

Legal questionnaire completed by Nubyul Law • February 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>)

- (1) Section 16 of the Child Care and Protection Act of Bhutan 2011 states, “A person below the age of 18 years shall be treated as a child evidenced by an official record maintained by the Government, birth certificate or any other document proving the age of the child.”

Citation: The Child Care and Protection Act of Bhutan 2011, §16.

Available Links:

- <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
- <https://www.ncwc.gov.bt/allpublications?key=Acts>.

- (2) Section 221 (5) of the Child Care and Protection Rules and Regulations of Bhutan 2015 states, “Child shall mean a person below the age of 18 years.”

Citation: The Child Care and Regulations of Bhutan 2015, § 221 (5).

Available Links:

- <https://nubyul.com/child-care-protection-rules-and-regulations-2015/>
- <https://www.ncwc.gov.bt/allpublications?key=rules>

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 sexual exploitation’ is not defined explicitly under the laws and regulations of Bhutan. Therefore, terms effecting similar meanings have been identified as follows:

(1) Child Molestation

Section 18 of the Penal Code (Amendment) Act of Bhutan 2021 states, “A defendant shall be guilty of the offence of child molestation, if the defendant commits any of the following acts against a child with or without consent:



- (a) Touching of private parts;
- (b) Exposure of genitalia;
- (c) Inducement of sexual acts with the defendant or with other children; or
- (d) Conduct of any other sexual acts.”

Citation: Penal Code (Amendment) Act of Bhutan 2021, § 18.

Available Links:

- (i) [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(2) Trafficking of a Child

- a) Section 227 of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of the offence of trafficking of a child, if the defendant, sells, buys or transports a child for any illegal purpose.”

Citation: Penal Code of Bhutan 2004, § 227.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

- b) Section 224 of the Child Care and Protection Act of Bhutan 2011 states, “A person shall be guilty of trafficking of a child if a person recruits, transport, transfer, harbour or procure a child by means of threat, use of force, coercion, abduction, fraud, deception, abuse of power, position of vulnerability, transaction involving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The offence of trafficking of a child shall be felony of the third degree.”

Citation: The Child Care and Protection Act 2011, § 224.

Available Links:

- (i) <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
- (ii) https://www.ilo.org/newdelhi/WCMS_300620/lang--en/index.htm

(3) Prohibition of the Worst Forms of Child Labour

Section 9 (b) of the Labour and Employment Act of Bhutan 2007 states, “No person shall subject a child to the use, procuring or offering of the child for prostitution, for the production of pornography or for pornographic performances.”

Citation: The Labour and Employment Act of Bhutan 2007, § 9 (b).

Available Links:

- (i) <https://nubyul.com/labour-and-employment-act-of-bhutan-2007/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

c. sexually explicit conduct (18 U.S.C. 2256(2),



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

'Sexually explicit conduct' is not defined explicitly under the laws and regulations of Bhutan. The corresponding terms are however identified as follows:

(1) Indecent Exposure

Section 209 of the Penal Code of Bhutan 2004 states, "A defendant shall be guilty of the offence of indecent exposure, if the defendant exposes one's private parts to another person or does any obscene act in a public place under circumstances, which the defendant knows or should know that it is likely to cause affront or alarm."

Citation: Penal Code of Bhutan 2004, § 209.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(2) Bestiality

Section 211 of the Penal Code of Bhutan 2004 states, "A defendant shall be guilty of the offence of bestiality, if the defendant engages in sexual intercourse or other sexual contact with an animal."

Citation: Penal Code of Bhutan 2004, § 211.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(3) Unnatural Sex

Section 20 of the Penal Code (Amendment) Act of Bhutan 2021 states, "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sexual conduct that is against the order of nature. However, homosexuality between adults shall not be considered unnatural sex."

Citation: Penal Code (Amendment) Act of Bhutan 2021, § 20.

