

Legal questionnaire completed by Gonzalez Calvillo • December 2024

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

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

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

Article 5 – Ley General de los Derechos de Niñas, Niños y Adolescentes (General Law on the Rights of Children and Adolescents) (“Minor’s Law”), Reformed, Diario Oficial de la Federación [D.O.F.], December 4th, 2013

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA.pdf>

Definition: “Children are those under twelve years of age, and adolescents are those between twelve years of age and less than eighteen years of age. For the purposes of international treaties and legal age, minors are those under eighteen years of age...” (not an official English translation)

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 204: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition: “The crime of pandering of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it is committed by:

- I. Any person who exploits the body of the aforementioned persons by means of carnal commerce or obtains any profit from it;
- II. Anyone who induces or solicits any of the aforementioned persons to engage in sexual commerce with their bodies or provides them with the means to engage in prostitution; and
- III. Whoever manages, administers or supports, directly or indirectly, brothels or places of concurrence dedicated to prostitution of persons under eighteen years



of age or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it, or obtains any benefit with its products.” (not an official English translation)

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

The Federal Criminal Code mentions sexually explicit acts in the context of sexual abuse but does not define it.

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

Article 260: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition for “sexual abuse”: “The crime of sexual abuse is committed by whoever executes on a person, without his consent, or forces such person to perform sexual acts on himself or on another person without the purpose of copulation” (not an official English translation)

“Child sexual abuse” is not defined per se, but committing a crime, including sexual abuse as defined hereinabove, against a minor is considered an aggravating factor.

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; [...]

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 2, paragraph c): Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Resolution A/RES/54/263 of 25 May 2000, entry into force 18 January 2002 and approved by Mexico in 2002.

Link: <http://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/D43.pdf>

Definition: Child pornography means any depiction, by whatever means, of a child engaged in real or simulated sexually explicit activities, or any depiction of the genital parts of a child for primarily sexual purposes. (not an official English translation)

Article 202: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition: “The crime of pornography of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the act or of persons



who do not have the capacity to resist it, is committed by whoever procures, forces, facilitates or induces, by any means, one or more of these persons to perform sexual acts or body exhibitionism for lewd or sexual purposes, real or simulated, for the purpose of videotaping, photographing, filming, exhibiting or describing them by means of through printed advertisements, transmission of data files in public or private telecommunication networks, computer telecommunication networks, computer, electronic or substitute systems.” (not an official English translation)

- 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>)**

The law does not include a specific definition of this term, but several articles under the Federal Criminal Code could consider this activity under their definition:

- i. Article 202 considers real and simulated acts in its definition of child pornography, please refer to our answer in point E. above.
- ii. Articles 199 Octies and 199 Nonies, state:
 - “Article 199 Octies.- The crime of violation of sexual intimacy is committed by a person who discloses, shares, distributes or publishes images, videos or audios of intimate sexual content of a person of majority age, without his consent, approval or authorization.

As well as whoever videotapes, audiotapes, photographs, prints or elaborates images, audios or videos with intimate sexual content of a person without his consent, approval or authorization. [...]” (not an official English translation)

- -Article 199 Nonies.- The same penalties provided for in the preceding article shall be imposed when the images, videos or audio images, videos or audios of intimate sexual content that are disclosed, shared, distributed or published do not correspond to the person who is indicated or identified therein.” (emphasis added; not an official English translation)

As mentioned before, committing a crime against a minor is considered an aggravating factor.

- 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>)**

Article 199 Septies: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition: “Whoever, by means of broadcasting, telecommunications, computer or any other means of data transmission, contacts a person under eighteen years of age, or anyone who does not have the capacity to understand the meaning of the act or a person



who does not have the capacity to resist it, and requires images, audio or video of sexually explicit activities, acts of sexual connotation, or requests sexual connotation, or solicits a sexual encounter.” (not an official English translation)

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

18 years of age; any sexual activity with someone younger is considered rape, per the following:

Article 266: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition: “It is equated to rape and shall be punishable by eight to thirty years of imprisonment:

- I. Whoever, without violence, performs copulation with a person under eighteen years of age.
[...] (not an official English translation)
- 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>)**

Mexican regulation does not define “sextortion” but sextortion could be considered under the definition of extortion as follows:

Article 390: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

Definition: “Whoever, without right, compels another to give, do, refrain from doing, or tolerate something, obtaining a profit for himself or another or causing someone else a financial loss.” (not an official English translation)

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 is no specific applicable regulation in Mexico requiring Online Platforms to review, screen, moderate, or detect content to identify child pornography or CSAM content.



