

Legal questionnaire completed by Tilleke & Gibbins Vietnam . 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>)

General Note: Relevant treaties that are deemed relevant to the case, i.e., the Optional Protocol to the Convention on the Rights of the Child regarding the sale of children, child prostitution, and child pornography, have been considered and mentioned in relevant responses.

In Vietnam, depending on each specific treaty, the National Assembly/President of Vietnam/Government may decide to apply directly the treaty or the treaty will need to be made part of domestic law for implementation. (Article 6.2 of the Law on Treaties)

Link (in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=18457>

Legal citation: Article 6.2 of Law on Treaties No. 108/2016/QH13 issued by the National Assembly of Vietnam on 9 April 2016 (“Law on Treaties”).

- (i) According to Article 1 of Law on Children No. 102/2016/QH13 issued by the National Assembly of Vietnam on 5 April 2016 (“Law on Children”), children are persons under the age of 16.

Link (in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

Legal citation: Article 1 of Law on Children No. 102/2016/QH13 issued by the National Assembly on 5 April 2016.

- (ii) According to Article 21.1 of Civil Code No. 91/2015/QH13 issued by the National Assembly of Vietnam on 24 November 2015 (“Civil Code”), minors are persons under the age of 18.

Link (in Vietnamese): <https://vanban.chinhphu.vn/?pageid=27160&docid=183188>



Legal citation: Article 21.1 of Civil Code No. 91/2015/QH13 issued by the National Assembly of Vietnam on 24 November 2015.

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>)

Vietnamese does not specifically provide for the concept of “child sexual exploitation.” Similar concepts are introduced as the following:

- According to Article 2.1 of the Law on Human Trafficking Prevention and Fighting, sexual exploitation is the forcing of another person into prostitution, to act as an object for the production of pornography, to perform sexually, or to serve as a sexual slave.

Link (Law on Human Trafficking Prevention and Fighting in Vietnamese):
<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=100154>

Legal citation:

Article 2.1 of Law on Human Trafficking Prevention and Combat No. 66/2011/QH12

- According to Article 4.7 of the Law on Children, child exploitation refers to the act of forcing a child to work against the law on labor, perform or produce pornographic products; organizing or supporting tourist activities for the purpose of child sexual abuse; offering, adopting or supplying a child for prostitution; and other acts of using a child for profiteering purposes.

According to Article 4.8 of the Law on Children, child sexual abuse refers to the act of using violence, threatening to use violence, forcing, persuading or seducing a child to engage in sexual acts. The child sexual abuse includes rape, aggravated rape, sexual intercourse or molestation with children and use of children for prostitution or pornography in any form.

Link (Law on Children in Vietnamese):
<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

Legal citation:

Article 4.7 of Law on Children No. 102/2016/QH13

- Article 146.1 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017 (“Criminal Code”) provides for the crime of molestation of a person under 16 being the case where a person molests a person under 16 for purposes other than sexual intercourse or other sexual activities.

Link (in Vietnamese):
<https://vietlaw.quochoi.vn/Pages/vbpbq-toan-van.aspx?ItemID=28116>

Legal citation:

Articles 146.1 of the Criminal Code No. 100/2015/QH13



- Article 3.3 of Resolution No. 06/2019/NQ-HDTP of the Council of Justices of the Supreme People's Court dated 1 October 2019 guiding the application of a number of regulations of articles 141, 142, 143, 144, 145, 146, and 147 of the Criminal Code and settlement of cases of sexual exploitation and abuse of persons under 18 ("Resolution 06") regulates that molestation means an act committed by a person against another person of different or the same sex that involves direct or indirect physical contact via clothing with a reproductive organ, private part or one of the other body parts of a person under 16 that is sexual in nature but is not committed with the intention to engage in sexual intercourse. To be specific:
 - a. Using a reproductive organ or private part to touch (e.g., groping, rubbing, etc.) a reproductive organ, private part or one of the other body parts of a person under 16;
 - b. Using one of the other body parts (e.g., finger, toe, tongue, etc.) to touch (e.g. caressing, groping, squeezing, pinching, kissing, licking, etc.) a reproductive organ or private part of a person under 16;
 - c. Using a sex aid to touch (e.g., groping, rubbing, etc.) a reproductive organ or private part of a person under 16;
 - d. Enticing or forcing a person under 16 to use one of their other body parts to touch (e.g. caressing, groping, squeezing, pinching, kissing, licking, etc.) a private part of the offender or another person;
 - e. Other acts that are sexual in nature but are not committed with the intention to engage in sexual intercourse (e.g., kissing the mouth, neck, ear, nape, etc., of a person under 16).

