasts).

254. Because most phone scammers live abroad, serving them with legal process for a civil suit can be difficult. Additionally, many scammers may no longer have the cash they stole from victims. *Victim Restitution for Financial and Emotional Suffering from Fraud*, CRIMES OF PERSUASION, <https://www.crimes-of-persuasion.com/victims/restitution.htm> (last visited July 17, 2021).

255. BUTTON, LEWIS & TAPLEY, *supra* note 248, at 31.

256. *Id.*

257. *See, e.g., Indian-Origin Man Arrested for International Telephone Scam: Canada Police*, NDTV (Oct. 19, 2020, 4:23 PM), <https://www.ndtv.com/indians-abroad/indian-origin-man-arrested-for-international-telephone-scam-royal-canadian-mounted-police-2312458>; *Raids Mounted on Fake Indian Tech Support Centres*, BBC NEWS (Nov. 29, 2018), <https://www.bbc.com/news/technology-46357007>; *UK Arrests Four in Tech Support Phone Scam*, PINDROP, <https://www.pindrop.com/blog/uk-arrests-four-in-tech-support-phone-scam/> (last visited July 17, 2021).

258. *See* Press Release, U.S. Att'y's Off. N. Dist. Ga., India-based VoIP Provider and its Director Indicted for Facilitating Millions of Scam Robocalls to Americans (Nov. 17, 2020), <https://www.justice.gov/usao-ndga/pr/india-based-voip-provider-and-its-director-indicted-facilitating-millions-scam>.

259. *See* Kelly Phillips Erb, *Scammers Finally Punished for Cheating U.S. Taxpayers Out of Millions of Dollars*, FORBES (July 22, 2018, 10:04 AM), <https://www.forbes.com/sites/kellyphillipserb/2018/07/22/scammers-finally-punished-for-cheating-us-taxpayers-out-of-millions-of-dollars/?sh=2c223d0a2294/>.

260. *See, e.g.,* Press Release, *supra* note 183.

tried for the charged offenses.²⁶¹ Under utilitarianism,²⁶² crime deterrence is achievable when the potential profit of committing the offense is less than the punishment for the offense.²⁶³ In the context of phone scams, scammers conduct a cost-benefit analysis that balances the risks of being arrested, prosecuted, and jailed against the economic benefits of scamming victims.²⁶⁴ Under current conditions, the balancing test is weighed in favor of continuing to engage in phone scams.²⁶⁵ Phone scammers are more likely to perceive the risks of “getting caught” as less than their potential profit from the scams due to law enforcement’s inability to successfully investigate, extradite, arrest, prosecute, and convict them.²⁶⁶

If the international community can work together to encourage and support the prosecution of phone scammers, then deterrence may be possible.²⁶⁷ One study shows a correlation between countries that enforce the Convention on Cybercrime,²⁶⁸ and a

261. See DRESSLER, *supra* note 34, at 50.

262. The doctrine of utilitarianism holds that “the purpose of all laws is to maximize next happiness of society.” *Id.* at 16. As applied to criminal law, utilitarians subscribe to the idea that “the threat or imposition of punishment can reduce crime because...a person contemplating criminal activity (to augment his happiness) will balance the expected benefits of the proposed conduct against its risks, taking into account such factors as the risk of detection and conviction, and the severity of the likely punishment.” *Id.*

263. *Id.* at 50.

264. For example, a scammer told his new employee that the job was illegal but that there was “nothing to worry about.” Rajendra Jadhav, Euan Rocha, & Rahul Bhatia, *Callers for Dollars: Inside India’s Scam Call Centers*, REUTERS (Nov. 29, 2016, 6:35 PM), <https://www.reuters.com/article/us-india-fraud-usa/callers-for-dollars-inside-indias-scam-call-centers-idUSKBN13O2XZ>.

265. See *id.*

266. An IRS phone scammer told a journalist “I love to scam people because we are making good money...the FBI’s searching for us the last two years. At this moment, we are making good money and we are enjoying our business.” Chris Minor, *Phone Scammers Say FBI Can’t Catch Them*, WQAD8 (Nov. 14, 2014, 4:49 PM, updated Nov. 14, 2014, 6:08 PM), <https://www.wqad.com/article/news/local/drone/8-in-the-air/phone-scammers-say-fbi-cant-catch-them/526-a0ba1a63-3585-4fa1-9221-2bc1c5ee85bc>.

267. See generally Paulo Verdelho, *The Effectiveness of International Co-operation Against Cybercrime: Examples of Good Practice* (Mar. 12, 2008), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802fa3a2>.

