

Legal questionnaire completed by Kakar Advocates LLC • March 2024

This document contains responses from the law firm listed above to a questionnaire distributed by NCMEC (questions are in **bold text**). Responses to the questionnaire may be limited to officially enacted legislation; it is possible that actual practice or enforcement of the law varies, and relevant court rulings or case law may also differ from legislative text. Responses have been reformatted and may have been slightly edited for clarity. Furthermore, responses may include commentary, paraphrasing, and unofficial translations of source material (e.g., national legislation) originally produced in other languages. Only official source documents in official languages should be relied upon as legally binding. This document serves to inform further research and does not constitute legal advice from NCMEC or the listed law firm.

1. What laws and regulations contain legal definitions of the following terms or corresponding terms in your local jurisdiction (links to existing U.S. legal definitions are included, where relevant, as background for comparison – please include definitions of any corresponding terms in your country):

a. child or minor (18 U.S.C. 2256(1), <https://www.law.cornell.edu/uscode/text/18/2256>)

Child: a person who has not completed the age of 18. (Article 3(1) of the Law on Protection of Child Rights, Official Gazette no. 1334, dated March 11, 2019)

b. child sexual exploitation (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(9), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)

Child Exploitation: is the exploitation of a child for business, work, sexual, and misbehavior purposes including physical and mental misbehavior leading to injury to the physical, mental, and psychological health or life or human dignity of the child. (Article 3(15) of Article 3(1) of the Law on Protection of Child Rights, Official Gazette no. 1334, dated March 11, 2019)

c. sexually explicit conduct (18 U.S.C. 2256(2), <https://www.law.cornell.edu/uscode/text/18/2256>)

Sexual Exploitation of Child: touching a child for sexual pleasure, encouraging or persuading and forcing the child to be used by another person for sexual pleasure, using or exposing the child to sexual activities or immorality and pornography, and providing or permitting the child for sexual and economic exploitation. (Article 3(16) of Article 3(1) of the Law on Protection of Child Rights, Official Gazette no. 1334, dated March 11, 2019)

d. child sexual abuse (18 U.S.C. 2243(a), <https://www.law.cornell.edu/uscode/text/18/2243>)

The Afghan Law does not provide for a specific definition of child sexual abuse, however, the law uses the term “Bacha Bazi” and defines it as follows: is keeping a male or she-male child for sexual pleasure, dancing in public or private parties, singing, clothing with female clothes, pederasty, rape, intercourse, touching, pornography, and sleeping with. (Article 3(17) of Article 3(1) of the Law on Protection of Child Rights, Official Gazette no. 1334, dated March 11, 2019)

e. child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8),



<https://www.law.cornell.edu/uscode/text/18/2256>)

This term is not defined under Afghan law.

- f. **computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9), <https://www.law.cornell.edu/uscode/text/18/2256>)**

This term is not defined under Afghan law.

- g. **enticement or grooming (encouraging, persuading, or coercing a child to engage in sexual activity or to create child pornography or CSAM) (18 U.S.C. 2422(b), <https://www.law.cornell.edu/uscode/text/18/2422>)**

This term is not defined under Afghan law.

- h. **legal age of consent for sexual activity – are there laws and regulations, if so, what ages are specified?**

Sex outside of marriage is prohibited under Afghan law (and also under strict interpretation of Islamic law), but according to Article 70 of the Afghan Civil Law, the capacity to marry shall be complete when males attain 18 and females 16 years. (Article 70, Civil Law, OG no. 353, dated 15 JADI 1355 (JANUARY 5, 1977))

- i. **Sextortion (extorting money or sexual favors from a child by threatening to share sexually explicit, child pornography or CSAM images of the child) (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(8), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)**

This term is not defined under Afghan law.

2. **Please explain any legal or regulatory requirement or recommendation for Online Platforms to undertake any of the following activities on their systems to protect children online from sexual exploitation:**

- a. **review, screen, moderate, or detect content to identify child pornography or CSAM content**

All forms of pornography are prohibited under Afghan law. However, Afghan Law is severely underdeveloped with respect to online platforms. The law does not provide any specific requirements for Online Platforms to take steps to avoid or prevent these activities.