Link (Resolution 06 in Vietnamese):

<https://vbpq.toaan.gov.vn/webcenter/portal/htvb/chi-tiet?dDocName=TAND086871&Keyword=>

Legal citation: Article 3.3 of Resolution No. 06/2019/NQ-HDTP

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

- According to Article 3.5 of Decree 178, "sexually explicit conduct" is the act of using gestures, actions, images, and sounds to stimulate sexual desire.

Link (Decree 178 in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=13489>

Legal citation:

Article 3.5 of Decree No. 178/2004/ND-CP of the Government dated 15 October 2004

- Article 2.1 of Resolution 06 regulates that "sexual abuse of persons under 16" means using violence, threatening to use violence, forcing, persuading, or enticing a person under 16 to participate in sexual activities, including rape, sexual abuse, sexual intercourse and molestation of a person under 16 and using a person under 16 for pornographic or prostituting purposes in any shape or form (e.g., sexual exploitation or abuse committed with the consent of a person under 13), via force or promises of

financial interests (money or property) or non-financial interests (e.g., high grades, favorable evaluation, advancement opportunity, etc.).

Article 3.6 of Resolution 06 regulates “Crime of using a person under 16 years old for sexually explicit conduct purposes” that “participate in a sexually explicit conduct performance or watch a sexually explicit conduct performance” in Article 147.1 of the Criminal Code includes:

- a. Giving a sexually explicit conduct performance to a person under 16 or enticing a person under 16 to participate in a sexually explicit conduct performance;
- b. Showing a sexually explicit conduct performance involving a person under 16;
- c. Enticing, persuading or forcing a person under 16 to photograph or record their sexually explicit conduct performance and distributing such photo or video;
- d. Enticing, persuading or forcing a person under 16 to undress completely and live stream;
- e. Showing sexually explicit conduct contents involving a person under 16 or running a simulation of a person under 16 (animated works or digitally created characters);
- f. Description of human reproductive organs and private parts, excluding the cases provided by law;
- g. Other forms of sexually explicit conduct performances or watching of sexually explicit conduct performances.

Link (Resolution 06 in Vietnamese):

<https://vbpg.toaan.gov.vn/webcenter/portal/htvb/chi-tiet?dDocName=TAND086871&Keyword=>

Legal citation:

Articles 2.1 and 3.6 of Resolution No. 06/2019/NQ-HDTP

- Under Article 145.1 of the Criminal Code, the crime of engagement in sexual intercourse or other sexual activities with a person aged from 13 to under 16 regulates is the case where a person aged 18 or over engages in sexual intercourse or other sexual activities with a person aged from 13 to under 16 in circumstances other than sexual assault and rape.

Under Article 147.1 of the Criminal Code, the crime of use of a person under 16 for sexually explicit conduct purposes being the case where a person aged 18 or over who persuades, entices, or forces a person under 16 to participate in a sexually explicit conduct performance or watch a sexually explicit conduct performance in any form.

Link (in Vietnamese):

<https://vietlaw.quochoi.vn/Pages/vbpg-toan-van.aspx?ItemID=28116>

Legal citation:

Articles 145.1 and 147 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017.

- Under Article 4.5 of the Law on Children, the crime of child abuse is any act that



results in harm to the body, emotion, psychology, honor or human dignity of such child through violence against the child, child exploitation, sexual abuse, neglect and abandonment, and other forms of causing harm to the child.

Link (Law on Children in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

Legal citation:

Article 4.5 of Law on Children No. 102/2016/QH13 issued by the National Assembly on April 5, 2016.

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

- According to Article 4.8 of the Law on Children, “child sexual abuse” refers to the act of using violence, threatening to use violence, forcing, persuading or seducing a child to engage in sexual acts, including rape, aggravated rape, sexual intercourse or molestation with children and use of children for prostitution or pornography in any form.

Link (in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

Legal citation:

Article 4.8 of Law on Children No. 102/2016/QH13 issued by the National Assembly on April 5, 2016.

