

Legal questionnaire completed by Consortium Legal - March 2024

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

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

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

Article 2 of The Code of Childhood and Adolescence provides the following definition:

“Artículo 2°- Definición.

Para los efectos de este Código, se considerará niño o niña a toda persona desde su concepción hasta los doce años de edad cumplidos, y adolescente a toda persona mayor de doce años y menor de dieciocho. Ante la duda, prevalecerá la condición de adolescente frente a la de adulto y la de niño frente a la de adolescente.”

[Unofficial Translation:

“Article 2°- Definition.

For the purposes of this Code, a child shall be considered a person from conception to twelve years of age, and an adolescent shall be considered a person over twelve years of age and under eighteen years old. In case of doubt, the condition of adolescent shall prevail over that of adult and the condition of child over that of adolescent.”]

Regarding the scope of application of this Code, the following article broadens the concept by indicating that there shall be no discrimination based on characteristics of any kind:

“Artículo 3°- Ámbito de aplicación.

Las disposiciones de este Código se aplicarán a toda persona menor de edad, sin distinción alguna, independientemente de la etnia, la cultura, el género, el idioma, la religión, la ideología, la nacionalidad o cualquier otra condición propia, de su padre, madre, representantes legales o personas encargadas.

Los derechos y las garantías de este grupo son de interés público, irrenunciables e intransigibles.”



[Unofficial Translation:

“Article 3°- Scope of application.

The provisions of this Code shall apply to all minors, without any distinction whatsoever, regardless of ethnicity, culture, gender, language, religion, ideology, nationality, or any other condition of their own, of their father, mother, legal representatives or persons in charge. The rights and guarantees of this group are of public interest, unwaivable and unyielding.”]

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=43077&nValor3=0&strTipM=TC

On the other hand, the Convention on the Rights of the Child, which was signed by Costa Rica in 1990, by Law 7184, also refers to the concept of "child" or "minor", specifically, Article 1 indicates:

“Para los efectos de la presente Convención se entiende por niño todo ser humano menor de dieciocho años de edad, salvo que, en virtud de la ley que le sea aplicable, haya alcanzado antes la mayoría de edad.”

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=RA&nValor1=1&nValor2=6606&nValor3=7032&nValor5=38920

[Unofficial translation:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.]

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>)

There is no definition of “child sexual exploitation” in Costa Rican legislation.

In 1999, Law 7899, also called Law Against the Sexual Exploitation of Minors, was enacted. This Law, which modified the Costa Rican Criminal Code, is relevant because it included articles that set out new penalties for sexual crimes that are considered “child sexual exploitation” under the laws in Costa Rica, in the following cases:

- sexual relations with minors;
- when a person promises remuneration to a minor in exchange for having sexual relations or erotic acts;
- corruption of minors for erotic, pornographic or obscene purposes, in public or private exhibitions or shows, even if the minor consents to such actions;
- pimping, or promoting prostitution against minors;
- human trafficking as the violation of a minor’s vulnerability and sexual exploitation of such child through the use of technologies or any other means;



- fabrication, production, reproduction and possession of child pornography are taken as abusive and constitute sexual exploitation against minors.

This section of the Criminal Code, which includes penalties for crimes related to child sexual exploitation, was modified several times after the enactment of this law. The legislation that is currently in force is the following: Articles 159, 160, 161, 167, 167 bis, 170, 172, 173, 173 bis, 174.

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027

The Ministry of Health, along with the Costa Rican Social Security Fund, have drafted a Manual for the attention of children and adolescents who are victim of sexual exploitation for commercial purposes. This Manual is aimed at health officials. The concept of sexual exploitation of children and adolescents for commercial purposes is defined as the use of children and adolescents in sexual activities in exchange for financial remuneration or promise of remuneration, as well as any other type of remuneration.

<https://www.corteidh.or.cr/sitios/Observaciones/2/AnexoIX.pdf>

Patronato Nacional de la Infancia is the institution in charge of the protection of minors in Costa Rica. This institution has a specialized manual on emerging cases of sexual exploitation of minors under eighteen years of age. The concept of sexual exploitation of children and adolescents for commercial purposes is also defined in a similar way.