Available Links:

- (i) [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(4) Lewd and Lascivious Conduct

Section 381 of the Penal Code of Bhutan 2004 states, "A defendant shall be guilty of the offence of lewd and lascivious conduct, if the defendant:

- (a) Performs a sexual act in a public place under circumstances where the defendant knows it may be observed by the public and that causes the public affront or

- alarm; or
(b) Sells, manufactures, issues, distributes, displays or otherwise deals in obscene material.”

Citation: Penal Code of Bhutan 2004, § 381.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

‘Child Sexual Abuse’ is not defined explicitly in any of Bhutan’s laws and regulations but applicable terms are identified as follows:

(1) Sexual Abuse

Section 4 (2) of the Domestic Violence Prevention Act of Bhutan 2013 states, “Sexual abuse” includes any conduct of sexual nature that humiliates, degrades or otherwise violates the dignity of the victim.”

[Domestic Violence Prevention Act of Bhutan 2013, § 4 (2), <https://nubyul.com/domestic-violence-prevention-act-of-bhutan-2013/>]

(2) Child Molestation

Section 18 of the Penal Code (Amendment) Act of Bhutan 2021 states, “A defendant shall be guilty of the offence of child molestation, if the defendant commits any of the following acts against a child with or without consent:

- (a) Touching of private parts;
- (b) Exposure of genitalia;
- (c) Inducement of sexual acts with the defendant or with other children; or
- (d) Conduct of any other sexual acts.”

[Penal Code (Amendment) Act of Bhutan 2021, § 18, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)]

(3) Sexual Harassment

Section 205 of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of sexual harassment, if the defendant makes unwelcome physical, verbal or non-verbal abuse of sexual nature.”

[Penal Code of Bhutan 2004, § 205, <https://nubyul.com/penal-code-of-bhutan-2004/>]

(4) Statutory Rape

Section 15 of the Penal Code (Amendment) Act of Bhutan 2011 states, “A defendant shall be guilty of the offence of statutory rape, if the defendant engages in any act of sexual intercourse whatever its nature with a child of twelve years and below, or an incompetent



person, either with or without knowledge of the other person being a child or incompetent person.”

[Penal Code (Amendment) Act of Bhutan 2011, § 15, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2011/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2011/)]

(5) Rape of a Child Above Twelve Years of Age

Section 13 of the Penal Code (Amendment) Act of Bhutan 2021 states, “A defendant shall be guilty of the offence of rape of a child above the age of twelve years if the defendant commits any act of sexual intercourse against a child between the ages of twelve to eighteen years. However, if the sexual intercourse between children of sixteen to eighteen years was consensual when it occurred, it shall not be considered to be rape thereafter even if one of the children has become an adult when a complaint is lodged.”

[Penal Code (Amendment) Act of Bhutan 2021, § 13, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)]

(6) Gang Rape of a Child Below Twelve Years of Age

Section 19 of the Penal Code (Amendment) Act of Bhutan 2011 states, “A defendant shall be guilty of the gang rape of a child of twelve years and below, when two or more persons engage in any act of sexual intercourse whatever its nature with a child of twelve years and below.”

[Penal Code (Amendment) Act of Bhutan 2011, § 19, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2011/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2011/)]

(7) Gang Rape of a Child Above Twelve Years of Age

Section 21 of the Penal Code (Amendment) Act of Bhutan 2011 states, “A defendant shall be guilty of the offence of gang rape of a child above the age of twelve years, when two or more persons engages in any act of sexual intercourse whatever its nature with a child between the age of twelve and eighteen years.”

[Penal Code (Amendment) Act of Bhutan 2011, § 21, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2011/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2011/)]

(8) Custodial Rape

Section 17 of the Penal Code (Amendment) Act of Bhutan 2021 states, “A defendant shall be guilty of the offence of custodial rape, if the defendant who is in a position of trust or authority towards a person, including a child between the ages of twelve to eighteen years engages in sexual intercourse with such person or child by taking advantage of one’s position or authority.”

