

Legal questionnaire completed by Pino Elizalde Abogados • March 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>)

Article 4 - Definition of Child and Adolescent. A child is an individual who has not reached the age of twelve. An adolescent is a person of either sex between the ages of twelve and eighteen. (Child and Adolescent Law, link: <https://shorturl.at/aBY12>)

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>)

Article 69 - Concept of Sexual Exploitation. Sexual exploitation comprises child prostitution and child pornography. Child prostitution is the utilization of a child or adolescent in sexual activities in exchange for remuneration or any other form of compensation. Child pornography is any representation, through any means, of a child or adolescent engaged in explicit sexual activities, whether real or simulated, or depicting their genital organs, with the purpose of promoting, suggesting, or evoking sexual activity. (Child and Adolescent Law, link: <https://shorturl.at/aBY12>)

Art. 100 - Sexual Exploitation. - Any person who, for their benefit or that of third parties, sells, lends, exploits, or exchanges another person to engage in one or more acts of a sexual nature shall be subject to a penalty of imprisonment ranging from thirteen to sixteen years. If the described conduct is carried out against older adults, (child’s (girls and boys), adolescents, pregnant women, individuals with disabilities or catastrophic illnesses, individuals in situations of risk, or those in vulnerable situations, or if there exists or has existed a consensual relationship of partnership, family, marital, or economic dependence between the victim and the perpetrator, or if there is a link of civil, military, educational, religious, or occupational authority, the penalty of imprisonment shall be from sixteen to nineteen years. (Organic Criminal Code , link: <https://shorturl.at/gnAU8>)

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



Although there is no specific legal framework addressing sexually explicit conduct, the Organic Criminal Code, in its articles 169 and 172, provides the following provisions:

Article 169 - Corruption of Children and Adolescents:

1. Any person who intentionally allows access or exposure of children or adolescents to sexually explicit, violent, or hate-inducing content shall be punished with imprisonment for a term of one to three years.
2. Any person who incites, leads, or allows the entry of children or adolescents into brothels or places where pornography is exhibited shall be punished with imprisonment for a term of three to five years. (Organic Criminal Code link: <https://shorturl.at/gnAU8>)

Art. 172.- Employment of persons for public exhibition for purposes of a sexual nature. -The person who uses children or adolescent, persons over sixty-five years of age or persons with disabilities to force them to exhibit their body totally or partially for purposes of a sexual nature, shall be punished with deprivation of liberty for a term of seven to ten years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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

Article 68 - Concept of Sexual Abuse. Notwithstanding the provisions of the Organic Criminal Code on the matter, for the purposes of this Law, sexual abuse constitutes any physical contact or suggestion of a sexual nature to which a child or adolescent is subjected, even with their apparent consent, through seduction, blackmail, intimidation, deception, threats, or any other means.

Any form of sexual harassment or abuse shall be reported to the competent Public Prosecutor for legal purposes, without prejudice to administrative investigations and sanctions as appropriate. (Child and Adolescent Law, link: <https://shorturl.at/aBY12>)

Art. 170 - Sexual Abuse - Any person who, against the will of another, performs on them or compels them to perform on themselves or another person an act of a sexual nature, without penetration or carnal access, shall be subject to a penalty of imprisonment ranging from three to five years.

When the victim is under fourteen years of age or has a disability; when the person lacks the capacity to comprehend the meaning of the act or for any reason cannot resist it; or if, as a consequence of the offense, the victim suffers a permanent physical injury or psychological harm or contracts a serious or deadly illness, the penalty of imprisonment shall be from seven to ten years.

If the victim is under six years of age, the penalty of imprisonment shall be from ten to thirteen years.

The maximum penalties established in the preceding paragraphs shall be imposed when such sexual abuse is intentionally recorded or broadcast live by the perpetrator through any digital means, electronic device, or any information and communication technologies.



