

Paraguay

Legal questionnaire completed by Estudio Jurídico Gross Brown • April 2024

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- 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)

Paraguayan legislation does not define the term "minor", however, from the current regulations, it is understood that a minor is a person under eighteen years of age, as the Paraguayan Civil Code deems fully capable every human being who has reached eighteen years of age and has not been declared judicially incapable. Additionally, the norms relating to children and adolescents establish that for the purposes of interpretation and application of the norms relating to children and adolescents, the scope is established in the following terms:

- (i) Child is every human person from conception to and including thirteen years of age;
- (ii) Adolescent is every human person from fourteen years of age to and including seventeen years of age; and
- (iii) Adult is every human person from eighteen years of age.

Thus, a Child for Paraguayan legislation is a person from conception to and including thirteen years of age, an Adolescent is a person from fourteen years of age to and including seventeen years of age, and an Adult is a person from eighteen years and above. A minor would be any person under eighteen, meaning children or adolescents. (Art. 36 Civil Code and Art. 1 of Law No. 1.702/01).

Links:

https://www.conatel.gov.py/conatel/wp-content/uploads/2019/10/ley-1183_1985-cdigo-civilparaguayo.pdf

https://www.bacn.gov.py/leyes-paraguayas/4845/ley-n-2169-establece-la-mayoria-de-edad

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 Criminal Code criminalizes child sexual abuse and pimping on minors. Article 135a of the Criminal Code considers child sexual abuse when someone performs sexual acts with a child or induces a child to perform such acts on himself or on others, or if someone performs or





induces a child to perform, sexual acts which are manifestly relevant to a child and directed at him or her, or at a third party. On the other hand, the Criminal Code also penalizes any person who induces a person to prostitution who is (i) under sixteen years of age; (ii) between sixteen years of age and the age of majority, abusing their helplessness, trust or naivety; or (iii) between sixteen years of age and the age of majority, whose education is in their charge, shall be punished with imprisonment of up to five years or a fine. (Art. 135a and 139 Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/9906/ley-n-6002-modifica-el-articulo-135-dela-ley-n-116097-codigo-penal-modificado-por-el-articulo-1-de-la-ley-n-344008-quemodifica-varias-disposiciones-de-la-ley-n-116097-codigo-penal

https://www.bacn.gov.py/leyes-paraguayas/3485/ley-n-3440-modifica-variasdisposiciones-de-la-ley-n-116097-codigo-penal

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

The Criminal Code does not specifically mention which sexually explicit conduct is criminalized.

However, it criminalizes sexual acts with a child, and sexual abuse of persons under guardianship. For definitions, please refer to answer I (b). (Art. 135a Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/9906/ley-n-6002-modifica-el-articulo-135-dela-ley-n-116097-codigo-penal-modificado-por-el-articulo-1-de-la-ley-n-344008-quemodifica-varias-disposiciones-de-la-ley-n-116097-codigo-penal

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

For definition, please refer to answer 1(b). (Art. 135a Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/9906/ley-n-6002-modifica-el-articulo-135-dela-ley-n-116097-codigo-penal-modificado-por-el-articulo-1-de-la-ley-n-344008-quemodifica-varias-disposiciones-de-la-ley-n-116097-codigo-penal

https://www.bacn.gov.py/leyes-paraguayas/3777/modifica-y-amplia-varios-articulos-de-laley-n-116097-codigo-penal

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

Since Paraguayan legislation does not have an express definition of the term "minor", it is important to clarify that some articles of the Criminal Code consider people under eighteen years of age as minors, which include children as mentioned in answer 1(a). The law does not only protect those classed as "children", but minors in general. Thus, the Criminal Code



criminalizes anyone who

- by any means produces publications containing sexual acts involving persons under eighteen years of age and aimed at arousing sexual appetite, as well as the exhibition of their genital parts for pornographic purposes;
- (ii) organizes, finances or promotes public or private shows, in which a person under eighteen years of age participates in the performance of sexual acts; or
- (iii) distributes, imports, exports, offers, exchanges, exhibits, disseminates, promotes or finances the production or reproduction of publications within the meaning of subparagraph (i).

