

*Legal questionnaire completed by DF DL • April 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>)**

In Myanmar, the legal definition of “child or minor” can be found in the following laws:

- The Child Rights Law of 2019 (the “Child Rights law”) is the main legislation regarding the child rights in Myanmar. The Child Rights Law repealed the Child Law of 1993. Section 3 (b) of the Child Rights Law defines a child as the person who has not attained the age of 18 years.
- The Factories Act 1950 defines “child” as a person who has not attained fifteen (15) years.
- The Workmen Compensation Act 1923 defines “minor” as a person who is under the age of fifteen (15) years.
- Child Marriage Restraint Act 1929 defines:
  - “child” means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen (14) years age.
  - “minor” means a person of either sex who is under eighteen years of age.
- The 2019 Draft Cyber Security Law defines “minor” as any person 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>)**

The Child Rights Law lacks a precise definition of the term “child sexual exploitation”. However, it defines the term “exploitation”. Under Section 3 (s) of the Child Rights Law, “exploitation” encompasses various actions such as obtaining or agreeing to obtain payment or any benefit from the prostitution of a child, engaging in sexual activity with a child, subjecting a child to forced labor or services, practicing slavery or servitude upon a child, imposing debt bondage upon a child, or participating in the removal or sale of a child’s body organ.

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



The Child Rights Law lacks a precise definition of the term “sexually explicit conduct”. However, it defines the term “sexual violence”. Under Section 3 (x) of the Child Rights Law, sexual violence means seduction, urge by force, threat or coercion done by an adult or a child to a child to get sexual favours or encouraging to provide such favours. This term contains any of the following sexual acts toward a child:

- (1) Touching, groping, rape and sexual abuse in physical manner by force;
- (2) Sexual abuse or exploitation for monetary gains;
- (3) Production and distribution of child pornography on web pages and social networks using electronic technologies; and
- (4) Forced marriage or getting a child married.

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

The Child Rights Law lacks a precise definition of “child sexual abuse”. However, the term “sexual violence” would apply to the “child sexual abuse”. Section 3 (x) of the Child Rights Law, sexual violence means seduction, urge by force, threat or coercion done by an adult or a child to a child to get sexual favours or encouraging to provide such favours. This term contains any of the following sexual acts toward a child:

- (1) Touching, groping, rape and sexual abuse in physical manner by force;
- (2) Sexual abuse or exploitation for monetary gains;
- (3) Production and distribution of child pornography on web pages and social networks using electronic technologies; and
- (4) Forced marriage or getting a child married.

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

The Child Rights Law does not contain a precise definition of the term “child sexual abuse material (CSAM)”. However, Section 3 (r) of the Child Rights Law defines “child pornography” as any depiction of actual or simulated sexual intercourse with a child or sexual organs of a child, or exposing, broadcasting or distribution of such items through news media or webpages or social networks for sexual purposes.

Section 3 (t), sub-section (ii) of the Child Rights Law also defines the term “worst forms of child labor”, which includes persuasion, purchasing, utilizing or proposing a child for prostitution, child pornography or acting in a pornographic shoot.

Under Section 103 of 2019 Draft Cyber Security Law, “child pornography” include pornographic material that visually depicts:

- a) a minor (under 18 years of age) engaged in sexually explicit conduct;
- b) a person appearing to be a minor engaged in sexually explicit conduct; and
- c) realistic images representing a minor engaged in sexually explicit conduct.

However, the definition of “child pornography” that was included in 2019 Draft Cyber Security Law is no longer present in the 2022 Draft Cyber Security Law. Accordingly, it remains uncertain if this term will be incorporated into the final Cyber Security Law.

**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 not a precise definition for the term of “computer-generated images or videos of child pornography or CSAM”. Please refer to answer to question e for the relevant provision.

- 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>)**

There is not a precise definition for the term of “enticement or grooming”. Please refer to answers to questions c and e for the relevant provisions.

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

The existing Myanmar laws do not provide a specific legal term regarding the legal age of consent for sexual activity.

However, under Section 375 of the Penal Code as amended in 2016, the legal age of consent by a girl/woman for sexual activity is fifteen (15) years old.

