

Legal questionnaire completed by Guyer & Regules • 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>)

The main regulation in Uruguay about childhood issues is the Code of Childhood and Adolescence, which article 1 expresses:

“For the purposes of the application of this Code, a child is defined as any human being up to thirteen years of age and an adolescent is defined as a person over thirteen and under eighteen years of age.

Whenever this Code refers to children and adolescents it includes both genders”.

Link:

<https://www.impo.com.uy/bases/codigo-ninez-adolescencia/178232004>

In terms of international regulation, Uruguay has ratified the Palermo Protocol, which Art. 3 d) provides an identic definition: “Child” shall mean any person under the age of 18 years.

Link:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

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>)

At the international level, Uruguay ratified two relevant protocols:

- Palermo Protocol, Art. 3: “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



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.

Link:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

- 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.

Link:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

- Another similar definition, this time referring to sexual violence, but which fits within the same concept, is found in article 6 c) of Law 19.580:

“Sexual violence is also the involvement of children and adolescents in sexual activities with an adult or with any other person who is in a situation of advantage over them, either because of their age, or because of their greater physical or mental development, or because of the relationship of kinship, affective or trusting relationship that unites him/her to the child, by his/her position of authority or power. Are forms of sexual violence: sexual abuse, sexual exploitation and use in pornography, among others”.

Link:

<https://www.impo.com.uy/bases/leyes/19580-2017>

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

The closest concept to the one requested is that provided for in article 273 of the Criminal Code, relating to the crime of violent indecent assault:

“Violent indecent assault is committed by anyone who, by the means established in the preceding article (violence, intimidation, psychological pressure, abuse of power, threat, force or any other coercive circumstance), or taking advantage of the circumstances therein enunciated, performs obscene acts, other than carnal intercourse, on a person of the same or different sex, or obtains that the latter performs such acts on himself or on the person of the guilty party or on a third party”.

Link:

<https://www.impo.com.uy/bases/codigo-penal/9155-1933>

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



The definition foreseen in our legal system exists in article 123 of our Code of Childhood and Adolescence:

“For the purposes of this section, mistreatment or sexual violence against children and adolescents is understood as any form of physical, psychological or humiliating harm, abuse or punishment, neglect or negligent treatment, sexual abuse or sexual exploitation in all its forms, occurring in the family, institutional or community environment.

Mistreatment of children and adolescents is also understood as their exposure to gender-based violence against their mothers or other persons in charge of their care”.

Link:

<https://www.impo.com.uy/bases/codigo-ninez-adolescencia/17823-2004>

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

This concept is regulated in the national Law N° 17.815, accomplishing with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which Uruguay has ratified and added to the domestic regulations by Law N° 17.559.

Article 3 of Law 17.815: “a pornographic product or material is any product or material that by any means contains the image or any other form of representation of minors or incapable persons engaged in explicit sexual activities, real or simulated, or the image or representation of their genital parts, for primarily sexual purposes”.

Link:

<https://www.impo.com.uy/bases/leyes/17815-2004>

- 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>)**

This specific kind of definition is not regulated in our country, although this material could be within the definition of CSAM explained above in item “e”, since that definition includes “any product or material that by any means contains the image or any other form of representation of minors or incapable persons engaged in explicit sexual activities, real or simulated”.

- 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>)**

In case of grooming, the article 277 BIS of our Criminal Code provides the criminal conduct that configure grooming:

Whoever, through the use of technology, the Internet, any computer system or any means of communication or data transmission technology, contacts or influences a minor with the



purpose of committing any crime against his sexual integrity, acts with sexual connotations, obtains pornographic material or forces him to do or not to do something against his will.

Apart of what is regulated in this article (which is the description of the grooming felony), Uruguay does not have any other legal definition.

Link:

<https://www.impo.com.uy/bases/codigo-penal/9155-1933>

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

There is no legal age of consent for sexual activities, however, article 272-BIS of the Criminal Code establishes a presumption of violence when the minor with whom sexual activity took place was 15 years old or younger.

Art. 272-BIS of Criminal Code: Whoever by means of intimidation, psychological pressure, abuse of power, threat, force, or any other psychological pressure, performs an act of a sexual nature on a person of the same or different sex, shall be punished with a penalty of two to twelve years of penitentiary.

(...)