<https://www.corteidh.or.cr/sitios/observaciones/2/AnexoIV.pdf>

The Childhood and Adolescence Code, N° 7739, came into effect on December 11, 1997.

The Childhood and Adolescence Code is important because it establishes a minimum legal framework for the protection of the individual rights of minors this protection or benefit prevails over any other relevant code. It establishes principles and rules and the main offenses that cause physical and emotional integrity of minors and establishes the sanctions in case of issuing any of these.

An important point is that any person, outside the identity of the minor, can make representations on behalf of minors, can file a complaint in the event that a violation is considered to have occurred to minors.

http://www.pgrweb.go.cr/scij/busqueda/normativa/normas/nrm_texto_completo.aspx?param2=1&nValor1=1&nValor2=43077&IResultado=4&strSelect=sel

The United Nations Convention on the Rights of the Child:

In Costa Rica, the international treaties that have been ratified are included in the national legislation, and since 1990, when the Convention on the Rights of the Child was ratified, Article 34 is of special relevance to this issue at the national level.



<https://observatoriodegenero.poder-judicial.go.cr/images/Normativa/Internacional/Ninos-Ninas/Convencion-Derechos-del-Nio.pdf>

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

There is no definition of “sexually explicit conduct” in Costa Rican legislation.

According to the research report “Harassment, abuse and acts of sexual connotation” of the Online Legal Information Center of the University of Costa Rica, the definition of sexually explicit conduct can be analyzed in two elements. As for the first element of the definition, “behavior or conduct” should be understood in a broad sense that includes actions of verbal, written, gestural or physical contact. By conduct of a “sexual nature” or “sexual conduct” in the strict sense, it is understood as acts of exhibitionism, touching, rubbing involving the genital organs of the body commonly considered erogenous (breasts, gluteus, etc.) and by acts of sexual connotation or implication, sexual proposals, insinuations, vulgar language or gestures and exhibition of pornographic material.

<https://cijulenlinea.ucr.ac.cr/portal/descargar.php?q=Nzcz>

As aforementioned, Law 4573, the Costa Rican Criminal Code, includes several sections on these types of crimes. An example is Article 167 bis.

The law seeks to align with mandates of international law on children and adolescents to protect minors against abusive sexual conduct.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=138898&strTipM=TC

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

The United Nations Convention on the Rights of the Child:

In Costa Rica, the international treaties that have been ratified are included in the national legislation, and since 1990, when the Convention on the Rights of the Child was ratified, Article 34 is of special relevance to this issue at the national level.

<https://observatoriodegenero.poder-judicial.go.cr/images/Normativa/Internacional/Ninos-Ninas/Convencion-Derechos-del-Nio.pdf>

In the Criminal Code, Article 161 defines the offense of Sexual Abuse against minors and incapacitated persons, stating that anyone who, in an abusive manner, engages in acts for sexual purposes with a minor or incapacitated person or compels them to perform such acts on the perpetrator, themselves, or another person, shall be punished with imprisonment for a term of three to eight years, provided it does not constitute the crime of rape.

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027



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

The issue of the manufacture, production or reproduction of child pornography is addressed in the national legislation in the Criminal Code, specifically in Article 173.

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=5027&nValor3=138750&nValor5=23953

The same Code also penalizes the possession of such material (Article 173 bis).

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=5027&nValor3=138750&nValor5=215629

The Code also punishes the dissemination, exhibition, distribution, financing or display of child pornography (Article 174).

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=5027&nValor3=138750&nValor5=23954&strTipM=FA

Article 174 bis punishes the production of pornography when there has been intention of simulating the appearance of minors, even if they are not shown.

It should be mentioned that all the above, with the exception of article 174 bis, were amended by the Law for the Prevention of Harassment of Underage Persons by Electronic or Virtual Means (GROOMING) and amendment of the Criminal Code No. 10020, of October 2021. The articles mentioned above are the current articles that are in force.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=95290&nValor3=127168&strTipM=TC

Regarding this issue, the Convention on the Rights of the Child does not make direct and specific reference to the conduct, but it does refer to the position that States must take to prevent such conduct (Article 34).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=6606&nValor3=7032&nValor5=38953

On the other hand, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which was signed by Costa Rica in 2012 and ratified in 2013, is positioned as a guide for the States have signed the Convention.

