

Legal questionnaire completed by Bialski Advogados Associados • April 2024

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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>)

According to Brazilian Civil's Code, minors between the ages of 16 and 18 are relatively capable of exercising the acts of civil life (art. 4, I). Minors under the age of 16 are absolutely incapable of performing the acts of civil life (art. 3). Furthermore, minors cease to be minors when they reach the age of 18, at which point they will be qualified to perform all acts of civil life (art. 5).

According to Brazilian Child and Adolescent Statute, a child is considered to be someone up to the age of twelve and an adolescent is considered to be someone between the ages of twelve and eighteen (art. 2º).

Brazilian Civil's Code:

https://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm

Brazilian Child and Adolescent Statute:

https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

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>)

According to Law 13.431/2017, child sexual exploitation is submission, inducement or attraction to sexual prostitution. Understood as the use of children or adolescents in sexual activity in exchange for remuneration or any other form of compensation, independently or under sponsorship, support or encouragement third party, whether in person or by electronic means.

- Penal Code

Art. 215. Having sexual intercourse or other lewd acts with someone through fraud or other means that prevent or hinder the free expression of the victim's will: Penalty - incarceration, from 2 (two) to 6 (six) years.



Sole paragraph. If the crime is committed with the aim of obtaining an economic advantage, a fine shall also apply.

Art. 216-A. Constraining someone with the intention of obtaining a sexual advantage or favor, taking advantage of the agent's status as hierarchical superior or ascendancy inherent in the exercise of employment, position or function: Penalty - incarceration, from 1 (one) to 2 (two) years.

§ Paragraph 2 The penalty is increased by up to a third if the victim is under the age of 18 (eighteen).

Art. 218-B. Whoever subjects, induces, or attracts a minor under the age of 18 (eighteen) or who, due to illness or mental disability, does not have the necessary discernment to prostitution or other forms of sexual exploitation, facilitates it, prevents or makes it difficult to abandon it, shall be punished with imprisonment for a term of 4 (four) to 10 (ten) years.

§ Paragraph 1: If the crime is committed with the aim of obtaining an economic advantage, a fine shall also apply.

§ Paragraph 2: The same penalties shall apply to:

- I anyone who performs carnal or other libidinous acts with someone under 18 (eighteen) and over 14 (fourteen) years of age in the situation described in the main section of this article;
- II the owner, manager or person responsible for the place where the practices referred to in the main section of this article take place.

§ Paragraph 3: A conviction under paragraph 2, item II, results in the mandatory revocation of the establishment's license to locate and operate.

Art. 227. Inducing someone to satisfy the lust of another: Penalty: Imprisonment from one to three years.

§ Paragraph 1: If the victim is over 14 (fourteen) years old and under 18 (eighteen) years old, or if the perpetrator is his or her ascendant, descendant, spouse or partner, brother, guardian or curator, or a person to whom the victim is entrusted for educational, treatment, or custody purposes:

Penalty: Imprisonment from two to five years.

§2 If the crime is committed with the use of violence or threat, the punishment is imprisonment from two to eight years, in addition to the punishment corresponding to the violence.

§3 If the crime is committed for profit, a fine is also applied.

Art. 228. Inducing or luring someone into prostitution or another form of sexual exploitation, facilitating it, preventing or making it difficult for someone to leave it: Penalty - imprisonment, from 2 (two) to 5 (five) years, and a fine.

§ Paragraph 1 - If the offender is an ascendant, stepfather, stepmother, sibling, stepchild, spouse, partner, guardian or curator, mentor or employer of the victim, or has assumed, by law or otherwise, an obligation of care, protection or vigilance: Penalty - imprisonment, from 3 (three) to 8 (eight) years.

§ Paragraph 2 - If the crime is committed with the use of violence, serious threat or fraud: Penalty - imprisonment, from four to ten years, in addition to the penalty corresponding to the violence.

§ Paragraph 3 - If the crime is committed for profit, a fine shall also apply.



