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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>)

“child” (section 2 of Prevention of Child Pornography Ordinance, <https://www.elegislation.gov.hk/hk/cap579>)

Further information:

Treaties that are in force and applicable to Hong Kong

- Convention on the Civil Aspects of International Child Abduction, The Hague, 25.10.1980
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the Hague, 29.5.1993
- Worst Forms of Child Labour Convention, Geneva, 17.6.1999 (ILC No. 182)
- International Convention for the Suppression of the Traffic in Women and Children, Geneva, 30.9.1921
- Convention on the Rights of the Child, New York, 20.11.1989, as amended in 1995
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, New York, 25.5.2000

“child” means a person under the age of 16 (Section 2 of Prevention of Child Pornography Ordinance (Cap. 579) (the “Prevention of Child Pornography Ordinance”))

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>)

No such legal definition. However, the heading for sections 129 to 139 of Crimes Ordinance is “Exploitation of other persons for sexual purposes”, <https://www.elegislation.gov.hk/hk/cap200>).



No such legal definition.

“Trafficking in persons to or from Hong Kong” means taking part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution. (Section 129 of Crimes Ordinance (Cap. 200) (the “Crimes Ordinance”))

“Control over persons for purpose of unlawful sexual intercourse or prostitution” means harbouring another person or exercising control or direction over another person with the intention that that person shall do unlawful sexual acts with others; or harbouring another person or exercising control, direction or influence over another person for the purpose of or with a view to that person’s prostitution. (Section 130 of Crimes Ordinance)

“Causing prostitution” means procuring another person to become, in Hong Kong or elsewhere, a prostitute; or procuring another person to leave Hong Kong, intending that other person to become, elsewhere, an inmate of or frequent any premises, vessel or place kept as a vice establishment; or procuring another person to leave her or his usual place of abode in Hong Kong, intending that other person to become an inmate of or frequent any premises, vessel or place kept as a vice establishment, in Hong Kong or elsewhere, for the purpose of prostitution. (Section 131 of Crimes Ordinance)

“Intercourse with girl under 13” means any man who has unlawful sexual intercourse with a girl under the age of 13. (Section 123 of Crimes Ordinance) “Intercourse with girl under 16” means any man who has unlawful sexual intercourse with a girl under the age of 16 unless the man reasonably believes the girl to be his wife in an invalid marriage by reason of the wife being under the age of 16. (Section 124 of Crimes Ordinance)

“Procurement of girl under 21” means procuring a girl under the age of 21 to have unlawful sexual intercourse in Hong Kong or elsewhere with a third person. (Section 132 of Crimes Ordinance)

“Detention for intercourse or in vice establishment” means detaining another person against her or his will with the intention that the other person shall do an unlawful sexual act; or on any premises or vessel, or in any place, kept as a vice establishment. (Section 134 of Crimes Ordinance)

“Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16” means causing or encouraging the prostitution of or an unlawful sexual act with a girl or boy under the age of 16 for whom that person is responsible. (Section 135 of Crimes Ordinance)

“Living on earnings of prostitution of others” means knowingly living wholly or in part on the earnings of prostitution of another. (Section 137 of Crimes Ordinance)

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

No such legal definition. However, there is reference to “explicit sexual conduct” in section 138A(4)(a) of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)



No such legal definition.

“Rape” means when a man has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it. (Section 118 of Crimes Ordinance)

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

No such legal definition.

According to the Social Welfare Department, “child abuse” is defined as any act of commission or omission that endangers or impairs a child’s physical or psychological health and development of an individual under the age of 18. Such act is judged on the basis of a combination of community standards and professional expertise. Meanwhile, “sexual abuse” is the involvement of a child in sexual activity (e.g. rape, oral sex) which is unlawful, or to which a child is unable to give informed consent. This includes direct or indirect sexual exploitation and abuse of a child (e.g. production of pornographic material). (<https://www.swd.gov.hk/vs/doc/publicity/Child%20Abuse%20It%20Matters%20You.pdf>).