- Article 2.1 of Resolution 06 regulates that “sexual abuse of persons under 16” means using violence, threatening to use violence, forcing, persuading, or enticing a person under 16 to participate in sexual activities, including rape, sexual abuse, sexual intercourse and molestation of a person under 16 and using a person under 16 for pornographic or prostituting purposes in any shape or form (including sexual exploitation or abuse committed with the consent of a person under 13), via force or promises of financial interests (money or property) or non-financial interests (e.g., high grades, favorable evaluation, advancement opportunity, etc.).

Link (in Vietnamese):

<https://vbpg.toaan.gov.vn/webcenter/portal/htvb/chi-tiet?dDocName=TAND086871&Keyword=>

Legal citation:

Article 2.1 of Resolution No. 06/2019/NQ-HDTP of the Council of Justices of the Supreme People’s Court dated 1 October 2019 guiding the application of a number of regulations of articles 141, 142, 143, 144, 145, 146, and 147 of the Criminal Code and settlement of cases of sexual exploitation and abuse of persons under 18.

- Under Article 141.1 of the Criminal Code, the crime of sexual assault is the case where any person uses violence or threatens to use violence or takes advantage of the victim's defenselessness or otherwise engages in non-consensual sexual intercourse or other sexual activities.



Under Article 142.1 of the Criminal Code, the crime of sexual assault of a person under 16 is the case where a person who commits any of the following acts:

- a. Using violence or threatening to use violence or taking advantage of the victim's defenselessness or otherwise engaging in non-consensual sexual intercourse or other sexual activities with a person aged from 13 to under 16.
- b. Engaging in sexual intercourse or other sexual activities with a person under 13.

Under Article 145.1 of the Criminal Code, the crime of engagement in sexual intercourse or other sexual activities with a person aged from 13 to under 16 regulates in the case where a person aged 18 or over who engages in sexual intercourse or other sexual activities with a person aged from 13 to under 16 in circumstances other than sexual assault and rape.

Link (in Vietnamese):

<https://vietlaw.quochoi.vn/Pages/vbpq-toan-van.aspx?ItemID=28116>

Legal citation: Articles 141.1, 142.1 and 145.1 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017.

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

Vietnamese law does not specifically provide a definition of “child pornography” or “child sexual abuse material (CSAM)”. Distribution of pornographic materials in general is a crime under Article 326 of the Criminal Code, which specifies that any person who makes, copies, circulates, transports, buys, sells, or stores for the purpose of disseminating books, newspapers, paintings, photos, movies, music, or other items with pornographic content, depravity, or other acts to spread depraved items will be subject to criminal liabilities in accordance with the law. One aggravating factor for this crime is providing pornographic materials to persons under the age of 18.

Link (in Vietnamese):

<https://vietlaw.quochoi.vn/Pages/vbpq-toan-van.aspx?ItemID=28116>

Legal citation:

Article 326 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017.

However, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted on 25 May 2000 by Resolution A/RES/54/263 at the 54th session of the General Assembly of the United Nations, ratified by Vietnam in 2001 (“Optional Protocol”), in its Article 2.3 defines “child pornography” as 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. As Vietnam ratified this Optional Protocol, the definition can be used for reference.



Legal citation:

Article 2.c of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted on 25 May 2000 by Resolution A/RES/54/263 at the 54th session of the General Assembly of the United Nations, ratified by Vietnam in 2001.

In terms of the legal validity of this Optional Protocol, we note that Article 6.1 of the Law on Treaties No. 108/2016/QH13 issued by the National Assembly on 9 April 2016 regulates that in cases where a Vietnamese legal document and a treaty to which the Socialist Republic of Vietnam is a party contain different provisions on the same matter, the provisions of the treaty shall prevail, except for the Constitution. Hence, we understand the definition in the Optional Protocol can be used for reference. We also note that we have not found a public source for the document ratifying the Optional Protocol by Vietnam; instead, the information that Vietnam ratified the Optional Protocol can be found via the United Nations website at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en&gl=1*1ho9py0*_ga*MTE3NTM3NTc3MS4xNzA2MTg4MjQ5*_ga_TK9BQL5X7Z*MTcwNjE5MTIwMS4yLjAuMTcwNjE5MTIwOS4wLjAuMA.

- 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>)**

Vietnamese law does not specifically provide a definition of “computer-generated images or videos of child pornography or CSAM”, so the laws and regulations relating to child pornography or CSAM shall apply.

- 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>)**

Vietnamese law does not specifically provide a definition of “enticement or grooming”.