This protocol seeks that the States parties adopt measures with respect to the protection of the human rights of persons living in the signatory countries, in addition to configuring the Committee on the Rights of the Child as the body with competence to resolve situations that are brought before it (Article 5).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=76099&nValor3=94877&strTipM=TC



Another Protocol that has been adopted by Costa Rica (signed in 2000) is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which outlines the State's obligations in this regard (Articles 1, 2, 3).

<https://www.ohchr.org/es/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

Finally, the European Convention on Cybercrime (Budapest 2001), which was signed and ratified by Costa Rica in 2017, regulates child pornography related offenses (Article 9).

<https://rm.coe.int/1680081561>

- 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>)

In Costa Rican regulations, there is no specific law that regulates images or videos of child pornography generated by computer or artificial intelligence, however, codes and laws that regulate similar issues will be addressed.

- Criminal Code (Law 4573): articles 173, 174 bis

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027

- Childhood and Adolescence Code (Law 7739): Article 27

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=43077&nValor3=0&strTipM=TC

- 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>)

Prevention of harassment of minors by electronic or virtual means (GROOMING) Law and Criminal Code reform. (2021)

The objective of this law is to establish both the theoretical and practical bases, in terms of criminalization, of the concept of grooming or harassment of minors by electronic means, because this concept is characteristically new in the global regulatory framework.

Criminal Code – Costa Rica: Articles 167, 167 bis, 173.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=95290&nValor3=127168&strTipM=TC

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



are specified?

The legal age of consent for sexual activity in Costa Rica is 15 years. The Criminal Code regulates sexual relations in articles 159 and 161.

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027

- 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>)**

Costa Rican law does not define the concept of “sextortion” directly. However, the Criminal Code addresses the issue of extortion at a general level in Article 214.

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027

Apart from what has just been mentioned, there is no specific norm that deals with the subject, however there is an attempt to produce a law to add the figure of sexual extortion of minors, now known at the Legislative Assembly as file n ° 24063, “Law to Protect Minors from Sexual Predators on Social Networks and their Privacy Through Criminal Measures For Protection Against Sexual Predators and Social Networks”.

Besides some recommendations made by public institutions, there are no specific crimes for sextortion.

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.?

To this day there are no regulations or laws that directly approach the topic of age verification, moderation or reviewing on social media platforms in Costa Rica.

The country focuses on the individualization of each criminal complaint or situation through the judicial system, but not by working with the social platform itself. There are no technological sources or related ways that automatically process this content. The approach is through the Law nº 10020 of "Prevention of Stalking (grooming) of Minors by Digital Ways and Reform of the Criminal Law Code".

This law creates an inter institutional commission which goal is to provide legal recommendations of actualization in this topic to the Legislative Assembly, to create strategies to promote awareness and to look for any other ways to protect minors against sexual crimes committed through electronic or virtual media.

This regulation, in its third article says:

"Artículo 3 - Creación de la Comisión interinstitucional para la protección de la persona menor de edad frente a delitos sexuales cometidos a través de medios electrónicos o virtuales (Grooming). Se crea la Comisión interinstitucional para la protección de la persona menor de edad ante la comisión de delitos sexuales a través de medios electrónicos o virtuales, que estará adscrita al Patronato Nacional de la Infancia (PANI), como ente constitucionalmente encargado de la protección de la persona menor de edad."

[Unofficial Translation:

"Article 3 - Creation of the Inter-institutional Commission for the protection of minors against sexual crimes committed through electronic or virtual media (Grooming). The Inter-institutional Commission for the protection of minors against sexual crimes committed through electronic or virtual means is hereby created, which shall be attached to the National Child Welfare Agency (PANI), as the entity constitutionally in charge of the protection of minors".

