

Legal questionnaire completed by Neupane Law Associates • 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>)

"Children" means persons who have not completed the age of eighteen years. (Children Act 2018, Sec. 2(j), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>)

"minor" means a child who has not attained eighteen years of age (Sec. 2(j), Muluki Civil Code 2017, Sec. 2(e), <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Civil-code.pdf>.)

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>)

"Child sexual exploitation" is not particularly defined.

No child shall be recruited or used in army, police or any armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner. (Constitution of Nepal, Article 39(6), https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov_.npDate-72_11_16.pdf.)

If any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse: To engage, or cause to engage, in child sexual exploitation. (Children Act 2018, Section 66(3)(h), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

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

"Sexually explicit conduct" is not particularly defined.

If any person does any of the following acts against a child, he or she shall be deemed to



have committed child sexual abuse: To show, or cause to show, him or her an obscene picture, audiovisual recording or other material of similar kind or display, or cause to display, such expression or gesture that reflects obscene or sexual conduct or behaviour to him or her or display, or cause to display, child pornography. (Children Act 2018, Section 66 (3)(a), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

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

If any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse:

- (a) To show, or cause to show, him or her an obscene picture, audiovisual recording or other material of similar kind or display, or cause to display, such expression or gesture that reflects obscene or sexual conduct or behaviour to him or her or display, or cause to display, child pornography,
- (b) To distribute, store or use any actual or fictitious obscene picture or audio-visual material of him or her,
- (c) To propose, lure, coerce or threaten him or her for sexual activity,
- (d) To use him or her in the production of an obscene act and material,
- (e) To touch, kiss, hold sensitive parts of body of him or her, embrace him or her with sexual intent or cause him or her to touch or hold sensitive parts of own body or body of another person or render him or her unconscious with sexual intent or display, or cause him or her to display sexual organs,
- (f) To use, or cause to use, him or her for stimulating sexual lust or sexual excitement,
- (g) To use, or cause to use, him or her for the purpose of sexual gratification,
- (h) To engage, or cause to engage, in child sexual exploitation,
- (i) To use, or cause to use, him or her with the intent of providing sexual services,
- (j) To use, or cause to use, him or her with the intent of engaging in sexual abuse,
- (k) To use him or her in prostitution or other sexual work. (Children Act, 2018, Section 66(3), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>)

A person shall be considered to commit child sexual abuse if the person takes to any lonely place in an unusual manner, or holds or touches any sexual organ of, gets his or her sexual organ to be touched or held by, or makes any form of unusual sexual behavior with, a child, with the motive of having sexual intercourse with the child. (Muluki Criminal Code 2017, Sec 225(2), <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>)

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

"Child pornography" means an act to take or make video or picture of children showing their sex organ or making them involve in imaginary sexual activities, to demonstrate vulgar picture through newspaper, poster, print, movie or other medium of communication, and this term also includes activities of production, sale, import, export, collection or dissemination of such materials. (Children Act 2018, Section 2(m), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)



Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000, Article 2(c), <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Optional-Protocol-To-The-Convention-On-The-Rights-Of-The-Child-On-The-Sale-Of-Children-Child-Prostitution-And-Child-Pornography.pdf>.)

"CSAM" is not particularly defined.

However, pursuant to Section 66(3)(b) of Children Act 2018, if any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse: To distribute, store or use any actual or fictitious obscene picture or audio-visual material of him or her. (Children Act, 2018, Section 66(3)(b), <https://www.lawcommission.gov.np/en/wpcontent/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

- 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>)**

Not defined.

However, pursuant to Section 66(3)(b) of Children Act 2018, if any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse:

To distribute, store or use any actual or fictitious obscene picture or audio-visual material of him or her. (Children Act, 2018, Section 66(3)(b), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

- 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>)**

"Enticement or grooming" is not defined.

However, pursuant to Section 66(3)(c) and Section 66(3)(d) of Children Act 2018, if any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse:

- To propose, lure, coerce or threaten him or her for sexual activity. (Children Act, 2018, Section 66(3)(c), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)
- To use him or her in the production of an obscene act and material. (Children Act, 2018, Section 66(3)(d), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)



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

Where a man has sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent, the man shall be considered to commit rape on such woman or girl child. (Muluki Criminal Code 2017, Sec 219(2), <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>.)

Consent given in any of the following circumstances shall not be considered to be consent:

Where the consent is given by a child below eighteen years of age. (Muluki Criminal Code 2017, Sec 20(c), <https://www.moljpa.gov.np/en/wpcontent/uploads/2018/12/Penal-Code-English-Revised-1.pdf>.)

- 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>)**

"Sextortion" is not defined.