Art. 229. Maintaining, on one's own account or on behalf of a third party, an establishment in which sexual exploitation takes place, whether or not there is any intention of profit or direct mediation by the owner or manager: Penalty - imprisonment, from two to five years, and a fine.

Art. 241-D. Enticing, harassing, instigating or embarrassing a child, by any means of communication, with the aim of practicing a libidinous act with them: Penalty - imprisonment, from 1 (one) to 3 (three) years, and a fine;

Sole paragraph. The same penalties apply to anyone who:

- I facilitates or induces access to the child of material containing explicit or pornographic sex scenes with the aim of practicing libidinous acts with the child;
- II practices the conduct described in the heading of this article in order to induce a child to show themselves in a pornographic or sexually explicit manner;

Art. 244-A. Subjecting a child or adolescent, as defined in the heading of Article 2 of this Law, to prostitution or sexual exploitation: Penalty - imprisonment from four to ten years and a fine, in addition to the forfeiture of assets and values used in the criminal practice in favor of the Fund for the Rights of Children and Adolescents of the Federation unit (State or Federal District) in which the crime was committed, subject to the rights of third parties in good faith.

§ The owner, manager or person in charge of the place where a child or adolescent is subjected to the practices referred to in the heading of this article shall incur the same penalties.

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

- Penal Code

Indecent Assault

Art. 215-A. Performing a libidinous act against someone without their consent with the aim of satisfying one's own lust or that of a third party: Penalty: Imprisonment for 01 (one) to 05 (five) years.

Crime Against sexual freedom

Art. 218-A. Practicing, in the presence of someone under the age of 14 (fourteen), or inducing him/her to witness, carnal conjunction or another libidinous act, in order to satisfy one's own lust or that of another: Penalty - imprisonment, from 2 (two) to 4 (four) years.

- Brazilian Child and Adolescent Statute

Art. 241-E. For the purposes of the crimes provided for in this Law, the expression "explicit or pornographic sex scene" includes any situation involving a child or adolescent in explicit sexual activities, real or simulated, or display of the genitals of a child or adolescent for primarily sexual purposes;

Penal Code:

https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm

Brazilian Child and Adolescent Statute:



https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

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

In accordance with the Law 13.431/2017, child sexual abuse is understood as any action that uses a child or adolescent for sexual purposes, be it carnal conjunction or another libidinous act, carried out in person or by electronic means, for the sexual stimulation of the offender or a third party;

- Penal Code

Indecent Assault

Art. 215-A. Performing a libidinous act against someone without their consent with the aim of satisfying one's own lust or that of a third party. Penalty: Imprisonment for 01 (one) to 05 (five) years.

Child's rape

Art. 217-A. Rape of a vulnerable person. Penalty: Imprisonment for 08 (eight) to 15 (fifteen) years.

§ Paragraph 1 - The same penalty applies to those who carry out the actions described in the caput with someone who, due to illness or mental disability, does not have the necessary discernment to carry out the act, or who, for any other reason, cannot offer resistance.

§ Paragraph 3 - If the conduct results in serious bodily injury: Penalty - imprisonment, from 10 (ten) to 20 (twenty) years.

§ Paragraph 4 If the conduct results in death: Penalty - imprisonment, from 12 (twelve) to 30 (thirty) years.

§ Paragraph 5 - The penalties provided for in the main section and in Paragraphs 1, 3 and 4 of this article apply regardless of the victim's consent or the fact that she had sexual relations prior to the crime.

Penal Code:

https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm

Law 13431/2017:

https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13431.htm

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

- Penal Code

Dissemination of a scene of rape or sexual abuse

Art. 218-C. Offering, exchanging, making available, transmitting, selling or exhibiting for sale, distributing, publishing or disseminating, by any means - including by means of mass communication or computer or telematic system - a photograph, video or other media containing a scene of rape or rape of a vulnerable person or which advocates or induces its practice, or, without the victim's consent, a scene of sex, nudity or pornography: Penalty - imprisonment, from 1 (one) to 5 (five) years, if the fact does not constitute a more serious



crime.