Also, anyone who reproduces publications within the meaning of subparagraph (i). (Art. 140 Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/3777/modifica-y-amplia-varios-articulos-de-laley-n-116097-codigo-penal

f. computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9), <u>https://www.law.cornell.edu/uscode/text/18/2256</u>)

The Criminal Code does not specifically typify computer-generated images or videos of child pornography or CSAM, these acts are not provided for by our legislation.

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)

When someone induces a child to perform sexual acts on himself or on others, or if someone performs or induces a child to perform, sexual acts which are manifestly relevant to a child and directed at him or her, or at a third party, under Paraguayan legislation is considered child abuse as mentioned in our answer 1(b). Additionally, the Criminal Code criminalizes pimping of minors also mentioned in our answer 1(b). On the other hand, the Code does criminalize statutory rape, which is similar to the definition of enticement or grooming. Statutory rape is when a man, through persuasion, engages in extramarital sexual intercourse with a woman between the ages of fourteen and sixteen. This is not foreseen for children (thirteen years and under). For definition of pimping of minors, please refer to answer 1(b). (Art. 137 and Art. 139 Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/3485/ley-n-3440-modifica-variasdisposiciones-de-la-ley-n-116097-codigo-penal

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

The Criminal Code does not expressly establish a legal age of consent for sexual activity. However, it is understood that up to the age of thirteen there can in no way be consent and the act is considered a crime (child sexual abuse) as established in the Criminal Code. Then,



from fourteen to sixteen years of age, if the perpetrator is an adult there cannot be consent either, as established in the Criminal Code under statutory rape. Nonetheless, if the perpetrator is under eighteen years of age, our legislation dispenses with the penalty. Our legislation therefore explicitly incorporates a close in age exemption ("Romeo and Juliet" laws). It is important to mention that the Criminal Code only penalizes a man under statutory rape who attempts to have sexual intercourse with a woman; a male minor is not covered by this rule. However, there is no provision regarding consent to sexual activity for minors with the age of seventeen. (Art. 135a and 137 Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/9906/ley-n-6002-modifica-el-articulo-135-dela-ley-n-116097-codigo-penal-modificado-por-el-articulo-1-de-la-ley-n

https://www.bacn.gov.py/leyes-paraguayas/3485/ley-n-3440-modifica-variasdisposiciones-de-laley-n-116097-codigo-penal

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), <u>https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf</u>)

The Criminal Code considers abuse through technological means when someone, by means of electronic communications, telecommunications or any other data transmission technology, solicits or demands in any way a child to perform sexual acts or to send him or her images of himself or herself with sexual content, shall be punished by deprivation of liberty for up to three years. (Art. 135b Criminal Code).

Links:

https://www.bacn.gov.py/leyes-paraguayas/9906/ley-n-6002-modifica-el-articulo-135-dela-ley-n-116097-codigo-penal-modificado-por-el-articulo-1-de-la-ley-n-344008-quemodifica-varias-disposiciones-de-la-ley-n-116097-codigo-penal

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

Law No. 1680 the "Code of Childhood and Adolescence" states that "It is forbidden to give or tolerate the access of children and adolescents to the exhibition of pornographic publications or shows". Under this rule, it could be understood that there is an obligation for any natural or legal person to not give or tolerate access of children to the exhibition of pornographic publication or shows, and that it could therefore apply to Online Platforms. However, there are no legal or regulatory requirements or recommendations for Online Platforms to undertake any activity on their systems to protect children online from sexual exploitation. There is also a law that seeks to protect children and adolescents from harmful internet content, by which internet service providers (ISPs) (which are not Online Platforms) are obliged to provide their clients with free and compulsory software with systems for



detecting, filtering, classifying, eliminating and blocking content that is harmful to children and adolescents. Likewise, public or private educational establishments, commercial or other publicly accessible spaces that provide internet access services for free or for a fee, must install and activate free protection software on all computers or devices of any kind that are available to the public. (Art. 31 Law No. 1680 and Art. 2, 3 and 5 of Law No. 5653).