[Penal Code (Amendment) Act of Bhutan 2021, § 17, [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)]



- e. **child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8), <https://www.law.cornell.edu/uscode/text/18/2256>)**

Child Pornography

Section 223 of the Child Care and Protection Act of Bhutan 2011 states, “A person shall be guilty of child pornography if the person by representation, by whatever means, of a child engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. The offence of child pornography shall be felony of the third degree.”

Citation: The Child Care and Protection Act of Bhutan 2011, § 223.

Available Links:

- (i) <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
- (iii) <https://www.ncwc.gov.bt/allpublications?key=Acts>

- 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>)**

There is no legal definition for ‘computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed).’ However, the definitions for the same may be implied under the following:

(1) Child Pornography

Section 223 of the Child Care and Protection Act of Bhutan 2011 states, “A person shall be guilty of child pornography if the person by representation, by whatever means, of a child engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. The offence of child pornography shall be felony of the third degree.”

Citation: The Child Care and Protection Act of Bhutan 2011, § 223.

Available Links:

- (i) <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
- (ii) <https://www.ncwc.gov.bt/allpublications?key=Acts>

(2) Child Prostitution

Section 222 of the Child Care and Protection Act of Bhutan 2011 states, “A person shall be guilty of child prostitution if a person uses a child in sexual activity for remuneration or any other form of consideration. The offence of child prostitution shall be felony of the third degree.”

Citation: The Child Care and Protection Act of Bhutan 2011, § 222.

Available Links:



- (i) <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
- (ii) <https://www.ncwc.gov.bt/allpublications?key=Acts>

(3) Publishing or Transmitting Obscene Communication Depicting Children

Section 424 (2) of the Information, Communications and Media Act of Bhutan 2018 states, “A person shall be liable for offence of felony of fourth degree, if he or she creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any form depicting children in obscene or indecent or sexually explicit manner.”

Citation: Information, Communications and Media Act of Bhutan 2018, § 424 (2).

Available Links:

- (i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>
- (ii) https://www.bicma.gov.bt/bicmanew/?page_id=31

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>)

‘Enticement or grooming’ is not defined explicitly under the laws and regulations of Bhutan. The corresponding term for it is identified as follows:
Pedophilia

Section 225 (c) of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of the offence of pedophilia, if the defendant solicits directly or indirectly the services of a child for sex.”

Citation: Penal Code of Bhutan 2004, § 225 (c).

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

‘Legal age of consent for sexual activity’ is not specifically defined under the laws and regulations of Bhutan. It is however implied that the legal age of consent for sexual activity is eighteen save for one exception, i.e., consensual sexual intercourse between children of sixteen and eighteen years [Penal Code (Amendment) Act of Bhutan 2021, § 13]. Implied legal definitions for the legal age of consent for sexual activity as eighteen are identified below.

- (1) Section 13 of the Penal Code (Amendment) Act of Bhutan 2021 states, “A defendant commits any act of sexual intercourse against a child between the ages of twelve to eighteen years. However, if the sexual intercourse between children of sixteen to eighteen years was consensual when it occurred, it shall not be considered to be rape



thereafter even if one of the children has become an adult when a complaint is lodged.”

Citation: Penal Code (Amendment) Act of Bhutan 2021, § 13.

Available Links:

- (i) [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

- (2) The Marriage Act of Bhutan 1980 (amended 2009) is drafted in Dzongkha. There is no official translation for this Act. A possible translation of Section Kha 1-14 of the Marriage Act of Bhutan 1980 (amended 2009) into English is as follows:

“Consequent to the restrictions on the marriages of minors as stipulated in the aforesaid section Kha 1-11, no Marriage Certificates shall be granted for marriages performed between a male and a female not attaining the age of eighteen years as they are considered not to have attained the marriageable age.”

Citation: The Marriage Act of Bhutan 1980, § Kha 1-14.

Available Links:

- (i) <https://nubyul.com/marriage-act-of-bhutan-/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

- 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>)**

‘Sextortion’ is not defined explicitly under the laws and regulations of Bhutan. The corresponding terms are however identified as follows:

- (1) Blackmail

Section 322 of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of the offence of blackmail, if the defendant threatens to expose a true or allegedly true fact about a person that would cause harm to that person's reputation unless the person gives the defendant money, property, or other gratification.”