However, certain examples of enticement or grooming can be derived, for reference, from Resolution 06. Accordingly, Article 2.1 of Resolution 06 regulates that “sexual exploitation of persons under 16” means using violence, threatening to use violence, forcing, persuading, or enticing a person under 16 to participate in sexual activities, including rape, sexual abuse, sexual intercourse and molestation of a person under 16 and using a person under 16 for pornographic or prostituting purposes in any shape or form (including sexual exploitation or abuse committed with the consent of a person under 13), via force or promises of financial interests (money or property) or non-financial interests (e.g. high grades, favorable evaluation, advancement opportunity, etc.).

Link (in Vietnamese):

<https://vbpq.toaan.gov.vn/webcenter/portal/htvb/chi-tiet?dDocName=TAND086871&Keyword=>

Legal citation:

Article 2.1 of Resolution No. 06/2019/NQ-HDTP of the Council of Justices of the Supreme People’s Court dated 1 October 2019 guiding the application of certain regulations of articles



141, 142, 143, 144, 145, 146, and 147 of the Criminal Code and settlement of cases of sexual exploitation and abuse of persons under 18.

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

The applicable regulations do not provide the legal age of consent for sexual activity.

However, under Articles 142, 144 and 146 of the Criminal Code, criminal liabilities are imposed for the act of having sexual activity with a person under 16 regardless of consent (with the liabilities depending on the specific acts). The Criminal Code does not impose criminal liabilities for consensual sex with a person at least 16 years of age.

Link (in Vietnamese):

<https://vietlaw.quochoi.vn/Pages/vbpg-toan-van.aspx?ItemID=28116>

Legal citation:

Articles 142, 144, 145 and 146 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017.

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>)

Vietnamese law does not specifically define “sextortion”. However, Article 170.1 of the Criminal Code regarding extortion regulates the crime of extortion to cover “any person who uses violence, threat of violence otherwise intimidates another person to obtain his/her property”.

In addition, Article 143.1 of the Criminal Code regarding rape regulates the crime of rape to cover “any person who employs trickery to make his care-dependent or a person in extreme need to reluctantly engage in sexual intercourse or other sexual activities”.

Further, Article 144.1 of the Criminal Code regarding rape of a person aged from 13 to under 16 regulates the crime of rape to cover “any person who employs trickery to make a person aged from 13 to under 16 who is his care-dependent or a person in extreme need to reluctantly engage in sexual intercourse or other sexual activities”.

Link (in Vietnamese):

<https://vietlaw.quochoi.vn/Pages/vbpg-toan-van.aspx?ItemID=28116>

Legal citation:

Articles 143.1, 144.1, and 170.1 of the Criminal Code No. 100/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, as amended in 2017.

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

The Online Platforms (including social networks such as Facebook, Instagram, and Snapchat and other local social media and similar websites) are legally required to control the contents on their platform in order to protect children as discussed below.

Under Articles 1 and 29.2 of the Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly of Vietnam on 12 June 2018 (“Law on Cybersecurity”), which regulates both local and foreign entities, the Online Platforms are required to control information on their information systems or on services provided by them, in order to not cause harm to or mistreatment of children or infringe children's rights. Child pornography and CSAM contents might be classified as contents which can cause harm to or mistreatment of children or infringe children's rights; as such, the Online Platforms will need to “control” (which can be interpreted to include review, screen, moderate, or detect content) these contents in order to protect children.

Link (Law on Cybersecurity in Vietnamese):

<https://congbao.chinhphu.vn/loi-dung-van-ban-so-24-2018-qh14-26894?cbid=23075>

Legal citation:

Articles 1 and 29.2 of Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly of Vietnam on 12 June 2018.

In addition, the Online Platforms are specifically regulated under Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on the management, provision, and use of internet services and online information, as amended by Decree No. 27/2018/ND-CP and Decree No. 150/2018/ND-CP (collectively, “Decree 72”). However, Decree 72 does not explicitly impose obligations on the Online Platforms to review, screen, moderate, or detect child-related harmful content.

Link (Decree 72 in Vietnamese):

<https://chinhphu.vn/default.aspx?pageid=27160&docid=196767>

Legal citation:

Article 25.6 of Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on the management, provision, and use of internet services and online information, as amended by Decree No. 27/2018/ND-CP and Decree No. 150/2018/ND-CP

To rectify this point, Article 31.2(c) of the Draft Decree amending Decree 72 (“Draft Decree”), which is expected to be promulgated in 2024, is drafted to impose the obligation of having solutions to moderate content posted on local social networks (local Online Platforms). Article 38.4 further requires the local Online Platforms to review and monitor information violating the Law on Cybersecurity and the Draft Decree, which can cover child pornography or CSAM content.