Likewise, the maximum penalties established in the preceding paragraphs shall be imposed when, in addition to the recording or transmission of this sexual abuse through any digital means, electronic device, or information and communication technologies, the victim is physically assaulted, and such assault is also recorded or transmitted. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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

Article 103.- Pornography using children or adolescents: The person who photographs, films, records, produces, transmits or edits visual, audiovisual, computer, electronic or any other physical support or format containing the visual representation of real or simulated nudity or semi-nudity of children or adolescents in a sexual attitude, even if the material has its origin abroad or is unknown, shall be punished with deprivation of liberty for thirteen to sixteen years.

If the victim, in addition, suffers from some type of disability or serious or incurable disease, shall be punished with imprisonment of sixteen to nineteen years.

When the offender is the father, mother, relative up to the fourth degree of consanguinity or second degree of affinity, guardian, legal representative, curator or belongs to the intimate environment of the family; minister of worship, professor, teacher, or person who by his profession or activity has abused the victim, shall be punished with imprisonment of twenty-two to twenty-six years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

Art. 174.- Offer of sexual services with minors under eighteen years of age by electronic means. - The person who uses or facilitates electronic mail, chat, instant messaging, social networks, blogs, photoblogs, network games or any other electronic or telematic means to offer sexual services with minors under eighteen years of age shall be punished with deprivation of liberty for seven to ten years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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>)

Situations like these have not yet been regulated. Nevertheless, as mentioned above, child pornography is a crime.

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- 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>)**

While there is no specific legal term addressing this conduct, certain behaviors falling under the umbrella of "enticement or grooming" are indeed recognized as crimes. Examples of such offenses include:

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2. Any person who incites, leads, or allows the entry of children or adolescents into brothels or places where pornography is exhibited shall be punished with imprisonment for a term of three to five years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

Article 102 - Sexual Tourism: Any person who organizes, promotes, offers, provides, transports, recruits, acquires, or contracts tourist activities involving sexual services shall be punished with imprisonment for a term of seven to ten years. If the victims fall into any of the following cases, the imprisonment term shall be from ten to thirteen years:

1. If they are children or adolescents or individuals in vulnerable situations, even if they have given their consent. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

Art. 172.- Employment of persons for public exhibition for purposes of a sexual nature. - The person who uses children or adolescent, persons over sixty-five years of age or persons with disabilities to force them to exhibit their body totally or partially for purposes of a sexual nature, shall be punished with deprivation of liberty for a term of seven to ten years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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



are specified?

In Ecuador, in accordance with article 171 of the Organic Criminal Code, it is considered rape when the victim is under fourteen years old, given that any individual below this age is not legally capable of providing consent. Consequently, any sexual relationship with individuals under the age of 14 is deemed a crime.

Regarding sexual relationships involving adolescents between the ages of 14 and 18, the Constitutional Court of Ecuador, in its decision No. 13-18-CN/21, sets forth that the consent of adolescents in sexual activities should be subject to case-by-case evaluation to ascertain its validity. Therefore, starting from the age of 14, an adolescent is legally deemed capable of granting consent to engage in sexual activities. (Court Judgment No. No. 13-18-CN/21, link: <https://t.ly/X2VrS>)

Furthermore, Article 167 of the Organic Criminal Code addresses the offense of “estupro”. It defines estupro as “A person over the age of eighteen who, through deception, engages in sexual relations with another person between the ages of fourteen and eighteen, shall be punished with imprisonment ranging from one to three years.” This provision reflects the legal stance on protecting adolescents from exploitative relationships, ensuring that even within the age range of 14 to 18, the law guards against deceptive practices in sexual interactions.

- 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>)**

In Ecuadorian law, the term "sextortion" lacks a specific definition concerning minors. The current legislation in Ecuador addresses sexual extortion in general terms without making explicit distinctions for cases involving children. The absence of a specific definition for child sextortion does not imply a lack of legal measures against such offenses.

Below is the relevant legal provision that refers to acts of sexual extortion.