§ Paragraph 1 The penalty is increased by 1/3 (one third) to 2/3 (two thirds) if the crime is committed by an agent who maintains or has maintained an intimate relationship of affection with the victim or for the purpose of revenge or humiliation.

§ Paragraph 2 There is no crime when the perpetrator carries out the conduct described in the heading of this article in a journalistic, scientific, cultural or academic publication, using a resource that makes it impossible to identify the victim, except for their prior authorization, if they are over the of 18 (eighteen).

-Brazilian Child and Adolescent Statute

Art. 240. Producing, reproducing, directing, photographing, filming or recording, by any means, a scene of explicit or pornographic sex involving a child or adolescent: Penalty - imprisonment, from 4 (four) to 8 (eight) years, and a fine.

§ Paragraph 1 - The same penalties apply to anyone who arranges, facilitates, recruits, coerces, or in any way intermediates the participation of a child or adolescent in the scenes referred to in the heading of this article, or even anyone who acts against them.

§ Paragraph 2 - The penalty is increased by 1/3 (one third) if the perpetrator commits the crime:

- I in the exercise of public office or function or under the pretext of exercising it;
- II taking advantage of domestic relations, cohabitation or hospitality; or
- III taking advantage of relationships of consanguineous or affinal kinship up to the third degree, or by adoption, of a guardian, curator, preceptor, employer of the victim or of anyone who, in any other capacity, has authority over them, or with their consent.

Art. 241. Selling or offering for sale photographs, videos, or other recordings that contain explicit or pornographic scenes involving children or adolescents. Penalty: Imprisonment for 04 (four) to 08 (eight) years, and a fine.

Art. 241-A. Offering, exchanging, making available, transmitting, distributing, publishing or disseminating by any means, including by means of a computer or telematic system, a photograph, video or other record containing a scene of explicit or pornographic sex involving a child or adolescent: Penalty - imprisonment, from 3 (three) to 6 (six) years, and a fine.

§ Paragraph 1: The same penalties apply to anyone who:

- I ensures the means or services for storing the photographs, scenes or images referred to in the caput of this article;
- II ensures, by any means, access by computer network to the photographs, scenes or images referred to in the heading of this article.

§ Paragraph 2: The conduct typified in items I and II of Paragraph 1 of this article is punishable when the person legally responsible for providing the service, officially notified, fails to disable access to the illegal content referred to in the heading of this article.

Art. 241-B. Acquiring, possessing, or storing, by any means, photographs, videos, or other forms of recording that contain explicit or pornographic scenes involving children or adolescents: Imprisonment for one to four years, and a fine.

§ Paragraph 1: The penalty shall be reduced by one to two thirds (1) if the material referred to in the main body of this article is of small quantity.



§ Paragraph 2: There is no crime if the possession or storage is for the purpose of communicating to the competent authorities the occurrence of the conduct described in articles 240, 241, 241 A and 241 C of this Law, when the communication is made by:

- I a public official in the exercise of their duties;
- II a member of a legally constituted entity whose institutional purposes include receiving, processing and forwarding reports of the crimes referred to in this paragraph;
- III legal representative and responsible employees of an access provider or service provided through a computer network, until the material relating to the report is received by the police authority, the Public Prosecutor's Office or the Judiciary.

§ Paragraph 3 The persons referred to in paragraph 2 of this article must keep the illicit material referred to confidential.

- 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>)**

-Brazilian Child and Adolescent Statute

Art. 241-C. Simulating the participation of a child or adolescent in a scene of explicit or pornographic sex by tampering with, editing or modifying a photograph, video or any other form of visual representation: Penalty - imprisonment, from 1 (one) to 3 (three) years, and a fine.

Sole paragraph. The same penalties apply to anyone who sells, exposes for sale, makes available, distributes, publishes or disseminates by any means, acquires, possesses or stores material produced under the heading of this article.

https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

- 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>)**

-Penal Code

Corruption of Minors

Art. 218 - Inducing someone under the age of 14 (fourteen) to satisfy the lust of another shall be punished with imprisonment, from 2 (two) to 5 (five) years.

