

Legal questionnaire completed by Araque Reyna Sosa Viso y Asociados • 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>)

- I. Law approving the Convention on the Rights of the Child, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 34.541 of August 29, 1990.

Link: <https://pandectasdigital.blogspot.com/2016/08/convencion-sobre-los-derechos-del-nino.html>

Definition: Article 1 of the CRC states: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (not an official English translation).

- II. Organic Law for the Protection of Children and Adolescents (LOPNNA), published in Official Gazette No. 6,185 of June 8, 2015.

Link: <https://elucabista.com/wp-content/uploads/2015/10/LOPNNA-REFORMADA.pdf>

Definition: Article 2 of LOPNNA states: “A child is any person under twelve years of age. An adolescent is any person twelve years of age or older and less than eighteen years of age. If there is any doubt as to whether a person is a child or adolescent, girl or adolescent, he or she shall be presumed to be a child, until proof to the contrary. If there is any doubt as to whether a person is an adolescent or over eighteen years of age, he/she shall be presumed to be an adolescent, until proven otherwise” (not an official English translation).

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>)

- I. Organic Law for the Protection of Children and Adolescents (LOPNNA), published in Official Gazette No. 6,185 of June 8, 2015.

Link: <https://elucabista.com/wp-content/uploads/2015/10/LOPNNA-REFORMADA.pdf>



Definition: There is no specific applicable regulation in Venezuela that defines child sexual exploitation, however, according to Article 258 of LOPNNA this crime can be committed by: “Whoever encourages, directs or profits from the sexual activity of a child or adolescent (,,,)” (not an official English translation).

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

- I. Law of Partial Reform of the Penal Code published in the Official Gazette No. 5.768 Extraordinary of April 13, 2005.

Link: https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_3_sp.pdf

There is no specific applicable regulation in Venezuela that defines sexually explicit conduct, however, Article 381 of the Law of Partial Reform of the Penal Code establish the penalty for the crime of indecent assault, and states that this crime can be committed by: “Any individual who, outside the cases indicated in the preceding articles, has outraged modesty or good morals by acts committed in a public place or exposed to public view (...)” (not an official English translation).

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

- I. Organic Law for the Protection of Children and Adolescents (LOPNNA), published in Official Gazette No. 6,185 of June 8, 2015.

Link: <https://elucabista.com/wp-content/uploads/2015/10/LOPNNA-REFORMADA.pdf>

Definition: There is no specific applicable regulation in Venezuela that defines child sexual abuse, however, according to Article 259 of LOPNNA this crime can be committed by: “Whoever performs sexual acts with a child, or participates in them (...)”. This also includes “(...) genital or anal penetration, by means of carnal, manual act or the introduction of objects; or oral penetration even with instruments that simulate sexual objects”. (not an official English translation)

Also, according to Article 260 of LOPNNA this crime can be committed by: “Whoever performs sexual acts with an adolescent, without consent, or participates in them (...)” (not an official English translation).

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

- I. Organic Law against Organized Crime and Financing of Terrorism published in Official Gazette No. 39.912 of April 30, 2012.

Link: https://www.oas.org/juridico/pdfs/mesicic4_ven_ley_del_org_finan_terr.pdf

Definition: There is no specific applicable regulation in Venezuela that defines child pornography or CSAM, however, according to Article 48 of the Organic Law against



Organized Crime and Financing of Terrorism, it can be considered that this crime can be committed by: “Whoever, as part of an organized criminal group, uses children or adolescents or their image, for purposes or in exhibitionist or pornographic shows, both public and private, or to produce any kind of pornographic material, whatever its medium, or finances any of these activities (...)” (not an official English translation).

Also Article 49 states that this crime can be committed by: “Whoever, as a member of an organized criminal group, produces, sells, distributes, exhibits or facilitates the production, sale, dissemination or exhibition by any means of pornographic material, in the preparation of which children or adolescents have been used, even if the material originates abroad or is unknown (...)” (not an official English translation).

- II. Law approving the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, published in Official Gazette No. 37.355 of January 2, 2002 signed by Venezuela on September 7, 2000 and ratified May 8, 2002, according to the United Nations.