Citation: Penal Code of Bhutan 2004, § 322.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

- (2) Extortion

Section 249 of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of the offence of extortion, if the defendant unlawfully obtains or collects or attempts to obtain or collect something of value from a person by compelling the person to deliver it.”

Citation: Penal Code of Bhutan 2004, § 249.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(3) Sexual Harassment

Section 205 of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of sexual harassment, if the defendant makes unwelcome physical, verbal or non-verbal abuse of sexual nature.”

Citation: Penal Code of Bhutan 2004, § 205.

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

(4) Pedophilia

Section 225 (c) of the Penal Code of Bhutan 2004 states, “A defendant shall be guilty of the offence of pedophilia, if the defendant solicits directly or indirectly the services of a child for sex.”

Citation: Penal Code of Bhutan 2004, § 225 (c).

Available Links:

- (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
- (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

The Information, Communications and Media Act of Bhutan 2018 (‘ICM Act’) applies to ICT and media sectors and the providers of ICT and media services and facilities, which includes online platforms [Information, Communications and Media Act of Bhutan 2018, § 5 & 464 (58)]. This Act does not explicitly provide for online platforms to review, screen, moderate, or detect content to identify child pornography or CSAM content. However, the ICM Act and its subsequent Rules and Regulations on Content set out restrictions on content produced by ICT and media services.

The ICM Act penalizes the publication or transmission of obscene communication depicting children engaged in sexually explicit acts or conduct [Information, Communications and Media Act of Bhutan 2018, § 424 (1)].

Similarly, the Rules and Regulations on Content 2019 were promulgated under the ICM Act, “to ensure good practice and standards of content disseminated... to the society” [Rules and Regulations on Content, § 1.1]. Section 2.4.4 of the rules and regulations contains rules on sexual content which prohibits all forms of pornography [Rules and Regulations on Content, § 2.4.4]. However, there does not exist any specification in which manner these contents will be reviewed, screened, moderated, or detected.

However, if the Bhutan InfoComm and Media Authority (‘BICMA’), the autonomous regulatory body under the ICM Act [Information, Communications and Media Act of Bhutan 2018, § 28] detects such content, failing to report it would be in violation of Section 430 of the Penal Code of Bhutan [Penal Code of Bhutan 2004, § 430]. Additionally, revocation and suspension of licenses of the online platforms may be carried out as stipulated under Sections 127 and 128 of the ICM Act [Information, Communications and Media Act of Bhutan 2018, § 127 & 128].

The direct answer to this question is that specific legal and regulatory requirements for online platforms to review, screen, moderate, or detect content to identify child pornography or CSAM content remain yet to be drafted at this point. Currently, it is difficult to attribute liabilities on the part of online platforms established outside Bhutan if they fail to review, screen, moderate, or detect content to identify child pornography or CSAM content. Consequently, it is unsure whether, even with the existence of legal or regulatory requirements, Bhutan has the capacity to attribute obligation to online platforms outside Bhutan as well.

Reference Citations and Available Links

- 1) Information, Communications and Media Act of Bhutan 2018 § 5, 464 (58), 424 (1), 28, 127, & 128.
 - (i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>
 - (ii) https://www.bicma.gov.bt/bicmanew/?page_id=31
- 2) Rules and Regulations on Content, § 1.1, & 2.4.4.
 - (i) <https://nubyul.com/rules-and-regulations-on-content-2019/>
 - (ii) https://www.bicma.gov.bt/bicmanew/?page_id=242
- 3) Penal Code of Bhutan 2004, § 430.
 - (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

The Information, Communications and Media Act of Bhutan 2018 (‘ICM Act’) does not impose any direct duty on online platforms to review screen, moderate, or detect content to identify enticement, grooming, or sextortion.