-Brazilian Child and Adolescent Statute

Art. 241-D. Enticing, harassing, instigating or embarrassing a child, by any means of communication, with the aim of practicing a libidinous act with them: Penalty - imprisonment, from 1 (one) to 3 (three) years, and a fine;

Sole paragraph. The same penalties apply to anyone who:

- I facilitates or induces access to the child of material containing explicit or pornographic sex scenes with the aim of practicing libidinous acts with the child;
- II practices the conduct described in the heading of this article in order to induce a child to show themselves in a pornographic or sexually explicit manner;



Penal Code:

https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm

Brazilian Child and Adolescent Statute:

https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

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

The age of sexual consent in Brazil is 14, according to article 217-A of the Penal Code. Below this age, the person is considered vulnerable.

https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm

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>)

- Penal Code:

Art. 218-C, § 1º - Dissemination of a scene of sex, nudity, or pornography, without the victim’s consent, which penalty is increased 1/3 (one third) if the offender is a person who has or has had an intimate relationship with the victim or if the offender commits the crime with the purpose of revenge or humiliation.

https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm

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

Online platforms under Brazilian law have almost no legal or regulatory requirement to undertake, moderate, review content that is being channeled through the platform, including child pornography or CSAM content.

Online platforms are only obliged to remove certain contents if there is a specific court order. Otherwise, there is no legal requirement to do so.

Law 12.965/2014:

Art. 19. In order to ensure freedom of expression and prevent censorship, the Internet application provider can only be held civilly liable for damages arising from content generated by third parties if, after a specific court order, it fails to take steps to make the content identified as infringing unavailable within the scope and technical limits of its service and within the specified timeframe, subject to legal provisions to the contrary.



§ Paragraph 1 The court order referred to in the caput must contain, under penalty of nullity, clear and specific identification of the content indicated as infringing, which allows the material to be unequivocally located.

§ Paragraph 2 The application of the provisions of this article to infringements of copyright or related rights depends on specific legal provision, which must respect freedom of expression and other guarantees provided for in Article 5 of the Federal Constitution.

§ Paragraph 3 Cases involving compensation for damages arising from content made available on the internet related to honor, reputation or personality rights, as well as the unavailability of such content by internet application providers, may be brought before the special courts.

§ Paragraph 4 The judge, including in the procedure provided for in Paragraph 3, may, in whole or in part, anticipate the effects of the relief sought in the initial request, if there is unequivocal proof of the fact and considering the interest of the community in making the content available on the Internet, provided that the requirements of verisimilitude of the plaintiff's claim and well-founded fear of irreparable damage or difficult reparation are present.

Art. 21. The internet application provider that makes available content generated by third parties will be held subsidiarily liable for the violation of privacy resulting from the disclosure, without the authorization of its participants, of images, videos or other materials containing scenes of nudity or sexual acts of a private nature when, after receiving notification from the participant or their legal representative, it fails to diligently promote, within the scope and technical limits of its service, the unavailability of such content.

Sole paragraph. The notification provided for in the caput must contain, under penalty of nullity, elements that allow the specific identification of the material indicated as violating the participant's privacy and the verification of the legitimacy for submitting the request.

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

Online platforms under Brazilian law have almost no legal or regulatory requirement to undertake, moderate, review content that is being channeled through the platform, including enticement, grooming or sextortion of a child.

Online platforms are only obliged to remove certain contents if there is a specific court order. Otherwise, there is no legal requirement to do so.

Law 12.965/2014:

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Art. 21 - The internet application provider that makes available content generated by third parties will be held subsidiarily liable for the violation of privacy resulting from the disclosure, without the authorization of its participants, of images, videos or other materials containing scenes of nudity or sexual acts of a private nature when, after receiving notification from the participant or their legal representative, it fails to diligently promote, within the scope and technical limits of its service, the unavailability of such content.

Sole paragraph. The notification provided for in the caput must contain, under penalty of nullity, elements that allow the specific identification of the material indicated as violating the participant's privacy and the verification of the legitimacy for submitting the request.