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

“Child pornography” (section 2 of Prevention of Child Pornography Ordinance, <https://www.elegislation.gov.hk/hk/cap579>)

“Child pornography” means (a) a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a person who is or is depicted as being a child, whether it is made or generated by electronic or any other means, whether or not it is a depiction of a real person and whether or not it has been modified; or (b) anything that incorporates a photograph, film, image or depiction referred to in paragraph (a), and includes data stored in a form that is capable of conversion into a photograph, film, image or depiction referred to in paragraph (a) and anything containing such data. (Section 2 of Prevention of Child Pornography Ordinance)

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>)

“Intimate image” (definition includes “altered images”) (section 159AA (Interpretation) of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)

“Intimate image” in relation to an individual—

(a) means an image showing—

- (i) an intimate part of the individual; or
- (ii) the individual doing an intimate act; and

(b) includes an image that has been altered to appear to show—

- (i) an intimate part of the individual; or
- (ii) the individual doing an intimate act,



- regardless of whether any intimate part shown in the image described in subparagraph (i) or (ii) is in fact that of the individual; but
- (c) does not include an image so altered that no reasonable person would believe that it shows—
- (i) an intimate part of the individual; or
 - (ii) the individual doing an intimate act;

(Section 159AA (Interpretation) of Crimes Ordinance)

- 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>)**

No such legal definition.

However, it is a statutory offence to “use, procurement or offer of persons under 18 for making pornography or for live pornographic performances” (section 138A of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)

“Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances” means using, procuring or offering another person who is under the age of 18 for making pornography, or for a live pornographic performance, in which that other person is or is to be pornographically depicted. (Section 138A of Crimes Ordinance)

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

For girls: age of 16 for indecent assault and sexual intercourse; while age of 21 for buggery (sections 122, 123-124 and 118D of Crimes Ordinance respectively, <https://www.elegislation.gov.hk/hk/cap200>)

For man: age of 16 for buggery (section 118C of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)

For girls: age of 16 (because intercourse with girls under 16 (and 13) is prohibited, and person under age of 16 cannot in law give any consent which would prevent an act being an assault); while age of 21 for buggery (Sections 122, 123-124 and 118D of Crimes Ordinance)

For men: age of 16 for buggery (Section 118C of Crimes Ordinance)

- 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>)**

“Intimidation” (section 24 of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)

It is a statutory offence to “procure another person by threats or intimidation to do an



unlawful sexual act” (section 119 of Crimes Ordinance,
<https://www.elegislation.gov.hk/hk/cap200>)

“Blackmail” (section 23 of Theft Ordinance,
https://www.elegislation.gov.hk/hk/cap210?xpid=ID_1438402833456_003)

“Intimidation” means any person who threatens any other person—

- (a) with any injury to the person, reputation or property of such other person; or
- (b) with any injury to the person, reputation or property of any third person, or to the reputation or estate of any deceased person; or
- (c) with any illegal act,

with intent in any such case—

- (i) to alarm the person so threatened or any other person; or
- (ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or
- (iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do,

(Section 24 of Crimes Ordinance)

“Procure another person by threats or intimidation to do an unlawful sexual act” means procuring another person, by false pretences or false representations, to do an unlawful sexual act in Hong Kong or elsewhere.

(Section 119 of Crimes Ordinance)

“Blackmail” means when a person with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—

- (a) that he has reasonable grounds for making the demand; and
- (b) that the use of the menaces is a proper means of reinforcing the demand.

(Section 23 of Theft Ordinance)

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

It is an offence to publish any obscene article, whether or not the offender knows that it is an obscene article, unless he/she can prove that he had had no reasonable opportunity to inspect the article at the time of the offence is alleged to have been committed (section 21 of Control of Obscene and Indecent Articles Ordinance,
https://www.elegislation.gov.hk/hk/cap390!en?xpid=ID_1438403141385_001&INDEX_CS=N).

Meaning of obscene or indecent materials: include any material that is violent, depraved or repulsive.

If the servers of the relevant Online Platforms (e.g. social media and instant messaging



groups) which the obscene article was published are hosted in Hong Kong, they would also be subject to the regulation.

(<https://www.info.gov.hk/gia/general/202005/13/P2020051300201.htm?fontSize=1>)

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

No relevant regulation or recommendation.

- 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**

No relevant regulation or recommendation.

In Hong Kong, the Mandatory Reporting of Child Abuse Bill (the “Bill”) was introduced to the Legislative Council for readings on 14 June 2023, but it has not been effective to date. Nevertheless, the Bill will only place the reporting responsibility on professionals who work with children such as doctors, nurses, social workers and teachers. It does not intend to regulate Online Platforms.

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

Allowing child pornography or CSAM to be published or distributed on Online Platform may constitute an offence under section 21 of Control of Obscene and Indecent Articles Ordinance (see question 2(a) for more details).

In past incidents of distribution of pornography and obscene articles on Online Platforms, the police made requests to the relevant Online Platforms to remove the content after investigation.

