

Legal questionnaire completed by S&A Lawyers LLP • 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>)

1. Section 60 (b) of Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009):

“Child” shall mean an individual who has not attained the age of 18 and includes newborns. Individuals with special needs suffering from mental disorders shall be included within the definition of “child” in spite of being above the age of 18.

2. Section 521 (d) of Penal Code (Act No. 6/2014):

“Minor” means an individual who is less than 18 years old.

3. Section 118 of Juvenile Justice Act (Act No. 18/2019):

“Minor” shall mean, where it relates to criminal liability of a child, an individual aged above 15 years but below 18 years of age. In other circumstances, it shall mean an individual who is less than 18 years of age.

4. Section 4 of Child Rights Protection Act (Act No. 19/2019):

“Children” shall mean fetuses, and individuals who are under 18 years of age.

b. child sexual exploitation (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(9), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)

Section 11 of Child Rights Protection Act (Act No. 19/2019):

Every child has the right to be protected from sexual exploitation and sexual abuse. This includes the right to be protected from being:

(i) a victim of sexual abuse:

(ii) forced to participate in acts of exploitation such as prostitution:

(iii) forced to participate in the making or producing of pornographic content and being exposed to pornographic content.

c. sexually explicit conduct (18 U.S.C. 2256(2),



<https://www.law.cornell.edu/uscode/text/18/2256>)

Whilst there is no explicit provision addressing the definition of sexually explicit content, offences that may be considered as exposing a child to such content are outlined in section 5 and 6 of the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009).

1. Section 5 of Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009):
It is an offence to intentionally engage in a sexual act in the presence of a child, or carry out such an act in a manner visible to a child or carry out such an act with the intention of exhibiting to a child or believing that the act would be visible to a child.
2. Section 6 of Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009):
It is an offence to force a child to watch the commission of a sexual act, or to show images, photograph, film, or part of a film depicting such acts being carried out, or to make a child listen to such acts being carried out.

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

Whilst there is no specific definition for child sexual abuse, the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009) specifies offences that may be equated to acts of child sexual abuse.

1. Pursuant to section 3, it is an offence to intentionally touch a child's body with sexual intent.
2. Pursuant to section 4, it is an offence to causes a child to engage in a sexual activity.
3. Pursuant to section 5, it is an offence to intentionally engage in a sexual act in the presence of a child, or carryout such an act in a manner visible to a child or carry out such an act with the intention of exhibiting to a child or believing that the act would be visible to the child.
4. Pursuant to section 6, it is an offence to force a child to watch the commission of a sexual act, or to show images, photograph, film, or part of a film depicting such acts being carried out, or to make a child listen to such acts being carried out.
5. Pursuant to section 8, it is an offence to intentionally arrange, assist or facilitate or abet the commission of an offence prescribed in sections 3, 4, 5 or 6 of the law, by a child.
6. Pursuant to section 9, it is an offence for a person in a position of trust with a child to engage in a sexual act with the child.
7. Pursuant to section 10, it is an offence for a person in a position of trust with a child to induce the child to engage in a sexual act.
8. Pursuant to section 11, it is an offence for a person in a position of trust with a child to engage in a sexual act in the presence of a child, with the intention of exhibiting to the child.
9. Pursuant to section 12, it is an offence for a person in a position of trust with a child to cause a child to watch the commission of a sexual act.
10. Pursuant to section 16, it is an offence for a family member of a child to encourage a child to engage in a sexual activity.
11. Pursuant to section 18, a person commits an offence, if he intentionally causes child



- prostitution, or involves a child in the creation of pornography, or where he creates pornographic material in which a child's sexual organ is displayed.
12. Pursuant to section 19, a person commits an offence if he engages a child in prostitution or participate a child in the production of pornography using force, through control or by restraining the free will of a child.
 13. Pursuant to section 20, it is an offence to engage with, or cause a child to engage in a sexual act, by administration of an intoxicating substance or a substance to stupefy or cause a child to lose free will.
 14. Pursuant to section 22, it is an offence for a person to display organs that could be considered sexual organs to a child.
- e. **child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8)),**
<https://www.law.cornell.edu/uscode/text/18/2256>

Section 622 of Penal Code (Act No. 6/2014):

A person commits an offense if, with knowledge of its obscene nature or content, he:

- (1) sells, delivers, or provides one or more obscene writings, pictures, records, or other representations or embodiments of the obscene; or
- (2) presents or directs an obscene play, dance, or other performance; or
- (3) publishes, exhibits, or otherwise makes available anything obscene; or
- (4) performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or
- (5) advertises or otherwise promotes the sale of material represented or held out by him to be obscene; or
- (6) creates, buys, procures, or possesses obscene matter or material with the purpose of distributing it in violation of this section; or

The offense is one grade higher than it otherwise would be if the obscene material or performance is of a person who is a minor.

- 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>

No definition provided.

- 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>

(a) The following provisions from the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009) may be equated to acts of enticement or grooming.

1. Pursuant to section 8, it is an offence to intentionally arrange, assist or facilitate or abet the commission of an offence prescribed in sections 3, 4, 5 or 6 of the law, by a child.
2. Pursuant to section 10, it is an offence for a person in a position of trust with a child to induce the child to engage in a sexual act.



