

Legal questionnaire completed by Carey & Cía • June 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>)

Our legislation, when dealing with the legal capacity to contract, Section 26 of the Chilean Civil Code, makes a main distinction between a person of legal age and a minor. Among the latter, which are those who have not reached the age of eighteen, a distinction is made between (i) the infant or child (under seven years of age); (ii) the impuberal (male under fourteen years of age and female under twelve years of age) and (iii) the so-called "menor adulto" (the one who has ceased to be impuberal, but have not reached the age of eighteen).

<https://www.bcn.cl/leychile/navegar?idNorma=172986&idParte=8717776>

In the family law area, Section 16 of Law No. 19,968 of 2004, which creates the Family Courts, considers a child to be any human being who has not reached the age of fourteen and an adolescent from the age of fourteen until he/she reaches the age of eighteen.

<https://www.bcn.cl/leychile/navegar?idNorma=229557>

The above is consistent with the criteria indicated in Section 1 of Law No. 21,430 regarding Guarantees and Comprehensive Protection of the Rights of Childhood and Adolescents.

<https://www.bcn.cl/leychile/navegar?idNorma=1173643>

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>)

Section 367 of the Chilean Criminal Code in its last paragraph defines sexual exploitation as the use of a person under the age of eighteen for the performance of a sexual act or an act of sexual significance with that person in exchange for any form of remuneration to the victim or a third party.

<https://www.bcn.cl/leychile/navegar?idNorma=1984&idParte=9672605>



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

There is no legal definition in our legislation.

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

There is no legal definition in our legislation. However, the definition used in this context is taken from international regulations. In this sense, the National Center of Child Abuse and Neglect, 1978, defines child sexual abuse as contacts and interactions between a child and an adult when the adult uses the child to sexually stimulate him/herself, the child, or another person.

<https://www.sename.cl/web/wp-content/uploads/2019/05/01-Aspectos-teo%C3%8C%C2%81ricos-del-abuso-sexual-infantil.pdf>

Notwithstanding the above, Section 362 and following of the Chilean Criminal Code punish the crime of rape, as well as a series of conducts regarding the sexual abuse of minors.

<https://www.bcn.cl/leychile/navegar?idNorma=1984&idVersion=2023-11-24&idParte=>

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

Section 367 quáter of the Chilean Criminal Code establishes that pornographic or sexually exploitative material, using minors, means any representation of such minors engaged in real or simulated explicit sexual activities, or any representation of their genital parts for primarily sexual purposes, or any representation of such minors with their voice or image.

<https://www.bcn.cl/leychile/navegar?idNorma=1984&idParte=9672605>

- 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 in our legislation.

- 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>)**

There is no legal definition in our legislation. However, the definition used in this context is taken from comparative law. In this sense, grooming is a criminal form of sexual harassment by an adult who contacts a child or adolescent in order to gradually gain his or her trust and then involve that person in sexual activity.

https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/33450/1/BCN_delito_de_grooming_por_personas_menores_de_edad_Derecho_Comparado_2022.pdf



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

Section 362 of the Criminal Code states that the legal age of consent for sexual activity is 14. However, there are some limitations regarding minors from 14 to 17 years of age.

https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/33530/2/BCN_Edad_consentimiento_sexual_rev_RBS__1_.pdf

- 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>)

There is no legal definition contained in any official Law, however, the Ministry of the Interior and Public Safety published a flyer containing a concept of sextortion, stating it consists of blackmail in which the victim is threatened with the dissemination of images, videos or sexual content of their own.

<https://www.csirt.gob.cl/media/2020/02/Ciberconsejos-sextors%C3%B3n.pdf>

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
- b. review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child
- 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
- d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about
- e. 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
- 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.
- 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 are no legal or regulatory requirements or recommendations for Online Platforms related to the protection of children against sexual exploitation. However, there is currently a bill, under the nomenclature "Boletín N° 14.561-19", which aims to regulate the situation of digital service platforms in Chile, including their responsibility derived from the content they provide, as well as the data protection duties they have.

https://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=14561-19

Notwithstanding the foregoing, the Chilean Criminal Code in Section 367 septies, establishes a crime that punishes whoever, using "technical devices", transmits the image or sound of a situation that causes a person under eighteen years old to witness, see or hear the performance of a sexual action or an act of sexual significance. If so, the offender risks a penalty of 3 years and 1 day up to 5 years of imprisonment.

<https://www.bcn.cl/leychile/navegar?idNorma=1984&idVersion=2023-11-24&idParte=>

Nevertheless, it should be noted that such liability and criminal sanction can only be imposed on the natural person who commits or is involved in the commission of the crime. Therefore, if the crime occurs through an Online Platform, since it is not one of the offenses mentioned in Law No.20,393, the legal entity cannot be held liable for the crime. However, the above will not prevent the Public Prosecutor's Office to initiate a criminal investigation involving the Platform, as well as its owners or legal representatives, in order to discover who -within the company- has intervened in the commission of the crime, either by perpetrating it, or by failing to take the necessary measures to prevent and/or stop its commission.