Section 375 of the Penal Code states that sexual intercourse with a woman under certain circumstances constitutes the offense of rape. The Section delineates five scenarios under which rape is defined, including situations where sexual intercourse occurs against the woman's will, without her consent, or with her consent obtained through fear of death or harm.

Notably, the section also addresses age-related criteria. The pertinent provision reads as follows:

"Exception. - Sexual intercourse by a man with his wife, the wife not being under fifteen (15) years of age, is not rape."

This exception, enshrined in the statutory framework, establishes that within the confines of a marital relationship, sexual intercourse is not deemed rape, provided that the wife has attained the age of fifteen (15) years old or above. Accordingly, it can be deemed that girls aged 15 or younger in Myanmar are not legally able to consent to sexual activity.

However, there are not any relevant laws or regulations regarding the legal age of consent by boys/men. Nevertheless, interpretations of this legal term may differ depending on individual court rulings, with precedent cases potentially influencing such decisions.

- 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>)**

The Child Rights Law does not contain a precise definition of the term. Section 56 of the Child Rights Law states that no person should employ physical force resulting in harm or

injury to a child in any manner, including physical or mental or sexual violence. Please also refer to the answers to questions c and e for the relevant provisions.

**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**

At present, Myanmar has no laws or regulations regarding the legal requirements or recommendations for Online platforms to review, screen, moderate, or detect content to identify child pornography or CSAM content.

However, Myanmar has been in the process of drafting a Cyber Security Law (Draft Law) since 2019. The Draft Cyber Security Law was initially issued in 2019 and subsequently amended in 2021 and 2022. As of now, the final version of the law has not been issued. The 2022 Draft Law includes provisions regarding the digital platform services and services providers. Section 3(y) of the 2022 Draft Law defines the term “digital platform service” as any over-the-top (OTT) service capable of providing data, information, images, voices, texts, and video online using cyber resources and similar systems or materials. Section 3 (z) defines “Digital platforms service provider” as any individual or entity offering digital platform service in Myanmar. This definition excludes companies and organizations that hold telecommunication services under the telecommunications law.

Section 35 (d) of the 2022 Draft Law mandates that a digital platform service provider promptly prevent, remove, destroy and cease per the specification upon notification by the Information Technology and Cyber Security Department (“Department”) if it detects child pornography, photo, video, text, symbols and other expressions on the platform. Accordingly, if the final law is enacted, the digital platform service provider will be required to comply with this obligation.

Further, the 2019 Draft Law includes the following provisions regarding the “child pornography”, which was excluded in the 2022 Draft Law:

“Section 102 - The Cybercrime Working Committee shall develop such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following conduct:

- a) producing child pornography for the purpose of its distribution through a computer system;
- b) offering or making available child pornography through a computer system;
- c) distributing or transmitting child pornography through a computer system;
- d) procuring child pornography through a computer system for oneself or for another person; and
- e) possessing child pornography in a computer system or on a computer-data storage medium.

Section 103 - The term "child pornography" shall include pornographic material that visually depicts:



- a) a minor (under 18 years of age) engaged in sexually explicit conduct;
- b) a person appearing to be a minor engaged in sexually explicit conduct; and
- c) realistic images representing a minor engaged in sexually explicit conduct.”

Accordingly, if the final Cyber Security Law includes the above provisions regarding “child pornography”, the Cyber Working Committee will also develop the legislative and other measures as may be necessary to establish as criminal offences regarding these activities.

Please also note that the 2019 Draft Cyber Law does not contain the provisions regarding the digital platform service and service providers. Accordingly, we are uncertain of which provisions will be included in the final Cyber Security Law.

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

Only the 2022 Draft Law includes the relevant provisions regarding the digital platform service provider’s obligation to promptly prevent, remove, destroy and cease per the specification upon notification by the Department if it detects child pornography, photo, video, text, symbols and other expressions on the platform. Accordingly, if the final Cyber Security Law includes the provisions pertaining to the digital platform service provider, it will be required to comply with this obligation.