Nonetheless, in an implied sense, section 349 of the ICM Act requires ICT and Media facilities or service providers and vendors, which includes online platforms, to take all reasonable steps to prevent offensive communications from being delivered to children [Information, Communications and Media Act of Bhutan 2018, § 349].



“Offensive communication” is not defined in the ICM Act, and unless, it is interpreted to include age-inappropriate (direct) communications [Information, Communications and Media Act of Bhutan 2018, § 348] involving predatory behaviors intended to entice, groom, or sextort a child, direct responsibility cannot be placed on online platforms to take all reasonable steps including reviewing, screening, moderating or detecting content to identify enticement, grooming or sextortion of a child.

The Consumer Protection Act of Bhutan 2012 (‘CPA 2012’) applies to all goods and services provided in Bhutan irrespective of the residence and location of the supplier and the service provider, and therefore, by extension, is applicable to online platforms [Consumer Protection Act of Bhutan 2012 § 2 (c)].

The CPA 2012 authorizes the Consumer Board in consultation with relevant agencies to create safety standards specific to any services including online platforms [Consumer Protection Act of Bhutan 2012 § 19]. Currently, the Consumer Board has not prescribed safety standards specific to online platforms. In light of this, CPA 2012 requires online platforms to adopt and ensure a reasonable standard of safety with regard to the nature of the services provided [Consumer Protection Act of Bhutan 2012 § 21 & 57]. However, there is no legal basis to define what constitutes ‘reasonable standards of safety’ and whether this would entail responsibility on the part of online platforms to review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child.

Reference Citations and Available Links

- 1) Information, Communications and Media Act of Bhutan 2018 § 348, & 349.
 - (i) [https://nubyul.com/information-communications-and-media-act-of-bhutan-2018/.](https://nubyul.com/information-communications-and-media-act-of-bhutan-2018/)
 - (ii) https://www.bicma.gov.bt/bicmanew/?page_id=31.
- 2) The Consumer Protection Act of Bhutan 2012 § 2 (c), 19, 21, & 57.
 - (i) <https://nubyul.com/consumer-protection-act-of-bhutan-2012/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

Online platforms, like any other persons, have the responsibility to report child pornography, CSAM, enticement, grooming, or sextortion of a child from the moment they become aware of or are notified about on their systems to a law enforcement, government agency, or nongovernmental agency. In the event they act otherwise, they can be prosecuted under section 430 of the Penal Code of Bhutan 2004 for having failed to report a crime [Penal Code of Bhutan 2004, § 430].

Reference Citation and Available Links:

- 1) Penal Code of Bhutan 2004, § 430.
 - (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion



that they identify, become aware of, or are notified about

Yes, once an online platform identifies, becomes aware of, or is notified of any child pornography, CSAM, enticement, grooming, or sextortion on its platform, it has to remove the obscene communication or material. In the event that an online platform permits such obscene communication or material to remain and/or causes it to be published, distributed, or transmitted despite the knowledge of its existence on its platform, it can be prosecuted for the offense of abetting [Information, Communications and Media Act of Bhutan 2018, § 422 & 464 (73)].

Reference Citations and Available Links

1) Information, Communications and Media Act of Bhutan 2018 § 422 & 464 (73).

(i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>

(ii) https://www.bicma.gov.bt/bicmanew/?page_id=31

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

Currently, there is no specific legislation that places direct responsibility on online platforms to review content by human moderators to screen or moderate for child pornography or CSAM.

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

Yes, once an online platform is notified of child pornography, CSAM, enticement, grooming, or sextortion, by a victim, non-governmental organization, law enforcement, or government agency,

it has to remove or take the obscene communication or material. In the event that an online platform permits such obscene communication or material to remain and/or causes it to be published, distributed, or transmitted despite the knowledge of its existence on its platform, it can be prosecuted for the offense of abetting [Information, Communications and Media Act of Bhutan 2018, § 422 & 464 (73)].

Reference Citations and Available Links

1) Information, Communications and Media Act of Bhutan 2018 § 422 & 464 (73).