- b. **review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child**

Afghan law generally imposes no duty on the owner or operator of an Online Platform to take specific steps to prevent illegal or improper activity on the platform.

- c. **report child pornography, CSAM, enticement, grooming, or sextortion that they become**



aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization

Afghan law generally imposes no duty on the owner or operator of an Online Platform to take specific steps to prevent illegal or improper activity on the platform. The law also does not require reporting of these activities, but as a practical matter an Online Platform owner or operator who allows such activities to take place will likely be considered an accomplice.

Response to the comment:

Accomplice is defined under the Penal Code (Article 58) as a person who knowingly and directly participates in one or more material elements of the crime with the principal offender. An accomplice shall be sentenced to the same punishment for the crime as the principal offender may be sentenced. The Penal Code does not provide a punishment for failure to report these activities, but an online platform operator who is aware that criminal activities are taking place and does not take any steps to stop or block the activities may be viewed as an accomplice by the courts.

d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about

Afghan law generally imposes no duty on the owner or operator of an Online Platform to take specific steps to prevent illegal or improper activity on the platform. The law also does not require reporting of these activities, but as a practical matter an Online Platform owner or operator who allows such activities to take place will likely be considered an accomplice.

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e. review content by human moderators to screen or moderate for child pornography or CSAM

Afghan law generally imposes no duty on the owner or operator of an Online Platform to take specific steps to prevent illegal or improper activity on the platform. The law also does not require reporting of these activities, but as a practical matter an Online Platform owner or operator who allows such activities to take place will likely be considered an accomplice.

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- f. **remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency**

Afghan law generally imposes no duty on the owner or operator of an Online Platform to take specific steps to prevent illegal or improper activity on the platform. The law also does not require reporting of these activities, but as a practical matter an Online Platform owner or operator who allows such activities to take place will likely be considered an accomplice.

The owner or operator of an Online Platform who does not remove criminal material from the platform after being made aware of its existence may be considered an accomplice, and/or may be considered in violation of Article 867 (Crimes against Public Ethics) or Article 868 (Disclosing Personal Secrets) or Article 874 (Pornography) of the Penal Code.

Failure to follow lawful orders of government authorities may lead to additional criminal charges.

Response to the comment:

Article 867 states:

- (1) A person who produces, sends, disseminates, distributes, publishes, sells or offers to sell immoral and un-Islamic materials using a computer or communication system or keeps or saves them for the purpose of sending, broadcasting, trading or producing the materials, he/she shall be sentenced to medium imprisonment up to two years or cash fine from 5,000 AFN to 60,000 AFN. Scientific usage is exempted from this provision.
- (2) For the purpose of paragraph (1) of this article, immoral materials include pictures, hard or soft sounds and text that portray a fully naked woman or man or their sexual organs.

According to Article 868:

- (1) A person who broadcasts in cyberspace private or family films, pictures and sounds of another without his/her consent or knowledge using computer or communication system or makes it accessible to others, and it causes physical or intangible harm or damage to his/her reputation, the perpetrator shall be sentenced to medium imprisonment up to two years or cash fine from 60,000 AFN to 120,000AFN.
- (2) A person who changes, distorts or broadcasts personal film, sound or picture of another or knowingly disseminates the changed or distorted film, sound or picture of another person using a computer or communication system in a way which causes harm to his/her reputation, shall be sentenced to medium imprisonment of more than three years or cash fine from 60,000 AFN to 180,000 AFN.
- (3) Legal proceedings of crimes contained in paragraphs (1 and 2) of this article shall be subject to the complaint of the victim.