Violence is presumed when the act of a sexual nature is carried out:

1. With a person under fifteen years of age. This presumption shall not apply in the case of consensual relations between persons of thirteen years of age and there is no difference of more than eight years between them.
2. With a descendant or person under his care or authority under eighteen years of age.
3. With a person who, for congenital or acquired, permanent or transitory causes, is, at the moment of the execution of the act, deprived of discernment.
4. With an arrested or detained person, as long as the accused turns out to be the one the person in charge of its custody or guardianship.

Link:

<https://www.impo.com.uy/bases/codigo-penal/9155-1933>

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>)

There is no definition with such specificity; this type of conduct would fall within the legal definition of traditional extortion, which is provided—like another mentioned definitions—by Uruguay’s Criminal Code (art. 345):

“Whoever, by violence or threats, forces someone to do, tolerate or refrain from doing something against his own right, in order to procure for himself or for another an unjust advantage, to the detriment of the victim or of a third party, shall be punished with four to ten years of penitentiary”.

Link:

<https://www.impo.com.uy/bases/codigo-penal/9155-1933>

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

Although Uruguay does not have a specific regulation for this purpose, Article 36 of the Personal Data Protection Law No. 18331 provides for the possibility of creating codes of conduct.

“Associations or entities representing responsible for or users of privately owned data banks may draw up codes of professional practice, which establish rules for the standards for the processing of personal data that tend to ensure and improve the conditions of operation of the information systems in accordance with the principles set forth in the present law. Said codes shall be entered in the register kept for such purpose by the controlling organism, which may refuse registration when it considers that they do not comply with the legal and regulatory provisions on the matter”.

Link:

<https://www.impo.com.uy/bases/leyes/18331-2008>

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

N/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

N/A

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

N/A

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

N/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

N/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-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.

N/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.?

N/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?

Currently, Uruguay does not have any law regulating obligations of this type for online platforms.

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, Uruguay does not have any law regulating obligations of this type for 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?

There is no legal provision for this possible remedy.

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

There is no legal provision for this possible remedy. Generally, the platform's own internal policies are responsible for removing this type of content.

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

Although Uruguay has no specific regulation on this point, there is a law on personal data protection, which provides for the possibility of taking action against databases that do not delete personal information after having been requested by the individual.

Article 37 of Personal Data Protection Law 18.331:

“The holder of personal data may bring the action for protection of personal data or habeas data, against any person responsible for a public or private database, in the following cases:

- A) When he/she wants to know his/her personal data that are registered in a database or similar and such information has been denied, or has not been, or has not been provided by the person in charge of the database, within the opportunities and terms provided by law.
- B) When he/she has requested the responsible for the database for its rectification, updating, elimination, inclusion or deletion and the latter has not proceeded to do so, or has given sufficient reasons for which the request does not correspond, within the term provided for the law”.

Link:

<https://www.impo.com.uy/bases/leyes/18331-2008>

Also, government provides medical and psychological assistance in such situations. This is regulated mainly in the Code of Childhood and Adolescence.

Article 129 of the Code of Childhood and Adolescence:

Of the denunciations that are presented referring to the conducts foreseen in article 123 and following of this Code, the acting Court will inform the competent state agency for the protection of children, which will coordinate the necessary public and private services for the immediate attention of the children and adolescents involved. Said services shall ensure them, as a minimum, the necessary medical treatment to reverse the physical sequels, if any, psychosocial interventions and psychotherapeutic approaches and eventually also for their family or protective environment, aimed at repairing the damage caused and restoring their violated rights.

To such effects, the intervening services must inform the Court acting in the complaint about the progress and results of the services provided, within six months after the beginning of the treatments.

Link:

<https://www.impo.com.uy/bases/codigo-ninez-adolescencia/17823-2004>

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?



Although it is a hypothesis of difficult configuration, our procedural system provides for the possibility of requesting provisional measures, which are issued in the framework of a civil proceeding and are intended to produce the result sought at the beginning of the process, without having gone through it. This institute does not apply to criminal proceedings.

Art. 317 of the General Code of Proceedings (provisional measures):

“Outside of the cases regulated in the preceding articles, the court may adopt such provisional measures as it deems appropriate or anticipate the carrying out of certain procedures, in order to avoid causing the party, before the judgment is rendered, a serious injury or one that is difficult to repair, or to provisionally ensure the decision on the merits”.