(i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>

(ii) https://www.bicma.gov.bt/bicmanew/?page_id=31

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.**

There is no legal or regulatory requirement for Online Platforms to use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion including hashing technology or other artificial intelligence.

- 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.?**

The Consumer Protection Act 2012 ('CPA 2012') is applicable to online platforms [Consumer Protection Act of Bhutan 2012 § 2 (c)] and authorizes the Consumer Board in consultation with relevant agencies to create safety standards specific to any services including online platforms [Consumer Protection Act of Bhutan 2012 § 19]. However, currently, the Consumer Board has not prescribed safety standards specific to online platforms. In light of the above and also given that all other applicable laws only provide generic rules to perform the above activities, differing requirements do not apply.

However, the difference in enforceability of the laws for online platforms licensed in Bhutan and other online platforms not licensed in Bhutan should be noted. In that, court orders and all applicable laws can be enforced against online platforms with head offices located within the jurisdiction of Bhutan, while the same cannot be said for online platforms with head offices outside the jurisdiction of Bhutan.

Reference Citation and Available Links:

- 1) The Consumer Protection Act of Bhutan 2012 § 2 (c), & 19.
 - (i) <https://nubyul.com/consumer-protection-act-of-bhutan-2012/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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?**

None of the existing and relevant laws and regulations neither address nor prescribe any requirement for the online platforms to implement methods to verify the age of a user before allowing access.

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?**

None of the existing and relevant laws and regulations neither address nor prescribe any requirement for the online platforms to implement methods to obtain parental consent before a child uses the services.

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:**

YES

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

The Online Platform's ability to stop the publication of pornography or CSAM imagery is not provided for in the laws and regulations of Bhutan. However, should an Online Platform become aware of the publication of pornography or imagery on its platform, it must not permit the obscene material's publication, failing which it may be prosecuted for the offense of abetting [Information, Communications and Media Act of Bhutan 2018, § 422 & 464 (73)].

Reference Citations and Available Links

- 1) Information, Communications and Media Act of Bhutan 2018 § 422 & 464 (73).
 - (i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>
 - (ii) https://www.bicma.gov.bt/bicmanew/?page_id=31

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

No, currently there is no specific legislation that provides an obligation on Online Platforms to take active steps to remove pornography or other imagery from their servers. However, should an Online Platform become aware of the publication of pornography or imagery on its platform, it must not permit the obscene material's publication, failing which it may be prosecuted for the offense of abetting [Information, Communications and Media Act of Bhutan 2018, § 422 & 464 (73)].

Reference Citations and Available Links

- 1) Information, Communications and Media Act of Bhutan 2018 § 422 & 464 (73).
 - (i) <https://nubyul.com/information-communications-and-media-act-of-bhutan-2018>
 - (ii) https://www.bicma.gov.bt/bicmanew/?page_id=31

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

Yes, the Court may issue preliminary injunctions, temporary restraining orders, interlocutory orders, and injunctions pursuant to the Civil and Criminal Procedure Code of Bhutan 2001 against Online Platforms to stop them from publishing pornography or imagery [Civil and Criminal Procedure Code of Bhutan 2001, § 64, 65, 66, 67].

Additionally, the Court, under Section 39 (f), 212, and 213 (a) and (f) of the Child Care and Protection Rules and Regulations [2015], in the best interest of the child, where the child's safety is at risk can take appropriate measures including the issuance of any orders or measures necessary to protect the child [Child Care and Protection Rules and Regulations [2015], § 39 (f), 212, & 213 (a) & (f)].

Reference Citation and Available Links:



- 1) Civil and Criminal Procedure Code of Bhutan 2001, § 64, 65, 66, & 67.
 - (i) <https://nubyul.com/civil-and-criminal-procedure-code-of-bhutan/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 2) Child Care and Protection Rules and Regulations [2015], § 39 (f), 212, 213 (a), & 213 (f).
 - (i) <https://nubyul.com/child-care-protection-rules-and-regulations-2015/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=rules>

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?