- 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**

There is no legal or regulatory requirement specifically on reporting child pornography, CSAM, enticement, grooming or sextortion that they become aware of or are notified about to a law enforcement or government agency. The online platforms are not obliged to report, it is a faculty that can or cannot be used, but are no legal requirements.

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

There is no legal or regulatory requirement specifically on reporting child pornography, CSAM, enticement, grooming or sextortion that the online platforms identify, become aware of, or are notified about. The online platforms are only obliged to take down these content if there is a specific court order.

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

There is no legal or regulatory requirement specifically on 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

There is no legal or regulatory requirement to remove child pornography, CSAM, enticement, grooming or sextortion from their systems when notified of its presence by a victim. Obviously it is prudent that the platforms remove these kind of content, but there is no legal obligation.

- 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 that the platforms must use hashing technology, artificial intelligence or machine learning to detect, remove, block or take down any child pornography, CSAM, enticement, grooming, or sextortion.

- 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.?**

There is no legal distinction between online platforms. All platforms are legally classified as one single category.

Under Law 12.965/2014, online platforms are classified as internet application providers:

Art. 5 For the purposes of this Law, the following are considered:

VII - Internet applications: the set of functionalities that can be accessed through a terminal connected to the Internet;

- 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?**

Brazil still doesn't have any legislation versing about the verification of a user's age before allowing access to an online platform, but this theme is already being discussed in the houses of the legislative power. There are already bills being proposed to make digital platforms accountable for children's and teenager's safety.

PL. 3993/2020 (Bill 3993/2020)

Verses about the obligation of presenting proof of age to have access to online platforms. This bill changes the law 12.965/2014 making it mandatory to show proof of age before entering online platforms.

PL 2628/2022 (Bill 2628/2022)

The Human Rights Commission approved a bill to protect children and teenagers in online

environments, in this bill there is an article prohibiting the creation of online profiles for children under 12 years old. The fail to ensure that these profiles aren't being created can lead to suspension or even prohibition of the service, plus a monetary fine (10% of its income in Brazil or R\$1000,00 by user under 12 years old of a maximum of R\$50.000.000,00).

The Senate is currently voting on this bill.

Therefore, Brazil still doesn't have any legislation in place to regulate at what age people can open accounts in digital platforms, but there are already bills put in place to start fixing this issue, now it's up to the House of Representatives and Senate to pass this bill for it to become a law.

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?

Brazil still doesn't have any legislation versing about parental consent before a child uses the services of online platforms, but this theme is under discussion in the houses of the legislative power. There are already bills proposals to make digital platforms accountable for children's and teenager's safety.

PL 2628/2022 (Bill 2628/2022)

The Human Rights Commission approved a bill to protect children and teenagers in online environments, in this bill there is an article that requires online platforms to obtain parental consent before a child uses the platform services. Although, this requirement applies only to those platforms that have more than 1 million Brazilian child users. These platforms are obliged to prepare reports twice a year on how they obtain parental consent.

The Senate is currently voting on this bill.

Therefore, Brazil still doesn't have any legislation in place to regulate how online platforms obtain consent from their parent's users, but there are already bills put in place to start fixing this issue, now it's up to the House of Representatives and Senate to pass this bill for it to become a law.

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?**

No.

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

Yes, according to Law 12.965/2014:



Art. 19. In order to ensure freedom of expression and prevent censorship, the Internet application provider can only be held civilly liable for damages arising from content generated by third parties if, after a specific court order, it fails to take steps to make the content identified as infringing unavailable within the scope and technical limits of its service and within the specified timeframe, subject to legal provisions to the contrary.

§ Paragraph 1 The court order referred to in the caput must contain, under penalty of nullity, clear and specific identification of the content indicated as infringing, which allows the material to be unequivocally located.

§ Paragraph 2 The application of the provisions of this article to infringements of copyright or related rights depends on specific legal provision, which must respect freedom of expression and other guarantees provided for in Article 5 of the Federal Constitution.