Links:

https://www.bacn.gov.py/leyes-paraguayas/5261/codigo-de-la-ninez-y-la-adolescencia

https://www.bacn.gov.py/leyes-paraguayas/5167/proteccion-de-ninos-ninas-yadolescentes-contra-contenidos-nocivos-deinternet#:~:text=La%20presente%20Ley%20protege%20al,del%20ni%C3%B10%2C%20ni%C 3%B1a%20y%20adolescente

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

Please refer to answer 2(a).

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

Please refer to answer 2(a).

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

Please refer to answer 2(a).

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

Please refer to answer 2(a).

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 2(a).

- 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-sexabuse-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.

Please refer to answer 2(a).

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.?

Please refer to answer 2(a).

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 are no legal requirements to implement any method to verify the age of a user before allowing access to an Online Platform. However, under Law N° 5,653/16 it is the obligation of Internet Service Providers to provide their customers with free and mandatory software with systems for detecting, filtering, classifying, eliminating and blocking harmful content that is harmful to children and adolescents. Filtering should be done by the Internet Service Provider, not by the Online Platform or the user. Nonetheless, this filtering process has not yet been regulated.

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 are no legal obligations to implement any method to obtain parental consent before a child uses 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?

Yes, under Art. 31 of Law No. 1,680/01 "Code of Childhood and Adolescence" the use of children and adolescents in sex trade activities and in the elaboration, production or distribution of pornographic publications is prohibited. It is also forbidden to give or tolerate the access of children and adolescents to the exhibition of pornographic publications or shows.

Also, Paraguay has incorporated, under Law 57/90, the United Nations Convention on the Rights of the Child, which establishes that States shall adopt all appropriate administrative, legislative, and other measures to give effect to the rights recognized in this Convention.

Thus, under the abovementioned legal precepts, there are remedies to stop the publication of pornography by local Online Platforms, e.g. an injunction.



Furthermore, in the investigation and prosecution of trade and the commercial or noncommercial diffusion of pornographic material of minors or incapacitated, the following provisions for the protection of the rights and guarantees of the accused and the best interests of the child and adolescent shall be observed (Law No. 2,861/06 "WHICH REPRESSES THE TRADE AND COMMERCIAL OR NON-COMMERCIAL DIFFUSION OF PORNOGRAPHIC MATERIAL, USING THE IMAGE OR OTHER REPRESENTATION OF MINORS OR INCAPABLE PERSONS"):

- 1. The images in possession of the Public Prosecutor's Office shall not be delivered to the parties or exhibited to third parties.
- 2. A record of the content of the images will be drawn up, which will be available to the parties and will always be confidential.
- 3. The accused may be present at the time of the recording of the minutes. If he had not appeared at the act by himself or through his defense counsel, he may request the Judge of Guarantees that the images be exhibited to him in a hearing reserved to the parties. His observations shall be recorded in the minutes.
- 4. The images shall not be reproduced, except when the Court orders otherwise, by means of a resolution that may only be based on the preservation of the means of evidence. The party that requested the measure may appeal the resolution that rejects it. The Public Prosecutor's Office and the victim may appeal the decision granting it.
- 5. The persons who have access to the images, by reason of their public function or professional activity, in accordance with the provisions of this article or other laws, are personally responsible for preventing their content from being totally or partially reproduced, diffused, or disclosed.

