

Legal questionnaire completed by JNV Legal, Lawyers and Notaries • April 2024

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

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

The legal definition of a minor is contained in article 111 of the Macau Civil Code, as “anyone who has not yet reached 18 years of age”.

According to the Criminal Code, article 166, titled “Sexual Abuse of Children”, a person who sexually abuses children is defined as “anyone who performs a sexual act considered relevant with or to a minor under the age of 14”. Therefore, in the scope of criminal law, a person under the age of 14 will be considered a child.

For the purposes of defining and aggravating the punishment for certain types of sexual crimes, Macau criminal law divides persons between “children” and “minors”, and “minors” are further subdivided as persons between 14 and 16 years of age, on one hand, and between 16 and 18 years of age, on the other.

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 direct legal definition. Legal texts that use concepts which might encompass the definition include several articles in the Criminal Code, namely article 153-A, titled “Human Trafficking” (“Whoever offers, delivers, entices, recruits, accepts, transports, transfers, lodges or houses a minor for the purposes of sexual exploitation, or exploitation of that person's work or services...”), articles 168 (“Copulation with a Minor”), 169 (“Sexual Act with Minors”, 169-A (“Prostitution with a Minor”), 170 (“Pimping of Minors”) and 170-A (Pornography using Minors”).

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

There is no direct legal definition. Legal texts that use concepts which might encompass the definition include several articles in the Criminal Code, including articles 166 (mentioned above), 169, 169-A, and 170 (all containing the expression ...“sexual act considered



relevant...”). The matter is complicated by the fact that vaginal or anal coitus and oral sex are placed by some legal doctrine and jurisprudence outside the definition of “sexual act considered relevant”, due to the fact that the former are punishable separately and in a different way from the latter. Some doctrine defines “sexual act considered relevant as “...those acts which constitute a serious and grave offense to the intimacy and freedom of the victim and invades, in an objectively significant way, that which constitutes the personal space, the intimate sphere, which, in the realm of sexuality, is connected with every human being.” (in Leal Henriques and Simas Santos, Annotated Macau Criminal Code, Macau, 1997, page 430, our free translation).

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

There is no direct definition. Bearing in mind the definition of “child” explained above, article 166 of the Macau Criminal Code describes and punishes conducts of a sexual nature involving children and minors (see above), including “sexual acts considered relevant” (see above), copulation, and anal or oral coitus as well as vaginal and anal insertion of parts of the body and objects. The conducts can take place “with” and “on” the child, as well as consist of the agent in some way making the child perform them on itself, with the agent or with a third party, with or without a lucrative intent by the agent. The same article also punishes communications or interactions of a “pornographic” nature with children (i.e. less than 14 years old) by way of conversation, writings, shows, or objects.

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

There is no direct legal definition. Paragraph 1 of Article 170-A of the Criminal Code punishes:

- a) using a minor in a pornographic show or enticing him or her for that purpose,
- b) using a minor in pornographic photography, film or recording, regardless of its method, or enticing the minor for this purpose,
- c) produce, distribute, sell, import, export or disseminate in any capacity or by any means, or acquire or hold for these purposes, the materials provided for in the previous subparagraph b).

Also, under paragraph 2 of the same article, whoever transmits, displays or transfers, in any capacity or by any means, or acquires or holds for these purposes, the materials provided for in previous paragraph, is also committing the same crime.

For the purposes of regulating the sale and display of pornographic material and showing of pornographic movies, Law no. 10/78/M, considers pornographic or obscene the objects, posters, advertisements, notices, programs, manuscripts, drawings, pictures, paintings, stamps, signs, discs, photos, films, and in general any mechanical reproduction device or form of reproducing audio-visual communications which contain words, descriptions or images which outrage or offend public morals or modesty, including the representation or description of sexual acts or the exposure of genitals, in a context of pure sexual display, the exploitation of forms of sexual perversion, as well as sexual situations, through the use of visual and/or sound over-arousal techniques.

However, the purpose of Law no. 10/78/M is independent from the chapter on punishable sexual behaviors contained in the Macau Criminal Code. More likely, a court faced with the



need to consider or define the concept of “pornography”, may use this legal text as reference, but is in no way bound by it, and may prefer to resort to doctrinal texts or jurisprudence.

- 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 specific definition for this. The use, production or possession of such materials could fall under provisions of law which refer to “pornography” or “pornographic material” generally, with the aggravating factors contained therein when minors are involved (see provisions of the Criminal Code referred to above).