§ Paragraph 3 Cases involving compensation for damages arising from content made available on the internet related to honor, reputation or personality rights, as well as the unavailability of such content by internet application providers, may be brought before the special courts.

§ Paragraph 4 The judge, including in the procedure provided for in Paragraph 3, may, in whole or in part, anticipate the effects of the relief sought in the initial request, if there is unequivocal proof of the fact and considering the interest of the community in making the content available on the Internet, provided that the requirements of verisimilitude of the plaintiff's claim and well-founded fear of irreparable damage or difficult reparation are present.

Art. 20. Whenever it has contact information for the user directly responsible for the content referred to in Art. 19, the internet application provider shall be responsible for communicating to the user the reasons and information relating to the unavailability of content, with information that allows for an adversarial proceeding and a full defense in court, unless expressly provided for by law or a reasoned judicial determination to the contrary.

Sole paragraph. When requested by the user who made the content unavailable, the internet application provider that carries out this activity in an organized manner, professionally and for economic purposes will replace the content made unavailable with the reason or court order that gave rise to the unavailability.

Art. 21. The internet application provider that makes available content generated by third parties will be held subsidiarily liable for the violation of privacy resulting from the disclosure, without the authorization of its participants, of images, videos or other materials containing scenes of nudity or sexual acts of a private nature when, after receiving notification from the participant or their legal representative, it fails to diligently promote, within the scope and technical limits of its service, the unavailability of such content.

Sole paragraph. The notification provided for in the caput must contain, under penalty of nullity, elements that allow the specific identification of the material indicated as violating the participant's privacy and the verification of the legitimacy for submitting the request.

Law 12.965/2014:

https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm

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



Brazilian Code of Civil Procedure:

INTERLOCUTORY RELIEF

Art. 300. Interlocutory relief shall be granted when there are elements that prove the probability of the alleged claim (the “smoke of good law” or *fumus boni iuris*) and the risk of loss or injury to the useful outcome of the lawsuit (*periculum in mora*).

§ 1 In order to grant interlocutory relief, a judge may, as the case may be, demand suitable security interest or personal guarantees in order to compensate for losses that the other party may incur, with the possibility of waiving security interests if the economically disadvantaged party cannot provide them.

§ 2 Interlocutory relief may be granted on a preliminary basis or upon prior justification.

§ 3 Interlocutory relief of a preliminary nature shall not be granted when there is a risk of the effects of the decision being irreversible

Art. 301. Interlocutory relief of a preliminary nature may be enforced by means of a provisional attachment, sequestration, attachment lien on assets, the lodging of a protest against the alienation of property and any other suitable measure to assure the right.

PROCEDURE OF INTERLOCUTORY RELIEF REQUESTED IN THE COMPLAINT

Art. 303. In cases where there is urgency at the time of filing the action, the complaint can consist solely of a request for interlocutory relief and of the disclosure of the final remedy sought, with an explanation of the dispute, of the right sought to be enforced and the risk of loss or injury to the useful outcome of the lawsuit.

§ 1 Once the interlocutory relief referred to in the head provision of his article has been granted:

- I the plaintiff must amend the complaint, complementing it with arguments, filing new documents and confirming the request for final remedy, within fifteen (15) days or longer by determination of the judge;
- II the defendant shall be served with summons and notified to appear at the conciliation or mediation hearing under art. 334;
- III should the dispute not be resolved by the parties, the deadline for the filing of the defence shall start running pursuant to art. 335.

§ 2 If the amendment referred to in item I of § 1 of this article is not realised, the case shall be dismissed without prejudice.

§ 3 The amendment referred to in item I of § 1 of this article is to be filed in the same case, without giving rise to new procedural costs.

§ 4 The plaintiff is to state the value of the claim, which must take into account the final remedy request, in the complaint referred to in the head provision of this article.

§ 5 In the complaint, the plaintiff shall further state his or her intention of taking advantage of the benefit provided for in the head provision of this article.

§ 6 Should the court judge that there is no evidence that would justify granting interlocutory relief, it shall determine that the complaint be amended within five (5) days, under penalty of being denied and the action dismissed without prejudice.

