

Legal questionnaire completed by Hernández & Cía. Abogados • March 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>)

Law No. 27337, Children and Adolescents Code: Article I

A child is considered a human being from conception to twelve years of age and an adolescent from twelve to eighteen years of age.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682689>

Supreme Decree No. 093-2019-PCM, Regulation of Law No. 30254, Law for the Promotion for the Safe and Responsible use of information and communication technologies by children and minors:

Article 3

For the purposes of these Regulations, the following definitions shall apply:

(...)

2. Child: Any human being from conception to twelve (12) years of age.
3. Adolescent: Every human being from twelve (12) years of age until reaching eighteen (18) years of age.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H1235444>

International treaties

Peru has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Art. 3(d): “Child” shall mean any person under the age of 18 years.

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>)



Penal Code: Article 129-H.

Whoever makes a child or adolescent perform acts of sexual connotation with the purpose of obtaining economic or other benefit will be punished with a custodial sentence of not less than fifteen nor more than twenty years.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

International treaties

Peru has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Art. 3(a): "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

Peru has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Art 2(b): Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration.

Art 2(c): 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

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

Penal Code: Article 176-A.

Whoever, without the intention of having carnal access regulated in article 170, performs on a minor under fourteen years of age [Minor refers to an underage person, so it includes both child and adolescent until reaching 18 years old)] or forces him to perform on himself, on the agent or third party, inappropriate touching of his private parts, acts of sexual connotation in any part of his body or libidinous acts, will be punished with imprisonment of not less than nine nor more than fifteen years.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

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

Penal Code: Article 173. Sexual rape of a minor

Anyone who has sexual access vaginally, anal or orally or performs any other similar act with the introduction of an object or part of the body through one of the first two routes, with a minor under fourteen years of age, will be punished with life imprisonment.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

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

Penal Code: Article 129-M.

Anyone who possesses, promotes, manufactures, distributes, exhibits, offers, markets, advertises, publishes, imports or exports by any means objects, books, writings, images, videos or audios, or performs live shows of a sexual nature, in which minors under eighteen years of age participate, will be punished with imprisonment of no less than six nor more than ten years and a fine of one hundred and twenty to three hundred and sixty-five days [of defendant's daily wages].

The custodial sentence will be no less than ten nor more than fifteen years and a fine of fifty to three hundred and sixty-five days when [any one of the following apply]:

1. The victim is under fourteen years of age.
2. The material is disseminated through any information or communication technology or any other means that generates mass dissemination.
3. The agent acts as a member or member of a gang or criminal organization (...).

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

International treaties

Peru has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Art 2(c): 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

- 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>)**

Law No. 30096, Cyber Crime Law: Article 9

Whoever, by means of digital technologies impersonates the identity of a natural or juridical person, provided that such conduct results in some damage, material, moral or of any other nature, shall be punished with imprisonment of not less than three nor more than five years.



<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H1088463>.

*Note - The “damage” has to be reported by the impersonated party and verified by the prosecutor’s office.

- 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>)**

Law No. 30096, Cyber Crime Law: Article 5

Whoever, through the Internet or other similar means, contacts a minor under fourteen years of age to request or obtain pornographic material from him, or to propose to perform any act of sexual connotation with him or with a third party, shall be sentenced to a term of imprisonment of not less than six nor more than nine years.

When the victim is between fourteen [which is the age of consent] and less than eighteen years of age and deception is involved, the penalty shall be not less than three nor more than six years.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H1088463>

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

Penal Code: Article 173

Anyone who has sexual access vaginally, anal, or orally or performs any other similar act with the introduction of an object or part of the body through one of the first two routes, with a minor under fourteen years of age, will be punished with life imprisonment.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

- 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>)**

Penal Code: Article 176-C.

Anyone who threatens or intimidates a person, by any means, including the use of information or communication technologies, to obtain from them a conduct or act of sexual connotation, will be punished with imprisonment of not less than two nor more than of four years and disqualification, as applicable, in accordance with sections 5, 9, 10 and 11 of article 36.

The custodial sentence will be no less than three nor more than five years and disqualification, as appropriate, in accordance with sections 5, 9, 10 and 11 of article 36, if to carry out the crime the agent threatens the victim with dissemination of images, audiovisual

materials or audios with sexual content in which it appears or participates.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682692>

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

In Peru, legislation seeking to protect children from sexual exploitation establishes controls on the following service providers:

- (i) Internet access;
- (ii) Public internet booths;
- (iii) Internet service for clients in restaurants, hotels, airports, shopping malls and the like; and,
- (iv) Internet service for clients in plazas, parks, government facilities and the like.

These service providers are under the obligation to ensure that such services have minimum logs and filters, so that no web pages, chat channels or any other form of network communication, pornographic content and/or information can be accessed, under liability. Access to the aforementioned content is granted under the mechanisms established by the owner, driver, administrator, manager or person in charge of the establishment, to users of legal age, and a record of such authorizations must be kept.

In the case of internet access service providers, they are required to inform the user, before establishing the contractual relationship with him/her and every six months while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents. This possibility is included in the service agreement, and it is up to the user to authorize or contract it. The means of advertising the availability of the filters is similar to those used by the operating companies to promote the sale of the Internet service.