However, pursuant to Section 11(2) of Children Act, 2018, no one shall do, or cause to do the act of creation of personal information, details, photo, collection of information, publishing, printing, demonstrating, sale and distributing or transmitting by any means that causes negative impact on the characteristics of a child or any shame, regret or domination to him or her. (Children Act, 2018, Section 11(2), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

The prevailing law does not address financial activities and profits are generated from crimes against minors. Nevertheless, Section 66 of Children Act 2018 prohibits some of the acts where financial activities and profits are generated from crimes against minors. They are:

- To cause him or her to beg or disguise as an ascetic, monk or mendicant, except for the tradition, custom or any religious or cultural activity.
- To engage him or her in a magic or circus show.
- To remove any organ of him or her in contravention of the prevailing law.

Further, Article 2(b) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000 defines child prostitution as means the use of a child in sexual activities for remuneration or any other form of consideration.

- 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 provision in the law that requires or recommends the Online Platforms to undertake review, screen, moderate, or detect content to identify child pornography or CSAM content. However, Pursuant to No. 6 of the Directive to Manage the Use of Social Media 2023 (“Social Media Directive”), Social Media Platform operators are required to establish a Point of Contact in Nepal to address the complaints related to use of social media.

According to No. 7(1) of the Social Media Directive to Manage the Use of Social Media 2023, the Point of Contact is responsible for identifying contents published on social media that violate the provisions outlined in the Directive.

No.4 (i) of the Social Media Directive prohibits any materials that harm children and encourage prohibited activities including child sexual exploitation, sexual harassment and prostitution. Therefore, the Point of Contact is responsible to review and identify this kind of contents.

Furthermore, No. 8(1) of the Social Media Directive requires the Social Media Operators to adopt algorithms and other such ways in order to stop the publication or dissemination of notice, advertisements, and contents that are contrary to the prevailing laws. (Social Media Directive 2023, No. 8(1))

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

There is no specific provision in the law that requires or recommends the Online Platforms to undertake review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child. However, Pursuant to No. 6 of the Directive to Manage the Use of Social Media 2023 (“Social Media Directive”), Social Media Platform operators are required to establish a Point of Contact in Nepal to address the complaints related to use of social media.

According to No. 7(1) of the Social Media Directive 2023, the Point of Contact is responsible for identifying contents published on social media that violate the provisions outlined in the Directive.

No.4 (i) of the Social Media Directive prohibits any materials that harm children and encourage prohibited activities including child sexual exploitation, sexual harassment and prostitution. Therefore, the Point of Contact is responsible to review and identify this kind of contents.

Furthermore, No. 8(1) of the Social Media Directive requires the Social Media Operators to adopt algorithms and other such ways in order to stop the publication or dissemination of notice, advertisements, and contents that are contrary to the prevailing laws. (Social Media Directive 2023, No. 8(1))

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



No. 7 of Social Media Directive to Manage the Use of Social Media 2023 has made provision as follows:

The responsibility of Point of Contact shall be as follows:

- a. To identify the contents published on social media that violate the provisions outlined in the Social Media Directive.
- b. To suspend the contents as per clause (a) for a certain period of time or permanently, and notify the Social Media Management Unit and other relevant authorities.

(Social Media Directive 2023, No. 7(2))

Pursuant to No. 2(c) of the Social Media Directive, Point of Contact means the office established or person designated by the Social Media Platform Operator in Nepal pursuant to No.6 of the Directive.

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

Pursuant to No. 8(2) of Social Media Directive 2023, Social Media Platforms have following responsibility:

to remove or take down the content that are against the No. 4 of the Directive upon receiving any complaints within 24 hours.

(No. 4 of the Directive Prohibits any materials that harm children and encourage prohibited activities including child sexual exploitation, sexual harassment and prostitution.)

(Social Media Directive 2023, No. 8(2))

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

Pursuant to No. 7(1) of Social Media Directive 2023, the Point of Contact are required to identify the materials that are against the Directive. (Social Media Directive 2023, No. 7(1))

- 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**

Pursuant to No. 8(3) of Social Media Directive 2023, Social Media Platforms have following responsibility:

If the governmental authorities or Social Media Management Unit notify that someone has circulated disseminated any materials that should not be circulated disseminated or appears to be about to do so, the Social Media Platform shall take down such content within 24 hours.



(Social Media Directive 2023, No. 8(3))

- 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 are no specific technology required under the law to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including "hashing technology" or "artificial intelligence or machine learning tools".

Nonetheless, no. 8(1) of the Social Media Directive requires the Social Media Operators to adopt algorithms and other such ways in order to stop the publication or dissemination of notice, advertisements, and contents that are contrary to the prevailing laws. (Social Media Directive 2023, No. 8(1))

- 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. 5 of Social Media Directive 2023 has made provision as follows:

- (1) Based on the number of users, Social Media Platform operating in Nepal are classified as follows:
 - a. Social Media Platforms with less than 0.1 million users as ‘Small Social Media Platform’,
 - b. Social Media Platforms with more than 0.1 million users as ‘Large Social Media Platform’.
- (2) Social Media Platforms as per clause (b) are required to compulsorily appoint a residential officer to hear complaints and an officer to monitor self-regulation. Small Social Media Platforms are exempt from this requirement.
- (3) If the address of Point of Contact changes or if the complaint hearing officer changes, Social Media Management Unit shall be notified. (Social Media Directive 2023, No. 5)

- 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?**

There is no applicable law currently in force.