Art. 305. The complaint of the action that aims to obtain a provisional remedy at the outset shall state the dispute and its reasons, a brief statement of the right which it aims to assure and the risk of loss or injury to the useful outcome of the lawsuit.



Sole paragraph. Should the judge deem that the request referred to in the head provision is for an advance remedy, the provisions of art. 303 shall be observed.

Art. 311. Relief based on prima facie evidence is to be granted regardless of the production of evidence of risk of loss or injury to the useful outcome of the lawsuit, when:

- I there is an abuse of the right of defense or the party demonstrates clear intentions of delaying the proceedings;
- II the allegation can only be proven by means of documental evidence and when there is a rule based on the trial of multiple claims on the same point of law or a precedent, a binding statement;
- III it is an action to reclaim the possession of property based on the documental evidence of a bailment contract, in which case an order shall be issued to return the object held by the bailee for safekeeping, on pain of a fine;
- IV the complaint produces sufficient documental evidence of the facts that constitute the plaintiff's right, and against which the defendant does not produce evidence capable of generating reasonable doubt.

Sole paragraph. In the cases set forth in items II and III, a judge may render a preliminary decision.

Brazilian Code of Civil Procedure:

https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm

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?

Yes. According to the previous topic, in the civil sphere, these are the possible measures for the person posting pornography to remove it from the air. In the criminal sphere, there is the possibility of a court order to remove the content, based on the following articles:

-Code of Criminal Procedure:

Art. 282. The precautionary measures provided for in this Title shall be applied in accordance with:

- I Necessity for the application of criminal law, for investigation or criminal investigation and, in the cases expressly provided for, to prevent the commission of criminal offenses;
- II Suitability of the measure to the seriousness of the crime, the circumstances of the fact and the personal conditions of the accused.

§ Paragraph 1. Precautionary measures may be applied separately or cumulatively.

§ Paragraph 2. Precautionary measures shall be ordered by the judge at the request of the parties or, when in the course of a criminal investigation, by representation of the police authority or at the request of the Public Prosecutor's Office.

§ Paragraph 3. Except in cases of urgency or danger of ineffectiveness of the measure, the judge, upon receiving the request for a precautionary measure, shall order that the opposing party be summoned to appear within 5 (five) days, accompanied by a copy of the request and the necessary documents, and the case file shall remain in court, and cases of urgency or danger shall be justified and substantiated in a decision containing elements of the specific case that justify this exceptional measure.

§ Paragraph 4. In the event of non-compliance with any of the obligations imposed, the



judge, at the request of the Public Prosecutor's Office, its assistant or the plaintiff, may replace the measure, impose another in addition, or, in the last resort, decree preventive detention, under the terms of the sole paragraph of art. 312 of this Code.

§ Paragraph 5 -- The judge may, ex officio or at the request of the parties, revoke the precautionary measure or replace it when he finds that there is no reason for it to continue, as well as re--decree it if there are reasons to justify it.

§ Paragraph 6 -- Pre-trial detention shall only be ordered when it cannot be replaced by another precautionary measure, in compliance with Article 319 of this Code, and the failure to replace it by another precautionary measure shall be justified on the basis of the elements present in the specific case, in an individualized manner.

Art. 319. The following are precautionary measures other than imprisonment

- I Periodic appearance in court, within the time limit and under the conditions set by the judge, to inform and justify activities
- II Prohibition of access to or attendance at certain places when, due to circumstances related to the fact, the accused must remain away from these places to avoid the risk of further infractions;
- III Prohibition of maintaining contact with a specific person when, due to circumstances related to the fact, the accused must remain distant from them;
- IV Prohibition to leave the district when the stay is convenient or necessary for the investigation or instruction;
- V Home confinement at night and on days off when the investigated or accused has a fixed residence and work;
- VI Suspension of the exercise of public functions or economic or financial activities when there is a fair fear that they will be used to commit criminal offenses;
- VII provisional internment of the accused in the event of crimes committed with violence or serious threat, when the experts conclude that the accused is incapable or semi-capable (art. 26 of the Penal Code) and there is a risk of repetition;
- VIII Bail, in cases where bail is allowed, to ensure attendance at proceedings, to prevent obstruction of proceedings or in the event of unjustified resistance to a court order;
- IX Electronic monitoring;

§ Bail shall be applied in accordance with the provisions of Chapter VI of this Title, and may be combined with other precautionary measures.