<https://www.bcn.cl/leychile/navegar?idNorma=1008668&idVersion=2022-12-21&idParte=8811434>

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?

Law No. 19,846 on Cinematographic Productions Qualification ("LCPQ") regulates a qualification system for the purposes of commercialization, exhibition and public distribution of cinematographic productions and videogames, and it may be applicable to Online Platforms as distributors of a cinematographic production or a videogame.

Notwithstanding that the law establishes certain obligations for the screening of cinematographic works that are physically exhibited in theaters (the LCPQ regulates an "age certification" for physical places by showing the relevant ID public document, such as the national identity card, or other equivalent), Article 22 of said law states that the owner, representative or administrator of the establishment or Internet site that infringes the law may be sanctioned with a fine of 5 to 10 Monthly Tax Units or "UTM" (i.e. US\$330 to US\$660 approx.). The LCPQ also provides for: (i) a fine of 25 UTM (approx. US\$1,650) fine for every time someone modifies the rating qualification, exhibits a version of a film different from the one qualified by the CQC, or exhibits a film not qualified by the CQC. In cases of repeated offences, the fine shall be doubled; and (ii) a fine of 25 UTM (approx. US\$1,650) fine for delivering, at any title, cinematographic productions containing pornographic or

excessively violent content to minors.

<https://www.bcn.cl/leychile/navegar?idNorma=206396>

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?

From a data protection perspective, if the Online Platform collects and/or processes otherwise a user's personal data (whether through an age verification method or derived from the use itself of the platform), the user's prior express and written authorization will be required to comply with provisions from Chilean Law No. 19,628 on the Protection of Private Life ("DPL"). With respect to minors, there is no special regulation regarding the minimum age for the processing of personal data, so the general rules set forth in the Chilean Civil Code are applicable: an individual attains legal age at 18 years old, and since that moment he/she is legally capable of entering into a legally binding contract. Under the age of 18, the Chilean Civil Code distinguishes between:

- Minor adults ("menor adulto"): women who have turned 12 years old and men who have turned 14 years old, but who have not turned 18 years old yet. They can legally enter into a binding agreement or any other act with legal effects (i) represented by their parents/legal guardian or (ii) authorized by them.
- Minors: women under the age of 12 and men under the age of 14. They can only act represented by their parents or legal guardian.

<https://www.bcn.cl/leychile/navegar?idNorma=141599>

Finally, please note that a Bill to amend the DPL is currently being discussed which in Chilean Congress (the "DPL Bill"), among other things, includes specific rules regarding the processing of minor's personal data. This DPL Bill provides that the processing of personal data concerning children (under 14 years of age) and adolescents (over 14 and under 18 years of age) can only be carried out "in their best interest and respecting their progressive autonomy".

For these purposes, the Bill expressly requires that: (i) in the case of children (under 14), their parents/legal who have them under their care, must grant their consent; and (ii) in the case of adolescents (over 14 and under 18), their data may be processed in accordance with the rules of authorization provided by the Bill for adults, except in the case of the sensitive personal data of adolescents under 16 years of age, which may only be processed with the consent granted by their parents or legal representatives or the person in charge of their care.

The DPL Bill is still under discussion in the Chamber of Deputies (currently at the second constitutional stage) and it is expected to be passed soon.

<https://protecciondedatos.carey.cl/en/bill/text-of-bill/text-of-bill-in-english/>

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?

There is no law in Chilean legal system that addresses this phenomenon comprehensively, but there are some regulations that serve to protect children against online exploitation. Among these are:

- (i) Law No. 19,927 on Sexual Offenses , which includes child pornography
<https://www.bcn.cl/leychile/navegar?idNorma=220055>
- (ii) Law No. 21,459 on computer crimes
<https://www.bcn.cl/leychile/navegar?idNorma=1177743>
- (iii) Law No. 20,393 on criminal liability of legal persons
<https://www.bcn.cl/leychile/navegar?idNorma=1008668>
- (iv) Law No. 21,057 on the protection of the rights of children and adolescents
<https://www.bcn.cl/leychile/navegar?idNorma=1113932>
- (v) Law No. 20,453 that ensures the principle of network neutrality for consumers and user of the internet
<https://www.bcn.cl/leychile/navegar?idNorma=1016570>, and especially
- (vi) Political Constitution of the Republic, section 20
<https://www.bcn.cl/leychile/navegar?idNorma=242302>.

There are legal actions in the criminal field, mainly the criminal complaint, since the figure of online child sexual exploitation can be framed in the crimes of "Improper child sexual abuse" (Section 366 quarter), in which "grooming" can be framed under "Favoring child prostitution" (Section 367 of the Criminal Code) and the "Obtaining sexual services from minors or improper favoring" (Section 367 ter of the Criminal Code).