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=95290&nValor3=127168&nValor5=4

The fourth article in the same law, sections a and d, refer to the functions of this commission:

"Artículo 4- Funciones de la Comisión. La Comisión tendrá las siguientes funciones:

- a) Coordinar las políticas, acciones, estrategias y actuaciones de las entidades involucradas,

para asegurar la protección efectiva de las personas menores de edad ante la comisión de delitos sexuales en medios electrónicos o virtuales.

(...)

- d) Promover estrategias de concientización con los operadores y prestatarios de servicios de telecomunicaciones, para que colaboren con las autoridades y desarrollen mecanismos que coadyuven en la prevención, detección y persecución de delincuentes sexuales que utilicen medios electrónicos o virtuales para cometer actos en perjuicio de personas menores de edad o incapaces.”.

[Unofficial Translation:

Article 4 - Functions of the Commission. The Commission shall have the following functions:

- a) Coordinate the policies, actions, strategies and actions of the entities involved, to ensure the effective protection of underage persons against the commission of sexual crimes in electronic or virtual media.

(...)

- d) Promote awareness strategies with operators and providers of telecommunications services, so that they collaborate with the authorities and develop mechanisms to assist in the prevention, detection and prosecution of sex offenders who use electronic or virtual media to commit acts to the detriment of minors or legally incapacitated persons.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=95290&nValor3=127168&nValor5=5&strTipM=FA

Besides this, there is no affirmative answer to the questions.

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?

Costa Rica, to this day, does not have any regulations concerning the age at which minors are allowed to access Social Media Platforms. However, there are recommendations, which are not mandatory, made by public institutions in their social public platforms that mention that the minimum age is thirteen.

An example of this kind of recommendations is the image, shared by the INAMU (National Women’s Institute) in the following link: <https://www.inamu.go.cr/ciberseguridad>

There are some other recommendations, like the ones shared by the MIVAH (Ministry of Housing and Human Settlements) below.

“Las redes sociales son espacios para el encuentro de personas en Internet, donde comparten mensajes de texto, imágenes, videos y fotografías, esté atento:

1. Personas extrañas pueden acceder a información personal para hacer uso indebido.
2. El contenido visualizado en las redes sociales puede ser inapropiado para menores.

3. La edad mínima de acceso recomendada para el uso de redes sociales es de 13 años.”

These recommendations indicate that social networks are spaces for people to meet on the Internet, where they share text messages, images, videos, and photographs with inappropriate content. It is clear that the Internet is an open space, it is extremely useful, but it contains information that is not suitable for minors, so the following points should be taken into account:

[Unofficial Translation:

- “1. Strangers can access personal information to make improper use.
2. The content displayed on social networks may be inappropriate for minors.
3. The minimum age of access recommended for the use of social networks is 13.”]

<https://www.mivah.go.cr/Ciberseguridad.shtml#:~:text=El%20contenido%20visualizado%20en%20las,sociales%20es%20de%2013%20a%C3%B1os>

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?

Currently, there are no laws relating to the implementation of methods to establish parental consent before a child uses the services of online platforms. However, there is a draft bill at the Legislative Assembly, the “Law for the Comprehensive Protection of the Privacy of Minors in Virtual Environments”, that should it be approved, will regulate and provide the explanation of the use and storage of personal data on minors.

As the draft bill mentions, according to a study conducted by the National Children’s Hospital, 47% of the underage population has been exposed to pornography, generating a serious danger of sexual exploitation, pimping and even murder. Many of these minors are between ten and fifteen years of age.

There is the famous Grooming which consists in the harassment of an adult to gain the child’s confidence through the internet, with the purpose of sexually abusing him or her.

Some of the relevant articles of the draft bill are: Articles 2, 3.

<https://d1qqtien6gys07.cloudfront.net/wp-content/uploads/2021/04/21557.pdf>

There are also other laws that protect children’s rights:

- A) Código de la Niñez y la Adolescencia. Articles 22, 25, 27

https://www.pgrweb.go.cr/scij/busqueda/normativa/normas/nrm_texto_completo.aspx?param1=NRTC¶m2=1&nValor1=1&nValor2=43077&strTipM=TC&lResultado=4&strSelect=sel

- B) Ley de Justicia Penal Juvenil. Article 21

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=19385&nValor3=0&strTipM=TC

- C) Criminal Code of Costa Rica. Article 389.