(<https://www.info.gov.hk/gia/general/202005/13/P2020051300201.htm?fontSize=1>)

As recommended in the Report of Advisory Group on Health Effects of Use of Internet and Electronic Screen Products

(https://www.studenthealth.gov.hk/english/internet/report/files/e_report_wa.pdf), if the content is indecent, the internet service provider should request the webmaster to add the statutory warning notice or remove the indecent article. If the content is likely to be obscene, the internet service provider should block access to the article or request the webmaster to remove it. The internet service provider may also cancel the account of the repeated offenders.

No relevant regulation or recommendation in respect of enticement, grooming or sextortion.

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

No relevant regulation or recommendation.

- 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**

Allowing child pornography or CSAM to be published or distributed on Online Platform may constitute an offence under section 21 of Control of Obscene and Indecent Articles Ordinance (see question 2(a) for more details).

No relevant regulation or recommendation in respect of enticement, grooming or sextortion.

- 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.

No relevant regulation or recommendation.

- ii. **Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.**

No relevant regulation or recommendation.

- 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.?**

Not applicable.

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?**

No relevant regulation or recommendation.

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?**

No relevant regulation or recommendation.

5. **Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:**

YES

- a. **The ability to stop the publication of the pornography or CSAM imagery by the Online**



Platform?

The court may grant a disposal order, ordering a person, whether in Hong Kong or elsewhere, to take reasonable steps to remove, delete or destroy, or to cause the removal, deletion or destruction of, an image of an intimate image of an individual and a subject of an offence. (section 159AAK of Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>)

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

It is an offence to publish any obscene article, whether or not the offender knows that it is an obscene article, unless he/she can prove that he had had no reasonable opportunity to inspect the article at the time of the offence is alleged to have been committed (section 21 of Control of Obscene and Indecent Articles Ordinance, https://www.elegislation.gov.hk/hk/cap390!en?xpid=ID_1438403141385_001&INDEX_CS=N).

Meaning of obscene or indecent materials: include any material that is violent, depraved or repulsive.

If the servers of the relevant Online Platforms (e.g. social media and instant messaging groups) which the obscene article was published are hosted in Hong Kong, they would also be subject to the regulation.

(<https://www.info.gov.hk/gia/general/202005/13/P2020051300201.htm?fontSize=1>)

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

Yes. In civil proceedings, a victim may bring an action against the Online Platform and seek injunction as a remedy.

“Where the Court of Appeal or the Court of First Instance has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.” (Section 17 of High Court Ordinance (Cap. 4) (the “High Court Ordinance”))

“The [District] Court may award damages in addition to or in substitution for an injunction or specific performance where it has jurisdiction to entertain an application for an injunction or specific performance.” (Section 48A of District Court Ordinance (Cap. 336) (the “District Court Ordinance”))

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. In civil proceedings, a victim may bring an action against the offender under common law tort and seek injunction as a remedy.

“Where the Court of Appeal or the Court of First Instance has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.” (Section 17 of High Court Ordinance)



“The [District] Court may award damages in addition to or in substitution for an injunction or specific performance where it has jurisdiction to entertain an application for an injunction or specific performance.” (Section 48A of District Court Ordinance)

- e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child’s image or video, either in a civil or a criminal proceeding?**

Yes. In civil proceedings, a victim may sue the offender under common law tort of harassment for damages, on the basis that the victim has suffered emotional distress.

“Where the Court of Appeal or the Court of First Instance has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.” (Section 17 of High Court Ordinance)

“The [District] Court may award damages in addition to or in substitution for an injunction or specific performance where it has jurisdiction to entertain an application for an injunction or specific performance.” (Section 48A of District Court Ordinance)

- 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?**

None.

Note: The Criminal and Law Enforcement Injuries Compensation (CLEIC) Scheme is only applicable where the victim has suffered physical injury by the use of violence resulting from any criminal offence.

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

Yes.

According to the Victims Charter (https://www.police.gov.hk/ppp_en/04_crime_matters/vic_charter.html), victims have the right to information. So far as can be done without prejudicing the progress or outcome, victims of crime shall be kept fully informed of the progress of the case. Where prosecution is proceeding, victims shall be told about the steps which follow in the prosecution process, the progress of the investigation, the role of victims as witnesses in the prosecution of the offence, the date and place of the hearing of the proceedings, and the final disposal of the case, including the outcome of any appeal. Victims shall have the right to ask to be notified of the offender's pending release, or escape, from penal custody. Also, if a decision is made not to prosecute, victims shall be told of that decision.

- 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.

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”?

N/A