**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**

Section 20 of the Child Rights Law 2019 stipulates that if a child getting any of his or her right infringed, the victim child self or Parent or Guardian on behalf of the child or any relevant person have the right to report the case to regional committee or respective governmental department or governmental organization or court. However, there are currently no provisions in existing laws or draft laws specifying the reporting requirements obligated for the Online Platform or digital platforms service providers in such instances.

If the final Cyber Security Law includes the provisions regarding "child pornography" and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements. For further details, please refer to our responses to question 2.a above.

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

No at present. If the final Cyber Security Law includes the provisions regarding "child pornography" and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements. For further details, please refer to our responses to question 2.a and c.

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



No at present. If the final Cyber Security Law includes the provisions regarding this obligation and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements.

- 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**

No at present. If the final Cyber Security Law includes the provisions regarding "child pornography" and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements. For further details, please refer to our responses to question 2.a and c.

- 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.**

No at present. If the final Cyber Security Law includes the provisions regarding "child pornography" and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements. For further details, please refer to our responses to question 2.a and c.

- 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.?**

No at present.

- 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?**

At present, Myanmar has no laws or regulations regarding these legal requirements or recommendations for Online platforms to implement the method to verify the age of a user before allowing access to an online platform.

Section 37 of the 2022 Cyber Security Draft Law mandates that the Digital Platforms Service Provider in Myanmar requires to retain the following information from the service users for up to three years from the first date of use of the service:

- (a) Username, Internet Protocol (IP) address, telephone number, identification card number and address of the service users.
- (b) User record of the service user.
- (c) Other information as directed by the Department.

However, it does not contain any other specific provisions regarding the implementation of method by the Digital Platforms Service Providers to verify the age before allowing access to an online platform.

Section 102 of the 2019 Draft Law includes the provisions mandating the Cybercrime Working Committee to develop such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following conduct:

- a) producing child pornography for the purpose of its distribution through a computer system;
- b) offering or making available child pornography through a computer system;
- c) distributing or transmitting child pornography through a computer system;
- d) procuring child pornography through a computer system for oneself or for another person;  
and
- e) possessing child pornography in a computer system or on a computer-data storage medium.

Accordingly, if the final Cyber Security Law includes the above provisions and the Cyber Working Committee develops the legislative and other measures as may be necessary to establish as criminal offences regarding these activities, the Online Platform Service Provider will be required to comply with these requirements.

**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?**

Currently, Myanmar does not have any laws or regulations mandating or recommending that Online Platforms implement a method to obtain parental consent before a child uses the services of such Online Platforms.

The 2019 or 2022 Draft Cyber Security Law also lacks any relevant provisions regarding this requirement. However, if the final law incorporates such provisions regarding this, Online Platforms will be mandated to implement a method for obtaining parental consent.

**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 Child Rights Law is the primary legislation governing child rights in Myanmar. It encompasses provisions concerning the support and protection of child victims, as well as provisions addressing legal remedies for them.

Section 97 of the Child Rights Law mandates the Ministry of Social Welfare, Relief, and Resettlement of the Union Government (the “Ministry”) to implement measures to remedy and rehabilitate the physical and mental damages of the child victim.



Section 20 of the Child Rights Law and Rule 16 of the Child Rights Rules 2001 (“Child Rights Rules”) grant the victim child, the parent or guardian acting on behalf of the child, or any relevant person the right to report any violation of the child’s rights as provided by law to the regional Child Rights Committee or respective governmental department or governmental organization or court.

Under Rule 17 of the Child Rights Rules, the relevant Child Rights Committee has the obligation to investigate the case to find out whether the child’s rights have been violated, as reported. Additionally, the Committee is responsible for assigning its secretary or a member to file a complaint to the relevant court if it finds out that the reported case involves any offenses, including pornography.

Accordingly, although the Child Rights Law lacks provisions directly targeting the Online Platforms, the victim child, their parent or guardian, or any relevant person can report and request intervention from the relevant Child Rights Committee or relevant government department or governmental organization or court to have Online Platforms stop the publication of child pornography or CSAM imagery online under the Child Rights Law and Rules.