268. In 2001 the Council of Europe opened for signature the Convention on Cybercrime treaty with the goal of encouraging coordination and cooperation among international law enforcement agencies to deter cybercrime. *Cybercrime: The Council of Europe Convention*, EVERY CRS REPORT (Sept. 28,

decrease in Distributed Denial of Service (DDOS)²⁶⁹ attacks against residents of those countries.²⁷⁰ Although the study focuses on DDOS attacks and not phone scams, both are motivated by economic incentives.²⁷¹ The study demonstrates that active enforcement of the law can deter offenders from targeting victims.²⁷²

Some scholars argue that increasing penalties does not substantially deter crime because, as one study showed, some criminals do not even think about the perceived risks of punishment.²⁷³ Conversely, the same study explained that criminals who committed non-violent crimes, such as burglary, were more aware of the risks of punishment than those involved in violent crime, such as murder.²⁷⁴ Therefore, in the context of phone scams, continuous investigations, raids, and prosecutions of phone scammers may help deter future scammers from continuing to engage in such behavior. For example, one scammer told a journalist that he quit working at a scam call center out of fear of police crackdowns.²⁷⁵ Another former scammer now works for a legitimate technology company after police shut down every scam center by which he was employed.²⁷⁶

2006), https://www.everycrsreport.com/reports/RS21208.html#_Toc233610273; Ryan M. F. Baron, *A Critique of the International Cybercrime Treaty*, 10 COMMLAW CONSPECTUS 263, 267–68 (2002).

269. A DDOS attack occurs when multiple computers work together to flood a targeted computer or network until the target cannot respond. *Understanding Denial-of-Service Attacks*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Nov. 20, 2019), [https://us-cert.cisa.gov/ncas/tips/ST04-015#:~:text=A%20distributed%20denial%2Dof%2Dservice%20\(DDoS\)%20attack%20occurs,carry%20out%20large%20scale%20attacks.&text=In%20this%20case%2C%20the%20infected,also%20victims%20of%20the%20attack.The%20purpose%20of%20a%20DDoS%20attack%20is%20to%20prevent%20users%20from%20accessing%20their%20device%20and%20services%20such%20as%20the%20internet,%20e-mail,%20and%20other%20software.%20Id.%20The%20attacks%20are%20usually%20carried%20out%20on%20business%20organizations%20and%20can%20cost%20the%20business%20time%20and%20money.%20Id.](https://us-cert.cisa.gov/ncas/tips/ST04-015#:~:text=A%20distributed%20denial%2Dof%2Dservice%20(DDoS)%20attack%20occurs,carry%20out%20large%20scale%20attacks.&text=In%20this%20case%2C%20the%20infected,also%20victims%20of%20the%20attack.The%20purpose%20of%20a%20DDoS%20attack%20is%20to%20prevent%20users%20from%20accessing%20their%20device%20and%20services%20such%20as%20the%20internet,%20e-mail,%20and%20other%20software.%20Id.%20The%20attacks%20are%20usually%20carried%20out%20on%20business%20organizations%20and%20can%20cost%20the%20business%20time%20and%20money.%20Id.)

270. Kai-Lung Hui, Seung Hyun Kim & Qui-Hong Wang, *Cybercrime Deterrence and International Legislation: Evidence from Distributed Denial of Service Attacks*, 41 MIS QUARTERLY 497, 500, 535 (2017).

271. *Id.* at 535.

272. *Id.* at 499.

273. David A. Anderson, *The Deterrence Hypothesis and Picking Pockets at the Pickpocket's Hanging*, 4 AM. L. & ECON. REV. 295, 306 (2002).

274. *Id.* at 305.

275. Vaidyanathan, *supra* note 72.

276. *Id.*

B. International Support for the Prosecution of Phone Scammers via Subjective Territoriality and the Subsidiarity Approach to Concurrent Jurisdiction

To promote effective deterrence, countries where phone scams operate and originate from should exercise subjective territoriality and prosecute phone scammers. This is not to say that extradition requests should be ignored, but if unwilling to extradite, a country ought to follow the *aut dedere aut judicare* principle and prosecute. This method also alleviates issues of concurrent jurisdiction because historical norms favored by the subjective territoriality approach automatically favor the subsidiarity approach to concurrent jurisdiction.

The subjective territoriality principle is the least controversial,²⁷⁷ and countries from which phone scams originate can easily establish that the crime occurred within their borders.²⁷⁸ Considering the issues previously discussed, law enforcement agencies around the world need to support these countries more effectively to strengthen and improve investigations, arrests, and prosecutions of phone scammers.

Although there are several initiatives promoting this type of international cooperation, more needs to be done to specifically combat phone scams.²⁷⁹ Law enforcement agencies around the world need to ensure that the training of local police and prosecution agencies is continuous and always being updated with new investigatory techniques.²⁸⁰ Local law enforcement agencies should be provided with the technological equipment they need to execute successful investigations and prosecutions.²⁸¹

277. See generally IAP, *supra* note 152, at 17.

278. *Supra* Part II, § B.