Links:

https://www.bacn.gov.py/leyes-paraguayas/5261/codigo-de-la-ninez-y-la-adolescencia

https://www.csj.gov.py/cache/lederes/P-0-20121990-L-57-1.pdf

https://www.bacn.gov.py/leyes-paraguayas/1944/ley-n-2861-reprime-el-comercio-y-ladifusion-comercial-o-no-comercial-de-material-pornografico-utilizando-la-imagen-u-otrarepresentacion-de-menores-o-incapaces

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

No, under Law N° 5,653/16 it is the obligation of internet Service Providers (ISPs) to provide their customers with free and mandatory software with systems for detecting, filtering, classifying, eliminating and blocking harmful content, free of charge and on record.

Links:

https://www.bacn.gov.py/leyes-paraguayas/5167/proteccion-de-ninos-ninas-yadolescentes-contra-contenidos-nocivos-de-internet

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, there are remedies to stop the publication of pornography by local Online Platforms, e.g.



an injunction.

Furthermore, in the investigation and prosecution of trade and the commercial or noncommercial diffusion of pornographic material of minors or incapacitated, the following provisions for the protection of the rights and guarantees of the accused and the best interests of the child and adolescent shall be observed (Law No. 2,861/06 "WHICH REPRESSES THE TRADE AND COMMERCIAL OR NON-COMMERCIAL DIFFUSION OF PORNOGRAPHIC MATERIAL, USING THE IMAGE OR OTHER REPRESENTATION OF MINORS OR INCAPABLE PERSONS"):

- 1. The images in possession of the Public Prosecutor's Office shall not be delivered to the parties or exhibited to third parties.
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- 4. The images shall not be reproduced, except when the Court orders otherwise, by means of a resolution that may only be based on the preservation of the means of evidence. The party that requested the measure may appeal the resolution that rejects it. The Public Prosecutor's Office and the victim may appeal the decision granting it.
- 5. The persons who have access to the images, by reason of their public function or professional activity, in accordance with the provisions of this article or other laws, are personally responsible for preventing their content from being totally or partially reproduced, diffused, or disclosed.

Links:

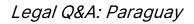
https://www.bacn.gov.py/leyes-paraguayas/1944/ley-n-2861-reprime-el-comercio-y-ladifusion-comercial-o-no-comercial-de-material-pornografico-utilizando-la-imagen-u-otrarepresentacion-de-menores-o-incapaces

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?

Yes, there are remedies to stop the publication of pornography by local Online Platforms, e.g. an injunction.

Furthermore, in the investigation and prosecution of trade and the commercial or noncommercial diffusion of pornographic material of minors or incapacitated, the following provisions for the protection of the rights and guarantees of the accused and the best interests of the child and adolescent shall be observed (Law No. 2,861/06 "WHICH REPRESSES THE TRADE AND COMMERCIAL OR NON-COMMERCIAL DIFFUSION OF PORNOGRAPHIC MATERIAL, USING THE IMAGE OR OTHER REPRESENTATION OF MINORS OR INCAPABLE PERSONS"):

- 1. The images in possession of the Public Prosecutor's Office shall not be delivered to the parties or exhibited to third parties.
- 2. A record of the content of the images will be drawn up, which will be available to the parties and will always be confidential.





- 3. The accused may be present at the time of the recording of the minutes. If he had not appeared at the act by himself or through his defense counsel, he may request the Judge of Guarantees that the images be exhibited to him in a hearing reserved to the parties. His observations shall be recorded in the minutes.
- 4. The images shall not be reproduced, except when the Court orders otherwise, by means of a resolution that may only be based on the preservation of the means of evidence. The party that requested the measure may appeal the resolution that rejects it. The Public Prosecutor's Office and the victim may appeal the decision granting it.
- 5. The persons who have access to the images, by reason of their public function or professional activity, in accordance with the provisions of this article or other laws, are personally responsible for preventing their content from being totally or partially reproduced, diffused, or disclosed.

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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?

The civil action for compensation for damage caused by an unlawful act may be brought independently of the criminal action. The criminal and civil procedures can occur concurrently. However, if the criminal action precedes the civil one, no judgment shall be rendered in the civil case until the outcome of the criminal case has been determined.