Article 172.1 - Sexual Extortion. Any person who, using violence, threats, or blackmail, induces, incites, or forces another person to exhibit their naked or semi-naked body or engage in sexual acts, with the purpose of obtaining personal gain for themselves or a third party, whether of a sexual nature or otherwise, shall be subject to a prison sentence ranging from three to five years. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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**

In Ecuador, while there are regulations to protect the integrity of children and adolescents, there are currently no explicit legal provisions regarding requirements or recommendations



for Online Platforms to undertake active measures against online child sexual exploitation. Therefore, it is not a direct obligation for Online Platforms to implement mechanisms or technologies aimed to detecting or preventing the distribution of child pornography or sexually abusive content.

Nonetheless, the legal framework sets forth the criminalization or classification of offenses, such as pornography using children or adolescents, the offer of sexual services to minors under eighteen years of age by electronic means, and the commercialization of child pornography and child sexual abuse. This legal framework, in general, is applicable to Online Platforms and aims to protect children from online sexual exploitation. (Organic Criminal Code, link: <https://shorturl.at/gnAU8>)

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

In Ecuador, while there are regulations to protect the integrity of children and adolescents, there are currently no explicit legal provisions regarding requirements or recommendations for Online Platforms to undertake active measures against online child sexual exploitation. Therefore, it is not a direct obligation for Online Platforms to implement mechanisms or technologies aimed to detecting or preventing the distribution of child pornography or sexually abusive content.

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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

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

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

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

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- 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.

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- 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.?

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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?

In Ecuador, there is currently no specific legislation mandating the implementation of age verification for users on digital platforms. Nevertheless, the Organic Law for the Protection of Personal Data regulates the processing of personal data in all types of automated support, extending its applicability to Online Platforms.

According to this law, explicit authorization from parents, tutors or legal representatives is required for the processing of personal data concerning children and adolescents. This mandate is applicable to adolescents aged twelve (12) to fifteen (15) years old, as well as children. On the contrary, adolescents aged fifteen (15) to eighteen (18) years old have the autonomy to directly manage the processing of their personal data.

While the law does not explicitly demand age verification, Online Platforms may implement such measures to avoid processing the data of minors without proper authorization. This approach may serve as a preventative measure to evade potential sanctions for non-compliance with data protection regulations. (Organic Law for the Protection of Personal Data, Article 21, link: <https://t.ly/wCvNT>)

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?

Yes. Online Platforms are legally required to obtain parental consent before a child uses them until the age of 15 years old.

When a minor creates a user on a social network, it is necessary to provide information regarding their personal data such as (full names, age, date of birth, place of birth, among others). In this sense, the Organic Law for the Protection of Personal Data of Ecuador issued in the year 2021, regulates the processing of personal data contained in any type of automated support, therefore, applicable to digital platforms.

The above law sets forth that data of children and adolescents may not be processed unless the express the authorization of their legal representative is obtained. This prohibition applies to adolescents over twelve (12) years old and under fifteen (15) years old, as well as for children. However, the law states that adolescents over fifteen (15) years old and under eighteen (18) years old may directly exercise the processing of their personal data.

Therefore, consent in Ecuadorian legislation is necessary and failure to comply with data protection regulation will result in the respective sanctions. (Organic Law for the Protection of Personal Data, Articles 2, 21, 24 and 66, link: <https://t.ly/wCvNT>)

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 legal regulation (specific provisions) that obligates the removal of certain type of publications, or the ability get an injunction against the online platform regarding child pornography.

However, the general rules still apply. In Ecuador, the right to protect personal data, informational self-determination, image, honor, and privacy are recognized. In this context, precautionary measures such as constitutional preventive measures can be applied to restore the situation.

As mentioned, the Constitution of the Republic of Ecuador provides the following:

“Art. 87 - Precautionary Measures: Precautionary measures may be ordered jointly or independently of constitutional actions to protect rights, with the aim of preventing or stopping the violation or threat of violation of a right.” (See: Document 5. Constitution of Ecuador).