279. See, e.g., U.N. Secretary-General, *International Cooperation in the Prevention, Investigation, Prosecution and Punishment of Economic Fraud and Identity-Related Crime*, U.N. Doc. E/CN.15/2009/2 (Feb. 3, 2009), <https://digitallibrary.un.org/record/651979?ln=en>; see also *What is the International Law Enforcement Academy (ILEA) in Budapest?*, FBI, <https://www.fbi.gov/about/faqs/what-is-the-international-law-enforcement-academy-ilea-in-budapest> (last visited July 17, 2021) (In the United States, the Federal Bureau of Investigation, a national security organization with both intelligence and law enforcement responsibilities, provides training on everything from corruption to cybercrime to police managers around the world).

280. See Karl Rock, *How Do Police Bust Scammers in India? Ft. Govind Bay*, YOUTUBE (May 16, 2020), https://www.youtube.com/watch?v=GZHts05TBcI&ab_channel=KarlRock.

281. See *id.*

Training efforts are undermined if the support is not continuous; for example, Indian police complained that US agencies were not interested in assisting with the prosecution of phone scammers after local officers raided an international phone scam company.²⁸² When there is international cooperation, the impact can be powerful. In 2015, twenty-three countries participated in an INTERPOL-coordinated operation to shut down fraudulent call centers across the Asian Pacific, which resulted in at least 500 arrests.²⁸³

Law enforcement agencies around the world ought to create task forces that provide education, funding, and equipment to countries where majority of the phone scams originate.²⁸⁴ The task forces should come together in the prosecuting countries to understand the type of environment in which local law enforcement officers operate, but they also can meet virtually. The task forces should include law enforcement agents from around the world, the police agents from the prosecuting countries, both local and foreign prosecutors, and experts who specialize in the technology used to conduct phone scams.

Knowledgeable, law enforcement agents would train the local police force on how phone scams work, the technology scammers use, and the investigatory techniques that would help them to identify and arrest wrongdoers. Local prosecutors would be

282. Kelly Phillips Erb, *Indian Police Allege IRS, FBI, Other Law Enforcement Not Interested In Phone Scam Arrests*, FORBES (Apr. 24, 2017, 9:40 AM), <http://www.forbes.com/sites/kellyphillipserb/2017/04/24/indian-police-allege-irs-fbi-other-law-enforcement-not-interested-in-phone-scam-arrests/#37ededfc4a3e>.

283. *More than 500 Arrested in INTERPOL Operation Targeting Phone and Email Scams*, INTERPOL (Dec. 17, 2015), <https://www.interpol.int/en/News-and-Events/News/2015/More-than-500-arrested-in-INTERPOL-operation-targeting-phone-and-email-scams>.

284. In the U.S., the Office of Overseas Prosecutorial Development, Assistance, and Training, deploys experienced prosecutors to U.S. embassies around the world “to enhance cooperation in transnational cases and to help partners fight crime in furtherance of U.S. national security.” U.S. DEP’T OF JUSTICE, OFFICE OF OVERSEAS PROSECUTORIAL DEVELOPMENT, ASSISTANCE, AND TRAINING (2021), <https://www.justice.gov/criminal-opdat>. India is not a part of the global program. See *Worldwide Activities*, U.S. DEP’T OF JUSTICE, OFFICE OF OVERSEAS PROSECUTORIAL DEVELOPMENT, ASSISTANCE, AND TRAINING (July 27, 2021), <https://www.justice.gov/criminal-opdat/worldwide-activities>. This Note, however, argues for a *global* cohort of prosecutors, law enforcement agents, and experts in cybercrime, phone scams, and fraud, to assist and support each other in the fight against phone scammers.

responsible for training police officers on the type of evidence they need for successful prosecutions. International liaisons would be responsible for communicating the needs of the local law enforcement to law enforcement abroad, and vice versa. Liaisons would assist with information sharing regarding Mutual Legal Assistance Treaties²⁸⁵ and obtaining evidence from victims living abroad. The techniques acquired from these task forces would help local police to not only seek justice for victims living abroad, but also for local victims of phone scams.

Training and open communication alone, however, are not enough to support the local prosecution of phone scammers. Law enforcement agencies around the world also need to provide specialized equipment so local police officers can properly investigate phone scams. The task forces should provide local law enforcement with computers, internet infrastructure, and tools used to conduct forensic extractions on the technology seized from call center raids.