<https://www.bcn.cl/leychile/navegar?idNorma=1984>

Also, one of the most widely used remedies is the constitutional protection remedy ("recurso de protección"), an action which stands out for its rapid processing and is intended to reestablish the rule of law in situations that violate constitutionally protected rights.

The "recurso de protección" is recognized in Section 20 of the Political Constitution of the Republic (the "Constitution") [<https://www.bcn.cl/leychile/navegar?idNorma=242302>] and is also regulated in Act Number 94-2015 of the Supreme Court.

<https://www.bcn.cl/leychile/navegar?idNorma=1080916>

The Constitution provides the "recurso de protección" to all persons who, as a result of arbitrary or unlawful acts or omissions, suffer deprivation, disturbance or threat to some constitutional rights.

In the case of online child sexual exploitation, the "recurso de protección" may be filed under (i) the right to life and to the physical and psychological integrity of the person; or (ii) the respect and protection of the private life and honor of the person and his/her family.

If there is evidence of wrongdoing or arbitrariness, the respective Court may order the requested party to remove all material affecting the honor, reputation and right to self-image



of the affected person within a specified period (for example, 5 days). In addition, the Court may forward the case to the Public Prosecutor's Office for investigation of the facts constituting a felony.

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

The "recurso de protección" does not directly contemplate such a possibility. However, indirectly, the appellant could claim against public telecommunications service concessionaires and Internet access providers, by means of a "recurso de protección", the existence of an omission to respond to the request to remove online material that may constitute child abuse. This purpose could be accomplished by virtue of Law 20,453, that include the new section 24 H letter a) second paragraph to Law 18,168 , which stipulates that public telecommunications service concessionaires and Internet access providers may block access to certain content, applications or services, only at the express request of the user, and at the user's expense. Besides, on previous occasions, the Undersecretary of Telecommunications of Chile ("Subtel") has instructed, ex officio, the blocking of websites containing child pornography.

<https://www.bcn.cl/leychile/navegar?idNorma=1016570>

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

With the "recurso de protección" the claimant can request an injunction ("orden de no innovar") requesting the Court to order the necessary measures to reestablish the legality. Also, indirectly, the claimant could claim against public telecommunications service concessionaires and Internet access providers, by means of a "recurso de protección", the existence of an omission to respond to the request to remove online material that may constitute child abuse. This purpose could be accomplished by virtue of Law 20,453, 24 H letter a) second paragraph, which stipulates that public telecommunications service concessionaires and Internet access providers may block access to certain content, applications or services, only at the express request of the user, and at the user's expense. Besides, on previous occasions, the Undersecretary of Telecommunications of Chile ("Subtel") has instructed, ex officio, the blocking of websites containing child pornography.

<https://www.bcn.cl/leychile/navegar?idNorma=1016570>

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 Courts of Appeals may order the respondent, in the context of the "recurso de protección", to abstain in the future from publishing on any social network any publication or allusion that is offensive to the honor of the person affected by the same facts discussed in the action brought. Nevertheless, being a special and limited precautionary action, if the respondent fails to comply with such an order, there would be no coercive means to force the removal of the post. In such an event, a new protective action would have to be filed.

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?

This cannot be accomplished through the "recurso de protección", but through an ordinary proceeding for damages for extra-contractual liability, the victim could obtain pecuniary compensation from the victimizer (Law 1,552, articles 253 et seq).

<https://www.bcn.cl/leychile/navegar?idNorma=22740>

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?

There is no specific regulation on the subject.

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

There is no specific regulation on the subject.

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?

Please note that in Chile there are no legal requirements to incorporate "Safety by Design" into their systems.

However, from a data protection standpoint, please note that a Bill to amend the DPL is currently being discussed which in Chilean Congress (the "DPL Bill"). Among other things, DPL Bill expressly states that among the duties of data controllers will be the duty of protection by design and by default, providing that the data controller shall be responsible for implementing appropriate technical and organizational measures from the design, prior to and during the processing of personal data.

https://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=11144-07

The measures to be applied must take into consideration the state of the art; the costs of implementation; the nature, scope, context and purposes of the data processing; as well as the risks associated with such activity.

In addition, the data controller shall implement technical and organizational measures to ensure that, by default, only personal data that are specific and strictly necessary for such activity are processed (collected, gathered, shared, etc.). For this purpose, consideration shall be given to the number of data collected, the extent of the processing, the storage period and its accessibility.

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

As mentioned before, in Chile there are no legal requirements to incorporate



“Safety by Design” into their systems. Please see answer 6.a.

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

As mentioned before, in Chile there are no legal requirements to incorporate “Safety by Design” into their systems. Please see answer 6.a.

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

As mentioned before, in Chile there are no legal requirements to incorporate “Safety by Design” into their systems. Please see answer 6.a.

- 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”?**

As mentioned before, in Chile there are no legal requirements to incorporate “Safety by Design” into their systems. Please see answer 6.a.