- 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>)**

These concepts and behaviors are described in articles 166, 168 (sexual abuse of a minor aged between 14 and 16 years, taking advantage of their inexperience), 169 (sexual act considered relevant with or on a minor between 14 and 16 years of age, taking advantage of their inexperience), 169-A (sexual acts with minors with payment of benefit, i.e., sexual acts with minors in exchange for payment or the promise thereof), 170 (enticement or facilitation of prostitution by minors, i.e., pimping) and 170-A (pornography using minors).

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

There is no single age of consent for sexual activity.

Articles 166 to 170-A of the Macau Criminal Code punish sexual activity involving minors under the age of 14 in all circumstances. For minors between the age of 14 and 16, the conduct is generally punishable if the agent has taken advantage of the inexperience (in the sense of immaturity or innocence) of the former. Also, article 167, punishes the crime of sexual abuse of a minor aged between 14 and 16 who has been entrusted to the agent for education or assistance, and sexual abuse of a minor aged between 16 and 18 who has been entrusted to the agent for education or assistance, and where the latter abuses its role of guardian or educator. Lastly, article 169-A punishes those taking advantage of prostitution of minors aged between 14 and 18 years.

Therefore:

- (1) sexual activity with a minor younger than 14 is prohibited in all circumstances;
- (2) sexual activity with minors of between 14 and 16 is allowed as long as the minor is proven to be experienced and/or is not under the care of the agent; and
- (3) age of consent for the practice of prostitution and being involved in pornography is 18 years.

- 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 direct specific definition for “sextortion” relating to minors, and this could fall under the provisions of articles 166, 168, 169, 169-A, 170 and 170-A, in the sense that they all contain language dealing with “enticement” or “influence” over the minor and, depending on the circumstances, sextortion could also be a form of taking advantage of the innocence of the minor as provided in articles 168 and 169.

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

There are no specific laws or regulations establishing an obligation by or recommendation to online platforms to monitor child pornography, CSAM content, enticement, grooming, or sextortion of a child. Usually, cases arise when authorities are informed or notified of the existence of the relevant crimes.

Under article 172 of the Criminal Code, investigation by the police of the crimes contained in articles 166 to 169 (described above) depends upon a notice to the authorities by an aggrieved third party (or their guardian or representative, in the case of minors), except when the said crimes result in death or suicide of the victim, in which case the police can commence an investigation on their own initiative. Also, the Office of the Public Prosecutor (OPP) may take the initiative to investigate the crimes under articles 166 to 169 if special interests of the affected minor so dictate (the existence of such special interests is evaluated by the OPP at its discretion). Authorities can initiate an investigation of the crimes under articles 169-A and 170 on their own initiative, or on receiving a notice from anyone.

Article 32 of the Macau Basic Law states that “the freedom and privacy of communication of Macao residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communications in accordance with the provisions of the law to meet the needs of public security or of investigation into criminal offences.”, and article 172 of the Criminal Code is largely consistent with this.

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

Please see above.

c. report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization

There is no explicit obligation to report.

d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion

that they identify, become aware of, or are notified about

There is only explicit obligation to remove or take down on the order of a competent authority, such as an investigative judge or a court.

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

There is no explicit obligation.

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

There is only an explicit obligation to remove or take down on the order of a competent authority, such as an investigative judge or a court.

- g. **use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including:**

- i. **"Hashing technology"** (<https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/>). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.
- ii. **Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.**

There is no explicit obligation.

- 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.?**

We do not have any law or regulations specifying this circumstance.

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?**

We do not have any law or regulations specifying this circumstance.

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?**

There is no such explicit requirement 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?

There are no express rules specifically for this type of situation. However, under paragraph 2 of article 44 of the Criminal Code, if the police authorities become aware or are made aware of the publication and the latter is considered to be very likely the commitment of a crime and/or in breach of Law no. 10/78/M, said authorities have the power to order the publication stopped.

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

If the Online Platform becomes aware of the existence of the offending materials before receiving a take-down notice from a lawful authority (like the police, in the event of a crime being committed), it has the choice of either taking down the materials itself in order to avoid possible legal liability or leave the materials in place and await for the take down order. There is no explicit legal obligation to take down the materials. In practice, however, Online Platforms in Macau would remove materials (or make them inaccessible to the public and report the matter to the authorities) if they evaluate them as possibly breaching the laws regulating the display of any type of pornography or to prevent child abuse or if they receive any type of complaint to that effect.