- 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 applicable law currently in force.

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 provision regarding this.

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

According to No. 7(1) of the Social Media Directive 2023, the Point of Contact is responsible for identifying contents published on social media that violate the provisions outlined in the Directive.

No.4 (i) of the Social Media Directive prohibits any materials that harm children and encourage prohibited activities including child sexual exploitation, sexual harassment and prostitution. Therefore, the Point of Contact is responsible to review and identify this kind of contents.

Furthermore, No. 8(1) of the Social Media Directive requires the Social Media Operators to adopt algorithms and other such ways in order to stop the publication or dissemination of notice, advertisements, and contents that are contrary to the prevailing laws. (Social Media Directive 2023, No. 8(1))

Pursuant to No. 8(3) of Social Media Directive 2023, Social Media Platforms have following responsibility: If the governmental authorities or Social Media Management Unit notify that someone has circulated disseminated any materials that should not be circulated disseminated or appears to be about to do so, the Social Media Platform shall take down such content within 24 hours. (Social Media Directive 2023, No. 8(3)).

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

There are no specific legal provision regarding this.

- 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 provision regarding this.

- 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?**

Section 47 of Electronic Transactions Act 2008 has made following provisions:



1. If any person publishes or displays any material in the electronic media including computer, internet which are prohibited to publish or display by the prevailing law or which may be contrary to the public morality or decent behavior or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities, teasing, harassing, or disrespecting women or any conducts in any other similar undignified manner shall be liable to the punishment with the fine not exceeding One Hundred Thousand Rupees or with the imprisonment not exceeding five years or with both.
2. If any person commit an offence referred to in Sub-section (1) time to time he/she shall be liable to the punishment for each time with one and one half percent of the punishment of the previous punishment. (Electronic Transaction Act 2008, § 47, <http://www.tepc.gov.np/uploads/files/12the-electronic-transaction-act55.pdf>.)

Pursuant to Section 76 of the Electronic Transactions Act 2008, if any loss or damage has been caused to any person by the reason of offence committed under this Act, the compensation of such loss or damage shall also be recovered from the offender. (Electronic Transaction Act 2008, Section 76, <http://www.tepc.gov.np/uploads/files/12the-electronic-transaction-act55.pdf>.)

Pursuant to Section 25(d) of Children Act 2018, a child victim shall have the right to child friendly justice as follows in every stage of investigation, prosecution and judicial process:

To get recovery of the reasonable compensation from the offender. (Children Act 2018, Section 25(d), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

Pursuant to Section 73 of Children Act 2018, (1) The juvenile court shall cause the recovery of such a reasonable compensation in lump sum or instalments from the offender to the victim child that is not less than the amount of fine imposed on the offender committing the offence against the child under this Act and the prevailing law, having regard to, inter alia, the loss caused to the education, and physical and mental health, development and family of the child victim.

- 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?**

Pursuant to Article 21(2) of Constitution of Nepal 2015, a victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with law. (Constitution of Nepal 2015, Article 21(2), https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov_.npDate-72_11_16.pdf.)

Pursuant to Section 228 of Muluki Criminal Code 2017, a reasonable compensation shall be ordered to be paid to the victim of offence of child sexual abuse. (Muluki Criminal Code 2017, Section 228, <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>.)



Pursuant to Section 25 of Children Act 2018, a child victim shall have the right to child friendly justice as follows in every stage of investigation, prosecution and judicial process:

- To obtain recovery of the reasonable compensation from the offender. Provided that this clause shall not be considered as limiting the opportunity of the victim to receive compensation from the State.
- To obtain free legal aid and socio-psychological counselling service as required and to appoint a separate legal counsel if he or she so wishes.
- To obtain free service of the translator, sign language expert or interpreter if the victim does not understand the language used by the investigating authority or Juvenile Court.
- To obtain, free of cost, the copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court.
- To obtain police protection for safety against the probable threat that may be caused from the offender or his or her party. (Children Act 2018, Section 25, <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

As per section 73(2) of the Children Act 2018, the juvenile court shall cause to provide reasonable compensation to the child from the Child Fund created pursuant to section 63 of the Children Act 2018. (Children Act 2018, Section 73(2), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.)

Pursuant to Article 39 of the Convention on the Rights of the Child 1989, States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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

A victim of crime shall have the right to get information about the investigation and proceedings of a case in which he or she is the victim. (Constitution of Nepal 2015, Article 21(1), https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov._npDate-72_11_16.pdf.)

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 are no specific tool and processes to protect children, however, pursuant to No. 8(1) of Social Media Directive 2023 Social Media Operators are required to adopt algorithms and other such ways in order to stop the publication or dissemination of notice, advertisements, and contents that are contrary to the prevailing laws. (Social Media Directive 2023, No. 8(1)).



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

N/A

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

N/A

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

N/A

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

N/A