Link (Draft Decree amending Decree 72 in Vietnamese):

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanB



[an=2163&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx](https://vanban.chinhphu.vn/?pageid=2163&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx)

Legal citation: Article 26.3(b), Article 27.7(a), Article 31.2(c) and Article 38.4 of the Draft Decree amending Decree 72.

Article 26.3(b) and Article 27.7(a) of the Draft Decree regulate that foreign Online Platforms with servers in Vietnam or with total visits from Vietnam per month (based on statistics for six consecutive months) of 100,000 or more (foreign Online Platforms under the Draft Decree) will also have to inspect, monitor and remove contents violating the Law on Cybersecurity and the Draft Decree, which can cover child pornography or CSAM content.

Link (Law on E-Transactions in Vietnamese):

<https://vanban.chinhphu.vn/?pageid=27160&docid=208421&classid=1&orggroupid=1>

Legal citation:

Articles 2, Article 45.2 and 45.3 of the Law on E-Transactions No. 20/2023/QH15 issued by the National Assembly of Vietnam on 22 June 2023.

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

Yes. Similar to the answer for Question 2(a), the Online Platforms are legally required to review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child under the Law on Cybersecurity and Draft Decree.

Please refer to the previous analyses of Article 29.2 of Law on Cybersecurity and Article 26.3(b), Article 27.7(a), Article 31.2(c) and Article 38.4 of the Draft Decree in Question 2(a) for information. These regulations under the Law on Cybersecurity and Draft Decree are broad enough to cover the activities herein.

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

Yes, there is an obligation to report illegal contents (including child pornography, CSAM, enticement, grooming, or sextortion) that the Online Platforms become aware of or are notified about on their systems to the government agency.

To be specific, Article 29.2 of the Law on Cybersecurity requires the Online Platforms, when finding content that causes harm to or mistreatment of children or infringes children's rights ("Illegal Content"), which can cover the child pornography, CSAM, enticement, grooming and sextortion, the Online Platforms have to promptly notify and coordinate with the Department of Cybersecurity and Hi-Tech Crime Prevention ("A05") under the Ministry of Public Security ("MPS") for resolution. However, the authority has not yet provided further guidance on this notification procedure.

Link (in Vietnamese):

<https://congbao.chinhphu.vn/loi-dung-van-ban-so-24-2018-qh14-26894?cbid=23075>



Legal citation:

Article 29.2 of Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly of Vietnam on 12 June 2018.

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

Yes, there is an obligation to remove or delete Illegal Contents (including child pornography, CSAM, enticement, grooming, or sextortion) that the Online Platforms identify, become aware of, or are notified about. Please refer to the responses to Question 2(c) for further details of the Illegal Contents.

To be specific, Article 29.2 of the Law on Cybersecurity requires the Online Platforms to block the sharing of and delete information about Illegal Content. Article 38.4 of the Draft Decree requires the local Online Platform to delete the content within 24 hours from the time of discovery of the violation. The content to be deleted includes but is not limited to prostitution, vice, human trafficking; posting pornographic or criminal information; damaging Vietnam's good traditions, social ethics or public health. Hence, such content can also cover Illegal Content. In the same vein, Article 26.3(b) also requires foreign Online Platforms under the Draft Decree to generally delete the Illegal Content.

Link (Law on Cybersecurity in Vietnamese):

<https://congbao.chinhphu.vn/loi-dung-van-ban-so-24-2018-qh14-26894?cbid=23075>

Legal citation: Article 29.2 of Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly of Vietnam on 12 June 2018.

Link (Draft Decree amending Decree 72 in Vietnamese):

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=2163&replyUrl=/pages/duthaovanban/danhsachduthaovanban.aspx

Legal citation:

Article 26.3(b) and Article 38.4 of the Draft Decree amending Decree 72.

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

Article 23a.1(b) of Decree 72 requires the local Online Platforms to have an information content management department; nevertheless, Decree 72 is silent on whether the content must be reviewed by human moderators. The Law on Cybersecurity is also silent on this topic. Thus, the content can be reviewed either by humans or via the appropriate applications depending on the Online Platforms' sole discretion.

- 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**

Yes, there is an obligation for Online Platforms to remove Illegal Content (which may include child pornography, CSAM, enticement, grooming, or sextortion) from their systems when



notified of its presence by any parties (including a victim, nongovernmental organization, law enforcement, and government agency). Please refer to the responses to Question 2(c) for further details of the Illegal Contents.