This project can be funded through foreign assistance and forfeiture of money from civil prosecutions. For example, many countries already provide foreign assistance to various countries to combat the drug trade.²⁸⁶ Applying similar methods, countries with many phone scam victims could provide financial assistance to law enforcement in countries where phone scamming is pertinent.²⁸⁷ To ensure that the money is used appropriately, the task forces should provide bi-weekly reports to the agencies providing the funding to account for costs and avoid corruption. The aid should be provided for a period of five years to give the tasks forces enough time to investigate, arrest, and prosecute the phone scammers. After a five-year period, participating

285. Mutual Legal Assistance Treaties are treaties between two or more countries that facilitate information sharing between law enforcement agencies in both countries. *Mutual Legal Assistance in Criminal Matters Treaties*, FINDLAW (Jan. 11, 2018), <https://corporate.findlaw.com/law-library/mutual-legal-assistance-in-criminal-matters-treaties.html>. The treaties “include the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process.” *Id.*

286. See, e.g., Megan Alpert, *15 Years and \$10 Billion Later, U.S. Efforts to Curb Colombia’s Cocaine Trade Have Failed*, FOREIGN POL’Y (Feb. 8, 2016, 1:26 PM), <https://foreignpolicy.com/2016/02/08/15-years-and-10-billion-later-u-s-efforts-to-curb-colombias-cocaine-trade-have-failed/>; *Drugs Policy*, EUROPEAN COMMISSION, https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/drug-control_en (last visited July 17, 2021).

287. Kok, *supra* note 2.

countries should conduct a review of the task forces and decide whether they were successful in assisting the local prosecution of phone scammers. A report after the five-year period should include the following information: statistics on the number of call centers that were shut down, the number of arrests, the number of charges filed against defendants, the types of charges filed, the number of successful convictions, the type of sentences imposed by the courts, and an evaluation of whether the task forces deterred phone scammers from participating in such conduct.

The task forces can also be financed via sanctions won against private companies that knowingly allow phone scammers to use their services to perpetrate fraud. For example, MoneyGram agreed to pay the United States government \$125 million for failing to stop money transfers from victims to scammers impersonating the IRS.²⁸⁸ Although the settlement money from this case was distributed amongst fraud victims, private companies who continue to turn a blind eye to scammers using their services for nefarious reasons should pay sanctions that contribute to the task forces.

Some private companies, like Google, provide trainings to law enforcement agencies where cyber scams are pertinent; however week-long trainings are insufficient without continued financial support and proper forensic equipment.²⁸⁹ Additionally, private companies should not be relied upon to deter phone scammers alone because they do not have an incentive to continue to support such programs.²⁹⁰ Companies often rely on insurance policies that cover the costs of scams—it is considered “the cost of doing business.”²⁹¹

288. Michelle Singletary, *MoneyGram Agrees to Pay \$125 Million for Failing to Crack Down on Fraudulent Money Transfers*, WASH. POST (Nov. 8, 2018), <https://www.washingtonpost.com/business/2018/11/09/moneygram-agrees-pay-million-failing-crack-down-fraudulent-money-transfers/>.

289. Om Athavale, *Google-Backed Initiative for Training Law Enforcement Agencies in Cyber-Crime Investigation Concludes in Delhi*, TECHCIRCLE (July 4, 2019), <https://www.techcircle.in/2019/07/04/google-backed-initiative-for-training-law-enforcement-agencies-in-cyber-crime-investigation-concludes-in-delhi/>; see also Rock, *supra* note 280.

290. See Adam Gable, *Banks, Customers, Fraud and the Cost of Doing Business*, TEMENOS (Oct. 14, 2019), <https://www.temenos.com/news/2019/10/14/banks-customers-fraud-cost-of-doing-business/>.

291. See *id.*

CONCLUSION

The international community needs to work together, building on-the ground task forces, to help victims of phone scams receive justice and deter perpetrators from continuing to commit fraud. Countries with perpetrators of fraud ought to follow the *aut dedere aut judicare* principle and either extradite individuals sought by other jurisdictions or put in the work and prosecute. Because extraterritorial jurisdiction principles, like the passive personality principle, are controversial, countries that have many phone scam operations can undoubtedly establish criminal jurisdiction over fraudsters via subjective territoriality. To ensure that these investigations and prosecutions are successful in deterring phone scams, countries with many phone scam victims ought to assist law enforcement agencies in countries where the scammers operate by providing training, resources, and maintaining channels of communication. The purpose of these partnerships is to ensure that the local prosecutors receive the necessary materials and support they need to properly investigate, arrest, and charge phone scammers. Collectively, the international community can send the message that phone scamming is no longer a beneficial endeavor. Ending transborder, cyber-related crimes is not simple, but with a little more global communication, assistance, and resources, together we can support local prosecutions and discourage further participation in this fraud.

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