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?**

In Costa Rica the legal remedies that exist rely on the filing of a criminal complaint on the Costa Rican judicial court. In this case, the victim of the crime can and should file a criminal complaint against the offender or offenders in the Attorney General's Office. Depending on the crime, the criminal procedure is different, but it will always apply the provisions of the Criminal Code and the Code of Criminal Procedure, as well as special laws, if they exist for the specific case.

In Costa Rica there´s no ability to stop the publication of the pornography or CSAM imagery by the Online Platform that has its domain in a foreign country. The exception is when the pornography shown involves Costa Rican children. In this case the extraterritoriality of criminal law is a statement that refers to the possibility of applying the punitive law for actions or acts committed in a place outside the territorial limits for which it was enacted. Therefore it is possible to apply Costa Rican criminal law to punishable acts committed abroad by Costa Ricans or committed against Costa Ricans. In which case, Article 6 of the Criminal Code applies.

Also, what Costa Rica can do in those cases, in case the foreign country is subscribed to the Childrens Rights Convention (article 34), is request this foreign country to act in order to stop the publication of pornography or CSAM imagery on the Online Platform, but this will depend only on the foreign countries' jurisdiction.

Criminal Code:

“ARTÍCULO 6º.-

Podrá incoarse proceso por hechos punibles cometidos en el extranjero y en ese caso aplicarse la ley costarricense, cuando:

(...)

- 3) Se perpetraren contra algún costarricense o sus derechos.
- 4) Hayan sido cometidos por algún costarricense.”

[Unofficial Translation ARTICLE 6.

Proceedings may be instituted for punishable acts committed abroad and in that case Costa Rican law shall be applied, when:

(...)

- 3) They are perpetrated against any Costa Rican or his rights.
- 4) They have been committed by a Costa Rican.]



http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=138898&strTipM=TC

Children´s Rights Convention:

“Artículo 34

Los Estados Parte se comprometen a proteger al niño contra todas las formas de explotación y abusos sexuales. Con este fin, los Estados Parte tomarán, en particular, todas las medidas de carácter nacional, bilateral y multilateral que sean necesarias para impedir:

- a) La incitación o la coacción para que un niño se dedique a cualquier actividad sexual ilegal;
- b) La explotación del niño en la prostitución u otras prácticas sexuales ilegales;
- c) La explotación del niño en espectáculos o materiales pornográficos.”

[Unofficial Translation:

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. To this end, States Parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent, combat and eliminate all forms of sexual exploitation and sexual abuse of children:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of a child in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances or materials.]

<https://www.unicef.org/es/convencion-derechos-nino/texto-convencion>

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

There is no obligation from the Online Platform to take active steps to remove the pornography or other imagery from their servers unless the platform´s domain resides in Costa Rica and a physical person can be held accountable. As mentioned in the answer of question a, Costa Rica has no jurisdiction on the crime of publication of pornography or CSAM imagery if the Online Platforms domain resides outside of the Costa Rican borders.

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

A judge from the Costa Rican judicial system is entitled to issue an injunction or a court order against the representative of the Online Platform only if the platforms domain resides in Costa Rica, according to article 3 from the Judicial Branch Organic Law, which states the following:

“Artículo 3.- Administran la justicia:



(...) El juez que conozca de un proceso tendrá la facultad de ordenar lo que corresponda, para el cumplimiento de sus funciones y, en cada asunto, tendrá la potestad de ejercer el régimen disciplinario. (...)"

[Unofficial Translation:

"Article 3.- Justice Administration:

(...) The judge assigned to a proceeding shall have the power to order whatever is appropriate, for the fulfillment of his functions and, in each case, shall have the power to exercise the disciplinary regime. (...)"

https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?para m2=NRTC&nValor1=1&nValor2=33635

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?

A Costa Rican judge can issue an injunction or judicial order that prohibits the person who posts the pornography or imagery from doing so in the future on the same Online Platform only if a criminal case is filed and falls into the Costa Rican jurisdiction, according to Article 3 from the Judicial Branch Organic Law mentioned above.