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

Please refer to answer 5 (a).

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

Please refer to answer 5 (a).

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?

When constitutional rights are violated, such as privacy, intimacy, personal data, image, or honor, and a constitutional action is filed, Judges can grant protection measures before, during, and after the process to prevent recidivism as a reparative mechanism.

Constitutional Case No. 2064-14-EP/21 established the following:

“This Court places on record the absolute prohibition of any type of treatment of the photographs that are the subject of this controversy as a guarantee of non-repetition and part of the integral reparation. (...) Therefore, the defendant must do everything in its power to ensure that no processing of the personal data of the plaintiff is granted, as it has already stated in the affidavit; without being able to guarantee that a third party, other than itself, does not grant them a treatment. In any case, if it could be demonstrated that someone else has been able to access or process said photographs as a consequence of the actions of the defendant, he could also be liable for it and, therefore, the legal actions of the plaintiff, in the event that this were to occur, are left intact.” (See: Document 4. Case No. 2064-14-EP21).

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?

In the constitutional field, article 18 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, which is an essential law that the Ecuadorian Constitutional Court apply for its sentences, set forth the following:



Art. 18.- Integral reparation: In the event that a violation of rights is declared, integral reparation for material and non-material damage shall be ordered. Comprehensive reparation shall seek that the person or persons entitled to the violated right enjoy the right in the most adequate manner possible and that the situation prior to the violation is restored.

Reparation may include, among other forms, restitution of the right, economic or patrimonial compensation, rehabilitation, satisfaction, guarantees that the act will not be repeated, the obligation to refer to the competent authority for investigation and punishment, measures of recognition, public apologies, provision of public services, health care (...) (See: Document 2. Jurisdictional Guarantees and Constitutional Control Law)

Additionally, the Child and Adolescent Law set forth that despite the sanctions imposed by other laws civil liability in children's matters are applicable:

Article 19.- Sanctions for violation of children's rights shall be punished in the manner prescribed in this Code and other laws, without prejudice to the corresponding reparation as a consequence of civil liability. (See: Document 3. Child and Adolescent Law)

As a result, compensation can be granted in both civil and criminal proceedings when children's rights are violated.

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?

Article 78 of the Organic Criminal Code states the following:

Article 78.-Mechanisms for the reparation of damages. - The non-exclusive forms of integral, individual, or collective reparation are:

[...]

2. Rehabilitation: aimed at the recovery of persons through medical and psychological care, as well as guaranteeing the provision of legal and social services necessary for these purposes. (See: Document 1. Organic Criminal Code).

Thus, the victim can access recovery services during and after trial, as part of his/hers entitled reparation right.

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

This legal remedy can be applied according to Ecuadorian Organic Criminal Code, article 11 paragraph 11 sets forth the following:

Art. 11.-Rights. -In all criminal proceedings, the victim of the offenses shall be entitled to the following rights:

[...]

11. To be informed, even if he/she has not intervened in the process, regarding the final result (sentence/verdict/judgment), at the victims registered address, if known. [...] (See: Document 1. Organic Criminal Code)

Therefore, notification to the victim of the trial verdict results in a legal obligation in Ecuador.

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?

Online Platforms are not required to implement “Safety by Design” into their systems. This includes both situations: before the launch of the platform and after the platform has already been in use.

Nevertheless, in the year 2021 Ecuador recently published a National Cybersecurity Policy establishing specific objectives regarding this topic and lines of action as the following:

- 2.1. Develop and implement common processes and tools for managing and responding to cyber incidents at the national level based on management protocols, modeling of scenarios of possible occurrence and impact.
- 2.4. Promote the development and/or update of a regulatory framework for the national system for incident management and response in cyberspace and define clear competencies for each of the actors involved. (See: Document 8. National Cybersecurity Policy).

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

Please refer to 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?

Please refer to answer 6(a).

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

Please refer to 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”?



Please refer to answer 6(a).