Further, upon the enactment of the final Cyber Security Law, Online Platforms will be obligated to stop the publication of child pornography or CSAM imagery online. The reason is that § 35 (d) of the 2022 Draft Law explicitly mandates that a digital platform service provider promptly prevent, remove, destroy, and cease per the specification upon notification by the Information Technology and Cyber Security Department if it detects child pornography, photo, video, text, symbols and other expressions on the platform.

[Note: The Child Rights Rules 2001 were issued under the now-repealed Child Rights Law 1993. No rules have been issued under the Child Rights Law 2019. Therefore, the Child Rights Rules 2001 remains valid.]

**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 our response to question 5.a.

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

Yes. Section 20 of the Child Rights Law and Rule 16 of the Child Rights Rules grants the victim child, the parent or guardian acting on behalf of the child, or any relevant person the right to report any violation of the child’s rights as provided by law to the regional Child Rights Committee or respective governmental department or governmental organization or court.

Accordingly, the child’s parent or guardian or relevant person or the relevant regional Child Rights Committee can file a complaint to the relevant court and obtain a court order against Online Platform to stop them from publishing the pornography or imagery.

Section 144 of the Criminal Procedure Code empowers the judge to promptly issue an





absolute order in urgent cases of nuisance or imminent danger if there are sufficient grounds for action and immediate prevention or speedy remedy is deemed necessary. Under this Section, the judge may direct any person to abstain from a specific action or to undertake a specific measure concerning property in his/her possession or under his/her management.

This direction is deemed necessary if the judge considers that it will prevent or mitigate obstruction, an annoyance to persons, or a potential danger to human life and safety.

The legal proceedings will be as per the Civil Procedure Code which provides the necessary provisions governing the process and procedures for the trial and adjudication of criminal actions.

**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?**

Please refer to our response to question 5. c.

**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, Section 109 of the Child's Rights Law stipulates that the relevant court shall impose the appropriate penalties as prescribed by law on those found guilty of any offenses in this law.

Additionally, the court may also order those to pay suitable compensation to the child victim for the suffering endured. The legal proceedings will be as per the Civil Procedure Code.

Further, the child victim or their parent or guardian or relevant person can also seek monetary compensation for the child's damages, both physical and mental, under the Civil Procedures Code. It provides the necessary provisions governing the process and procedures for the trial and adjudication of civil actions.

**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?**

Under Section 58 of the Child Rights Law, the Social Welfare Officers, upon receiving information regarding a child who has been sexually exploited, must investigate whether the child requires care and protection as per the requirements and submit the findings together with comments to the Department of Social Welfare. Moreover, the Social Welfare Officer may instruct the child to be entrusted to a Parent/Guardian, Training School, Shelter, or Temporary Care Station. Further, The Social Welfare Officer shall report the case under investigation to the Police Station concerned if it becomes clear during the investigation that an offense is committed against the child.

Section 97 of the Child Rights Law states that the Ministry shall take measures for remedial actions and rehabilitation for the physical and mental losses of the child victim. Accordingly, the child victim or their parent or guardian or relevant person can also seek services provided by the Ministry.

**g. notification to a victim when an offender is arrested for distributing child pornography or**

**CSAM in which the child is depicted?**

The relevant laws or rules do not specifically mention this requirement. However, in case the child victim or their parent or guardian or relevant person has filed a complaint to the relevant police regarding the distribution of his/her child pornography or CSAM, the relevant police officer needs to notify the child victim or their parent or guardian or relevant person under the procedures.

**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, Myanmar has no laws or regulations that mandate legal compliance or requirements by Online Platforms with this requirement. The existing Child Rights Law and Rules lack specific provisions addressing the Online Platforms.

If the final Cyber Security Law includes the provisions regarding this obligation and the regulatory authority develops the legislative and other necessary measures for implementation, the Online Platforms will be obligated to comply with these requirements.

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

N/A. Please refer to the response to question 6.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. Please refer to the response to question 6.a.

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

N/A. Please refer to the response to question 6.a.

**b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform’s incorporation of “Safety by Design”?**

N/A. Please refer to the response to question 6.a.