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?

If a criminal case is filed in the Costa Rican judicial system, the plaintiff can request a compensation for financial damages or monetary recovery and physiological damages compensation, which in Costa Rica is called "pago por daños y perjuicios". In our legal system, the Code of Criminal Procedures establishes the possibility of bringing a civil action within a criminal proceeding, through the filing of a civil action for restitution. The purpose of this legal figure is the restitution of things to their original state, and the recovery of damages, or both, caused or derived from the criminal conduct, in this sense Article 37 of the Code of Criminal Procedure states:

"Artículo 37: Ejercicio. La acción civil para restituir el objeto materia del hecho punible, así como la reparación de los daños y perjuicios causados, podrá ser ejercida por el damnificado, sus herederos, sus legatarios, la sucesión o por el beneficiario en el caso de pretensiones personales, contra los autores del hecho punible y partícipes en él y, en su caso, contra el civilmente responsable."

[Unofficial Translation:

"Article 37. Exercise: The civil action for the restitution of the object that is the subject matter of the punishable act, as well as the reparation of the damages caused, may be exercised by the injured party, his heirs, his legatees, the succession or by the beneficiary in the case of personal claims, against the perpetrators of the punishable act and participants in it and, if applicable, against the civilly liable party".



The civil action for compensation exercised within the criminal proceeding, has certain particularities regulated from articles 37 to 41 of the Code of Criminal Procedure, thus, it has an accessory character (article 40), which implies that it remains while the criminal action remains; and it is of alternative exercise (article 41) which means, that the way of exercising the civil action can be chosen, either criminal or civil, but it is forbidden to exercise it, simultaneously, in both ways.

In the case of social damage, Article 38 of the Code of Criminal Procedure, in addition to giving the Attorney General's Office of the Republic legal standing for its participation, establishes the possibility of exercising the civil action for social damage within the criminal process.

In order to proceed with the collection of compensation for social damage as a result of the commission of criminal acts, the Attorney General's Office, which is the only one legitimized for this, must present within the criminal process a civil action for compensation and within this action indicate the reasons on which the action is based, indicating the nature that is invoked and the damage whose reparation is sought, trying to specify its amount (indispensable elements for proceeding), as contemplated in art. 112 of the Criminal Code.

The figure of the "querella" is the declaration that a person makes in writing to bring to the attention of the judge facts that he/she believes have the characteristics of a crime. With it, the complainant requests the opening of a criminal case in which the commission of the alleged crime will be investigated and will be constituted as the accusing party in the same.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297

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 Costa Rican court has a protection of the victim office which provides psychological assistance and advice on safety measures. The Office of Attention and Protection of Victims (OAPVD) belongs to the Public Prosecutor's Office and is in charge of the attention and protection of all victims, witnesses and other subjects involved in the criminal process, who are within the scope of application of Law 8720 (Sistema Costarricense de Información Jurídica (pgrweb.go.cr)). It has 19 offices throughout the country, staffed by professionals in social work, psychology, criminology and law, with voluntary and free programs:

- Attention Program: its objective is to strengthen all persons who are the target of the law and face criminal proceedings, through an interdisciplinary approach.
- Protection Program: its objective is to protect the rights of users whose life or physical integrity are at risk, as well as to regulate the extra-procedural protection measures provided for in Article 11, paragraph b) of the above-mentioned law, through the intervention of technical evaluation teams that assess the risk situation and determine the extra-procedural recommendations.

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

The Costa Rican judicial systems notify the victim via email when the offender is arrested.

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, in Costa Rican regulations there are no legal requirements to implement “Safety by Design” or any similar protection programs into national online systems. There are several regulations against the crime of Manufacture, production, or reproduction of pornography, but none of these regulations are directed towards online platforms.

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

N/A

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

N/A

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

N/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”?

Costa Rican cybersecurity measures are mostly focused on data protection regarding government institutions’ online platforms, there are no regulations for online platforms used by civilians or any user, therefore, there are no programs for monitoring or managing the production or reproductions of Child Pornography.