The non-compliance of the referred obligations by the internet service operating companies constitutes a very serious offense in accordance with the provisions of Law 27336, Law for the development of the functions and faculties of the Supervisory Body for Private Investment in Telecommunications - OSIPTEL".

Hence, Online Platforms are not legally required or recommended to undertake any of the activities described in the question.

- 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**



- d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about
- e. review content by human moderators to screen or moderate for child pornography or CSAM
- 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
- 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.
- 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.?

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?

In Peru, public internet booths; Internet service for clients in restaurants, hotels, airports, shopping malls and the like; and Internet service for clients in plazas, parks, government facilities and the like; are required to grant access to pornographic content and/or information only to users of legal age, and a record of such authorizations must be kept. Likewise, internet service providers are required to inform the user, before establishing the contractual relationship with him/her and every six months while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents.

Hence, age verification controls are established not at the level of Online Platforms but at the level of (i) public internet booths; (ii) internet service for clients in restaurants, hotels, airports, shopping malls and the like; (iii) internet service for clients in plazas, parks, government facilities and the like; and, (iv) internet service providers.

Note: The law does not establish a specific form of age verification, so the choice of method is left to the discretion of each regulated entity. In the case of public Internet booths, as clients physically enter the establishment, age verification is most likely to be carried out by requiring the National Identity Document (DNI), an official identification document showing the date of birth of the holder. However in the case of internet service for (ii) clients in restaurants, hotels, airports, shopping malls and the like; (iii) internet service for clients in plazas, parks, government facilities and the like; and (iv) internet service providers; as long as users do not physically enter an outfit the age verification will be online. Hence, these regulated entities must choose the online mechanism through which they will comply with the law.

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?

As explained in questions 2 and 3, in Peru Law 30254 and its Regulation seeks to protect children from sexual exploitation by establishing controls on online platforms. Article 7 of Law 30254 and Article 9 of Supreme Decree No. 093-2019-PCM establishes that in the case of internet access service providers, they are required to inform the user, before establishing the contractual relationship with him/her and every six months while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents. This possibility is included in the service agreement, and it is up to the user to authorize or contract it. The means of advertising the availability of the filters is similar to those used by the operating companies to promote the sale of the Internet service.

Similarly, article 10 of Law 30254 provides that public internet booths; Internet service for clients in restaurants, hotels, airports, shopping malls and the like; and Internet service for clients in plazas, parks, government facilities and the like; are required to grant access to pornographic content and/or information only to users of legal age, and a record of such authorizations must be kept. Likewise, internet service providers are required to inform the user, before establishing the contractual relationship with him/her and every six months while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents.

Law 30254 (<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H1113589>) and Supreme Decree 093-2019-PCM (<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H1235444>).

- 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?**

We note that Article 43 of Legislative Decree No. 1267, Law of the National Police of Peru, allows the National Police of Peru to use technological systems and records for the best fulfillment of its institutional purposes, including video surveillance systems on roads and public spaces, virtual patrol systems for the detection of crimes committed through information and communication technologies, police information and communication systems, the 911 Emergency, Urgency and Information Center - 911 Central, among others as defined in the regulatory standards.

On December 21, 2023, by means of Legislative Decree No. 1604, Article 43 of Legislative Decree No. 1267, Law of the National Police of Peru was modified, adding that the National Police of Peru coordinates with the Secretariat of Government and Digital Transformation of the Presidency of the Council of Ministers in the preparation of protocols referred to the use



of technological systems and records in the framework for promoting safe and responsible use of digital technologies by minors and adolescents.

<https://spij.minjus.gob.pe/spij-ext-web/#/detallenorma/H682684>

<https://busquedas.elperuano.pe/dispositivo/NL/2246611-3>

- b. **An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?**
 - c. **An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?**
 - d. **A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?**
 - 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?**
 - 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?**
 - g. **notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?**
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?**

Article 7 of Supreme Decree No. 093-2019-PCM, Regulation of Law No. 30254, Law for the Promotion for the Safe and Responsible use of information and communication technologies by children and minors, defines “Filters” as computer tools that refers to a program designed to restrict certain content that is available through the Internet and that must have at least the following content filter categories: Pornography, Violence, Racism, Drug addiction, Terrorism and Gambling.

As mentioned in our previous answers, Article 7 of Law 30254 and Article 9 of Supreme Decree No. 093-2019-PCM establishes that in the case of internet access service providers, they are required to inform the user, before establishing the contractual relationship with him/her and every six months while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents. This possibility is included in the service agreement, and it is up to the user to authorize or contract it. The means of advertising the availability of the filters is similar to those used by the operating companies to promote the sale of the Internet service.

Similarly, article 10 of Law 30254 provides that public internet booths; Internet service for clients in restaurants, hotels, airports, shopping malls and the like; and Internet service for clients in plazas, parks, government facilities and the like; are required to grant access to pornographic content and/or information only to users of legal age, and a record of such authorizations must be kept. Likewise, internet service providers are required to inform the user, before establishing the contractual relationship with him/her and every six months



while the contractual relationship is maintained, about the possibility of the user authorizing or contracting, as the case may be, the implementation of free or onerous filters, respectively, for blocking pornographic or other violent content pages on home or mobile devices, in order to protect children and adolescents.

- i. If so, must these steps be taken before the launch of an Online Platform?**
 - ii. If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?**
 - iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.**
- 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”?**