In particular, when a party notifies the information to the Online Platforms, the Online Platforms will become aware of the Illegal Content. Under Article 29.2 of the Law on Cybersecurity and Article 38.4 of the Draft Decree (as discussed in Question 2(d)), the Online Platforms will need to remove/delete such Illegal Content when they become aware of the Illegal Content.

In addition, Article 29.3 of the Law on Cybersecurity imposes an obligation on Online Platforms to be responsible for coordinating with competent State administrative agencies to guarantee children's rights in cyberspace, and prevent network information with contents causing harm to children. Thus, as this regulation is very broad, it can grant the authorities the right to notice information and request the removal of Illegal Content.

Link (Law on Cybersecurity in Vietnamese):

<https://congbao.chinhphu.vn/loi-dung-van-ban-so-24-2018-qh14-26894?cbid=23075>

Legal citation:

Article 29.3 of Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly of Vietnam on 12 June 2018.

Article 25.6 of Decree 72 requires local Online Platforms to coordinate with the authorities to remove or prevent the regulated Illegal Content upon request. Thus, upon being notified by the authorities, the local Online Platforms need to carry out such deletion following such notification. Under Article 3.2(b) and Article 5.1 of Circular No. 38/2016/TT-BTTTT of the Ministry of Information and Communications dated 26 December 2016 specifying cross-border provision of public information ("Circular 38"), foreign Online Platforms with servers in Vietnam for service provision or total visits from users in Vietnam of 1 million or more per month will have to handle the information per the request of the Ministry of Information and Communications ("MIC") within 24 hours from the time of receipt. The request of the MIC here can include the removal/deletion of information.

Link (Decree 72 in Vietnamese):

<https://chinhphu.vn/default.aspx?pageid=27160&docid=196767>

Legal citation:

Article 25.6 of Decree No. 72/2013/ND-CP of the Government dated 15 July 2013

Link (Circular 38 in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=188915>

Legal citation:

Article 3.2(b) and Article 5.1 of Circular No. 38/2016/TT-BTTTT of the Ministry of Information and Communications dated 26 December 2016 specifying cross-border provision of public information.



Article 38.5 of the Draft Decree requires the local Online Platforms to block or remove the Illegal Content upon request of the authorities via phone call, electronic means or written requests. Furthermore, Article 26.3(c) requires the foreign Online Platforms under the Draft Decree to block and remove contents that violate the law at the request of the MIC. Under Article 26.3(h), the foreign Online Platforms must, within 48 hours after receiving a complaint about content from a user, temporarily block such content that affects the legitimate rights and interests of organizations and individuals and remove such content when there is information verifying the violations.

Link (Draft Decree amending Decree 72 in Vietnamese):

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=2163&replyUrl=/pages/duthaovanban/danhsachduthaovanban.aspx

Legal citation:

Article 26.3(c), Article 26.3(h) and Article 38.5 of the Draft Decree amending Decree 72.

- 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.**

Vietnamese law does not regulate the use of specific technology to detect, remove, block, or take down any 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.?**

No. Vietnamese law imposes the abovementioned obligations on the Online Platforms in general (as discussed in detail above), except for limited obligations imposed on foreign Online Platforms in accordance with Circular 38 and the Draft Decree. In particular:

- Under Article 3.2(b) of Circular 38, the current obligation on coordinating with the MIC to handle violating content only applies to foreign Online Platforms with servers in Vietnam for service provision or total visits from users in Vietnam of 1 million or more per month.

Link (Circular 38 in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=188915>

Legal citation:

Article 3.2(b) of Circular No. 38/2016/TT-BTTTT of the Ministry of Information and Communications dated 26 December 2016 specifying cross-border provision of public information.

- Under Article 26.3 of the Draft Decree, the obligations are imposed on foreign Online Platforms with servers in Vietnam or with total visits from Vietnam per month (based on statistics for 6 consecutive months) of 100,000 or more.

Link (Draft Decree amending Decree 72 in Vietnamese):

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=2163&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx

Legal citation:

Article 26.3 of the Draft Decree amending Decree 72.

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?

Neither Decree 72 nor the Draft Decree provide regulations on the age verification process, but both require consent of parent/legal guardian if the user is under 14 years old and does not have an identity card/citizen identity card/passport. In addition, in terms of foreign Online Platforms under the Draft Decree, Article 26.3(e) only allows users at least 16 years old to register accounts on foreign Online Platforms.