Link: https://pandectasdigital.blogspot.com/2019/10/gaceta-oficial-de-la-republica_188.html

Definition: Article 2. For the purposes of the present Protocol: “(...) (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” (not an official English translation).

- 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>)**

- I. Special Law against Computer Crimes published in Official Gazette No. 37,313 of October 30, 2001.

Link: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo18.pdf

Definition: There is no specific applicable regulation in Venezuela that defines computer-generated images or videos of child pornography or CSAM, however, Article 24 of the Special Law against Computer Crime states: “Any person who, by any means involving the use of information technologies, uses the person or image of a child or adolescent for exhibitionist or pornographic purposes, shall be punished (...)” (not an official English translation)

- g. **enticement or grooming (encouraging, persuading, or coercing a child to engage in sexual activity or to create child pornography or CSAM) (18 U.S.C. 2422(b), <https://www.law.cornell.edu/uscode/text/18/2422>)**

There is no applicable regulation in Venezuela that specifically defines enticement or grooming.

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



are specified?

- I. Organic Law for the Protection of Children and Adolescents (LOPNNA), published in Official Gazette No. 6,185 of June 8, 2015.

Link: <https://elucabista.com/wp-content/uploads/2015/10/LOPNNA-REFORMADA.pdf>

Definition: Article 2 of LOPNNA identifies as an adolescent from 12 and under 18 years of age, and Article 260 of this Law establishes: "Whoever performs sexual acts with an adolescent, against his or her consent, or participates in such acts, shall be punished (...)" (not an official English translation).

- II. Law of Partial Reform of the Penal Code published in the Official Gazette No. 5.768 Extraordinary of April 13, 2005.

Link: https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_3_sp.pdf

Definition: Article 378 of the Penal Code states: "Whoever has carnal intercourse with a person over twelve and under sixteen years of age or performs lewd acts on them (...) shall be punished (...)". (not an official English translation)

If we analyze the first article, which is a special law, therefore the one applicable; the legal age of consent for sexual activity is 12 years of age. However, from the second article it can be understood that the age of consent for sexual activity is 16 years of age, because having sexual intercourse with an adolescent between 12 and 16 years of age has the risk of being punished for corruption of minors.

Therefore, it is the duty of the judge to consider the case and decides according to its specificities which will be the applicable law and define the crime.

- 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 applicable regulation in Venezuela that defines sextortion.

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**

- I. "The Special Law Against Computer Crimes" published in the Official Gazette of the Republic of Venezuela No. 37.313 of October 30, 2001.

Link: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo18.pdf



Definition: There is no specific applicable regulation or legislation in Venezuela regarding this matter; nevertheless, Article 24 of “The Special Law Against Computer Crimes” states: “Any person that by any means involving the use of information technologies, uses the person or image of a child or adolescent, for pornographic purposes, shall be punished with imprisonment of four to eight years and a fine of four hundred to eight hundred tax units” (not an official English translation)

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

- I. Optional Protocol to the Convention on the Rights of the Child on the sale of child , child prostitution and child pornography, signed by Venezuela on September 7, 2000 and ratified May 8, 2002.

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

Definition: There is no specific applicable national regulation or legislation in Venezuela regarding this matter; nevertheless; Article 2 of the mentioned Optional Protocol revolves around ensuring that activities such as sexual exploitation of the child, producing, distributing child pornography are fully covered under its criminal or penal law, whether such offenses are committed domestically or transnationally or on an individual or organized basis.

Additionally, Article 8 establishes the adoption of appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses.

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

- I. Law approving the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, published in Official Gazette No. 37.355 of January 2, 2002 signed by Venezuela on September 7, 2000 and ratified May 8, 2002, according to the United Nations.

Link: https://pandectasdigital.blogspot.com/2019/10/gaceta-oficial-de-la-republica_188.html

Definition: There are no specific applicable national regulation or legislation in Venezuela regarding this matter; nevertheless, Article 7 of the Optional Protocol mentions the following: “States Parties shall, subject to the provisions of their national law: (a) Take measures to provide for the seizure and confiscation, as appropriate, of: (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol; (ii) Proceeds derived from such offences; (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds



referred to in subparagraph (a); (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences” (not an official English translation).

- d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about**
 - I. United Nations Convention against Transnational Organized Crime, signed by Venezuela on December 14, 2000 and ratified May 13, 2002.