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

In situations where an authority such as the police or a criminal court can't or will not issue a takedown order, it is possible for an aggrieved party to seek a court injunction against the Online Platform to stop the publication, under Title III of the Civil Procedure Code. The granting of the injunction is subject to requirements of *periculum in mora* and *fumus boni juris*. If the injunction is granted, it will expire if declaratory proceedings seeking permanent relief and/or monetary damages are not commenced within 30 days thereafter.

Under article 61, paragraph 1, subparagraphs a) and b) of the Criminal Procedure Code, the same can be done if an indictment is not issued, or the investigation has no progress for more than, 8 months, or the criminal investigation has been closed without charges being made or when the criminal proceedings are extinguished before a judgement is issued by a court. In these instances, a claim for civil damages may be brought in a separate civil suit.

However, under article 61, paragraph 2, of the Criminal Procedure Code, in cases where a criminal investigation being initiated is made dependent on an aggrieved party filing a complaint with the police, or in cases where the criminal proceedings in court are made dependent upon an aggrieved party filing criminal charges together with the Public Prosecutor, an aggrieved party commencing a civil suit separately from the criminal proceedings will be considered equivalent to the aggrieved party having waived the right to such police complaint or to file such criminal charges, leading to the closing of the police investigation or criminal proceedings, as the case may be. Under article 172 of the Criminal



Code, this is the case, for example, in crimes of forcing others to prostitution, sexual harassment, exhibitionism, child sex abuse and sex with minors, under articles 161, 162 and 164-A to 169 of the Criminal Code, in which an investigation depends upon a criminal complaint having been filed by an aggrieved party, except if the commitment of the crime has resulted in suicide or death of the victim, or if the Public Prosecutor considers that the victim has a special interest in the proceedings continuing even in the absence of such complaint.

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?

In situations where a crime is being investigated, a specific posting can be taken down under paragraph 2 of article 44 of the Criminal Code, but this will not prevent other postings, which may constitute separate crimes or repeated offenses and may be prosecuted as such.

In circumstances of a breach of civil rights to reputation, personal image or moral standing, the Civil Procedure Code includes a simplified procedure of a civil nature under article 1201, where the court may be asked to take down postings and prohibit the poster from further damaging the rights of the petitioner. Alternatively, the aggrieved party may use an injunction, to be followed by a civil suit for damages, under Title III of the Civil Procedure Code and the general rules governing civil suits of the same Code, respectively. Enough we believe these remedies are possible, as far as we are aware the remedy in article 1201 has not been tested in court.

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?

Article 60 of the Macau Criminal Procedure Code, allows for all victims of any crimes (or their legal guardians or representatives) to file a monetary claim for damages in the criminal proceedings against the defendant(s), in the form of compensation for actual material losses and/or compensation for physical and/or mental pain and suffering. In addition, under article 173 of the Criminal Code, a person convicted of sexual crimes may be prevented from acting as the representative or guardian of minors for a period of between 2 and 5 years.

Under Law no. 13/2012, aggrieved parties who cannot afford legal representation can apply for a government-appointed lawyer to represent them in court proceedings.

Under article 77, paragraph 4, and article 78, paragraph 2, of the Criminal Procedure Code, criminal proceedings involving minors younger than 16 years are confidential.

Under article 184 of the Criminal Procedure Code, a defendant may be prevented by a judge or an investigation judge from contacting certain persons or frequenting certain locations, thus protecting the victims.

Under articles 67, 68 and paragraph 1 of article 69 of Decree-Law no. 65/99/M, enacted on 25 October 1999, minors found in circumstances which may cause harm to their moral upbringing or education may benefit from psychological, educational and social support by the government, through social workers, child psychologists or other government professionals.



- 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?**

Please see above.

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

Under article 100, paragraph 7 of the Criminal Procedure Code, it is mandatory for the authorities to notify the victim of and/or the aggrieved parties in any crime (when they can be identified), for them to file a private indictment and/or a claim for monetary damages, or appeal against the closing of an investigation when no charges are produced.

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?**

There is no such requirement.

- i. **If so, must these steps be taken before the launch of an Online Platform?**
- ii. **If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?**
- iii. **For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.**

- 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”?**