Under Article 20.2 of Decree No. 13/2023/ND-CP of the Government dated 17 April 2023 on personal data protection (“PDPD”), data controllers (the parties that can decide the means and purposes of data processing, who are usually the Online Platforms) will need to verify the age of children (those who are under 16 years old) when processing personal data of children. We understand that in order to allow a user to access/register for the online platform, the Online Platform will need to process personal data of such user, and the Online Platform is subject to the regulations of the PDPD. As a result, the Online Platform needs to adhere to the age verification requirement herein.

However, the PDPD has yet to provide further guidance in relation to this age verification requirement. Thus, the enterprises can freely develop their own mechanism to verify the age of children. For instance, in practice, some enterprises require the users to declare their ages (e.g., date of birth) and tick the checkbox to double confirm that the users are at least 18 years old.

As the PDPD has just taken full effect from 1 July 2023 and there are no applicable sanctions in terms of violations of the PDPD, there has been no enforcement yet regarding this age verification requirement.

Link (the PDPD in Vietnamese):

<https://vanban.chinhphu.vn/?pageid=27160&docid=207759>

Legal citation:

Article 20.2 of the Decree No. 13/2023/ND-CP of the Government dated 17 April 2023 on personal data protection

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?

Yes, there are legal requirements regarding parental consent. However, the regulations do not

specify any required or recommended method.

Under Decree 72 and the Draft Decree, Article 23c.2(a) and Article 30.2(a) respectively regulate that if the user is under 14 years old and does not have an identity card/citizen identity card/passport, the parent/legal guardian shall decide the registration of their personal information to show the permission for a child to use the Online Platform and take responsibility before the law for that registration. With such requirement, the laws set the age of 14 as a threshold to seek parental consent. Moreover, by law, the account information (including personal information) must be stored for at least two years under Article 23c.1(b) and Article 30.1(b) of the Decree 72 and the Draft Decree respectively.

In addition, the PDPD imposes specific requirements for collection and processing of children's personal data (children are those who are under the age of 16). Specifically, the law requires both consent from the child and from his/her parent or guardian for the processing of personal data of a child aged 7 years or above. For a child under 7 years old, only the consent from his/her parent or guardian is required. As the use of the online platform will require data-processing activities, the use of the platform by children will also require parental consent.

The PDPD does not set a specific timeline for the storage of such consent; however, as the Online Platforms will be required to prove the consent of users in case of dispute, the consent normally should be stored at least until the deletion of users' accounts.

Link (the PDPD in Vietnamese):

<https://vanban.chinhphu.vn/?pageid=27160&docid=207759>

Legal citation:

Article 20.2 of the Decree No. 13/2023/ND-CP of the Government dated 17 April 2023 on personal data protection.

Link (Decree 72 in Vietnamese):

<https://chinhphu.vn/default.aspx?pageid=27160&docid=196767>

Legal citation:

Article 23c.1(b), Article 23c.2(a) of Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on the management, provision, and use of internet services and online information, as amended by Decree No. 27/2018/ND-CP and Decree No. 150/2018/ND-CP.

Link (Draft Decree amending Decree 72 in Vietnamese):

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=2163&replyUrl=/pages/duthaovanban/danhsachduthaovanban.aspx

Legal citation:

Articles 30.1(b), 30.2(a) of the Draft Decree amending Decree 72.

- 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?
- 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?

Yes, there are legal remedies for children who have been victimized by online child sexual exploitation. Article 585 of the Civil Code grants the right to request compensation from the offender who has shared a child's image or video. In principle, actual loss and damage must be compensated in full and promptly. Unless otherwise provided by law, parties may agree on the amount of compensation; on the form of compensation, which may be money, in kind or the performance of an act; on one-off payment or payment in installments; and on the method of compensation.

It is worth noting that the compensation can include the compensation for loss and damage caused by harm to honor, dignity or reputation. Specifically, under Article 592 of the Civil Code, the compensation can comprise:

- (i) Reasonable costs for mitigating and remedying the damage;
- (ii) Loss of or reduction in actual income; and
- (iii) Other loss and damage as provided by law.

In addition, the offender must pay compensation together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties. If the parties are not able to agree, the maximum sum payable to a person whose honor, dignity or reputation is harmed shall not exceed 10 times the basic wage rate provided by the State (as of January 2024, the basic wage rate is VND 1,800,000/month, approx. USD 77/month).