We note however, that the last paragraph of Article 202 of the Federal Criminal Code is relevant in these instances, in respect to storage, distribution, sale, leases, exhibition, publicization, transmission, importation or exportation of child pornography or CSAM content:

Article 202: Código Penal Federal (Federal Criminal Code) Reformed, Diario Oficial de la Federación [D.O.F.], October 18, 2023

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

“The crime of pornography of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it, is committed by whoever procures, forces, facilitates or induces, by any means, one or more of these persons to perform sexual acts or body exhibitionism for lewd or sexual purposes, real or simulated, for the purpose of videotaping, photographing, filming, exhibiting or describing them by means of through printed advertisements, transmission of data files in public or private telecommunication networks, computer telecommunication networks, computer, electronic or substitute systems.

Whoever fixes, prints, video records, photographs, films or describes acts of bodily exhibitionism or lewd or sexual acts, real or simulated, involving one or more persons under eighteen years of age, or one or more persons who do not have the capacity to understand the meaning of the act, or one or more persons who do not have the capacity to resist it, shall be sentenced to seven to twelve years of imprisonment and a fine of eight hundred to two thousand days, as well as the confiscation of the objects, instruments and products of the crime.

The same penalty shall be imposed on anyone who reproduces, stores, distributes, sells, buys, leases, exhibits, publicizes, transmits, imports or exports the material referred to in the preceding paragraphs.” (emphasis added; not an official English translation)

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

There is no specific applicable regulation in Mexico requiring Online Platforms 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

There is no specific regulation or procedure requiring Online Platforms to 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.

Articles 76 to 81 of the Minor’s Law contain provisions related to the right of minors to intimacy and protection of personal data. However, such provisions are addressed to



communication media and not directly to Online Platforms, except for Article 81 of the Minor's Law in respect to suspension or blocking of users' accounts in electronic media in order to avoid the dissemination of information, images, sounds or data that may contravene children's rights, as noted in the response to question 2.d) below.

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

Article 81 of the Minor's Law contains provisions applicable to removal or take down of material in the context of proceedings before jurisdictional bodies.

Article 81: Ley General de los Derechos de Niñas, Niños y Adolescentes (General Law on the Rights of Children and Adolescents) ("Minor's Law"), Reformed, Diario Oficial de la Federación [D.O.F.], December 4th, 2013

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA.pdf>

"In proceedings before jurisdictional bodies, the suspension or blocking of user accounts in electronic media may be requested as a precautionary measure, in order to prevent the dissemination of information, images, sounds or data that may contravene the best interests of the child.

The court, based on this article and the applicable provisions, may require the companies providing electronic media services to carry out the necessary actions to comply with the precautionary measures ordered." (not an official English translation)

We also note that the last paragraph of Article 202 of the Federal Criminal Code (please refer to our answer to point 2.a.) and other laws (please refer to our answer to point 5.c.) may be relevant as it relates to Online Platforms removing or taking down such material to avoid potential liabilities, criminal or other otherwise.

Lastly, the Victims' Law sets forth the right of victims to request precautionary measures and the obligation of judges to take the necessary precautionary measures to guarantee the safety of the victims and their legal interests.

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

The applicable Mexican laws do not require Online Platforms 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

Please refer to answer to our answer to point 2.d) above.

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.**

The applicable Mexican laws do not require the use of any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion.

- h. **if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?**

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?

As of this date, the Mexico does not have specific provisions addressing the mandatory implementation of age verification methods for Online Platforms.

The Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (“INAI”) issued in October 2020 a non-binding document named Código de las buenas prácticas para orientar el tratamiento en línea de Datos Personales de niñas, niños y adolescentes (Code of Best Practices to guide the online processing of Personal Data of children and adolescents), which is addressed to Internet platforms and sites.

In a section named “How to establish age with an adequate level of certainty?”, the Code describes methods to determine the child’s age.

The Code is available here:

<https://home.inai.org.mx/wp-content/documentos/DocumentosSectorPrivado/codigobuenaspracticasnna.pdf>

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?

Article 23 of the Federal Civil Code establishes the following: “minority of age, the state of interdiction and other incapacities established by law are restrictions to legal personality that must not undermine the dignity of the person or threaten the integrity of the family; but the incapacitated may exercise their rights or contract obligations through their representatives.” (not an official English translation)

Article 435 of the Federal Civil Code further established that: “Those who exercise parental authority are legitimate representatives of those who are under parental authority, and have legal and have the legal administration of the goods that belong to them, according to the prescriptions of this Code.” (not an official English translation)

There are certain exceptions to the foregoing, where minors can provide consent directly, but none are applicable to Online Platforms. Therefore, Online Platforms need to adhere with law and should obtain parent/tutor consent before a child uses an online platform. This is applicable to any individual younger than 18 years old and the law does not require any specific process to obtain or manage such consent.

Therefore, Online Platform can implement any process to obtain the parent/tutor consent, as long as it adheres to the requirements law sets in connection with consent.

Link: https://www.diputados.gob.mx/LeyesBiblio/pdf/2_110121.pdf

- 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 specific legal remedies for stopping the publication prior to it actually happening. There are remedies however to stop the ongoing publication, in the context of proceedings before the authorities as outlined below.