Article 874:



- (1) A person who commits one of the below acts has committed the crime of pornography and shall be sentenced to medium imprisonment up to two years or cash fine from 60,000 AFN to 120,000 AFN:
 1. Producing pornography for oneself or others or to publish it in cyberspace;
 2. Presenting or providing pornography through cyberspace;
 3. Broadcasting or disseminating pornography in cyberspace;
 4. Keeping pornography in a computer system or in a hard drive.
- (2) For the purpose of Paragraph (1) of this article, pornography is pornographic display of the following person or thing:
 1. A person in a state of open sexual act;
 2. Real photos displaying a person in an open sexual act.
- (3) For the purpose of paragraph (1) of this article, publishing refers to distributing, broadcasting, presenting, displaying, exchanging, buying, selling, supplying for selling or distributing by any other way;
- (4) If the purpose of distributing or broadcasting pornography is to convince a child to engage in a sexual act, the perpetrator shall be sentenced to the maximum punishments set forth in this Article.
- (5) If crime contained in paragraph (1) of this article is committed for the purpose of medical or scientific investigation or based on provision of the law, shall not be prosecuted.

- g. use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including:**
- i. **“Hashing technology”** (<https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/>). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.
 - ii. **Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.**

All forms of pornography are prohibited under Afghan law. However, Afghan Law is severely underdeveloped with respect to online platforms. The law does not provide any specific requirements for Online Platforms to take steps to avoid or prevent these activities.

- h. if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?**

Not applicable.

- 3. Are Online Platforms legally required or recommended to implement any method to verify the age of a user before allowing access to an online platform?**

Unfortunately, Afghan law is severely underdeveloped with respect to cyber crimes, and currently Online Platforms are not required to implement any method of age verification.

- 4. Are Online Platforms legally required or recommended to implement any method to obtain parental consent before a child uses the services of such Online Platforms?**

Unfortunately, Afghan law is severely underdeveloped with respect to cyber crimes, and currently Online Platforms are not required to implement any method of obtaining or verifying parental consent.

- 5. Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:**

NO

- a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?**

This activity is prohibited by Afghan law but no legal remedies are provided by the law for such activities. Article 95 of the Law on Protection of Child Rights talks about the prohibition of broadcasting immoral movies and it states that the Ministry of Information and Cultural Affairs is obliged to prevent all kinds of sexual erogenous broadcasting including obscene and immoral movies for children, according to the provisions of law. The victim's remedy is to report the crime to the Ministry of Information and Cultural Affairs or other authorities.

- b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?**

The law does not impose an affirmative duty on the owner or the operator of an Online Platform to take any specific steps to prevent or remove criminal activity. However, the owner or the operator who knowingly allows criminal activity to take place will be considered an accomplice and/or charged with a crime.

Response to comment:

The law does not impose an affirmative duty on the owner or the operator of an Online Platform to take any specific steps to prevent or remove criminal activity. However, the owner or the operator who knowingly allows criminal activity to take place will be considered an accomplice and/or charged with a crime. An accomplice may receive the same range of sentences as a primary offender.

- c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?**

Courts in Afghanistan are authorized to issue injunctions. However, the court system is generally slow and inefficient. It is more likely to obtain expedited relief by reporting the crime to the Ministry of Information and Cultural Affairs.

- d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?**

Courts in Afghanistan are authorized to issue protective orders. However, the court system is generally slow and inefficient. It is more likely to obtain expedited relief by reporting the

crime to the Ministry of Information and Cultural Affairs.

- e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child’s image or video, either in a civil or a criminal proceeding?**

The Law on Protection of Child Rights does not provide for monetary damages. The Penal Code also does not provide for reparation for victims in this situation. Afghan tort law is underdeveloped; a personal injury claim is theoretically possible but unlikely to succeed.

- f. the ability to seek any other forms of victim compensation/recovery/services provided for under the law and/or by a government-funded source?**

Not applicable.

- g. notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?**

There is no notification requirement under Afghan law.

- 6. “Safety by Design” is defined as tools or processes that are built into an Online Platform to protect children by making it easier for the relevant Online Platform to detect or prevent the distribution of child pornography or CSAM.**

- a. Are Online Platforms legally required to incorporate “Safety by Design” into their systems?**

Unfortunately, Afghan law is severely underdeveloped with respect to cyber crimes and online child protection, and currently Online Platforms are not required to implement any “Safety by Design” tools or processes.

- i. If so, must these steps be taken before the launch of an Online Platform?**

Not applicable.

- ii. If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?**

Not applicable.

- iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.**

Not applicable.

- b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform’s incorporation of “Safety by Design”?**

Not applicable.