Link: Ch_XVIII_12p.pdf (un.org)

Definition: There are no specific applicable national regulation or legislation in Venezuela regarding this matter; nevertheless Article 12 states that: “1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention. 2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation”.

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

There are no national or international laws signed or ratified by Venezuela pertaining to this specific point.

- 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**
 - I. Law approving the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, published in Official Gazette No. 37.355 of January 2, 2002, signed by Venezuela on September 7, 2000 and ratified May 8, 2002, according to the United Nations.

Link: https://pandectasdigital.blogspot.com/2019/10/gaceta-oficial-de-la-republica_188.html

Definition: There are no specific applicable national regulation or legislation in Venezuela regarding this matter; nevertheless Article 7, paragraphs a. and b. establish: “1. States Parties shall, subject to the provisions of their national law: (a) Take measures to provide for the seizure and confiscation, as appropriate, of: (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol; (ii) Proceeds derived from such offences; (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph” (not an official English translation).



Additionally, Article 10, paragraph 1, establishes: “States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations” (not an official English translation).

- 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 national or international regulations signed or ratified by Venezuela pertaining to this specific point.

- 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.?**

There are no national or international regulations signed or ratified by Venezuela pertaining to this specific point.

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?

As of this date, Venezuela does not have specific provisions addressing the mandatory implementation of age verification methods for Online Platforms. However, there is one related regulation in the aforementioned Special Law against Computer Crimes published in Official Gazette No. 37,313 of October 30, 2001. Article 23 of said Law states: “Anyone who, by any means involving the use of information technologies, exhibits, disseminates, transmits or sells pornographic material or material reserved for adults, without previously giving due warnings to the user to restrict access to children and adolescents, shall be punished (...)” (not an official English translation).

The mentioned regulation does not detail specific parameters or enforcement mechanisms for age verification processes. Instead, it concentrates on the due warnings to restrict access to children and adolescents.

While age verification isn't directly mandated by this law, the legislation emphasizes shielding minors from explicit content.

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?

Online platforms are not legally required or recommended to implement any methods to obtain parental consent before a child uses the services of such Online Platform. Nevertheless, as stipulated above, the following regulation is related with the subject:

“The Special Law Against Computer Crimes” published in the Official Gazette of the Republic of Venezuela No. 37.313 of October 30, 2001.

Link: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo18.pdf

Definition: Article 23 states: “Anyone who, by any means involving the use of information technologies, exhibits, disseminates, transmits or sells pornographic material or material reserved for adults, without previously making the due warnings for the user to restrict access to children and adolescents, shall be punished(...)” (not an official English translation).

- 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:**

NO

- a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?**

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

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

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

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

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

- 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?**

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

- 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?**



As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

- 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?**

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

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

As of this date, Venezuela does not have specific provisions addressing legal remedies for children who have been victimized by online child sexual exploitation.

- 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 national or international regulations signed or ratified by Venezuela pertaining to online platforms that can detect or prevent the distribution of child pornography. Nevertheless;

“The Special Law Against Computer Crimes” published in the Official Gazette of the Republic of Venezuela No. 37.313 of October 30, 2001.

Link: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo18.pdf

Definition: Article 23 states: “Anyone who, by any means involving the use of information technologies, exhibits, disseminates, transmits or sells pornographic material or material reserved for adults, without previously making the due warnings for the user to restrict access to children and adolescents, shall be punished (...)” (not an official English translation).

Article 24 also states: “Any person who by any means involving the use of information technology, uses the person or image of a child or adolescent the person or image of a child or adolescent for exhibitionist or pornographic purposes, shall be punished (...)” (not an official English translation).

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

There are no national or international regulations signed or ratified by Venezuela pertaining to online platforms that can detect or prevent the distribution of child pornography.

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



There are no national or international regulations signed or ratified by Venezuela pertaining to online platforms that can detect or prevent the distribution of child pornography.

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

There are no national or international regulations signed or ratified by Venezuela pertaining to online platforms that can detect or prevent the distribution of child pornography.

- 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"?**

There are no national or international regulations signed or ratified by Venezuela pertaining to online platforms that can detect or prevent the distribution of child pornography.