Code of Criminal Procedure:

https://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm

- 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?**

– CIVIL CODE

Art. 927. Whoever, through an unlawful act (arts. 186 and 187), causes damage to another, is obliged to make reparation.

Sole paragraph. There will be an obligation to repair the damage, regardless of fault, in the cases specified by law, or when the activity normally carried out by the author of the damage implies, by its nature, a risk to the rights of others.



Art. 186. Whoever, through voluntary action or omission, negligence or recklessness, violates a right and causes damage to another, even if exclusively moral, commits an unlawful act of another.

Art. 187. The holder of a right who, in exercising it, manifestly exceeds the limits imposed by its economic or social purpose, by good faith or by good customs also commits an illicit act.

Civil Code:

https://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm

- 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?**

No.

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

No.

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?**

Safe by design is not implemented in Brazil’s legislation in any way, because Brazil uses a method of repression of crimes after they are identified. In Brazil, online platforms are not required to prevent the distribution of CSAM, but to repress it when identified.

All the legislation regarding the production, distribution and possession of CSAM is in the law 11.829, which alters the Children and Teenager’s statute, versing specifically about child pornography.

Law 11.829

ART. 241-A Offer, Exchange, transmit, distribute, publish or advertise by any means, including by online system, photographs, video or any other way to contain sexual or explicit content involving children or teenagers: Penalty – seclusion, of 3 to 6 years, and fine.

§ 1º in the same penalty incurs whom:

- I assures means or services to hold such pictures, videos or images of whom refers this legal rule;
- II assures, by any means, the access by online platforms to such pictures, videos or images of what refers this legal rule;

§ 2º the conducts specified in items I and II of § 1º of this legal rule are punishable when the online platform fails to disable the access of such illegal content.

ART. 241-B Buy, possess, or hold, by any means, pictures, video or images that contain sex



scenes or explicit content involving children or teenagers: Penalty – seclusion, of 1 to 4 years, and fine.

§ 1º the penalty is decreased by 1 to 2/3 if the material specified in this legal rule is of a small amount.

§ 2º there is no crime if the possession or hold has the goal of communication to the authorities, or any conduct specified in arts. 240, 241, 241-A and 241-C of this law, when the communication is done by:

- I public agent on the job;
- II member of an entity with the goal to receive process and send the proofs of the crimes committed to the right recipient;
- III legal representative and personnel responsible by providing access to internet providers or online platforms, that send such material to the police, the Public Minister or the Judiciary.

§ 3º People referred in § 2º of this legal rule must keep secret of such material.

ART. 241-C Simulate the participation of a child or teenager in a sex scene or explicit pornographic content, by means of adulteration, editing or modification of a picture, video or image: Penalty – seclusion, of 1 to 3 years, and fine.

Single Paragraph. Incurs in the same penalties, who sells, exposes, advertises, makes available, distributes, or publishes by any means, buys, possess or holds the material referenced in this legal rule.

ART. 241-D Entice, harass, instigate or embarrass, by any means of communications a child, with the goal of practicing a sexual act with them: Penalty – seclusion, of 1 to 3 years, and fine.

Single Paragraph. In the same penalty incurs whom:

- I facilitates or induces the access to children of sexual or explicit content with the goal of practicing a sexual act with them;
- II practices the conducts described in this legal rule with the goal of inducing a child to display their self in a sexual way;

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

There are no requirements to implement "Safety by Design" in before the launch of an Online Platform.

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

There is no requirement to implement "Safety by design" measures in Online Platforms.

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

There is no requirement to implement "Safety by design" measures in Online Platforms.

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 requirement to implement "Safety by design" measures in Online Platforms.