Link:

<https://www.impo.com.uy/bases/codigo-general-proceso/15982-1988>

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?

In the Criminal Procedure Code there is an institute called reparatory agreement, by which the victim may request the offender an economic claim, in exchange for the extinction of the crime charged. It is important to mention that the applicability of the reparatory agreement for this crime may be debatable due to its nature, but it is not excluded by express text.

Art. 393 of the Criminal Procedure Code:

“The accused and the victim, from the moment of the formalization of the investigation and throughout the process, may sign a material or symbolic reparation agreement, which will be submitted to the judge of the case in a hearing, with the intervention of the Public Prosecutor's Office, when there is no public interest in the prosecution and when the seriousness of the guilt does not oppose it”.

Link:

<https://www.impo.com.uy/bases/codigo-proceso-penal-2017/19293-2014>

If the reparatory agreement was not chosen in the criminal process, the aggressor may also be sued in the civil sphere for a claim of moral damages. This is legitimized by art. 1319 of the Civil Code:

“Every wrongful act of man that causes damage to another, imposes on him by whose willful misconduct, fault or negligence it has happened, the obligation to repair it. When the wrongful act has been committed with malice, that is, with intent to injure, it constitutes a crime; when there is no such intent to injure, the wrongful act constitutes a quasi-delict. In both cases, the wrongful act may be negative or positive, depending on whether the duty consists in doing or not doing. to do”.

Link:

<https://www.impo.com.uy/bases/codigo-civil/16603-1994>

At international level, also exists the UN Declaration on the Fundamental Principles of Justice



for Victims of Crime and Abuse of Power:

Article 12:

“Where compensation from the offender or from other sources is not sufficient, States shall endeavor to provide financial compensation:

- (a) To crime victims who have suffered significant bodily injury or impairment of their physical or mental health as a result of serious crimes;
- (b) To the family, in particular dependents, of victims who have died or become physically or mentally incapacitated as a result of the victimization”.

Link:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

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?

Government provides medical and psychological assistance in such situations. This is regulated mainly in the Code of Childhood and Adolescence.

Article 129 of the Code of Childhood and Adolescence:

Of the denunciations that are presented referring to the conducts foreseen in article 123 and following of this Code, the acting Court will inform the competent state agency for the protection of children, which will coordinate the necessary public and private services for the immediate attention of the children and adolescents involved.

Said services shall ensure them, as a minimum, the necessary medical treatment to reverse the physical sequels, if any, psychosocial interventions and psychotherapeutic approaches and eventually also for their family or protective environment, aimed at repairing the damage caused and restoring their violated rights.

To such effects, the intervening services must inform the Court acting in the complaint about the progress and results of the services provided, within six months after the beginning of the treatments.

Link:

<https://www.impo.com.uy/bases/codigo-ninez-adolescencia/17823-2004>

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

In our country's criminal procedure system, the victim is notified when the Prosecutor's Office requests the initiation of a criminal investigation against the perpetrator. Along with this request, it is likely that due to the type of crime, a preventive detention will also be ordered, of which the victim will be notified if he/she attends the hearing for this purpose.

Article 266.5 of the Criminal Procedure Code:

If the accused is at liberty, once the request for formalization has been received, the judge shall summon the parties and the victim to a hearing, which shall be held within a period of no more than twenty days.

Article 266.6 of the Criminal Procedure Code:

At the formalization hearing, the parties and the victim who has appeared will be heard. In such hearing the judge will decide:

- a) the legality of the detention if it is the case;
- b) the admissibility of the prosecutor's request for formalization of the investigation;
- c) the request for precautionary measures formulated by the prosecutor or the victim in accordance with the provisions of Article 81(2)(e) and Articles 216 and further of this Code;
- d) any other request made by the parties”.

Link:

<https://www.impo.com.uy/bases/codigo-proceso-penal-2017/19293-2014>

We can also refer to art. 9 of the Law 19.580:

“Children and adolescents, whether victims or witnesses of acts of violence, are recognized, without prejudice to the rights established by the applicable regulations, the right to:

- A) Be informed by his defense about his rights, the status and scope of administrative proceedings, deadlines and court decisions in the case, in a manner accessible to his age, taking into account his maturity and degree of autonomy”.

Link:

<https://www.impo.com.uy/bases/leyes/19580-2017>

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 is currently no law or regulation in Uruguay that obliges an online platform to use this type of system.

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