The Court may issue preliminary injunctions, temporary restraining orders, interlocutory orders, and injunctions to prohibit the defendant from posting pornography or imagery again in the future on the same or other Online Platforms [Civil and Criminal Procedure Code of Bhutan 2001, § 64, 65, 66, 67].

Additionally, the Court, under Section 39 (f), 212, and 213 (a) and (f) of the Child Care and Protection Rules and Regulations [2015], in the best interest of the child, where the child's safety is at risk can take appropriate measures including the issuance of any orders or measures necessary to protect the child [Child Care and Protection Rules and Regulations [2015], § 39 (f), 212, & 213 (a) & (f)].

Apart from the court orders mentioned above, if the person is found guilty of posting pornography or imagery again, the Court will consider aggravated circumstances and apply enhanced sentencing [Penal Code of Bhutan 2004, § 15, & 24].

Reference Citation and Available Links:

- 1) Civil and Criminal Procedure Code of Bhutan 2001, § 64, 65, 66, & 67.
 - (i) <https://nubyul.com/civil-and-criminal-procedure-code-of-bhutan/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 2) Child Care and Protection Rules and Regulations [2015], § 39 (f), 212, 213 (a), & 213 (f).
 - (i) <https://nubyul.com/child-care-protection-rules-and-regulations-2015/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=rules>
- 3) Penal Code of Bhutan 2004 §15, & 24]
 - (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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?

Yes, a child has the right to seek financial damages or any sort of monetary recovery from an offender who has shared the child's image or video, in both civil and criminal proceedings.



The Child Care and Protection Rules and Regulations [2015] provide that a child and the child's family have the right to reparation for full redressal, recovery, and reintegration and the Court will order the offender to pay damages as required [Child Care and Protection Rules and Regulations [2015], § 41 (o) & 214].

In a criminal proceeding, under the Penal Code of Bhutan, a child victim can seek damages in general, compensatory damages, and or restitution from the offender who has shared the child's image or video [Penal Code of Bhutan 2004, § 36, 37, 38, 39, 40, 42 & 46; and Penal Code (Amendment) Act of Bhutan 2021, § 7]. The Civil and Criminal Procedure Code of Bhutan also stipulates that the court may order the offender to pay compensation or damages and make restitution to the victim as a form of sentencing [Civil and Criminal Procedure Code of Bhutan 2001, § 208 (e)]. It may be noted that the damages sought under the Penal Code of Bhutan and the Civil and Criminal Procedure Code of Bhutan are not child victim specific but are available for a child victim as well.

In addition to the damages sought under the Penal Code of Bhutan, a child victim can seek damages in civil proceedings. The Civil and Criminal Procedure Code of Bhutan 2001 does not preclude a victim from filing a civil suit against the offender or any other associated parties after completion of a criminal trial [Civil and Criminal Procedure Code of Bhutan 2001, § 212].

According to the Civil Liability Act of Bhutan 2023, a child victim can seek monetary damages, restitution, compensation, damages for non-economic loss, and punitive or exemplary damages from the offender who has shared the child's image or video [Civil Liability Act of Bhutan 2023, § 110, 129, 130, 133, & 136].

Reference Citation and Available Links:

- 1) Child Care and Protection Rules and Regulations [2015], § 41 (o), & 214.
 - (i) <https://nubyul.com/consumer-protection-rules-and-regulations-2015/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=rules>
- 2) Penal Code of Bhutan 2004, § 36, 37, 38, 39, 40, 42, & 46.
 - (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 3) Penal Code (Amendment) Act of Bhutan 2021, § 7.
 - (i) [https://nubyul.com/penal-code-\(amendment\)-act-of-bhutan-2021/](https://nubyul.com/penal-code-(amendment)-act-of-bhutan-2021/)
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 4) Civil and Criminal Procedure Code of Bhutan 2001, § 208 (e), & 212.
 - (i) <https://nubyul.com/civil-and-criminal-procedure-code-of-bhutan/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 5) Civil Liability Act of Bhutan 2023, § 110, 129, 130, 133, & 136.
 - (i) <https://nubyul.com/civil-liability-act-of-bhutan-2023/>
 - (ii) <https://www.nab.gov.bt/page/acts>

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?