3. Pursuant to section 16, it is an offence for a family member of a child to encourage a child to engage in a sexual activity.
4. Pursuant to section 17, it is an offence to engage in sexual acts with a child pledging to make payment, or to carry out a sexual act with a child by creating an expectation that payment would be made, prior to carrying out the act.
5. Pursuant to section 18, a person commits an offence, if he intentionally causes child prostitution, or involves a child in the creation of pornography, or where he creates pornographic material in which a child's sexual organ is displayed.
6. Pursuant to section 19, a person commits an offence if he engages a child in prostitution or participate a child in the production of pornography using force, through control or by restraining the free will of a child.
7. Pursuant to section 20, it is an offence to engage with, or cause a child to engage in a sexual act, by administration of an intoxicating substance or a substance to stupefy or cause a child to lose free will.

(b) Pursuant to section 123 (c) of the Child Rights Protection Act (Act No. 19/2019), grooming refers to establishing an emotional connection with the child by giving the child money or any other materialistic thing and attempting to secure the child's trust in order to commit an act stipulated in the Act with the child.

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

1. Section 134 of Penal Code (Act No. 6/2014):

Exception for marriage, consent from minor is invalid. Assent or acquiescence to sexual intercourse or sexual contact by a minor is invalid, except where such minor is legally married to the defendant and is more than 18 years old.

2. Section 24 of Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009):

A child under 13 years of age shall not be deemed to be in a position to give consent under any circumstance. Even where such a child consents, for the purpose of the law, such consent shall be considered null and void.

3. Section 25 of Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009):

Unless established otherwise, it shall be deemed that a child between the age of 13 and 18 years of age did not give consent to carry out sexual acts, and that the sexual act was carried out without the child's consent.

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>)

No definition provided.

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

Online Platforms have no legal mandate to 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

Online Platforms have no legal mandate to 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

Online Platforms have no legal mandate to report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of / are notified about on their systems.

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

Online Platforms have no legal mandate to 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

Online Platforms have no legal mandate to 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

Online Platforms have no legal mandate to 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.

In some instances, reports of children's photos on inappropriate pages on Facebook have been brought to the attention of the Maldives Police Service. Following these reports, the police have collaborated with Facebook to remove the content. It is important to note that



this process is not tied to any legal obligation, and the absence of a regulatory framework complicates the removal of such content on various Online Platforms.

- 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.**

Online Platforms have no legal mandate to use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including hashing technology.

- 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.?**

As the Maldives lacks cybersecurity legislation or any form of regulatory framework relating to online platforms’ requirements to protect children online from sexual exploitation, no differing requirements apply.

- 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?**

Online Platforms have no legal mandate to implement any method to verify the age of a user before allowing access to an online platform.

- 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?**

Online Platforms have no legal mandate to implement any method to obtain parental consent before a child uses the services of such Online Platforms.

- 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?**

According to section 622 of the Penal Code (Act No. 6/2014), it is an offence if, with the knowledge of its obscene nature or content, someone publishes, exhibits, or otherwise



makes available anything obscene. If the obscene material or performance is of a person who is a minor, the offence is one grade higher than it would otherwise be. While this may not directly address measures to stop the publication of pornography or CSAM imagery, it does provide a basis for prosecuting the party involved.

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

With the absence of a regulatory and enforcement framework concerning Online Platforms, there is no legal mandate to remove child pornography or other imagery from Online Platforms.

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

The Maldives Police Services have confirmed that if they deem that certain content should be removed from an Online Platform, they will proceed by submitting a case to court and securing an order for its removal.

Further, although untested, there is a potential avenue to seek an injunction through civil proceedings aimed at stopping the Online Platform from publishing pornography or imagery.

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?

While there is no explicit legal remedy available, there is a strong likelihood that orders would grant such orders based on the merits of the claim.

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?

Pursuant to section 51 of the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009), if the commission of a sexual act with a child is proven, a separate civil lawsuit can be initiated to seek financial compensation for physical injuries sustained, medical treatment expenses, psychiatric/psychological injury endured, and the ordeal suffered by the child.

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?

Section 55 of the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009) stipulates that the state, at its cost, shall offer counseling services essential to facilitate the growth of the victim child towards recovery with the aim of the child becoming an upstanding citizen. Additionally, counseling will be provided to alleviate potential psychological distress experienced by a child who has been a victim of an offence stated in the Act.

Further, pursuant to section 56 of the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act No. 12/2009), the state shall extend financial aid to the parents or guardians



of a child who has been a victim of an offence stated in the Act, whenever such assistance is required by the parent or guardian for the child's maintenance.

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

While there is no legal requirement mandating the notification of a victim when an offender is arrested, it is a customary practice to inform the parent or guardian of the child in such cases.

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?

At present, Maldives lacks cybersecurity legislation. Therefore, Online Platforms are not obligated to integrate safety measures into their systems through a safety-by-design approach.

In October 2022, the 'Cyber Safe Maldives' national campaign was initiated to advocate for the safe use of the internet and technology in Maldives. The campaign encompassed various activities such as public talks, expert panel discussions, and training sessions aimed at enhancing cybersecurity awareness and capacity building. While the initiative addresses internet safety for children, the absence of a regulatory and enforcement framework means there are no mandates for integrating safety-by-design measures into Online Platforms.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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"?

Not applicable.