Links:

https://www.oas.org/dil/esp/codigo_civil_paraguay.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?

Yes, under the Code of Childhood and Adolescence, modified under Law N° 6,486/2020, if a child or adolescent is in situations that indicate the need for protection or support, the following measures of protection and support shall be applied through the justice system:

- a) Judicial warning to parent or guardian to cease / take action, or lose custody of child as consequence.
- b) Guidance to the child or adolescent and his or her family group.
- c) Temporary accompaniment of the child or adolescent and his/her family group.
- d) The incorporation of the child in an establishment of basic school education and the obligation of attendance.
- e) Medical and psychological treatment.
- f) In case of emergency, the material provision for the support of the child or adolescent.
- g) Residential shelter.
- h) The care of the child or adolescent in a foster family.

Links:

https://www.bacn.gov.py/leyes-paraguayas/9165/ley-n-6486-de-promocion-y-proteccion-



del-derecho-de-ninos-ninas-y-adolescentes-a-vivir-en-familia-que-regula-las-medidas-decuidados-alternativos-y-la-adopcion

https://www.bacn.gov.py/leyes-paraguayas/5261/codigo-de-la-ninez-y-la-adolescencia

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

Yes, the victim will be notified when an offender is arrested if the prosecutor has the details of the victim.

- 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?

In order to answer this section and per request, online platforms are to be read as being synonymous with Internet Service Providers (ISPs).

In light of the above, under Law N° 5,653/16 it is the obligation of internet Service Providers (ISPs) to provide their customers with free and mandatory software with systems for detecting, filtering, classifying, eliminating and blocking harmful content, free of charge and on record.

Links:

https://www.bacn.gov.py/leyes-paraguayas/5167/proteccion-de-ninos-ninas-y-adolescentes-contra-contenidos-nocivos-de-internet

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

Internet Service Providers (ISPs) shall have the previous validation and approval of the Ministry of Information and Communication Technologies (MITIC), through the issuance of a certificate of compliance with the specifications, in order to provide their customers with free software with systems for detection, filtering, classification, elimination and blocking of harmful content.

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

There is no provision regarding this matter under this applicable law, which is still being implemented.

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

The technical specifications , conditions, and requirements to be met by the software, in accordance with the provisions of Article 4 of Law No. 5,653/2016



are as follows:

- Web filtering: the software may be installed on users' end devices and must allow the filtering of websites accessed by the user, by means of automated detection and filtering mechanisms and/or blocking of contents by categories and/or patterns.
- Exception handling: the software must have the possibility of including internet domain exceptions, both whitelist (exceptionally allowing specific internet domains that by default are being blocked) and blacklist (exceptionally restricting specific internet domains that by default are not being blocked).
- Installation/Uninstallation. Activation/Deactivation: the software may be installed and/or deactivated at the discretion of the adult responsible for the device, and this functionality shall be protected by a password or other control mechanism configurable by the responsible adult.
- Availability: the software shall be available in the official stores of each operating system of the device's brand and/or may be preinstalled on the device at the time of purchase.

Links:

https://www.bacn.gov.py/leyes-paraguayas/5167/proteccion-de-ninos-ninasy-adolescentes-contra-contenidos-nocivos-de-internet

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"?

Article 5° of Law No. 5,653/16, prescribes that the National Telecommunications Commission (CONATEL) is the competent enforcement authority to control compliance with the obligations established in the standard by internet providers and the Municipalities, through the Municipal Councils for the Rights of Children and Adolescents (CODENI), are competent enforcement authorities to control and monitor that the spaces and establishments with public access maintain the implemented protective software active.

Links:

https://www.bacn.gov.py/leyes-paraguayas/5167/proteccion-de-ninos-ninas-yadolescentes-contra-contenidos-nocivos-de-internet