Link (in Vietnamese):

<https://vanban.chinhphu.vn/?pageid=27160&docid=183188>

Legal citation:

Articles 585, 592 of the Civil Code No. 91/2015/QH13 issued by the National Assembly of Vietnam on 24 November 2015.

- 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, children can seek other forms of victim recovery/services provided for under the law. The Law on Children, in its Article 47, regulates the implementation of child protection according to the following three levels:

- (i) Prevention;



- (ii) Support; and
- (iii) Intervention.

While the prevention and support levels aim to (i) raise awareness and improve knowledge of child protection, therefore creating a safe and healthy living environment for children and minimizing the risk of cases where children who may be abused or face disadvantaged conditions; and (ii) discover, reduce or remove risks of harm to children in a timely manner, the intervention level includes child protective measures that are applicable to, among others, abused children and their families for preventing acts that result in harm to children and supporting children. Child protective measures at the intervention level consist of, among others:

- (i) Giving health care, psychological treatment, physical and mental health rehabilitation;
- (ii) Measures to support children and children's families in terms of child health care, child education, and improvement in living conditions; and
- (iii) Monitoring and evaluating the safety of the child.

People's committees of communes where children reside shall take the prime responsibility and coordinate with agencies, organizations and individuals in charge of child protection to establish, approve and implement support and intervention plans; arrange resources and individuals and/or organizations to implement or cooperate to implement and inspect the implementation of such support and intervention plans.

In addition, the Optional Protocol, in its Article 9.4, regulates that the parties to the Convention shall ensure that all child victims of the offenses (such as the sale of children, child prostitution and child pornography) have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

The Optional Protocol (in English):

Legal citation: Article 9.4 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted on 25 May 2000 by Resolution A/RES/54/263 at the 54th session of the General Assembly of the United Nations, ratified by Vietnam in 2001.

Link (in Vietnamese):

<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

Legal citation: Articles 47, 48, 49, 50, 52 of the Law on Children No. 102/2016/QH13 issued by the National Assembly dated April 5, 2016.

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

Yes, there is a notification requirement under criminal proceedings when the offender is arrested for distributing child pornography or CSAM in which a child is depicted. Under the Criminal Procedure Code No. 101/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, amended in 2015 and 2021 ("Criminal Procedure Code"), the victim will be informed of results of investigations and lawsuits.



The investigation results that could be reported include (i) the conclusion of the investigation during the stage of prosecution; or (ii) the conclusion of an investigation that is terminated. The investigation authorities, within two days upon concluding the investigation in writing, must send such conclusion to the victim. If it is the conclusion of investigation during the stage of prosecution, the written conclusion of investigation shall specify, among other things, the progress of crimes; evidence of suspects' commission of crimes; reasons and justifications of prosecution; offenses and legal citations from the Criminal Code; recommendations for the settlement of the case; etc.

In terms of the results of lawsuits, the victim shall receive the judgment within 10 days after pronouncement of a judgment. The judgment will specify, among other things, the analyses on the evidence establishing guilt or innocence, determination of the defendants' status of being guilty of what crimes or innocent, legal citations from the Criminal Code and other legislative documents, factors aggravating and mitigating criminal liabilities and solutions, etc.

Link (in Vietnamese):

<https://congbao.chinhphu.vn/thuoc-tinh-van-ban-so-05-vbhn-vpqh-37562?cbid=41300>

Legal citation:

Articles 62, 232, 233, 260 and 262 of the Criminal Procedure Code No. 101/2015/QH13 issued by the National Assembly of Vietnam on 27 November 2015, amended in 2015 and 2021.

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?

Currently, in Vietnam, there are no specific regulations regarding the "safety by design" requirements for online platforms to protect children from child sexual exploitation. However, it is worth noting that the Vietnam Cyber Emergency Application Center (VNCERT/CC Center) launched the tool "Check website safety for children" at the website <https://vn-cop.vn/>.

Accordingly, this tool will help identify, analyze and warn about a website that may contain content inappropriate for children. At the same time, the tool supports parents in particular and users in general in evaluating the reasonableness of the website before allowing children to use it, avoiding the risk of exposure to harmful content.

To use the above tool, users access vn-cop.vn, go to "Tools" and enter the link of the website whose location path needs to be checked, then the system will perform analysis to display results about whether or not job content on the website is suitable for children.

- 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"?