Please refer to our answers in question 2.d above. As noted in such answers, Article 81 of the Minor's Law contains provisions applicable to removal or take down of material in the context of proceedings before jurisdictional bodies. We also note that the last paragraph of Article 202 of the Federal Criminal Code (please refer to our answer to point 2.a.) may be relevant as it relates to Online Platforms removing or taking down such material to avoid potential liabilities, criminal or other otherwise.

If the victim the publication of such pornography or imagery is female, it can be considered as "digital violence" under the Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (General Law On Women's Access to a Life Free of Violence).

Article 20 Quáter defines digital violence as any malicious action carried out through the use of information and communication technologies, which exposes, distributes, disseminates, exhibits, transmits, commercializes, offers, exchanges or shares real or simulated images, audios or videos of intimate sexual content of a person without their consent, without their approval or without their authorization and that causes them psychological or emotional harm, in any area of their private life or in their self-image.

The article states that malicious acts that cause harm to the intimacy, privacy and/or dignity of women that are committed by means of information and communication technologies are also considered as digital violence.

Considering that such law defines "information and communication technologies" as those



resources, tools and programs used to process, manage and share information through various technological supports, Online Platforms could be considered therein.

Article 20 Sexies states that in the event of digital violence, to guarantee the integrity of the victim, the Public Prosecutor's Office or the judge will immediately order the necessary protection measures to order the digital platforms, media, social networks or electronic pages companies, the interruption, blocking, destruction, or elimination of images, audios or videos related to the investigation, after satisfying the requirements of the law.

The authority that orders the protection measures contemplated in this article shall request the safekeeping and lawful and suitable conservation of the applicable content. The digital platforms, media, social networks or electronic pages shall immediately notify the user who shared the content, in a clear and precise way, that the content will be disabled in compliance with a court order.

Within five days following the imposition of the protective measures provided for in this article, a hearing must be held in which the judge may cancel, ratify or modify them, considering the information available, as well as the irreparability of the damage.

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV.pdf>

We also note that the Victims' Law sets forth the right of victims to request precautionary measures and the obligation of judges to take the necessary precautionary measures to guarantee the safety of the victims and their legal interests.

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 to question 5.a. above for an overview of the actions required from Online Platforms when so ordered by the judge or the Public Prosecutor's Office.

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 to question 5.a. above for an overview of the actions required from Online Platforms when so ordered by the judge or the Public Prosecutor's Office.

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?

There are no specific legal remedies for prohibitions to post in the future.

We note however that the Victims' Law sets forth the right of victims to request precautionary measures and the obligation of judges to take the necessary precautionary measures to guarantee the safety of the victims and their legal interests.

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?



A minor victim of online sexual exploitation (represented by his/her parents or guardians), can demand, through a civil lawsuit the payment of an indemnification for the affectation suffered in his feelings, honor, reputation, private life and in the consideration that others have of him. This affectations are considered moral damages, per article 1916 of the Federal Civil Code.

Link: https://www.diputados.gob.mx/LeyesBiblio/pdf/2_110121.pdf

Likewise, per Title II, Chapter V of the Federal Criminal Code, the victim of a crime has the right to reparation of the damage suffered. The amount of such damage must be determined by the judge in the criminal trial against the perpetrator of the crime.

Link: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

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?

Per article 49 of the Minor's Law, minors who are crime victims, which would include those that have been victimized by online child sexual exploitation, have the rights set forth in the General Victim's Law.

The General Victim's Law provides victims numerous rights, including those in connection with access to justice, help, assistance, attention and rehabilitation, this includes access to "support resources" i.e. certain expenses.

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

There are no specific legal provisions mandating notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted.

Per article 18 of the General Victim's Law, "victims and society in general have the right to know the facts constituting the crime and the human rights violations to which they were subjected, the identity of those responsible, the circumstances that led to its commission, as well as to have access to justice on equal terms."

Furthermore, victims in criminal processes, which would include those who have been victimized by online child sexual exploitation, also have the right under article 12 of the General Victim's Law, among others, to be informed of any resolution or hearing that that can affect or resolve their rights.

In practice, this would mean that the victims, at a minimum, would need to be informed of any resolution or hearing in connection with their offender's arrest.

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, but there are certain requirements in the Ley Federal de Protección de Datos Personales en Posesión de los Particulares (the Federal Law of Protection of Personal Data in Possession of Private Parties) and its Regulations that are related with privacy by design, particularly the following:

- as part of the accountability principle, article 48 of the Regulations states that controllers (in this case the Online Platforms) must “implement a procedure to address the risk to the protection of personal data due to the implementation of new products, services, technologies and business models, as well as to mitigate them.” (not an official English translation)

Link: https://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LFPDPPP.pdf

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 be 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