The child victim has the right to seek other forms of compensation/recovery/ services provided for under the law and/or by a government-funded source.



The Constitution of the Kingdom of Bhutan directs the government to take appropriate measures to ensure that a child is protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment, and economic exploitation [The Constitution of the Kingdom of Bhutan 2008, art. 9, § 18].

The child victim is entitled to appropriate and special measures to guarantee their safety during and on completion of the judicial proceedings [Child Care and Protection Rules and Regulations of Bhutan 2015 § 212]. In addition, a child victim is entitled to receive essential support services from the State to address their needs and to ensure their reintegration [Child Care and Protection Rules and Regulations of Bhutan 2015 § 211 (b)]. More so, to prevent and protect a child victim from being exposed to further moral dangers and exploitation, the Child Care and Protection Act 2011 directs the government to provide necessary education or training and establish and maintain facilities necessary for providing accommodation, maintenance, and development of a child's character and abilities [Child Care and Protection Act of Bhutan 2011 § 47 (2)].

From the offender, in the event that the offender is unable to provide monetary compensation, the Civil Liability Act of Bhutan 2023 and Section 41 of the Penal Code of Bhutan 2004, allow the child victim to claim damages in kind or possession [The Civil Liability Act of Bhutan 2023, § 111 and Penal Code of Bhutan 2004, § 41].

Reference Citation and Available Links:

- 1) The Constitution of the Kingdom of Bhutan 2008, art. 9, § 18.
 - (i) <https://nubyul.com/constitution-of-bhutan-2008/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>
- 2) Child Care and Protection Rules and Regulations [2015], § 212, 211 (b), & 210 (c) (1).
 - (i) <https://nubyul.com/child-care-protection-rules-and-regulations-2015/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=rules>
- 3) Child Care and Protection Act 2011, § 47 (2).
 - (i) <https://nubyul.com/child-care-and-protection-act-of-bhutan-2011/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=Acts>
- 4) Civil Liability Act of Bhutan 2023, § 111.
 - (i) <https://nubyul.com/civil-liability-act-of-bhutan-2023/>
 - (ii) <https://www.nab.gov.bt/page/acts>
- 5) The Penal Code of Bhutan 2004, § 41.
 - (i) <https://nubyul.com/penal-code-of-bhutan-2004/>
 - (ii) <https://oag.gov.bt/language/en/resources/acts-2/>

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

The Child Care and Protection Rules and Regulations of Bhutan [2015] provides that a child has the right to be informed about any matter relating to the case and various stages of the judicial proceedings [Child Care and Protection Rules and Regulations of Bhutan 2015 § 210 (c) (1) & (2)]. Therefore, a child victim and the family of the child will be notified when an offender is arrested for distributing child pornography or CSAM in which the child is depicted. However, this right may be limited if it is not in the best interest of the concerned child victim [Child Care and Protection Rules and Regulations of Bhutan 2015 § 210 (c)].

Reference Citation and Available Links:

- 1) Child Care and Protection Rules and Regulations [2015], § 210 (c) (1), & 210 (c) (2).
 - (i) <https://nubyul.com/child-care-protection-rules-and-regulations-2015/>
 - (ii) <https://www.ncwc.gov.bt/allpublications?key=rules>

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?

No, there is no legal or regulatory requirement for online platforms to incorporate “Safety by Design” into their systems.

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

Since there is no requirement for online platforms to incorporate “Safety by Design” into their systems, consequently there is no requirement for steps to be taken in that regard for online platforms before it is launched.

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

There is no requirement for online platforms to incorporate “Safety by Design” measures.

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

Description of the legal requirement for incorporation of “Safety by Design” does not exist. It is recommended that an Online Safety Act or laws and regulations to that effect is drafted in order to ensure the safety of users especially the safety of the children.

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”?

There is no information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the online platform incorporation of “Safety by Design”.